



# **Family Law Act 1975**

**Act No. 53 of 1975 as amended**

This compilation was prepared on 1 March 2009  
taking into account amendments up to Act No. 144 of 2008

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# **An Act relating to Marriage and to Divorce and Matrimonial Causes and, in relation thereto and otherwise, Parental Responsibility for Children, and to financial matters arising out of the breakdown of de facto relationships and to certain other Matters**

## **Part I—Preliminary**

### **1 Short title** [see Note 1]

This Act may be cited as the *Family Law Act 1975*.

### **2 Commencement** [see Note 1]

This Act shall come into operation on a date to be fixed by Proclamation.

### **3 Repeal and saving**

(1)The *Matrimonial Causes Act 1959*, the *Matrimonial Causes Act 1965* and the *Matrimonial Causes Act 1966* are repealed.

(2)Notwithstanding the repeal effected by subsection (1):

(a)the validity of a decree made before the commencement of the *Matrimonial Causes Act 1959* by virtue of the Imperial Act entitled the Matrimonial Causes (War Marriages) Act, 1944 or Part I of the Matrimonial Causes (War Marriages) Act 1947 of New Zealand and in force immediately before the commencement of this Act shall continue to be recognized in all courts in Australia;

(b)a decree of the Supreme Court of a State or Territory made before the commencement of the *Matrimonial Causes Act 1959* in the exercise of jurisdiction invested or conferred by the *Matrimonial Causes Act 1945*, or that Act as amended by the *Matrimonial Causes Act 1955*, and in force immediately before the commencement of this Act shall continue to have effect throughout Australia; and

Section 4

(c)a decree of the Supreme Court, or of a court of summary jurisdiction, of a State or Territory:

- (i) made before the commencement of this Act in the exercise of jurisdiction invested or conferred by the repealed Act, or in a matrimonial cause or proceedings for a separation order instituted under the law of that State or Territory, being a decree that was in force immediately before the commencement of this Act; or
  - (ii) made after the commencement of this Act in proceedings to which subsection 9(1) applied;  
shall have, or continue to have, effect throughout Australia, and, except in the case of:
    - (iii) a decree of nullity of marriage made on the ground that the marriage was voidable;
    - (iv) a decree of judicial separation;
    - (v) a decree of restitution of conjugal rights;
    - (vi) a decree of jactitation of marriage; or
    - (vii) a separation order;
- this Act applies to and in relation to the decree as if the decree had been made under this Act.

(3)For the purposes of paragraph (2)(c), a purported decree to which section 5 of the *Matrimonial Causes Act 1971* applied made in a State shall be deemed to be a decree of the Supreme Court of that State made in the exercise of jurisdiction invested by the repealed Act.

#### 4 Interpretation

(1)In this Act, the standard Rules of Court and the related Federal Magistrates Rules, unless the contrary intention appears:

***Aboriginal child*** means a child who is a descendant of the Aboriginal people of Australia.

***Aboriginal or Torres Strait Islander culture*** in relation to a child:

- (a)means the culture of the Aboriginal or Torres Strait Islander community or communities to which the child belongs; and
- (b)includes Aboriginal or Torres Strait Islander lifestyle and traditions of that community or communities.

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**abuse**, in relation to a child, means:

- (a)an assault, including a sexual assault, of the child which is an offence under a law, written or unwritten, in force in the State or Territory in which the act constituting the assault occurs; or
- (b)a person involving the child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned person or the other person, and where there is unequal power in the relationship between the child and the first-mentioned person.

**Accreditation Rules** means regulations made under section 10A.

**adopted**, in relation to a child, means adopted under the law of any place (whether in or out of Australia) relating to the adoption of children.

**alleged contravention**, in Subdivision D of Division 6 of Part VII, means the alleged contravention because of which the alleged offender is arrested.

**alleged offender**, in Subdivision D of Division 6 of Part VII, means the person who is arrested.

**appeal** includes an application for a re-hearing.

**Appeal Division** means the Appeal Division of the Family Court.

**applicable Rules of Court:**

- (a)in relation to the Federal Magistrates Court—means the related Federal Magistrates Rules; and
- (b)in relation to any other court—means the standard Rules of Court.

**applicant** includes a cross-applicant and, in relation to proceedings for dissolution of marriage instituted before the commencement of this Act, includes a petitioner or cross-petitioner.

**applied provisions**, when used in Division 13A of Part VII in relation to a community service order made under paragraph 70NFB(2)(a), means the provisions of the laws of a State or Territory (as modified by regulations made under subsection 70NFC(4)), that, because of regulations made under that

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**Section 4**

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subsection, apply in relation to the order.

***appropriate authority***, when used in Part VII in relation to a Commonwealth instrumentality, means a person:

- (a) who in, or in relation to, the instrumentality:
  - (i) is an SES employee or acting SES employee; or
  - (ii) holds an office or position that is at a level equivalent to that of an SES employee; or
- (b) who is authorised in writing by the principal officer of the instrumentality to provide information under Commonwealth information orders.

***appropriate officer***, when used in Division 5 of Part III in relation to the Family Court, means:

- (a) the Chief Executive Officer of the Family Court; or
- (b) any other officer of the Family Court specified in writing by the Chief Executive Officer for the purposes of this definition.

***arbitration*** has the meaning given by section 10L.

***arbitrator*** has the meaning given by section 10M.

***arresting person*** means the person who arrests the alleged offender.

***artificial conception procedure*** includes:

- (a) artificial insemination; and
- (b) the implantation of an embryo in the body of a woman.

***audio link*** means facilities (for example, telephone facilities) that enable audio communication between persons in different places.

***Australia*** includes Norfolk Island.

***bankruptcy trustee***, in relation to a bankrupt, means the trustee of the bankrupt's estate.

***birth*** includes stillbirth.

***breakdown:***

- (a) in relation to a marriage, does not include a breakdown of the marriage by reason of death; and
- (b) in relation to a de facto relationship, does not include a

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breakdown of the relationship by reason of death.

***captain***, in relation to an aircraft or vessel, means the person in charge or command of the aircraft or vessel.

***Chief Executive Officer*** means the Chief Executive Officer of the Family Court.

Note: The Chief Executive Officer is appointed under section 38C. A person is appointed to act as the Chief Executive Officer under section 38M.

***child:***

- (a) in Part VII, includes an adopted child and a stillborn child; and
- (b) in Subdivision E of Division 6 of that Part, means a person who is under 18 (including a person who is an adopted child).

***child:*** Subdivision D of Division 1 of Part VII affects the situations in which a child is a child of a person or is a child of a marriage or other relationship.

Note: In determining if a child is the child of a person within the meaning of this Act, it is to be assumed that Part VII extends to all States and Territories.

***childbirth maintenance period***, in relation to the birth of a child, means the period that begins on the day mentioned in paragraph (a) or (b) and ends 3 months after the child's birth:

- (a) if the mother:
    - (i) works in paid employment; and
    - (ii) is advised by a medical practitioner to stop working for medical reasons related to her pregnancy; and
    - (iii) stops working after being so advised and more than 2 months before the child is due to be born;
- the period begins on the day on which she stops working; or
- (b) in any other case—the period begins on the day that is 2 months before the child is due to be born.

***child maintenance order*** has the meaning given by subsection 64B(5).

***child maintenance provisions***, in relation to a parenting plan, has the meaning given by subsection 63C(5).

***child of a marriage*** includes a child who is, under subsection

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60F(1) or (2), a child of a marriage, but does not include a child who has, under subsection 60F(3), ceased to be a child of a marriage.

***child-related proceedings*** has the meaning given by section 69ZM.

***child welfare law*** means a law of a State or Territory prescribed, or included in a class of laws of a State or Territory prescribed, for the purposes of this definition.

***child welfare officer***, in relation to a State or Territory, means:

- (a)a person who, because he or she holds, or performs the duties of, a prescribed office of the State or Territory, has responsibilities in relation to a child welfare law of the State or Territory; or
- (b)a person authorised in writing by such a person for the purposes of Part VII.

***child welfare provisions***, in relation to a parenting plan, has the meaning given by subsection 63C(4).

***Commonwealth information order*** has the meaning given by subsection 67J(2).

***Commonwealth instrumentality*** means a body or authority established for a public purpose by or under a law of the Commonwealth.

***community service order*** has the meaning given by subsection 70NFC(3).

***contravened*** an order, in Division 13A of Part VII, has the meaning given by section 70NAC.

***court***, in relation to any proceedings, means the court exercising jurisdiction in those proceedings by virtue of this Act.

***debtor subject to a personal insolvency agreement*** has the meaning given by section 5.

***decree*** means decree, judgment or order and includes:

- (a)an order dismissing an application; or
- (b)a refusal to make a decree or order.

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***de facto financial cause*** means:

- (a) proceedings between the parties to a de facto relationship with respect to the maintenance of one of them after the breakdown of their de facto relationship; or
- (b) proceedings between:
  - (i) a party to a de facto relationship; and
  - (ii) the bankruptcy trustee of a bankrupt party to the de facto relationship;with respect to the maintenance of the first-mentioned party after the breakdown of the de facto relationship; or
- (c) proceedings between the parties to a de facto relationship with respect to the distribution, after the breakdown of the de facto relationship, of the property of the parties or either of them; or
- (d) proceedings between:
  - (i) a party to a de facto relationship; and
  - (ii) the bankruptcy trustee of a bankrupt party to the de facto relationship;with respect to the distribution, after the breakdown of the de facto relationship, of any vested bankruptcy property in relation to the bankrupt party; or
- (e) without limiting any of the preceding paragraphs, proceedings with respect to a Part VIIIAB financial agreement that are between any combination of:
  - (i) the parties to that agreement; and
  - (ii) the legal personal representatives of any of those parties who have died;(including a combination consisting solely of parties or consisting solely of representatives); or
- (f) third party proceedings (as defined in section 4B) to set aside a Part VIIIAB financial agreement; or
- (g) any other proceedings (including proceedings with respect to the enforcement of a decree or the service of process) in relation to concurrent, pending or completed proceedings of a kind referred to in any of the preceding paragraphs.

***de facto property settlement or maintenance proceedings*** means proceedings with respect to:

- (a) the distribution of the property of the parties to a de facto relationship or of either of them; or

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(b)the distribution of the vested bankruptcy property in relation to a bankrupt party to a de facto relationship; or  
(c)the maintenance of a party to a de facto relationship.

***de facto relationship*** has the meaning given by section 4AA.

**Department**, in Subdivision C of Division 8 of Part VII, means a Department of State of the Commonwealth.

***distribute:***

- (a) in relation to:
  - (i) property, and financial resources, of the parties to a de facto relationship or either of them; or
  - (ii) vested bankruptcy property in relation to a bankrupt party to a de facto relationship;  
includes conferring rights or obligations in relation to the property or financial resources; and
- (b)in relation to a Part VIIIAB financial agreement, has a meaning affected by subsection 90UI(3).

***divorce*** means the termination of a marriage otherwise than by the death of a party to the marriage.

Note: Annulment does not involve the termination of a marriage but simply a declaration that a purported marriage is in fact void.

***divorce or validity of marriage proceedings*** means:

- (a)proceedings between the parties to a marriage, or by the parties to a marriage, for:
  - (i) a divorce order in relation to the marriage; or
  - (ii) a decree of nullity of marriage; or
- (b)proceedings for a declaration as to the validity of:
  - (i) a marriage; or
  - (ii) a divorce; or
  - (iii) the annulment of a marriage;  
by decree or otherwise.

**DPP** means the Director of Public Prosecutions.

***education*** includes apprenticeship or vocational training.

***excluded order*** means:

- (a)an interim order; or

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- (b)an order made in favour of a person where:
- (i) the order was made on the application of the person; and
  - (ii) notice of making the application was not served on any other person; and
  - (iii) no other person appeared at the hearing of the application.

***family consultant*** has the meaning given by section 11B.

***family counselling*** has the meaning given by section 10B.

***family counsellor*** has the meaning given by section 10C.

***family dispute resolution*** has the meaning given by section 10F.

***family dispute resolution practitioner*** has the meaning given by section 10G.

***Family Law Magistrate of Western Australia*** means a person who holds office concurrently:

- (a)as a magistrate under the *Magistrates Court Act 2004* of Western Australia; and
- (b)as the Principal Registrar, or as a Registrar, of the Family Court of Western Australia.

***family violence*** means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety.

Note: A person reasonably fears for, or reasonably is apprehensive about, his or her personal wellbeing or safety in particular circumstances if a reasonable person in those circumstances would fear for, or be apprehensive about, his or her personal wellbeing or safety.

***family violence order*** means an order (including an interim order) made under a prescribed law of a State or Territory to protect a person from family violence.

***financial agreement*** means an agreement that is a financial agreement under section 90B, 90C or 90D, but does not include an ante-nuptial or post-nuptial settlement to which section 85A applies.

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***financial matters*** means:

- (a) in relation to the parties to a marriage—matters with respect to:
  - (i) the maintenance of one of the parties; or
  - (ii) the property of those parties or of either of them; or
  - (iii) the maintenance of children of the marriage; or
- (b) in relation to the parties to a de facto relationship—any or all of the following matters:
  - (i) the maintenance of one of the parties;
  - (ii) the distribution of the property of the parties or of either of them;
  - (iii) the distribution of any other financial resources of the parties or of either of them.

***financial or Part VII proceedings*** means proceedings (being, unless the context otherwise requires, proceedings under this Act) of a kind referred to in any of paragraphs (c) to (eb) of the definition of ***matrimonial cause*** in this subsection or proceedings under Part VII.

***forfeiture application*** means an application for a forfeiture order under the *Proceeds of Crime Act 2002*.

***forfeiture order*** means a forfeiture order under the *Proceeds of Crime Act 2002*.

***Full Court*** means:

- (a) 3 or more Judges of the Family Court sitting together, where a majority of those Judges are members of the Appeal Division; or
- (b) in relation to particular proceedings:
  - (i) 3 or more Judges of the Family Court sitting together, where, at the commencement of the hearing of the proceedings, a majority of those Judges were members of the Appeal Division; or
  - (ii) 2 Judges of the Family Court sitting together, where those Judges are permitted, by subsection 28(4), to complete the hearing and determination, or the determination, of those proceedings.

***General Division*** means the General Division of the Family Court.

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**guardian**, when used in Part VII in relation to a child, includes a person who has been granted (whether alone or jointly with another person or other persons) guardianship of the child under the law of the Commonwealth or of a State or Territory.

**income tested pension, allowance or benefit** means a pension, allowance or benefit prescribed, or included in a class of pensions, allowances or benefits prescribed, for the purposes of this definition.

**independent children's lawyer** for a child means a lawyer who represents the child's interests in proceedings under an appointment made under a court order under subsection 68L(2).

**information about the child's location**, in the context of a location order made or to be made by a court in relation to a child, means information about:

- (a)where the child is; or
- (b)where a person, who the court has reasonable cause to believe has the child, is.

**interests**, when used in Part VII in relation to a child, includes matters related to the care, welfare or development of the child.

**lawyer** means a person enrolled as a legal practitioner of:

- (a)a federal court; or
- (b)the Supreme Court of a State or Territory.

**location order** has the meaning given by subsection 67J(1).

**made**, in relation to a decree, being a judgment, means given.

**made in favour**, in relation to a parenting order (other than a child maintenance order), has the meaning given by subsection 64B(6).

**maintenance agreement** means an agreement in writing made, whether before or after the commencement of this Act and whether within or outside Australia, between the parties to a marriage, being an agreement that makes provision with respect to financial matters, whether or not there are other parties to the agreement and whether or not it also makes provision with respect to other matters, and includes such an agreement that varies an earlier maintenance agreement.

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***major long-term issues***, in relation to a child, means issues about the care, welfare and development of the child of a long-term nature and includes (but is not limited to) issues of that nature about:

- (a)the child's education (both current and future); and
- (b)the child's religious and cultural upbringing; and
- (c)the child's health; and
- (d)the child's name; and
- (e)changes to the child's living arrangements that make it significantly more difficult for the child to spend time with a parent.

To avoid doubt, a decision by a parent of a child to form a relationship with a new partner is not, of itself, a ***major long-term issue*** in relation to the child. However, the decision will involve a ***major long-term issue*** if, for example, the relationship with the new partner involves the parent moving to another area and the move will make it significantly more difficult for the child to spend time with the other parent.

***matrimonial cause*** means:

- (a)proceedings between the parties to a marriage, or by the parties to a marriage, for:
  - (i) a divorce order in relation to the marriage; or
  - (ii) a decree of nullity of marriage; or
- (b)proceedings for a declaration as to the validity of:
  - (i) a marriage; or
  - (ii) a divorce; or
  - (iii) the annulment of a marriage;by decree or otherwise; or
- (c)proceedings between the parties to a marriage with respect to the maintenance of one of the parties to the marriage; or
- (caa)proceedings between:
  - (i) a party to a marriage; and
  - (ii) the bankruptcy trustee of a bankrupt party to the marriage;with respect to the maintenance of the first-mentioned party; or
- (ca)proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either

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of them, being proceedings:

- (i) arising out of the marital relationship;
  - (ii) in relation to concurrent, pending or completed divorce or validity of marriage proceedings between those parties; or
  - (iii) in relation to the divorce of the parties to that marriage, the annulment of that marriage or the legal separation of the parties to that marriage, being a divorce, annulment or legal separation effected in accordance with the law of an overseas jurisdiction, where that divorce, annulment or legal separation is recognised as valid in Australia under section 104; or
- (cb) proceedings between:
- (i) a party to a marriage; and
  - (ii) the bankruptcy trustee of a bankrupt party to the marriage;
- with respect to any vested bankruptcy property in relation to the bankrupt party, being proceedings:
- (iii) arising out of the marital relationship; or
  - (iv) in relation to concurrent, pending or completed divorce or validity of marriage proceedings between the parties to the marriage; or
  - (v) in relation to the divorce of the parties to the marriage, the annulment of the marriage or the legal separation of the parties to the marriage, being a divorce, annulment or legal separation effected in accordance with the law of an overseas jurisdiction, where that divorce, annulment or legal separation is recognised as valid in Australia under section 104; or
- (d) proceedings between the parties to a marriage for the approval by a court of a maintenance agreement or for the revocation of such an approval or for the registration of a maintenance agreement; or
- (e) proceedings between the parties to a marriage for an order or injunction in circumstances arising out of the marital relationship (other than proceedings under a law of a State or Territory prescribed for the purposes of section 114AB); or
- (ea) proceedings between:
- (i) the parties to a marriage; or
  - (ii) if one of the parties to a marriage has died—the other

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party to the marriage and the legal personal representative of the deceased party to the marriage; being proceedings:

- (iii) for the enforcement of, or otherwise in relation to, a maintenance agreement that has been approved under section 87 and the approval of which has not been revoked;
- (iv) in relation to a maintenance agreement the approval of which under section 87 has been revoked; or
- (v) with respect to the enforcement under this Act or the applicable Rules of Court of a maintenance agreement that is registered in a court under section 86 or an overseas maintenance agreement that is registered in a court under regulations made pursuant to section 89; or

(eaa) without limiting any of the preceding paragraphs, proceedings with respect to a financial agreement that are between any combination of:

- (i) the parties to that agreement; and
- (ii) the legal personal representatives of any of those parties who have died;

(including a combination consisting solely of parties or consisting solely of representatives); or

(eab) third party proceedings (as defined in section 4A) to set aside a financial agreement; or

(eb) proceedings with respect to the enforcement of a decree made under the law of an overseas jurisdiction in proceedings of a kind referred to in paragraph (c); or

(f) any other proceedings (including proceedings with respect to the enforcement of a decree or the service of process) in relation to concurrent, pending or completed proceedings of a kind referred to in any of paragraphs (a) to (eb), including proceedings of such a kind pending at, or completed before, the commencement of this Act.

**medical expenses** includes medical, surgical, dental, diagnostic, hospital, nursing, pharmaceutical and physiotherapy expenses.

**medical practitioner** means a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.

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**member of the family**, in relation to a person, has, for the purposes of the definition of **step-parent**, paragraphs 60CC(3)(j) and (k) and section 60CF, the meaning given by subsection (1AB) of this section.

**non-referring State de facto financial law** means a law that:

- (a) is a law of a State that is not a participating jurisdiction; and
- (b) relates to financial matters relating to the parties to de facto relationships arising out of the breakdown of those de facto relationships.

**order under this Act affecting children**, in relation to a court, means:

- (a) a parenting order; or
- (b) an injunction granted by the court:
  - (i) under section 68B; or
  - (ii) under section 114 in so far as the injunction is for the protection of a child; or
- (c) an undertaking given to, and accepted by, the court:
  - (i) that relates to, or to the making of, an order or injunction referred to in paragraph (a) or (b) or a community service order referred to in paragraph (f); or
  - (ii) that relates to a bond referred to in paragraph (g); or
- (d) a subpoena issued under the applicable Rules of Court:
  - (i) that relates to, or to the making of, an order or injunction referred to in paragraph (a) or (b) or a community service order referred to in paragraph (f); or
  - (ii) that relates to a bond referred to in paragraph (g); being a subpoena issued to a party to the proceedings for the order, injunction or bond, as the case may be; or
- (e) a registered parenting plan within the meaning of subsection 63C(6); or
- (f) a community service order made under paragraph 70NFB(2)(a); or
- (g) a bond entered into:
  - (i) under a parenting order; or
  - (ii) under paragraph 70NFB(2)(b); or
  - (iii) for the purposes of subsection 70NFG(6);

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and includes an order, injunction, plan or bond that:

- (h) is an order under this Act affecting children made by another court because of paragraph (a), (b), (e) or (g); and
- (i) has been registered in the first-mentioned court.

***ordinarily resident*** includes habitually resident.

***overseas child order*** means:

- (a) an order made by a court of a prescribed overseas jurisdiction that:
  - (i) however it is expressed, has the effect of determining the person or persons with whom a child who is under 18 is to live, or that provides for a person or persons to have custody of a child who is under 18; or
  - (ii) however it is expressed, has the effect of providing for a person or persons to spend time with a child who is under 18; or
  - (iii) however it is expressed, has the effect of providing for contact between a child who is under 18 and another person or persons, or that provides for a person or persons to have access to a child who is under 18; or
  - (iv) varies or discharges an order of the kind referred to in subparagraph (i), (ii) or (iii), including an order of that kind made under this Act; or
- (b) an order made for the purposes of the Convention referred to in section 111B by a judicial or administrative authority of a convention country (within the meaning of the regulations made for the purposes of that section).

***overseas jurisdiction*** means a country, or part of a country, outside Australia.

***overseas maintenance agreement*** means a maintenance agreement that has force and effect in a prescribed overseas jurisdiction by reason of the registration of the agreement, or the taking of any other action in relation to the agreement, under the law of that jurisdiction and includes an agreement with respect to the maintenance of an ex-nuptial child that would be covered by the foregoing provisions of this definition if the child were a child of the marriage of the parties to the agreement.

***parent***, when used in Part VII in relation to a child who has been

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adopted, means an adoptive parent of the child.

***parentage testing order*** has the meaning given by subsection 69W(1).

***parentage testing procedure*** means a medical procedure prescribed, or included in a class of medical procedures prescribed, for the purposes of this definition.

***parental responsibility***, in Part VII, has the meaning given by section 61B.

***parenting order*** has the meaning given by subsection 64B(1).

***parenting plan*** has the meaning given by subsection 63C(1).

***participating jurisdiction*** has the meaning given by subsection 90RA(1).

***Part VIIIAB financial agreement*** means an agreement:

- (a)made under section 90UB, 90UC or 90UD; or
- (b)covered by section 90UE.

***Part VIIIAB proceedings*** means:

- (a)proceedings under Part VIIIAB for orders with respect to:
  - (i) the maintenance of a party to a de facto relationship; or
  - (ii) the property of the parties to a de facto relationship or of either of them; or
- (b)proceedings in relation to a Part VIIIAB financial agreement;

but does not include any proceedings specified in the regulations for the purposes of this definition.

***Part VIIIAB termination agreement*** means an agreement made under paragraph 90UL(1)(b).

***Part VIIIA proceedings*** means proceedings in relation to a financial agreement.

***Part VIIIB proceedings*** means:

- (a)proceedings in relation to a superannuation agreement (within the meaning of Part VIIIB); or
- (b)proceedings in relation to a payment split or payment flag (within the meaning of that Part); or

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(c)any other proceedings under that Part.

**Part VIII proceedings** means proceedings under Part VIII for orders with respect to spousal maintenance or the property of parties to a marriage, but does not include any proceedings specified in the regulations for the purposes of this definition.

**party to a de facto relationship** means a person who lives or has lived in a de facto relationship.

**pending**, in Subdivision E of Division 6 of Part VII, has a meaning affected by section 65X.

**personal insolvency agreement** has the same meaning as in the *Bankruptcy Act 1966*.

**police officer** means:

- (a)a member or special member of the Australian Federal Police; or
- (b)a member, however described, of the police force of a State or Territory.

**post-separation parenting program** means a program:

- (a)that is designed to help people to resolve problems that adversely affect the carrying out of their parenting responsibilities (including by providing counselling services or by teaching techniques to resolve disputes); and
- (b)that consists of lectures, discussions (including group discussions) or other activities; and
- (c)that is provided by an organisation that meets the conditions in section 65LB.

**prescribed adopting parent**, in relation to a child, means:

- (a)a parent of the child; or
- (b)the spouse of, or a person in a de facto relationship with, a parent of the child; or
- (c)a parent of the child and either his or her spouse or a person in a de facto relationship with the parent.

**prescribed child welfare authority**, in relation to abuse of a child, means:

- (a)if the child is the subject of proceedings under Part VII in a State or Territory—an officer of the State or Territory who

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is responsible for the administration of the child welfare laws of the State or Territory, or some other prescribed person; or

(b)if the child is not the subject of proceedings under Part VII —an officer of the State or Territory in which the child is located or is believed to be located who is responsible for the administration of the child welfare laws of the State or Territory, or some other prescribed person.

***prescribed overseas jurisdiction*** means any country, or part of a country, outside Australia that is declared by the regulations to be a prescribed overseas jurisdiction for the purposes of the provision in which the expression is used.

***prescribed proceedings*** means:

- (a)divorce or validity of marriage proceedings; or
- (b)proceedings in relation to concurrent, pending or completed divorce or validity of marriage proceedings.

***primary order*** means an order under this Act affecting children and includes such order as varied.

***principal officer***, when used in Subdivision C of Division 8 of Part VII in relation to a Commonwealth instrumentality, means:

- (a)if the regulations declare an office to be the principal office in respect of the instrumentality—the person holding, or performing the duties of, that office; or
- (b)the person who constitutes the instrumentality or who is entitled to preside at any meeting of the instrumentality, or of its governing body, at which the person is present.

***proceedings*** means a proceeding in a court, whether between parties or not, and includes cross-proceedings or an incidental proceeding in the course of or in connexion with a proceeding.

***proceedings for principal relief*** means proceedings under this Act of a kind referred to in paragraph (a) or (b) of the definition of ***matrimonial cause*** in this subsection.

***proceeds of crime order*** means:

- (a)a restraining order under the *Proceeds of Crime Act 2002*;
- or
- (b)a forfeiture order under the *Proceeds of Crime Act 2002*.

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***professional ethics*** includes:

- (a)rules of professional conduct; and
- (b)rules of professional etiquette; and
- (c)a code of ethics; and
- (d)standards of professional conduct.

***property*** means:

- (a)in relation to the parties to a marriage or either of them—means property to which those parties are, or that party is, as the case may be, entitled, whether in possession or reversion; or
- (b)in relation to the parties to a de facto relationship or either of them—means property to which those parties are, or that party is, as the case may be, entitled, whether in possession or reversion.

***property settlement or spousal maintenance proceedings*** means proceedings with respect to:

- (a)the property of the parties to a marriage or either of them; or
- (aa)the vested bankruptcy property in relation to a bankrupt party to a marriage; or
- (b)the maintenance of a party to a marriage.

***property settlement proceedings*** means:

- (a)in relation to the parties to a marriage—proceedings with respect to:
  - (i) the property of the parties or either of them; or
  - (ii) the vested bankruptcy property in relation to a bankrupt party to the marriage; or
- (b)in relation to the parties to a de facto relationship—proceedings with respect to:
  - (i) the property of the parties or either of them; or
  - (ii) the vested bankruptcy property in relation to a bankrupt party to the de facto relationship.

***reasonable excuse for contravening*** an order includes the meanings given by section 70NAE.

***recovery order*** has the meaning given by section 67Q.

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**referring State** has the meaning given by subsections 90RA(2), (3), (4) and (5).

**Registrar** means:

- (a) in relation to the Family Court—the Principal Registrar, a Registrar, or a Deputy Registrar of the Court; and
- (b) in relation to a court other than the Family Court—the principal legal officer of the court or any other appropriate officer of the court.

**Registry Manager**:

- (a) except in Subdivision C of Division 8 of Part VII and section 67Z, means:
  - (i) in relation to the Family Court—the Registry Manager of a Registry of the Court; and
  - (ii) in relation to a court other than the Family Court—the principal officer of the court or any other appropriate officer of the court; and
- (b) in Subdivision C of Division 8 of Part VII, means:
  - (i) in relation to the Family Court—the Registry Manager of the Registry of the Court; and
  - (ii) in relation to the Family Court of Western Australia—the Principal Registrar, a Registrar or a Deputy Registrar, of the court; and
  - (iii) in relation to any other court—the principal officer of the court.

**related Federal Magistrates Rules** means the Rules of Court made under the *Federal Magistrates Act 1999* to the extent to which they relate to this Act.

**relative** of a child:

- (a) in Part VII, means:
  - (i) a step-parent of the child; or
  - (ii) a brother, sister, half-brother, half-sister, step-brother or step-sister of the child; or
  - (iii) a grandparent of the child; or
  - (iv) an uncle or aunt of the child; or
  - (v) a nephew or niece of the child; or
  - (vi) a cousin of the child; and

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(b)in subsection (1AB), has the meaning given by subsection (1AC).

**relevant property or financial arbitration** has the meaning given by subsection 10L(2).

**repealed Act** means the *Matrimonial Causes Act 1959*.

**section 13E arbitration** has the meaning given by subsection 10L(2).

**section 90RD declaration** means a declaration under subsection 90RD(1).

**section 106A proceedings** means proceedings under section 106A.

**separation order** means a decree, not being a decree of dissolution or nullity of marriage or for a judicial separation, having the effect of relieving a party to a marriage from any obligation to cohabit with the other party to the marriage.

**split court** has the meaning given by subsection 27(2).

**spouse party** means:

- (a)in relation to a financial agreement—a party to the agreement who is a party to the contemplated marriage, marriage or former marriage to which the agreement relates; or
- (b)in relation to a Part VIIIAB financial agreement—a party to the agreement who is a party to the contemplated de facto relationship, de facto relationship or former de facto relationship to which the agreement relates.

**standard Rules of Court** means Rules of Court made under this Act.

**State**, in Subdivision B of Division 13 of Part VII, includes a Territory.

**State child order** means an order made under the law of a State:

- (a)that (however it is expressed) has the effect of determining the person or persons with whom a child who is under 18 is to live, or that provides for a person or persons to have custody of a child who is under 18; or
  - (b)that (however it is expressed) has the effect of providing
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for a person or persons to spend time with a child who is under 18; or

(c)that (however it is expressed) has the effect of providing for contact between a child who is under 18 and another person or persons, or that provides for a person or persons to have access to a child who is under 18.

**step-parent**, in relation to a child, means a person who:

- (a)is not a parent of the child; and
- (b)is, or has been, married to or a de facto partner (within the meaning of section 60EA) of, a parent of the child; and
- (c)treats, or at any time while married to, or a de facto partner of, the parent treated, the child as a member of the family formed with the parent.

**Subdivision C parenting order**, when used in Division 13 of Part VII, means a parenting order to the extent to which it deals with:

- (a)whom a child is to live with; or
- (b)whom a child is to spend time with; or
- (c)who is to be responsible for a child's day-to-day care, welfare and development.

**Territory** includes:

- (a)Norfolk Island;
- (b)the Territory of Christmas Island;
- (c)the Territory of Cocos (Keeling) Islands;

but does not include any other external Territory.

**third party**, in relation to a financial agreement or Part VIIIB financial agreement, means a party to the agreement who is not a spouse party.

**this Act** includes the regulations.

**Torres Strait Islander child** means a child who is a descendant of the Indigenous inhabitants of the Torres Strait Islands.

**trustee**, in relation to a personal insolvency agreement, has the same meaning as in the *Bankruptcy Act 1966*.

**vested bankruptcy property**, in relation to a bankrupt, means property of the bankrupt that has vested in the bankruptcy trustee

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under the *Bankruptcy Act 1966*. For this purpose, **property** has the same meaning as in the *Bankruptcy Act 1966*.

**video link** means facilities (for example, closed-circuit television facilities) that enable audio and visual communication between persons in different places.

**warrant issued under a provision of this Act** includes a warrant issued under the standard Rules of Court or the related Federal Magistrates Rules.

(1AA)A reference in this Act to a person or people involved in proceedings is a reference to:

- (a)any of the parties to the proceedings; and
- (b)any child whose interests are considered in, or affected by, the proceedings; and
- (c)any person whose conduct is having an effect on the proceedings.

(1AB)For the purposes of:

- (a)the definitions of **family violence** and **step-parent** in subsection (1); and
- (b)paragraphs 60CC(3)(j) and (k); and
- (c) section 60CF;

a person (the **first person**) is a **member of the family** of another person (the **second person**) if:

- (d)the first person is or has been married to, or in a de facto relationship with, the second person; or
- (e)the first person is or has been a relative of the second person (as defined in subsection (1AC)); or
- (f)an order under this Act described in subparagraph (i) or (ii) is or was (at any time) in force:
  - (i) a parenting order (other than a child maintenance order) that relates to a child who is either the first person or the second person and that is in favour of the other of those persons;
  - (ii) an order providing for the first person or the second person to have custody or guardianship of, or a right of access to, the other of those persons; or
- (g)an order under a law of a State or Territory described in subparagraph (i) or (ii) is or was (at any time) in force:

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- (i) an order determining that the first person or the second person is or was to live with the other of those persons, or is or was to have custody or guardianship of the other of those persons;
  - (ii) an order providing for contact between the first person and the second person, or for the first person or the second person to have a right of access to the other of those persons; or
- (h) the first person ordinarily or regularly resides or resided with the second person, or with another member of the family of the second person; or
  - (i) the first person is or has been a member of the family of a child of the second person.

(1AC) For the purposes of subsection (1AB), a *relative* of a person is:

- (a) a father, mother, grandfather, grandmother, step-father or step-mother of the person; or
- (b) a son, daughter, grandson, grand-daughter, step-son or step-daughter of the person; or
- (c) a brother, sister, half-brother, half-sister, step-brother or step-sister of the person; or
- (d) an uncle or aunt of the person; or
- (e) a nephew or niece of the person; or
- (f) a cousin of the person; or
- (g) if the person is or was married—in addition to paragraphs (a) to (f), a person who is or was a relative, of the kind described in any of those paragraphs, of the person's spouse; or
- (h) if the person is or was in a de facto relationship with another person—in addition to paragraphs (a) to (f), a person who would be a relative of a kind described in any of those paragraphs if the persons in that de facto relationship were or had been married to each other.

(1A) In this Act, the standard Rules of Court and the related Federal Magistrates Rules:

- (a) a reference to the Family Court is a reference to the Family Court of Australia; and
- (b) a reference to a Family Court of a State is a reference to a

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court to which section 41 applies.

(2)A reference in this Act, the standard Rules of Court or the related Federal Magistrates Rules to a party to a marriage includes a reference to a person who was a party to a marriage that has been:

- (a)terminated by divorce (in Australia or elsewhere); or
- (b)annulled (in Australia or elsewhere); or
- (c)terminated by the death of one party to the marriage.

(2A)A reference in this Act, the standard Rules of Court or the related Federal Magistrates Rules to a party to a de facto relationship includes a reference to a person who was a party to a de facto relationship that has broken down.

(3)To avoid doubt, for all purposes:

- (a)jurisdiction under the standard Rules of Court is taken to be jurisdiction under this Act; and
- (b)jurisdiction under the related Federal Magistrates Rules is taken to be jurisdiction under this Act; and
- (c)proceedings under the standard Rules of Court are taken to be proceedings under this Act; and
- (d)proceedings under the related Federal Magistrates Rules are taken to be proceedings under this Act; and
- (e)an order (however described) made by a court under the standard Rules of Court is taken to be an order made by the court under this Act; and
- (f)an order (however described) made by a court under the related Federal Magistrates Rules is taken to be an order made by the court under this Act.

(4)A reference in this Act to a person who has parental responsibility for a child is a reference to a person who:

- (a)has some or all of that responsibility solely; or
- (b)shares some or all of that responsibility with another person.

(5)A reference in this Act to a person who shares parental responsibility for a child with another person is a reference to a person who shares some or all of the parental responsibility for the child with that other person.

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## **4AA De facto relationships**

### *Meaning of **de facto relationship***

- (1)A person is in a **de facto relationship** with another person if:
- (a)the persons are not legally married to each other; and
  - (b)the persons are not related by family (see subsection (6)); and
  - (c)having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

Paragraph (c) has effect subject to subsection (5).

### *Working out if persons have a relationship as a couple*

- (2)Those circumstances may include any or all of the following:
- (a)the duration of the relationship;
  - (b)the nature and extent of their common residence;
  - (c)whether a sexual relationship exists;
  - (d)the degree of financial dependence or interdependence, and any arrangements for financial support, between them;
  - (e)the ownership, use and acquisition of their property;
  - (f)the degree of mutual commitment to a shared life;
  - (g)whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship;
  - (h)the care and support of children;
  - (i)the reputation and public aspects of the relationship.
- (3)No particular finding in relation to any circumstance is to be regarded as necessary in deciding whether the persons have a de facto relationship.
- (4)A court determining whether a de facto relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.
- (5)For the purposes of this Act:
- (a)a de facto relationship can exist between 2 persons of different sexes and between 2 persons of the same sex; and

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(b)a de facto relationship can exist even if one of the persons is legally married to someone else or in another de facto relationship.

*When 2 persons are related by family*

(6)For the purposes of subsection (1), 2 persons are ***related by family*** if:

- (a)one is the child (including an adopted child) of the other; or
- (b)one is another descendant of the other (even if the relationship between them is traced through an adoptive parent); or
- (c)they have a parent in common (who may be an adoptive parent of either or both of them).

For this purpose, disregard whether an adoption is declared void or has ceased to have effect.

#### **4A Third party proceedings to set aside financial agreement**

(1)For the purposes of paragraph (eab) of the definition of ***matrimonial cause*** in subsection 4(1), ***third party proceedings*** means proceedings between:

- (a)any combination of:
  - (i) the parties to a financial agreement; and
  - (ii) the legal personal representatives of any of those parties who have died;(including a combination consisting solely of parties or consisting solely of representatives); and
- (b)any of the following:
  - (i) a creditor;
  - (ii) if a creditor is an individual who has died—the legal personal representative of the creditor;
  - (iii) a government body acting in the interests of a creditor; being proceedings for the setting aside of the financial agreement on the ground specified in paragraph 90K(1)(aa).

(1A)For the purposes of paragraph (eab) of the definition of ***matrimonial cause*** in subsection 4(1), ***third party proceedings*** also means proceedings between:

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(a)any combination of:

- (i) the parties to a financial agreement; and
- (ii) the legal personal representatives of any of those parties who have died;

(including a combination consisting solely of parties or consisting solely of representatives); and

(b) either:

- (i) another person who is a party to a *de facto* relationship with one of the spouse parties to the financial agreement; or
- (ii) the legal personal representative of that other person if that person has died;

being proceedings for the setting aside of the financial agreement on the ground specified in paragraph 90K(1)(ab).

(2)In this section:

***creditor*** means:

- (a)a creditor of a party to the financial agreement; or
- (b)a person who, at the commencement of the proceedings, could reasonably have been foreseen by the court as being reasonably likely to become a creditor of a party to the financial agreement.

***government body*** means:

- (a)the Commonwealth, a State or a Territory; or
- (b)an official or authority of the Commonwealth, a State or a Territory.

#### **4B Third party proceedings to set aside Part VIIIAB financial agreement**

(1)For the purposes of paragraph (f) of the definition of ***de facto financial cause*** in subsection 4(1), ***third party proceedings*** means proceedings between:

- (a)any combination of:
  - (i) the parties to a Part VIIIAB financial agreement; and
  - (ii) the legal personal representatives of any of those parties who have died;
- (including a combination consisting solely of parties or

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consisting solely of representatives); and

(b)any of the following:

(i) a creditor;

(ii) if a creditor is an individual who has died—the legal personal representative of the creditor;

(iii) a government body acting in the interests of a creditor;

being proceedings for the setting aside of the Part VIIIB financial agreement on the ground specified in paragraph 90UM(1)(b).

(2)For the purposes of paragraph (f) of the definition of *de facto financial cause* in subsection 4(1), *third party proceedings* also means proceedings between:

(a)any combination of:

(i) the parties to a Part VIIIB financial agreement; and

(ii) the legal personal representatives of any of those parties who have died;

(including a combination consisting solely of parties or consisting solely of representatives); and

(b) either:

(i) another person who is a party to a de facto relationship with one of the spouse parties to the Part VIIIB financial agreement; or

(ii) the legal personal representative of that other person if that person has died;

being proceedings for the setting aside of the Part VIIIB financial agreement on the ground specified in paragraph 90UM(1)(c).

(3)For the purposes of paragraph (f) of the definition of *de facto financial cause* in subsection 4(1), *third party proceedings* also means proceedings between:

(a)any combination of:

(i) the parties to a Part VIIIB financial agreement; and

(ii) the legal personal representatives of any of those parties who have died;

(including a combination consisting solely of parties or consisting solely of representatives); and

(b) either:

(i) another person who is a party to a marriage with one of the spouse parties to the Part VIIIB financial agreement; or

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(ii) the legal personal representative of that other person if that person has died;  
being proceedings for the setting aside of the Part VIIIAB financial agreement on the ground specified in paragraph 90UM(1)(d).

(4) In this section:

***creditor*** means:

- (a) a creditor of a party to the Part VIIIAB financial agreement; or
- (b) a person who, at the commencement of the proceedings, could reasonably have been foreseen by the court as being reasonably likely to become a creditor of a party to the Part VIIIAB financial agreement.

***government body*** means:

- (a) the Commonwealth, a State or a Territory; or
- (b) an official or authority of the Commonwealth, a State or a Territory.

## **5 Debtor subject to a personal insolvency agreement**

For the purposes of this Act, if:

- (a) a person who is a debtor (within the meaning of Part X of the *Bankruptcy Act 1966*) executes a personal insolvency agreement; and
- (b) the agreement has not ended (within the meaning of the *Bankruptcy Act 1966*);

the person is a debtor subject to the personal insolvency agreement.

## **6 Polygamous marriages**

For the purpose of proceedings under this Act, a union in the nature of a marriage which is, or has at any time been, polygamous, being a union entered into in a place outside Australia, shall be deemed to be a marriage.

## **7 Extension of Act to certain Territories**

This Act extends to the following Territories:

- (a) Norfolk Island;
- (b) the Territory of Christmas Island;

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(c)the Territory of Cocos (Keeling) Islands.

**7A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

**8 Supersession of existing laws**

(1)After the commencement of this Act:

- (a)proceedings by way of a matrimonial cause shall not be instituted except under this Act; and
- (b)proceedings by way of a matrimonial cause instituted before the commencement of this Act shall not be continued except in accordance with section 9.

(2)Proceedings for a decree of restitution of conjugal rights, of jactitation of marriage or of judicial separation shall not be instituted or continued after the commencement of this Act.

(3)Proceedings for a separation order shall not be instituted after the commencement of this Act.

**9 Transitional**

(1)Subject to subsections (2) and (2A), pending proceedings for a decree of dissolution of marriage or for a decree of nullity of marriage on the ground that the marriage is voidable, and pending proceedings for a separation order, may be continued and shall be dealt with as if this Act had not been passed.

(2)Where the parties have lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of commencement of this Act, pending proceedings for a decree of dissolution of marriage shall, if either party so requests, be dealt with as if they were proceedings instituted under this Act on the ground referred to in section 48, and, in relation to proceedings in which such a request is made, subsection 48(2) has effect as if the proceedings for dissolution of marriage had been instituted by an application filed on the date of commencement of this Act.

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(2A)Where subsection (2) does not apply but the parties have lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of making of the request under this subsection, pending proceedings for a decree of dissolution of marriage shall, if either party so requests, be dealt with as if they were proceedings instituted under this Act on the ground referred to in section 48, and, in relation to proceedings in which such a request is made, subsection 48(2) has effect as if the proceedings for dissolution of marriage had been instituted by an application filed on the date of making of the request.

(3)Pending proceedings for a decree of nullity of marriage on the ground that the marriage is void or proceedings of a kind referred to in paragraph (b) of the definition of **matrimonial cause** in subsection 4(1) may be continued and shall be dealt with as if they were proceedings instituted under this Act.

(4)Pending proceedings constituting a matrimonial cause, not being proceedings for principal relief, whether instituted under the repealed Act or under the law of a State or Territory, may be continued and shall be dealt with as if they were proceedings instituted under this Act.

(5)Subsection 117(1) does not apply to proceedings continued and dealt with under this section.

(6)Where, in any proceedings constituting a matrimonial cause, a decree has been made before the commencement of this Act:

- (a)any appeal in respect of that decree may be continued or instituted;
- (b)any new trial or re-hearing ordered upon the hearing of such an appeal, or upon an appeal heard before the commencement of this Act, may be had and completed; and
- (c)any decree may be made upon any such appeal, new trial or re-hearing, and, if a decree so made is a decree *nisi*, the decree may become absolute;

as if this Act had not been passed.

(7)Where, in any proceedings constituting a matrimonial cause, a decree *nisi* was made before the commencement of this Act but did not become absolute before that date, the decree becomes absolute upon:

- (a)the expiration of 1 month from the date of making of the

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decree;

(b)the expiration of 1 month from the date of making of a relevant order under subsection 71(1) of the repealed Act or section 55A of this Act; or

(c)the date of commencement of this Act;

whichever is the latest.

(7A)Where, in any proceedings constituting a matrimonial cause, being proceedings continued and dealt with in accordance with subsection (1), a decree *nisi* was made on or after 5 January 1976 and before the date of commencement of this subsection, being a decree that did not become absolute before that last-mentioned date, or is made on or after the date of commencement of this subsection, then:

(a)except in the case of a decree made before the date of commencement of this subsection in respect of which a relevant order was made under subsection 71(1) of the repealed Act before that date—section 55A of this Act applies in relation to the decree; and

(b)the decree becomes absolute upon:

(i) the expiration of one month from:

(A) in the case of a decree in respect of which a relevant order was made under subsection 71(1) of the repealed Act before the date of commencement of this subsection—the date of making of that order; or

(B) in any other case—the date of making of a relevant order under section 55A of this Act; or

(ii) the date of commencement of this subsection;

whichever is the later.

(8)The law to be applied, and the practice and the procedure to be followed, in and in relation to pending proceedings that are continued as if this Act had not been passed shall be the same as if this Act had not been passed.

(9)In this section:

***appeal*** includes:

(a)an application for leave or special leave to appeal;

(b)an application for a new trial or for a re-hearing; and

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(c)an intervention.

***pending proceedings*** means proceedings that were instituted before the date of commencement of this Act but were not completed before that date.

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## Part IA—Protection of names

### 9A Use of protected names and symbols

- (1) A person must not, without the Minister's written consent:
- (a) use in relation to a business, trade, profession or occupation; or
  - (b) use as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship, aircraft or other craft; or
  - (c) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let for hire; or
  - (d) use in relation to:
    - (i) goods or services; or
    - (ii) the promotion, by any means, of the supply or use of goods or services;
- either:
- (e) a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it; or
  - (f) a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

Penalty: 30 penalty units.

- (2) Subsection (1), so far as it applies in relation to a particular protected name or protected symbol, does not affect rights conferred by law on a person in relation to:
- (a) a trade mark that is a registered trade mark for the purposes of the *Trade Marks Act 1995*; or
  - (b) a design registered under the *Designs Act 2003*;
- that was so registered, or was registered under the *Designs Act 1906*, at the protection time in relation to the name or symbol.
- (3) This section, so far as it applies in relation to a particular protected name or protected symbol, does not affect the use, or rights conferred by law relating to the use, of a name or symbol (*the relevant name or symbol*) by a person in a particular manner
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if, at the protection time in relation to the protected name or protected symbol, the person:

- (a)was using the relevant name or symbol in good faith in that manner; or
- (b)would have been entitled to prevent another person from passing off, by means of the use of the relevant name or symbol or a similar name or symbol, goods or services as the goods or services of the first-mentioned person.

(4)In this section:

***protected name*** means a name prescribed for the purposes of this definition.

***protected symbol*** means a symbol whose design is set out in the regulations.

***protection time*** means:

- (a)in relation to a protected name—the time immediately before the commencement of the regulation prescribing the name; or
- (b)in relation to a protected symbol—the time immediately before the commencement of the regulation setting out the design of the symbol.

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## **Part II—Non-court based family services**

### **Division 1—Accreditation of family counsellors, family dispute resolution practitioners and other family service providers**

#### **10A Accreditation Rules**

(1)The regulations may prescribe Accreditation Rules. These are rules relating to:

- (a)the accreditation of persons as family counsellors; and
- (b)the accreditation of persons as family dispute resolution practitioners; and
- (c)the accreditation of persons to perform other roles prescribed by regulations made for the purposes of this paragraph.

(2)Examples of matters that the Accreditation Rules may deal with are:

- (a)the standards that are to be met by persons who seek to be accredited; and
- (b)who is responsible for determining whether a person meets the Accreditation Rules; and
- (c)how accreditation is to be recognised (for example, by establishment of a register or other method); and
- (d)the standards and other obligations that accredited persons must continue to meet to remain accredited; and
- (e)who is responsible for monitoring compliance with ongoing requirements in the Rules; and
- (f)the consequences of accredited persons failing to comply with the provisions of this Act and the Rules; and
- (g)the obligations of accredited persons in relation to the monitoring of their compliance; and
- (h)how and by whom an accredited person may have his or her accreditation (or recognition of that accreditation) suspended or cancelled; and
- (i)review of decisions to refuse, suspend or cancel accreditation (or recognition of accreditation); and

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- (j)the process for handling complaints involving accredited persons; and
  - (k)who may deliver recognised training to accredited persons, and
  - (l)dealing with individuals or other persons who make false or misleading representations about a person's status as an accredited person.

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## Division 2—Family counselling

### 10B Definition of *family counselling*

***Family counselling*** is a process in which a family counsellor helps:

- (a) one or more persons to deal with personal and interpersonal issues in relation to marriage; or
- (b) one or more persons (including children) who are affected, or likely to be affected, by separation or divorce to deal with either or both of the following:
  - (i) personal and interpersonal issues;
  - (ii) issues relating to the care of children.

### 10C Definition of *family counsellor*

(1) A ***family counsellor*** is:

- (a) a person who is accredited as a family counsellor under the Accreditation Rules; or
- (b) a person who is authorised to act on behalf of an organisation designated by the Minister for the purposes of this paragraph; or
- (c) a person who is authorised to act under section 38BD, or engaged under subsection 38R(1A), as a family counsellor; or
- (d) a person who is authorised to act under section 93D of the *Federal Magistrates Act 1999*, or engaged under subsection 115(1A) of that Act, as a family counsellor; or
- (e) a person who is authorised by a Family Court of a State to act as a family counsellor.

(2) The Minister must publish, at least annually, a list of organisations designated for the purposes of paragraph (b) of the definition of ***family counsellor***.

(3) An instrument under this section is not a legislative instrument.

### 10D Confidentiality of communications in family counselling

(1) A family counsellor must not disclose a communication made to

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the counsellor while the counsellor is conducting family counselling, unless the disclosure is required or authorised by this section.

(2)A family counsellor must disclose a communication if the counsellor reasonably believes the disclosure is necessary for the purpose of complying with a law of the Commonwealth, a State or a Territory.

(3)A family counsellor may disclose a communication if consent to the disclosure is given by:

- (a)if the person who made the communication is 18 or over—that person; or
- (b)if the person who made the communication is a child under 18:
  - (i) each person who has parental responsibility (within the meaning of Part VII) for the child; or
  - (ii) a court.

(4)A family counsellor may disclose a communication if the counsellor reasonably believes that the disclosure is necessary for the purpose of:

- (a)protecting a child from the risk of harm (whether physical or psychological); or
- (b)preventing or lessening a serious and imminent threat to the life or health of a person; or
- (c)reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person; or
- (d)preventing or lessening a serious and imminent threat to the property of a person; or
- (e)reporting the commission, or preventing the likely commission, of an offence involving intentional damage to property of a person or a threat of damage to property; or
- (f)if a lawyer independently represents a child's interests under an order under section 68L—assisting the lawyer to do so properly.

(5)A family counsellor may disclose a communication in order to provide information (other than personal information within the meaning of section 6 of the *Privacy Act 1988*) for research relevant to families.

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(6) Evidence that would be inadmissible because of section 10E is not admissible merely because this section requires or authorises its disclosure.

Note: This means that the counsellor's evidence is inadmissible in court, even if subsection (2), (3), (4) or (5) allows the counsellor to disclose it in other circumstances.

(7) Nothing in this section prevents a family counsellor from disclosing information necessary for the counsellor to give a certificate of the kind mentioned in paragraph 16(2A)(a) of the *Marriage Act 1961*.

(8) In this section:

**communication** includes admission.

#### **10E Admissibility of communications in family counselling and in referrals from family counselling**

(1) Evidence of anything said, or any admission made, by or in the company of:

- (a) a family counsellor conducting family counselling; or
- (b) a person (the **professional**) to whom a family counsellor refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person;

is not admissible:

- (c) in any court (whether or not exercising federal jurisdiction); or
- (d) in any proceedings before a person authorised to hear evidence (whether the person is authorised by a law of the Commonwealth, a State or a Territory, or by the consent of the parties).

(2) Subsection (1) does not apply to:

- (a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse; or
- (b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse;

unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

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(3)Nothing in this section prevents a family counsellor from disclosing information necessary for the counsellor to give a certificate of the kind mentioned in paragraph 16(2A)(a) of the *Marriage Act 1961*.

(4)A family counsellor who refers a person to a professional (within the meaning of paragraph (1)(b)) must inform the professional of the effect of this section.

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## Division 3—Family dispute resolution

### 10F Definition of *family dispute resolution*

*Family dispute resolution* is a process (other than a judicial process):

- (a)in which a family dispute resolution practitioner helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other; and
- (b)in which the practitioner is independent of all of the parties involved in the process.

### 10G Definition of *family dispute resolution practitioner*

(1)A *family dispute resolution practitioner* is:

- (a)a person who is accredited as a family dispute resolution practitioner under the Accreditation Rules; or
- (b)a person who is authorised to act on behalf of an organisation designated by the Minister for the purposes of this paragraph; or
- (c)a person who is authorised to act under section 38BD, or engaged under subsection 38R(1A), as a family dispute resolution practitioner; or
- (d)a person who is authorised to act under section 93D of the *Federal Magistrates Act 1999*, or engaged under subsection 115(1A) of that Act, as a family dispute resolution practitioner; or
- (e)a person who is authorised by a Family Court of a State to act as a family dispute resolution practitioner.

(2)The Minister must publish, at least annually, a list of organisations designated for the purposes of paragraph (b) of the definition of *family dispute resolution practitioner*.

(3)An instrument under this section is not a legislative instrument.

### 10H Confidentiality of communications in family dispute resolution

(1)A family dispute resolution practitioner must not disclose a

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communication made to the practitioner while the practitioner is conducting family dispute resolution, unless the disclosure is required or authorised by this section.

(2)A family dispute resolution practitioner must disclose a communication if the practitioner reasonably believes the disclosure is necessary for the purpose of complying with a law of the Commonwealth, a State or a Territory.

(3)A family dispute resolution practitioner may disclose a communication if consent to the disclosure is given by:

- (a)if the person who made the communication is 18 or over—that person; or
- (b)if the person who made the communication is a child under 18:
  - (i) each person who has parental responsibility (within the meaning of Part VII) for the child; or
  - (ii) a court.

(4)A family dispute resolution practitioner may disclose a communication if the practitioner reasonably believes that the disclosure is necessary for the purpose of:

- (a)protecting a child from the risk of harm (whether physical or psychological); or
- (b)preventing or lessening a serious and imminent threat to the life or health of a person; or
- (c)reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person; or
- (d)preventing or lessening a serious and imminent threat to the property of a person; or
- (e)reporting the commission, or preventing the likely commission, of an offence involving intentional damage to property of a person or a threat of damage to property; or
- (f)if a lawyer independently represents a child's interests under an order under section 68L—assisting the lawyer to do so properly.

(5)A family dispute resolution practitioner may disclose a communication in order to provide information (other than personal information within the meaning of section 6 of the *Privacy Act 1988*) for research relevant to families.

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Section 4

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(6)A family dispute resolution practitioner may disclose information necessary for the practitioner to give a certificate under subsection 60I(8).

(7)Evidence that would be inadmissible because of section 10J is not admissible merely because this section requires or authorises its disclosure.

Note: This means that the practitioner's evidence is inadmissible in court, even if subsection (2), (3), (4), (5) or (6) allows the practitioner to disclose it in other circumstances.

(8)In this section:

**communication** includes admission.

**10J Admissibility of communications in family dispute resolution and in referrals from family dispute resolution**

(1)Evidence of anything said, or any admission made, by or in the company of:

- (a)a family dispute resolution practitioner conducting family dispute resolution; or
- (b)a person (the *professional*) to whom a family dispute resolution practitioner refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person;

is not admissible:

- (c)in any court (whether or not exercising federal jurisdiction); or
- (d)in any proceedings before a person authorised to hear evidence (whether the person is authorised by a law of the Commonwealth, a State or a Territory, or by the consent of the parties).

(2)Subsection (1) does not apply to:

- (a)an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse; or
- (b)a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse;

unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

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(3) Subsection (1) does not apply to information necessary for the practitioner to give a certificate under subsection 60I(8).

(4) A family dispute resolution practitioner who refers a person to a professional (within the meaning of paragraph (1)(b)) must inform the professional of the effect of this section.

#### **10K Family dispute resolution practitioners must comply with regulations**

(1) The regulations may prescribe requirements to be complied with by family dispute resolution practitioners in relation to the family dispute resolution services they provide.

(2) The regulations may prescribe penalties not exceeding 10 penalty units in respect of offences against regulations made for the purposes of subsection (1).

Section 4

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## Division 4—Arbitration

### 10L Definition of *arbitration*

(1) ***Arbitration*** is a process (other than the judicial process) in which parties to a dispute present arguments and evidence to an arbitrator, who makes a determination to resolve the dispute.

(2) Arbitration may be either:

(a) ***section 13E arbitration***—which is arbitration of Part VIII proceedings, or Part VIIIAB proceedings (other than proceedings relating to a Part VIIIAB financial agreement), carried out as a result of an order made under section 13E; or

(b) ***relevant property or financial arbitration***—which is arbitration (other than section 13E arbitration) of:

- (i) Part VIII proceedings, Part VIIIA proceedings, Part VIIIAB proceedings, Part VIIIB proceedings or section 106A proceedings; or
- (ii) any part of such proceedings; or
- (iii) any matter arising in such proceedings; or
- (iv) a dispute about a matter with respect to which such proceedings could be instituted.

### 10M Definition of *arbitrator*

An ***arbitrator*** is a person who meets the requirements prescribed in the regulations to be an arbitrator.

### 10N Arbitrators may charge fees for their services

(1) An arbitrator conducting arbitration may charge the parties to the arbitration fees for conducting it.

(2) The arbitrator must give written information about those fees to the parties before the arbitration starts.

Note: There may be Rules of Court or regulations relating to the costs of arbitration and how they are assessed or taxed (see paragraphs 123(1)(se) and 125(1)(bc)).

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## **10P Immunity of arbitrators**

An arbitrator has, in performing his or her functions as an arbitrator, the same protection and immunity as a Judge of the Family Court has in performing the functions of a Judge.

Note:      Communications with arbitrators are not confidential, and may be admissible in court.

Section 4

## **Part III—Family consultants**

### **Division 1—About family consultants**

#### **11A Functions of family consultants**

The functions of family consultants are to provide services in relation to proceedings under this Act, including:

- (a)assisting and advising people involved in the proceedings; and
- (b)assisting and advising courts, and giving evidence, in relation to the proceedings; and
- (c)helping people involved in the proceedings to resolve disputes that are the subject of the proceedings; and
- (d)reporting to the court under sections 55A and 62G; and
- (e)advising the court about appropriate family counsellors, family dispute resolution practitioners and courses, programs and services to which the court can refer the parties to the proceedings.

Note: See subsection 4(1AA) for people who are taken to be involved in proceedings.

#### **11B Definition of *family consultant***

A *family consultant* is a person who is:

- (a)appointed as a family consultant under section 38N; or
- (b)appointed as a family consultant in relation to the Federal Magistrates Court under the *Federal Magistrates Act 1999*; or
- (c)appointed as a family consultant under the regulations; or
- (d)appointed under a law of a State as a family consultant in relation to a Family Court of that State.

Note: The Chief Executive Officers of the Family Court and the Federal Magistrates Court have all of the functions and powers of family consultants, and may direct consultants in the performance of their functions. See Division 1A of Part IVA of this Act and Division 1A of Part 7 of the *Federal Magistrates Act 1999*.

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## **11C Admissibility of communications with family consultants and referrals from family consultants**

(1) Evidence of anything said, or any admission made, by or in the company of:

- (a) a family consultant performing the functions of a family consultant; or
- (b) a person (the *professional*) to whom a family consultant refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person;

is admissible in proceedings under this Act.

Note 1: Communications with family consultants are not confidential (except in the special circumstances set out in subsection 38BD(3) in relation to consultants having several roles).

Note 2: Subsection (1) does not prevent things said or admissions made by or in the company of family consultants from being admissible in proceedings other than proceedings under this Act.

(2) Subsection (1) does not apply to a thing said or an admission made by a person who, at the time of saying the thing or making the admission, had not been informed of the effect of subsection (1).

(3) Despite subsection (2), a thing said or admission made is admissible even if the person who said the thing or made the admission had not been informed of the effect of subsection (1), if:

- (a) it is an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse; or
- (b) it is a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse;

unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

## **11D Immunity of family consultants**

A family consultant has, in performing his or her functions as a family consultant, the same protection and immunity as a Judge of the Family Court has in performing the functions of a Judge.

Section 4

## **Division 2—Courts' use of family consultants**

### **11E Courts to consider seeking advice from family consultants**

- (1)If, under this Act, a court has the power to:
- (a)order a person to attend family counselling or family dispute resolution; or
  - (b)order a person to participate in a course, program or other service (other than arbitration); or
  - (c)order a person to attend appointments with a family consultant; or
  - (d)advise or inform a person about family counselling, family dispute resolution or other courses, programs or services;
- the court:
- (e)may, before exercising the power, seek the advice of:
    - (i) if the court is the Family Court or the Federal Magistrates Court—a family consultant nominated by the Chief Executive Officer of that court; or
    - (ii) if the court is the Family Court of a State—a family consultant of that court; or
    - (iii) if the court is not mentioned in subparagraph (i) or (ii)—an appropriately qualified person (whether or not an officer of the court);
  - as to the services appropriate to the needs of the person and the most appropriate provider of those services; and
- (f)must, before exercising the power, consider seeking that advice.
- (2)If the court seeks advice under subsection (1), the court must inform the person in relation to whom the advice is sought:
- (a)whom the court is seeking advice from; and
  - (b)the nature of the advice the court is seeking.

### **11F Court may order parties to attend appointments with a family consultant**

- (1)A court exercising jurisdiction in proceedings under this Act may order one or more parties to the proceedings to attend an appointment (or a series of appointments) with a family consultant.

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Note: Before exercising this power, the court must consider seeking the advice of a family consultant about the services appropriate to the parties' needs (see section 11E).

(2) When making an order under subsection (1), the court must inform the parties of the effect of section 11G (consequences of failure to comply with order).

(3) The court may make orders under this section:

- (a) on its own initiative; or
- (b) on the application of:
  - (i) a party to the proceedings; or
  - (ii) a lawyer independently representing a child's interests under an order made under section 68L.

## **11G Consequences of failure to comply with order under section 11F**

(1) If a person who is ordered to attend an appointment with a family consultant under section 11F fails to comply with:

- (a) the order made by the court; or
- (b) any instruction the consultant gives to the person;

the consultant must report the failure to the court.

(2) On receiving the report, the court may make any further orders it considers appropriate.

(3) The court may make orders under subsection (2):

- (a) on its own initiative; or
- (b) on the application of:
  - (i) a party to the proceedings; or
  - (ii) a lawyer independently representing a child's interests under an order made under section 68L.

Section 4

## **Part IIIA—Obligations to inform people about non-court based family services and about court’s processes and services**

### **Division 1—Introduction**

#### **12A Objects of this Part**

The objects of this Part are:

- (a)to ensure that married couples considering separation or divorce are informed about the services available to help with a possible reconciliation, in situations where a reconciliation between the couple seems a reasonable possibility; and
- (b)to ensure that people affected, or likely to be affected, by separation or divorce are informed about the services available to help them adjust to:
  - (i) separation or divorce; and
  - (ii) orders made under this Act; and
- (c)to ensure that people affected, or likely to be affected, by separation or divorce are informed about ways of resolving disputes other than by applying for orders under this Act.

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## **Division 2—Kind of information to be provided**

### **12B Prescribed information about non-court based family services and court's processes and services**

- (1)The regulations may prescribe information that is to be included in documents provided to persons under this Part, relating to non-court based family services and court's processes and services.
- (2)Without limitation, information prescribed under this section must include information about:
- (a)the legal and possible social effects of the proposed proceedings (including the consequences for children whose care, welfare or development is likely to be affected by the proceedings); and
  - (b)the services provided by family counsellors and family dispute resolution practitioners to help people affected by separation or divorce; and
  - (c)the steps involved in the proposed proceedings; and
  - (d)the role of family consultants; and
  - (e)the arbitration facilities available to arbitrate disputes in relation to separation and divorce.

### **12C Prescribed information about reconciliation**

The regulations may prescribe information that is to be included in documents provided to persons under this Part, relating to services available to help with a reconciliation between the parties to a marriage.

### **12D Prescribed information about Part VII proceedings**

- (1)The regulations may prescribe information that is to be included in documents provided under this Part to persons involved in proceedings under Part VII.
- (2)Without limitation, the information must include information about the family counselling services available to assist the parties, and the child or children concerned, to adjust to the consequences of orders under that Part.
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Section 4

## **Division 3—Who must provide information, and when**

### **12E Obligations on legal practitioners**

(1)A legal practitioner who is consulted by a person considering instituting proceedings under this Act must give the person documents containing the information prescribed under section 12B (about non-court based family services and court's processes and services).

(2)A legal practitioner who is consulted by, or who is representing, a married person who is a party to:

(a)proceedings for a divorce order in relation to the marriage;  
or

(b)financial or Part VII proceedings in relation to the marriage;

must give the person documents containing the information prescribed under section 12C (about reconciliation).

(3)A legal practitioner representing a party in proceedings under Part VII must give the party documents containing the information prescribed under section 12D (about Part VII proceedings).

Note: Section 63DA also imposes information-giving obligations on legal practitioners dealing with people involved in Part VII proceedings.

(4)A legal practitioner does not have to comply with subsection (1), (2) or (3) if the practitioner has reasonable grounds to believe that the person has already been given documents containing the prescribed information mentioned in that subsection.

(5)A legal practitioner does not have to comply with subsection (2) if the practitioner considers that there is no reasonable possibility of a reconciliation between the parties to the marriage.

### **12F Obligations on principal executive officers of courts**

#### *Obligation to give prescribed information*

(1)The principal executive officer of a court that has jurisdiction under this Act must ensure that any person who is considering

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instituting proceedings under this Act is, on the first occasion the person deals with a registry of the court, given documents containing the information prescribed under:

- (a)section 12B (about non-court based family services and court's processes and services); and
- (b)section 12C (about reconciliation).

*Obligation to respond to requests for information*

(2)The principal executive officer of a court that has jurisdiction under this Act must ensure that, if a person involved in proceedings under this Act requests an officer or staff member of the court for information about family counselling services or family dispute resolution services, the person is given documents containing information about those services.

Note: See subsection 4(1AA) for people who are taken to be involved in proceedings.

## **12G Obligations on family counsellors, family dispute resolution practitioners and arbitrators**

(1)A family counsellor, family dispute resolution practitioner or arbitrator who deals with a married person considering instituting:

- (a)proceedings for a divorce order in relation to the marriage; or
- (b)financial or Part VII proceedings in relation to the marriage;

must give the married person (and in appropriate cases, that person's spouse) documents containing the information prescribed under 12C (about reconciliation).

Note: Section 63DA also imposes information-giving obligations on family counsellors and family dispute resolution practitioners (not arbitrators) dealing with people involved in Part VII proceedings.

(2)A family counsellor, family dispute resolution practitioner or arbitrator does not have to comply with subsection (1), if he or she:

- (a)has reasonable grounds to believe that the person has already been given documents containing the prescribed information or
- (b)considers that there is no reasonable possibility of a reconciliation between the parties to the marriage.

Section 4

## **Part IIIB—Court’s powers in relation to court and non-court based family services**

### **Division 1—Introduction**

#### **13A Objects of this Part**

- (1)The objects of this Part are:
- (a)to facilitate access to family counselling:
    - (i) to help married couples considering separation or divorce to reconcile; and
    - (ii) to help people adjust to separation or divorce; and
    - (iii) to help people adjust to court orders under this Act; and
  - (b)to encourage people to use dispute resolution mechanisms (other than judicial ones) to resolve matters in which a court order might otherwise be made under this Act, provided the mechanisms are appropriate in the circumstances and proper procedures are followed; and
  - (c)to encourage people to use, in appropriate circumstances, arbitration to resolve matters in which a court order might otherwise be made, and to provide ways of facilitating that use; and
  - (d)to give the court the power to require parties to proceedings under this Act to make use of court or non-court based family services appropriate to the needs of the parties.
- (2)The object mentioned in paragraph (1)(b) also lies behind the general requirement in section 60I for family dispute resolution services to be used before applications for orders under Part VII are made.

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## **Division 2—Help with reconciliation**

### **13B Court to accommodate possible reconciliations**

(1)A court exercising jurisdiction in:

- (a)proceedings for a divorce order; or
- (b)financial or part VII proceedings instituted by a party to a subsisting marriage;

must consider, from time to time, the possibility of a reconciliation between the parties to the marriage.

(2)If, during the proceedings, the court considers, from the evidence in the proceedings or the attitude of the parties to the marriage, that there is a reasonable possibility of a reconciliation between the parties, the court may adjourn the proceedings to give the parties the opportunity to consider a reconciliation.

(3)If the court adjourns the proceedings under subsection (2), the court must advise the parties to attend family counselling, or use the services of another appropriate person or organisation.

Note: Before advising the parties, the court must consider seeking the advice of a family consultant about the services appropriate to the parties' needs (see section 11E).

(4)If, after an adjournment under subsection (2), either of the parties requests that the proceedings resume, the court must resume the proceedings as soon as practicable.

Section 4

**Division 3—Referrals to family counselling, family dispute resolution and other family services**

**13C Court may refer parties to family counselling, family dispute resolution and other family services**

(1)A court exercising jurisdiction in proceedings under this Act may, at any stage in the proceedings, make one or more of the following orders:

- (a)that one or more of the parties to the proceedings attend family counselling;
- (b)that the parties to the proceedings attend family dispute resolution;
- (c)that one or more of the parties to the proceedings participate in an appropriate course, program or other service.

Note 1: Before making an order under this section, the court must consider seeking the advice of a family consultant about the services appropriate to the parties' needs (see section 11E).

Note 2: The court can also order parties to attend appointments with a family consultant (see section 11F).

(2)The court may suggest a particular purpose for the attendance or participation.

(3)The order may require the party or parties to encourage the participation of specified other persons who are likely to be affected by the proceedings.

Note: For example, the participation of children, grandparents or other relatives may be encouraged.

(4)The court may make any other orders it considers reasonably necessary or appropriate in relation to the order.

(5)The court may make orders under this section:

- (a)on its own initiative; or
- (b)on the application of:
  - (i) a party to the proceedings; or
  - (ii) a lawyer independently representing a child's interests under an order made under section 68L.

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### **13D Consequences of failure to comply with order under section 13C**

(1) If a party fails to comply with an order of a court under section 13C, the family counsellor, family dispute resolution practitioner or provider of the course, program or other service must report the failure to the court.

(2) On receiving the report, the court may make any further orders it considers appropriate.

(3) The court may make orders under subsection (2):

- (a) on its own initiative; or
- (b) on the application of:
  - (i) a party to the proceedings; or
  - (ii) a lawyer independently representing a child's interests under an order made under section 68L.

Section 4

## **Division 4—Court’s role in relation to arbitration of disputes**

### **13E Court may refer Part VIII proceedings or Part VIIIAB proceedings to arbitration**

(1)With the consent of all of the parties to the proceedings, a court exercising jurisdiction in:

- (a)Part VIII proceedings; or
- (b)Part VIIIAB proceedings (other than proceedings relating to a Part VIIIAB financial agreement);

may make an order referring the proceedings, or any part of them, or any matter arising in them, to an arbitrator for arbitration.

(2)If the court makes an order under subsection (1), it may, if necessary, adjourn the proceedings and may make any additional orders as it thinks appropriate to facilitate the effective conduct of the arbitration.

### **13F Court may make orders to facilitate arbitration of certain disputes**

A court that has jurisdiction under this Act may, on application by a party to relevant property or financial arbitration, make orders the court thinks appropriate to facilitate the effective conduct of the arbitration.

### **13G Family Court and Federal Magistrates Court may determine questions of law referred by arbitrator**

(1)An arbitrator of section 13E arbitration or relevant property or financial arbitration may, at any time before making an award in the arbitration, refer a question of law arising in relation to the arbitration for determination by:

- (a)a single judge of the Family Court; or
- (b)a single judge of the Family Court of a State; or
- (c)the Federal Magistrates Court.

(2)The arbitrator may do so:

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- (a)on his or her own initiative; or
  - (b)at the request of one or more of the parties to the arbitration if the arbitrator considers it appropriate to do so.
- (3)The arbitrator must not make an award in the arbitration before the judge or Federal Magistrates Court has either:
- (a)determined the question of law; or
  - (b)referred the matter to the arbitrator having found that no question of law arises.

### **13H Awards made in arbitration may be registered in court**

- (1)A party to an award made in section 13E arbitration or in relevant property or financial arbitration may register the award:
  - (a)in the case of section 13E arbitration—in the court that ordered the arbitration; or
  - (b)otherwise—in a court that has jurisdiction under this Act.
- (2)An award registered under subsection (1) has effect as if it were a decree made by that court.

### **13J Family Court or Federal Magistrates Court can review registered awards**

- (1)A party to a registered award made in section 13E arbitration or relevant property or financial arbitration may apply for review of the award, on questions of law, by:
  - (a)a single judge of the Family Court; or
  - (b)a single judge of the Family Court of a State; or
  - (c)the Federal Magistrates Court.

Note: There may be Rules of Court providing for when, and how, an application for review of the award can be made (see paragraph 123(1)(sf)).

- (2)On a review of an award under this section, the judge or Federal Magistrates Court may:
  - (a)determine all questions of law arising in relation to the arbitration; and
  - (b)make such decrees as the judge or Federal Magistrates Court thinks appropriate, including a decree affirming, reversing or varying the award.

Section 4

**13K Family Court and Federal Magistrates Court may set aside registered awards**

(1) If an award made in section 13E arbitration or relevant property or financial arbitration, or an agreement made as a result of such arbitration, is registered in:

- (a) the Family Court; or
- (b) the Federal Magistrates Court; or
- (c) a Family Court of a State;

the court in which the award is registered may make a decree affirming, reversing or varying the award or agreement.

(2) The court may only make a decree under subsection (1) if the court is satisfied that:

- (a) the award or agreement was obtained by fraud (including non-disclosure of a material matter); or
- (b) the award or agreement is void, voidable or unenforceable; or
- (c) in the circumstances that have arisen since the award or agreement was made it is impracticable for some or all of it to be carried out; or
- (d) the arbitration was affected by bias, or there was a lack of procedural fairness in the way in which the arbitration process, as agreed between the parties and the arbitrator, was conducted.

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## **Part IV—The Family Court of Australia**

### **Division 1—Interpretation**

#### **20 Interpretation**

In this Part, unless the contrary intention appears:

***Chief Judge*** means the Chief Judge of the Court, and includes the Deputy Chief Judge or a Judge Administrator if the Deputy Chief Judge or Judge Administrator is for the time being performing the duties and exercising the powers of the Chief Judge.

***Court*** means the Family Court of Australia.

***Deputy Chief Judge*** means the Deputy Chief Judge of the Court.

***Judge*** means a Judge of the Family Court (including the Chief Judge, the Deputy Chief Judge, a Judge Administrator or a Senior Judge).

***Judge Administrator*** means a Judge Administrator of the Court.

***Principal Registrar*** means the Principal Registrar of the Court.

Section 4

## **Division 2—The Family Court of Australia**

### **21 Creation of Court**

- (1)A Court, to be known as the Family Court of Australia, is created by this Act.
- (2)The Court is a superior court of record.
- (3)The Court consists of:
  - (a)a Chief Judge, who shall be called the Chief Justice of the Court;
  - (b)a Deputy Chief Judge, who shall be called the Deputy Chief Justice of the Court; and
  - (c)Judge Administrators, Senior Judges and other Judges, not exceeding, in total, such number as is prescribed.
- (4)Regulations made pursuant to subsection (3) shall take effect at the expiration of 7 sitting days after the regulations have been laid before each House of the Parliament.

### **21A Divisions of Court**

For the purposes of the organization and conduct of the business of the Court, the Court comprises 2 Divisions, namely, the Appeal Division and the General Division.

### **21B Arrangement of business of Court**

- (1)The Chief Judge is responsible for ensuring the orderly and expeditious discharge of the business of the Court and accordingly may, subject to this Act and to such consultation with the Judges as is appropriate and practicable, make arrangements as to the Judge or Judges who is or are to constitute the Court, or the Full Court, in particular matters or classes of matters.
- (2)The Deputy Chief Judge shall assist the Chief Judge in the exercise of the functions conferred on the Chief Judge by subsection (1).
- (3)A Judge Administrator shall, in relation to such part of Australia as is from time to time assigned by the Chief Judge, assist the

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Chief Judge and the Deputy Chief Judge in the exercise of such of the functions conferred on the Chief Judge by subsection (1) as are from time to time so assigned.

Section 4

**Division 3—Judges**

**22 Appointment, removal and resignation of Judges**

(1)A Judge:

- (a)shall be appointed by the Governor-General; and
- (b)shall not be removed except by the Governor-General, on an address from both Houses of the Parliament in the same session praying for the Judge's removal on the grounds of proved misbehaviour or incapacity.

(2)A person shall not be appointed as a Judge unless:

- (a)the person is or has been a Judge of another court created by the Parliament or of a court of a State or has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory for not less than 5 years; and
- (b)by reason of training, experience and personality, the person is a suitable person to deal with matters of family law.

(2AA)The members of the Appeal Division of the Court are the Chief Judge, the Deputy Chief Judge and such other Judges as are assigned to the Appeal Division under this section.

(2AB)The Governor-General may, in the commission of appointment of a Judge or, with the consent of the Judge but not otherwise, at a later time assign a Judge to the Appeal Division.

(2AC)The Governor-General shall not assign a Judge to the Appeal Division under subsection (2AB) if, as a result of that assignment, the number of members of the Appeal Division assigned under that subsection would exceed the prescribed number.

(2AF)A Judge (other than the Chief Judge or the Deputy Chief Judge) who is not assigned to the Appeal Division shall be deemed to be assigned to the General Division.

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(2AFA)Where a person holding office as a Senior Judge or Judge of the Court is appointed Deputy Chief Judge or a Judge Administrator, the person retains that office as Senior Judge or Judge, as the case may be, and may resign the office of Deputy Chief Judge or Judge Administrator without resigning that first-mentioned office.

(2AG)Notwithstanding anything contained in any other Act, a person may hold office at the one time as a Judge of the Court and as a Judge of a prescribed court or of 2 or more prescribed courts.

(2AH)In subsection (2AG), **prescribed court** means:

- (a)a court (other than the Court) created by the Parliament; or
- (b)the Supreme Court of the Northern Territory.

(2A)A person may be appointed to the office of Judge of the Family Court of Australia notwithstanding that he or she holds an office of Judge of a Family Court of a State and may serve in that office of Judge of the Family Court of Australia notwithstanding that he or she continues to hold, and serve in, the office of Judge of the Family Court of that State.

(2B)If a person who holds office as a Judge of the Family Court of Australia is appointed or serves as a Judge of a Family Court of a State, the appointment or service shall not affect his or her tenure of that office of Judge of the Family Court of Australia or his or her rank, title, status, precedence, salary or annual allowance or other rights or privileges as the holder of that office of Judge of the Family Court of Australia and, for all purposes, his or her service as a Judge of the Family Court of that State shall be taken to be service as the holder of that office of Judge of the Family Court of Australia.

(3)A Judge may resign office by writing under his or her hand addressed to the Governor-General.

(3A)The resignation takes effect on:

- (a)the day on which it is received by the Governor-General; or
- (b)a later day specified in the resignation document.

(4)A Judge or former Judge is entitled to be styled “The Honourable”.

Section 4

**23 Seniority**

- (1)The Chief Judge is senior to all other Judges of the Court.
- (2)The Deputy Chief Judge is senior to all other Judges of the Court other than the Chief Judge.
- (3)Judges appointed as Judge Administrators or assigned to the Appeal Division before, or not later than 3 months after, the commencement of section 13 of the *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988* have seniority next to the Deputy Chief Judge, and have such seniority in relation to each other as they had immediately before that commencement.
- (4)The remaining Judge Administrators and Judges assigned to the Appeal Division have seniority next to the Judges to whom subsection (3) applies according to the days on which their appointments as Judge Administrators and their assignments to the Appeal Division (whichever first occurred) took effect.
- (5)Where, because 2 or more appointments as Judge Administrator and assignments to the Appeal Division took effect on the same day, subsection (4) does not determine priority between the Judges concerned, those Judges have such seniority in relation to each other as is assigned to them by the Governor-General.
- (6)The Senior Judges not assigned to the Appeal Division have seniority next to the Judges to whom subsection (4) applies according to the days on which their appointments as Senior Judges took effect.
- (7)Where, because 2 or more commissions of appointment as Senior Judge took effect on the same day, subsection (6) does not determine seniority between the Senior Judges concerned, those Judges have such seniority in relation to each other as is assigned to them by the Governor-General.
- (8)The Judges who are not Judge Administrators or Senior Judges and are not assigned to the Appeal Division have seniority next to the Senior Judges to whom subsection (6) applies according to the days on which their appointments as Judges took effect.
- (9)Where, because 2 or more commissions of appointment as

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Judge took effect on the same day on or after the commencement of this subsection, subsection (8) does not determine seniority between the Judges concerned, those Judges have such seniority in relation to each other as is assigned to them by the Governor-General.

(10) If:

(a)a person's commission of appointment as a Judge of a particular kind terminates; and

(b)a new commission of appointment of the person as a Judge of that kind takes effect immediately after the termination;

the day of appointment of the person as a Judge of that kind is, for the purposes of this section, the day on which the earlier appointment took effect and not the day on which the later appointment took effect.

(11) Subsection (10) applies to the termination of a commission of appointment however it occurs (whether because of resignation or because of the expiration of the term of the appointment or otherwise).

## **24 Absence or illness of Chief Judge**

(1) Whenever:

(a) the Chief Judge is absent from Australia or from duty; or

(b) there is a vacancy in the office of Chief Judge;

the Deputy Chief Judge or, if the Deputy Chief Judge is unavailable, the senior Judge Administrator who is in Australia and is available and willing to do so shall perform the duties and may exercise the powers of the Chief Judge.

(2) A Judge who is, under subsection (1), performing the duties and exercising the powers of the Chief Judge shall be called the Acting Chief Justice of the Court.

## **25 Salary and Allowances**

(1) The Chief Judge, Deputy Chief Judge, Judge Administrators, Judges assigned to the Appeal Division, Senior Judges and other Judges of the Court shall receive salary, annual allowances and travelling allowances at such respective rates as are fixed from

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time to time by the Parliament.

(2)The salary and annual allowances of the Judges accrue from day to day and are payable monthly.

(3)The Consolidated Revenue Fund is appropriated to the extent necessary for payment of salaries and annual allowances in accordance with this section.

**26 Oath or affirmation of allegiance and office**

A Judge shall, before proceeding to discharge the duties of the office, take, before the Chief Justice or a Justice of the High Court of Australia or a Judge of the Family Court or of another court created by the Parliament, an oath or affirmation of allegiance in the form in the Schedule to the Constitution, and also an oath or affirmation in the following form:

“I, \_\_\_\_\_, do swear that I will well and truly serve in the office of (*Chief Judge, Deputy Chief Judge, Judge Administrator, Senior Judge or Judge*, as the case may be) of the Family Court of Australia and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will, So help me God.”

*or*

“I, \_\_\_\_\_, do solemnly and sincerely promise and declare that \_\_\_\_\_” (*as above, omitting the words “So help me God”*).  
\_\_\_\_\_”

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## **Division 4—Judicial Registrars**

### **26A Judicial Registrars**

The Governor-General may appoint one or more Judicial Registrars of the Court.

### **26B Powers of Judicial Registrars**

(1)The Judges, or a majority of them, may make Rules of Court delegating to the Judicial Registrars all or any of the powers of the Court except the power to make an excluded child order (as defined in subsection (1A)) and the power to make an order setting aside a registered award under section 13K.

(1A)An *excluded child order* is:

- (a)a parenting order to the extent to which it provides that:
  - (i) a child is to live with a person; or
  - (ii) a child is to spend time with a person; or
  - (iii) a child is to communicate with a person; or
  - (iv) a person is to have parental responsibility for a child; or
- (b)an order in relation to the welfare of a child; other than:
  - (c)a parenting order made under paragraph 70NEB(1)(b) or an order made under paragraph 70NFB(2)(c) that has the same effect as such a parenting order; or
  - (d)an order until further order; or
  - (e)an order made in undefended proceedings; or
  - (f)an order made with the consent of all the parties to the proceedings.

(2)Without limiting the generality of subsection (1), the Judges, or a majority of them, may make Rules of Court under that subsection:

- (a)delegating to the Judicial Registrars all or any of the powers of the Court that could be delegated to the Registrars of the Court; and
- (b)delegating to the Judicial Registrars powers of the Court by reference to powers of the Court that have been delegated

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to the Registrars of the Court under section 37A.

(3) A power delegated to the Judicial Registrars shall, when exercised by a Judicial Registrar, be deemed to have been exercised by the Court or a Judge, as the case requires.

(4) The delegation of a power to the Judicial Registrars does not prevent the exercise of the power by the Court or a Judge.

(5) The provisions of this Act, the regulations and the standard Rules of Court, and other laws of the Commonwealth, that relate to the exercise by the Court of a power that is, under a delegation made under subsection (1), exercisable by a Judicial Registrar, apply in relation to an exercise of the power by a Judicial Registrar as if references to the Court, or to a court exercising jurisdiction under this Act, were references to a Judicial Registrar.

(6) The Judicial Registrars shall have, in addition to the powers delegated to them under subsection (1), such other powers (if any) as are conferred on them by this Act, the regulations and the standard Rules of Court.

Note: Powers to make Rules of Court are also contained in sections 37A, 109A and 123.

**26C Review of decisions of Judicial Registrars**

(1) A party to proceedings in which a Judicial Registrar has exercised a power delegated under subsection 26B(1) may, within the time prescribed by, or within such further time as is allowed in accordance with, Rules of Court made by the Judges or a majority of them, apply to the Court to review the exercise of the power.

(2) The Court may, on application made under subsection (1) or of its own motion, review the exercise by a Judicial Registrar of a power delegated under subsection 26B(1), and may make such orders as it considers appropriate in relation to the matter in relation to which the power was exercised.

(3) The Court may, on the application of a party or of its own motion, refer an application under subsection (1) to a Full Court of the Court.

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## **26D Exercise of delegated powers by Court**

(1) Where:

- (a)an application for the exercise of a power delegated under subsection 26B(1) is to be, or is being, heard by a Judicial Registrar; and
- (b)the Judicial Registrar considers that it is not appropriate for the application to be determined by a Judicial Registrar; the Judicial Registrar shall not hear, or continue to hear, the application, and shall make appropriate arrangements for the application to be heard by the Court.

(2) Where:

- (a)a power delegated under subsection 26B(1) is proposed to be exercised in a particular case by a Judicial Registrar; but
  - (b)the Judicial Registrar has not commenced to exercise the power in that case;
- a Judge may, on application by a person who would be a party to the proceedings before the Judicial Registrar in relation to the proposed exercise of the power, order that the power be exercised in that case by a Judge.

(3)Where an application is made to a Judge under subsection (2) seeking an order that, in a particular case, a power be exercised by a Judge, the Judicial Registrar shall not commence to exercise the power in that case until the application has been determined.

## **26E Application of the *Legislative Instruments Act 2003* to rules of court**

The *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made under sections 26B and 26C of this Act:

- (a)as if a reference to a legislative instrument were a reference to a rule of court; and
- (b)as if a reference to a rule-maker were a reference to the Chief Judge acting on behalf of the Judges; and
- (c)subject to such further modifications or adaptations as are provided for in regulations made under paragraph 125(1) (baa) of this Act.

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**26F Independence of Judicial Registrars**

Notwithstanding any provision of this Act or any other law, a Judicial Registrar is not subject to the direction or control of any person or body in the exercise of a power delegated under subsection 26B(1).

**26G Judicial Registrars hold office on full time or part time basis**

A Judicial Registrar may be appointed on a full time or part time basis.

**26H Qualifications for appointment etc.**

- (1)A person shall not be appointed as a Judicial Registrar unless:
- (a)the person is or has been a Judge of a court created by the Parliament or of a court of a State or the Northern Territory or has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory for not less than 5 years; and
  - (b)the person is, by reason of training, experience and personality, a suitable person to deal with matters of family law.

**26I Term of office**

- (1)A Judicial Registrar:
- (a)shall be appointed with effect from the day specified in the instrument of appointment; and
  - (b)holds office, subject to this Act:
    - (i) for such term (not exceeding 7 years) as is specified in the instrument of appointment, but is eligible for re-appointment; or
    - (ii) if the instrument of appointment so provides, until attaining 65 years of age, but is eligible for re-appointment.

**26J Remuneration and allowances**

- (1)A Judicial Registrar shall be paid such remuneration as is determined by the Remuneration Tribunal.

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(2)A Judicial Registrar shall be paid such allowances as are prescribed.

(3)This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **26JA Leave of absence**

(1)A person appointed as a full-time Judicial Registrar has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2)The Chief Judge may grant a person appointed as a full-time Judicial Registrar leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Chief Judge, with the approval of the Attorney-General, determines.

#### **26K Resignation**

(1)A Judicial Registrar may resign office by writing under his or her hand addressed to the Governor-General.

(2)The resignation takes effect on:

- (a)the day on which it is received by the Governor-General;
- or
- (b)a later day specified in the resignation document.

#### **26L Termination of appointment**

(1)The Governor-General may terminate the appointment of a Judicial Registrar for misbehaviour or physical or mental incapacity.

(2)The Governor-General shall terminate the appointment of a Judicial Registrar if the Judicial Registrar becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

#### **26M Oath or affirmation of office**

A Judicial Registrar shall, before proceeding to discharge the

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duties of the office, take, before the Chief Judge or another Judge of the Family Court, an oath or affirmation in the following form:

“I, \_\_\_\_\_, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law and that I will well and truly serve Her in the office of Judicial Registrar of the Family Court of Australia, So help me God.”

*or*

“I, \_\_\_\_\_, do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law and that I will well and truly serve Her in the office of Judicial Registrar of the Family Court of Australia.”

**26N Terms and conditions of appointment not provided for by Act**

A Judicial Registrar holds office on such terms and conditions (if any) in relation to matters not provided by this Act as are determined, in writing, by the Governor-General.

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## **Division 5—Jurisdiction and exercise of jurisdiction**

### **27 Place of sitting**

(1)Sittings of the Court must be held from time to time as required and the Court may sit at any place in Australia.

(2)The Court, in respect of proceedings, may be constituted by 2 or more Judges sitting at the same time, but in different places in Australia, using video link, audio link or other appropriate means to facilitate the Court sitting (*split court*).

Note: Section 21B provides for the Chief Judge to make arrangements for the constitution of the Court for particular matters.

(3)For the purpose of determining which law to apply in proceedings in which a split court is sitting, the Court is taken to be sitting at the place at which the presiding Judge is sitting.

### **27A Change of venue**

The Court or a Judge may, at any stage of a proceeding in the Court, direct that the proceeding or a part of the proceeding be conducted or continued at a place specified in the order, subject to such conditions (if any) as the Court or Judge imposes.

### **28 Exercise of jurisdiction**

(1)The original jurisdiction of the Court may be exercised by one or more Judges.

(2)The jurisdiction of the Court in an appeal from a court of summary jurisdiction may be exercised by one Judge or by a Full Court.

(2A)Nothing in this Act prevents a Judge who is a member of the Appeal Division from exercising the jurisdiction of the Court that, under subsection (1) or (2), may be exercised by one or more Judges.

(3)The jurisdiction of the Court in an appeal from a Judge of the Court or of the Supreme Court of a State or Territory shall be exercised by a Full Court.

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(3A)The jurisdiction of the Court to hear and determine a case stated under section 94A shall be exercised by a Full Court.

(4)Where, after a Full Court (including a Full Court constituted in accordance with this subsection) has commenced the hearing, or further hearing, of proceedings and before the proceedings have been determined, one of the Judges constituting the Full Court dies, resigns his or her office, ceases to be a member of the Court by reason that the term of his or her appointment expires or otherwise becomes unable to continue as a member of the Full Court for the purposes of the proceedings, then the hearing and determination, or the determination, of the proceedings may be completed:

- (a)if only 2 Judges remain and one of those Judges is assigned to the Appeal Division, or if more than 2 Judges remain and a majority of those Judges are assigned to the Appeal Division—by the Court constituted by the remaining Judges; or
- (b)with the consent of the parties—by the Court constituted by the remaining Judge or Judges and an additional Judge or Judges, where a majority of the Judges constituting the Court are assigned to the Appeal Division.

(5)A Full Court constituted in accordance with subsection (4) may have regard to any evidence given or received, and arguments adduced, by or before the Full Court as previously constituted.

(6)The Court constituted by one or more Judges may sit and exercise the jurisdiction of the Court notwithstanding that the Court constituted by one or more other Judges is at the same time sitting and exercising the jurisdiction of the Court.

### **30 Court divided in opinion**

If the Judges constituting the Court for the purposes of any proceedings are divided in opinion as to the judgment to be pronounced, judgment shall be pronounced according to the opinion of the majority, if there is a majority, but, if the Judges are equally divided in opinion:

- (a)in the case of an appeal from a judgment of the Family Court constituted by a single Judge, or of a Family Court of a State or the Supreme Court of a State or Territory—the

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judgment appealed from shall be affirmed; and  
(b)in any other case—the opinion of the Chief Judge or, if he or she is not one of the Judges constituting the Court, the opinion of the most senior of those Judges, shall prevail.

### **31 Original jurisdiction of Family Court**

- (1)Jurisdiction is conferred on the Family Court with respect to:
- (a)matters arising under this Act or under the repealed Act in respect of which matrimonial causes are instituted or continued under this Act; and
  - (aa)matters arising under this Act in respect of which de facto financial causes are instituted under this Act; and
  - (b)matters arising under the *Marriage Act 1961* in respect of which proceedings (other than proceedings under Part VII of that Act) are instituted or continued under that Act; and
  - (c)matters arising under a law of a Territory (other than the Northern Territory) concerning:
    - (i) the adoption of children;
    - (iv) the property of the parties to a marriage or either of them, being matters arising between those parties other than matters referred to in the definition of ***matrimonial cause*** in subsection 4(1); or
    - (v) the rights and status of a person who is an ex-nuptial child, and the relationship of such a person to his or her parents; and
  - (d)matters (other than matters referred to in any of the preceding paragraphs) with respect to which proceedings may be instituted in the Family Court under this Act or any other Act.

(2)Subject to such restrictions and conditions (if any) as are contained in section 111AA, the regulations or the standard Rules of Court, the jurisdiction of the Family Court may be exercised in relation to persons or things outside Australia and the Territories.

Note: Division 4 of Part XIIIIA (International protection of children) may affect the jurisdiction of the Court.

### **33 Jurisdiction in associated matters**

To the extent that the Constitution permits, jurisdiction is conferred

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on the Court in respect of matters not otherwise within the jurisdiction expressed by this Act or any law to be conferred on the Court that are associated with matters (including matters before the Court upon an appeal) in which the jurisdiction of the Court is invoked or that arise in proceedings (including proceedings upon an appeal) before the Court.

**33A Proceedings not to be instituted in the Family Court if an associated matter is before the Federal Magistrates Court**

- (1) Proceedings must not be instituted in the Family Court in respect of a matter if:
- (a) the Federal Magistrates Court has jurisdiction in that matter; and
  - (b) proceedings in respect of an associated matter are pending in the Federal Magistrates Court.

(2) Subsection (1) does not apply to:

- (a) proceedings for a divorce order; or
- (b) proceedings instituted in the Family Court under Division 13A of Part VII or under Part XIII or XIII A.

(3) If:

- (a) proceedings are instituted in the Family Court in contravention of subsection (1); and
- (b) the proceedings are subsequently transferred to the Federal Magistrates Court;

the proceedings are taken to be as valid as they would have been if subsection (1) had not been enacted.

**33B Discretionary transfer of proceedings to the Federal Magistrates Court**

- (1) If a proceeding is pending in the Family Court, the Family Court may, by order, transfer the proceeding from the Family Court to the Federal Magistrates Court.
- (2) The Family Court may transfer a proceeding under subsection (1):
- (a) on the application of a party to the proceeding; or
  - (b) on its own initiative.

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(3)The standard Rules of Court may make provision in relation to the transfer of proceedings to the Federal Magistrates Court under subsection (1).

(4)In particular, the standard Rules of Court may set out factors that are to be taken into account by the Family Court in deciding whether to transfer a proceeding to the Federal Magistrates Court under subsection (1).

(5)Before standard Rules of Court are made for the purposes of subsection (3) or (4), the Family Court must consult the Federal Magistrates Court.

(6)In deciding whether to transfer a proceeding to the Federal Magistrates Court under subsection (1), the Family Court must have regard to:

- (a)any standard Rules of Court made for the purposes of subsection (4); and
- (b)whether proceedings in respect of an associated matter are pending in the Federal Magistrates Court; and
- (c)whether the resources of the Federal Magistrates Court are sufficient to hear and determine the proceeding; and
- (d)the interests of the administration of justice.

(7)If an order is made under subsection (1), the Family Court may make such orders as it considers necessary pending the disposal of the proceeding by the Federal Magistrates Court.

(8)An appeal does not lie from a decision of the Family Court in relation to the transfer of a proceeding under subsection (1).

(8A)The Federal Magistrates Court has jurisdiction in a matter that:

- (a)is the subject of a proceeding transferred to the court under this section; and
- (b)is a matter in which the court does not have jurisdiction apart from this subsection.

To avoid doubt, the court's jurisdiction under this subsection is not subject to limits set by another provision.

(9)The reference in subsection (1) to a proceeding pending in the Family Court includes a reference to a proceeding that was instituted in contravention of section 33A.

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(10) This section does not apply to proceedings of a kind specified in the regulations.

**33C Mandatory transfer of proceedings to the Federal Magistrates Court**

(1) If a proceeding of a kind specified in regulations made for the purposes of this subsection is pending in the Family Court, the Family Court must, before going on to hear and determine the proceeding, transfer the proceeding to the Federal Magistrates Court.

(2) If a proceeding is transferred under subsection (1), the Family Court may make such orders as it considers necessary pending the disposal of the proceedings by the Federal Magistrates Court.

(3) An appeal does not lie from a decision of the Family Court in relation to the transfer of a proceeding under subsection (1).

(3A) The Federal Magistrates Court has jurisdiction in a matter that:

- (a) is the subject of a proceeding transferred to the court under this section; and
- (b) is a matter in which the court does not have jurisdiction apart from this subsection.

To avoid doubt, the court's jurisdiction under this subsection is not subject to limits set by another provision.

(4) The reference in subsection (1) to a proceeding pending in the Family Court includes a reference to a proceeding that was instituted in contravention of section 33A.

(5) The Minister must cause a copy of regulations (*transfer regulations*) made for the purposes of subsection (1) to be tabled in each House of the Parliament.

(6) Either House may, following a motion upon notice, pass a resolution disallowing the transfer regulations. To be effective, the resolution must be passed within 15 sittings days of the House after the copy of the transfer regulations was tabled in the House.

(7) If neither House passes such a resolution, the transfer regulations take effect on the day immediately after the last day

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upon which such a resolution could have been passed.

(8) Subsections (5), (6) and (7) have effect despite anything in:

- (a) the *Acts Interpretation Act 1901*; or
- (b) the *Legislative Instruments Act 1999*.

#### **34 Issue of certain writs etc.**

(1) The Court has power, in relation to matters in which it has jurisdiction, to make orders of such kinds, and to issue, or direct the issue of, writs of such kinds, as the Court considers appropriate.

#### **35 Contempt of court**

Subject to this and any other Act, the Family Court has the same power to punish contempts of its power and authority as is possessed by the High Court in respect of contempts of the High Court.

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## **Division 6—Registries and officers**

### **36 Registries**

- (1)The Governor-General shall cause such Registries of the Court to be established as the Governor-General thinks fit.
- (2)Unless and until the regulations otherwise provide, the Principal Registry shall be located in Sydney.

### **37 Officers of Court**

- (1)In relation to a proceeding under this Act, the officers of the Court have such duties, powers and functions as are given by this Act or the standard Rules of Court or by the Chief Judge.
- (2)The Principal Registrar of the Court may, subject to this Act, the regulations, the standard Rules of Court and any directions of the Chief Judge, give directions to the officers of the Court in relation to the manner in which the functions and duties of those officers are to be performed and the powers of those officers are to be exercised in relation to proceedings under this Act.
- (3)Despite subsection (2), the Principal Registrar must not give directions that relate to an officer's functions as a family consultant, family counsellor or family dispute resolution practitioner.

### **37A Delegation of powers to Registrars**

- (1)The Judges, or a majority of them, may, subject to subsection (2), make Rules of Court delegating to the Registrars all or any of the powers of the Court, including, without limiting the generality of the foregoing, all or any of the following powers of the Court:
  - (a)the power to dispense with the service of any process under this Act;
  - (b)the power to make orders in relation to substituted service;
  - (c)the power, in proceedings under this Act, to make orders in relation to discovery, inspection and production of documents in the possession, power or custody of a party to

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the proceedings or of any other person;

(d)the power, in proceedings under this Act, to direct a party to the proceedings to answer particular questions;

(e)the power to make orders under:

- (i) sections 11F and 11G; and
- (ii) sections 13C and 13D; and
- (iii) subsection 65LA(1); and
- (iv) paragraph 70NEB(1)(a);

(ea)the power to direct a family consultant to give a report under section 62G;

(f)the power, in proceedings under this Act, to make:

- (i) an order under section 66Q, 67E, 77 or 90SG; or
- (ii) an order for the payment of maintenance pending the disposal of the proceedings;

(g)the power to make, in proceedings under this Act, an order the terms of which have been agreed upon by all the parties to the proceedings;

(h)the power, in proceedings under this Act, to make an order adjourning the hearing of the proceedings;

(j)the power under section 117 to make an order as to costs;

(m)the power to make an order exempting a party to proceedings under this Act from compliance with a provision of the regulations or Rules of Court.

(2)The powers of the Court that may be delegated under subsection (1) do not include the power to make:

- (a)a divorce order in proceedings that are defended; or
- (b)a decree of nullity of marriage; or
- (c)a declaration as to the validity of:
  - (i) a marriage; or
  - (ii) a divorce; or
  - (iii) the annulment of a marriage; or
- (d)an excluded child order (as defined in subsection (2A)); or
- (e)an order setting aside a registered award under section 13K.

(2A)An ***excluded child order*** is:

- (a)a parenting order to the extent to which it provides that:
  - (i) a child is to live with a person; or

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- (ii) a child is to spend time with a person; or
  - (iii) a child is to communicate with a person; or
  - (iv) a person is to have parental responsibility for a child; or
  - (b) an order in relation to the welfare of a child;  
other than:
    - (c) an order until further order; or
    - (d) an order made in undefended proceedings; or
    - (e) an order made with the consent of all the parties to the proceedings.
- (3) A power delegated by applicable Rules of Court under subsection (1), when exercised by a Registrar, shall, for all purposes, be deemed to have been exercised by the Court or a Judge, as the case requires.
- (4) The delegation of a power by applicable Rules of Court under subsection (1) does not prevent the exercise of the power by the Court or a Judge.
- (5) If the power referred to in paragraph (1)(f) is delegated under subsection (1), a Registrar shall not exercise the power on application by a party to proceedings under this Act unless:
- (a) the other party to the proceedings appears at the hearing of the application; or
  - (b) the Registrar is satisfied that notice of the intention of the first-mentioned party to make the application has been served on the other party.
- (6) If the power referred to in paragraph (1)(j) is delegated under subsection (1), a Registrar shall not exercise the power except in relation to costs of or in connection with an application heard by a Registrar.
- (7) The provisions of this Act, the regulations, the standard Rules of Court, and other laws of the Commonwealth, that relate to the exercise by the Court of a power that is, by virtue of a delegation under subsection (1), exercisable by a Registrar apply in relation to an exercise of the power by a Registrar under the delegation as if references in those provisions to the Court or to a court exercising jurisdiction under this Act were references to a Registrar.
- (8) Notwithstanding any other provision of this Act and any

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provision of the *Public Service Act 1999* or of any other law, a Registrar is not subject to the direction or control of any person or body in relation to the manner in which he or she exercises powers pursuant to a delegation under subsection (1).

(9)A party to proceedings in which a Registrar has exercised any of the powers of the Court pursuant to a delegation under subsection (1) may, within the time prescribed by, or within such further time as is allowed in accordance with, applicable Rules of Court made by the Judges or a majority of them for the purposes of this subsection, apply to the Court to review that exercise of power.

(10)The Court may, on application under subsection (9) or of its own motion, review an exercise of power by a Registrar pursuant to a delegation under this section and may make such order or orders as it considers appropriate with respect to the matter with respect to which the power was exercised.

(11)Where:

- (a)an application for the exercise of a power delegated under subsection (1) is to be, or is being, heard by a Registrar; and
- (b)the Registrar considers that it is not appropriate for the application to be determined by a Registrar acting under the delegation;

the Registrar shall not hear, or continue to hear, the application and shall make appropriate arrangements for the application to be heard by the Court.

(12)Where:

- (a)a power delegated under subsection (1) is proposed to be exercised in a particular case by a Registrar; but
- (b)the Registrar has not commenced to exercise the power in that case;

a Judge may, on application by a person who would be a party to the proceedings before the Registrar in relation to the proposed exercise of the power, order that the power be exercised in that case by a Judge.

(13)Where an application is made to a Judge under subsection (12) seeking an order that, in a particular case, a power be exercised by a Judge, the Registrar shall not commence to exercise the power in that case until the application has been determined.

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(14)The *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made under this section:

- (a)as if a reference to a legislative instrument were a reference to a rule of court; and
- (b)as if a reference to a rule-maker were a reference to the Chief Judge acting on behalf of the Judges; and
- (c)subject to such further modifications or adaptations as are provided for in regulations made under paragraph 125(1) (baa) of this Act.

(15)In this section, **Registrar** means the Principal Registrar, a Registrar or a Deputy Registrar of the Court.

Note: Powers to make Rules of Court are also contained in sections 26B, 109A and 123.

**37B Independence of Registrars**

(1)Notwithstanding any provision of this Act other than subsection (3), and any provision of the *Public Service Act 1999* or any other law, in the performance of a function or the exercise of a power under this Act, under the regulations or under the standard Rules of Court (other than a power delegated by standard Rules of Court under subsection 37A(1)):

- (a)the Principal Registrar is subject to the direction and control of the Chief Judge and is not subject to the direction or control of any other person or body;
- (b)a Registrar is subject to the direction and control of:
  - (i) the Chief Judge;
  - (ii) any other Judge authorized by the Chief Judge to direct and control that Registrar; and
  - (iii) the Principal Registrar;and is not subject to the direction or control of any other person or body; and
- (c)a Deputy Registrar is subject to the direction and control of:
  - (i) the Chief Judge;
  - (ii) any other Judge authorized by the Chief Judge to direct and control that Deputy Registrar;
  - (iii) the Principal Registrar; and

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(iv) the Registrars;

and is not subject to the direction or control of any other person or body.

(2)Without limiting the generality of subsection (1), the Principal Registrar may, subject to this Act and to any directions of the Chief Judge, make arrangements as to the Registrars or Deputy Registrars who are to perform any functions or exercise any power under this Act, under the regulations or under the standard Rules of Court (including a power delegated by standard Rules of Court under subsection 37A(1)) in particular matters or classes of matters.

(3)The powers of the Principal Registrar in relation to the Registrars and the Deputy Registrars, and the powers of the Registrars in relation to the Deputy Registrars, shall be exercised subject to the directions of the Chief Judge.

(4)An Agency Head (within the meaning of the *Public Service Act 1999*) cannot take action under section 15 of the *Public Service Act 1999* against the Principal Registrar, a Registrar or a Deputy Registrar unless such action is requested by the Chief Judge.

(5)In this section, ***Registrar*** means a Registrar of the Court.

### **37C Oath or affirmation of office**

A Principal Registrar, Registrar or Deputy Registrar shall, before proceeding to discharge the duties of the office, take, before the Chief Judge or another Judge of the Family Court, an oath or affirmation in the following form:

“I, \_\_\_\_\_, do swear that I will well and truly serve in the office of (*Principal Registrar, Registrar or Deputy Registrar*, as the case may be) of the Family Court of Australia and that I will do right to all manner of people according to law, without fear or favour, affection or illwill, So help me God.”

or

“I, \_\_\_\_\_, do solemnly and sincerely promise and declare that \_\_\_\_\_” (*as above, omitting the words “So help me God”*).

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## **Division 7—Practice and procedure**

### **38 Practice and procedure**

(1) Subject to this Act, the practice and procedure of the Court shall be in accordance with the regulations and the standard Rules of Court.

(2) In so far as the provisions applicable in accordance with subsection (1) are insufficient, the Rules of the High Court, as in force for the time being, apply, *mutatis mutandis*, so far as they are capable of application and subject to any directions of the Court or a Judge, to the practice and procedure of the Court.

(2A) This section does not apply in relation to proceedings that are transferred to the Court from the Federal Court of Australia.

(3) In this section, ***practice and procedure*** includes all matters with respect to which regulations or standard Rules of Court may be made under this Act.

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## **Part IVA—Management of the Court**

### **Division 1—Management responsibilities of the Chief Judge and the Chief Executive Officer**

#### **38A Management of administrative affairs of Court**

(1)The Chief Judge is responsible for managing the administrative affairs of the Court.

(2)For that purpose, the Chief Judge has power to do all things that are necessary or convenient to be done, including, on behalf of the Commonwealth:

- (a)entering into contracts; and
- (b)acquiring or disposing of personal property.

(3)The powers given to the Chief Judge by subsection (2) are in addition to any powers given to the Chief Judge by any other provision of this Act or by any other Act.

(4)Subsection (2) does not authorise the Chief Judge to:

- (a)acquire any interest or right that would constitute an interest in land for the purposes of the *Lands Acquisition Act 1989*; or
- (b)enter into a contract under which the Commonwealth is to pay or receive an amount exceeding \$250,000 or, if a higher amount is prescribed, that higher amount, except with the approval of the Attorney-General.

#### **38B Chief Executive Officer**

In the management of the administrative affairs of the Court, the Chief Judge is assisted by a Chief Executive Officer.

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**Division 1A—Administration of Court’s family services**

**38BA Chief Executive Officer has functions of family consultants**

- (1)The Chief Executive Officer has all of the functions conferred on family consultants by section 11A, and any associated powers and duties.
- (2)Without limiting subsection (1), sections 11C (admissibility of communications with family consultants) and 11D (immunity of family consultants) apply to the Chief Executive Officer while the Chief Executive Officer is performing those functions.
- (3)The Chief Executive Officer is responsible for administering the functions of family consultants.

**38BB Chief Executive Officer may delegate powers and functions that relate to family consultants**

- (1)The Chief Executive Officer may, in writing, delegate to a family consultant any of the Chief Executive Officer’s powers, functions and duties in relation to the functions of family consultants mentioned in section 11A.
- (2)A delegate is, in the exercise of a delegated power, function or duty, subject to the directions of the Chief Executive Officer.

**38BC Chief Executive Officer may give directions that relate to family services functions**

The Chief Executive Officer may give directions that relate to:

- (a)a Court officer’s functions as a family consultant; or
- (b)a Court officer’s or staff member’s functions as a family counsellor or family dispute resolution practitioner.

**38BD Chief Executive Officer may authorise officer or staff member to act as family counsellor or family dispute resolution practitioner**

- (1)The Chief Executive Officer may authorise an officer or staff member of the Family Court to provide family counselling under

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this Act.

(2)The Chief Executive Officer may authorise an officer or staff member of the Family Court to provide family dispute resolution under this Act.

(3)If an officer who is a family consultant also becomes a family counsellor, or family dispute resolution practitioner, because of an authorisation under this section:

(a)section 11C (admissibility of communications with family consultants) does not apply to the officer at any time while the officer is acting as a family counsellor or family dispute resolution practitioner; and

(b)the officer must not perform the functions of a family consultant in relation to particular proceedings, if the officer has conducted family counselling or family dispute resolution with a person involved in those proceedings.

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## **Division 2—Appointment, powers etc. of Chief Executive Officer**

### **38C Appointment of Chief Executive Officer**

The Chief Executive Officer is appointed by the Governor-General on the nomination of the Chief Judge.

### **38D Powers of Chief Executive Officer**

- (1)The Chief Executive Officer has power to do all things necessary or convenient to be done for the purpose of assisting the Chief Judge under section 38B.
- (2)In particular, the Chief Executive Officer may act on behalf of the Chief Judge in relation to the administrative affairs of the Court.
- (3)The Chief Judge may give the Chief Executive Officer directions regarding the exercise of his or her powers.

### **38E Remuneration of Chief Executive Officer**

- (1)The Chief Executive Officer is to be paid the remuneration and allowances determined by the Remuneration Tribunal.
- (2)If there is no determination in force, the Chief Executive Officer is to be paid such remuneration as is prescribed.
- (3)The Chief Executive Officer is to be paid such other allowances as are prescribed.
- (4)Remuneration and allowances payable to the Chief Executive Officer under this section are to be paid out of money appropriated by the Parliament for the purposes of the Court.

### **38F Terms and conditions of appointment of Chief Executive Officer**

- (1)The Chief Executive Officer holds office for the period (not longer than 5 years) specified in the instrument of his or her appointment, but is eligible for re-appointment.

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(4)The Chief Executive Officer holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Chief Judge.

### **38G Leave of absence**

(1)The Chief Executive Officer has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2)The Chief Judge may grant the Chief Executive Officer leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Chief Judge, with the approval of the Attorney-General, determines.

### **38H Resignation**

The Chief Executive Officer may resign by giving a signed notice of resignation to the Governor-General.

### **38J Outside employment of Chief Executive Officer**

(1)Except with the consent of the Chief Judge, the Chief Executive Officer must not engage in paid employment outside the duties of his or her office.

(2)The reference in subsection (1) to paid employment does not include service in the Defence Force.

### **38K Termination of appointment**

(1)The Governor-General may terminate the appointment of the Chief Executive Officer for misbehaviour or physical or mental incapacity.

(2)The Governor-General is required to terminate the appointment of the Chief Executive Officer if he or she:

- (a)becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (b)is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (c)engages in paid employment contrary to section 38J; or

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(d)fails, without reasonable excuse, to comply with section 38L.

(3)The Governor-General may, with the consent of the Chief Executive Officer who is:

- (a)an eligible employee for the purposes of the *Superannuation Act 1976*; or
- (b)a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or
- (c)an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*;

retire the Chief Executive Officer from office on the ground of incapacity.

(4)In spite of anything contained in this section, if the Chief Executive Officer:

- (a)is an eligible employee for the purposes of the *Superannuation Act 1976*; and
- (b)has not reached his or her maximum retiring age (within the meaning of that Act);

he or she is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless the Board (within the meaning of that Act) has given a certificate under section 54C of that Act.

(5)In spite of anything contained in this section, if the Chief Executive Officer:

- (a)is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
- (b)is under 60 years of age;

he or she is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless the Board (within the meaning of that Act) has given a certificate under section 13 of that Act.

(6)In spite of anything contained in this section, if the Chief Executive Officer:

- (a)is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and
- (b)is under 60 years of age;

he or she is not capable of being retired from office on the ground

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of invalidity (within the meaning of that Act) unless the Board (within the meaning of that Act) has given an approval and certificate under section 43 of that Act.

### **38L Disclosure of interests by Chief Executive Officer**

The Chief Executive Officer must give written notice to the Chief Judge of all direct or indirect pecuniary interests that the Chief Executive Officer has or acquires in any business or in any body corporate carrying on a business.

### **38M Acting Chief Executive Officer**

(1)The Chief Judge may, in writing, appoint a person to act in the office of Chief Executive Officer:

- (a)during a vacancy in the office (whether or not an appointment has previously been made to the office); or
- (b)during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

(2)A person appointed to act in the office of Chief Executive Officer during a vacancy may not continue to act in that office for more than 12 months.

(3)Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that:

- (a)the occasion for the appointment had not arisen; or
- (b)there was a defect or irregularity in connection with the appointment; or
- (c)the appointment had ceased to have effect; or
- (d)the occasion for the person to act had not arisen or had ceased.

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## Division 3—Other officers and staff of Registries

### 38N Personnel other than the Chief Executive Officer

(1) In addition to the Chief Executive Officer, there are the following officers of the Court:

- (a) a Principal Registrar of the Court;
- (b) such Registrars and Deputy Registrars of the Court as are necessary;
- (c) such Registry Managers of the Court as are necessary;
- (d) such family consultants as are necessary;
- (e) the Marshal of the Court;
- (f) such Deputy Marshals of the Court as are necessary.

(2) The officers of the Court, other than the Chief Executive Officer, have such duties, powers and functions as are given to them by this Act, by the standard Rules of Court or by the Chief Judge.

(3) The officers of the Court are appointed by the Chief Executive Officer.

(4) The officers of the Court, other than the Chief Executive Officer and the Deputy Marshals, are to be persons engaged under the *Public Service Act 1999*.

(5) The Deputy Marshals may be persons engaged under the *Public Service Act 1999*.

(6) The Chief Executive Officer may, on behalf of the Chief Judge, arrange with an Agency Head (within the meaning of the *Public Service Act 1999*), or with an authority of the Commonwealth, for the services of officers or employees of the Department or authority to be made available for the purposes of the Court.

(7) There are to be such staff of the Registries as are necessary.

(8) The staff of the Registries is to consist of persons engaged under the *Public Service Act 1999*.

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### **38P Marshal**

- (1)The Marshal of the Court is responsible for the service and execution of all process of the Court directed to the Marshal.
- (2)The Marshal is also responsible for:
- (a)dealing, on behalf of the Court, with the Australian Federal Police and the police forces of the States and Territories in relation to the service and execution of process of the Court directed to members of any of those police forces; and
  - (b)the security of the Court and the personal security of the Judges and officers of the Court; and
  - (c)taking, receiving and detaining all persons committed to his or her custody by the Court; and
  - (d)discharging such persons when so directed by the Court or otherwise required by law.
- (3)A Deputy Marshal may, subject to any directions of the Marshal, exercise or perform any of the powers and functions of the Marshal.
- (4)The Marshal or a Deputy Marshal may authorise persons to assist him or her in the exercise of any of his or her powers or the performance of any of his or her functions.

### **38Q Statutory Agency etc. for purposes of Public Service Act**

For the purposes of the *Public Service Act 1999*:

- (a)the Chief Executive Officer and the APS employees assisting the Chief Executive Officer together constitute a Statutory Agency; and
- (b)the Chief Executive Officer is the Head of that Statutory Agency.

### **38R Engagement of consultants etc.**

- (1)The Chief Executive Officer may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Chief Executive Officer.

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(1A)The Chief Executive Officer may engage persons to perform:

- (a)family counselling services under this Act; or
- (b)family dispute resolution services under this Act.

(2)An engagement under subsection (1) or (1A) is to be made:

- (a)on behalf of the Commonwealth; and
- (b)by written agreement.

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## **Division 4—Miscellaneous administrative matters**

### **38S Annual report**

(1)As soon as practicable after 30 June in each year, the Chief Judge must prepare and give to the Attorney-General a report of the management of the administrative affairs of the Court during the year.

(2)The report must include:

- (a)the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*; and
- (b)an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.

(3)The Attorney-General must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable.

### **38W Delegation of administrative powers of Chief Judge**

The Chief Judge may, in writing, delegate all or any of his or her powers under section 38A to any one or more of the Judges.

### **38X Proceedings arising out of administration of Court**

Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Court under this Part, including any proceeding relating to anything done by the Chief Executive Officer under this Part, may be instituted by or against the Commonwealth, as the case requires.

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## Part V—Jurisdiction of courts

### Division 1—Jurisdiction in matrimonial causes

#### 39 Jurisdiction in matrimonial causes

(1) Subject to this Part, a matrimonial cause may be instituted under this Act:

- (a) in the Family Court; or
- (b) in the Supreme Court of a State or a Territory.

(1A) Subject to this Part, a matrimonial cause (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of **matrimonial cause** in subsection 4(1)) may be instituted under this Act in the Federal Magistrates Court.

(2) Subject to this Part, a matrimonial cause (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of **matrimonial cause** in subsection 4(1)) may be instituted under this Act in a Court of summary jurisdiction of a State or Territory.

(3) Proceedings for a divorce order may be instituted under this Act if, at the date on which the application for the order is filed in a court, either party to the marriage:

- (a) is an Australian citizen;
- (b) is domiciled in Australia; or
- (c) is ordinarily resident in Australia and has been so resident for 1 year immediately preceding that date.

(4) Proceedings of a kind referred to in the definition of **matrimonial cause** in subsection 4(1), other than proceedings for a divorce order or proceedings referred to in paragraph (f) of that definition, may be instituted under this Act if:

- (a) in the case of proceedings between the parties to a marriage or proceedings of a kind referred to in paragraph (b) of that definition in relation to a marriage—either party to the marriage is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, at the relevant date; and

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(b)in any other case—any party to the proceedings is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, at the relevant date.

(4A)In subsection (4), *relevant date*, in relation to proceedings, means:

- (a)if the application instituting the proceedings is filed in a court—the date on which the application is so filed; or
- (b)in any other case—the date on which the application instituting the proceedings is made.

(5)Subject to this Part and to section 111AA, the Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred on the Family Court and on the Supreme Court of each Territory, with respect to matters arising under this Act in respect of which:

- (a)matrimonial causes are instituted under this Act; or
- (b)matrimonial causes are continued in accordance with section 9; or
- (d)proceedings are instituted under regulations made for the purposes of section 109, 110, 111, 111A or 111B or of paragraph 125(1)(f) or (g) or under Rules of Court made for the purposes of paragraph 123(1)(r); or
- (da)proceedings are instituted under Division 4 of Part XIIIIA or under regulations made for the purposes of section 111CZ; or
- (e)proceedings are instituted under section 117A.

(5AA)Subject to this Part and to section 111AA, the Federal Magistrates Court has, and is taken always to have had, jurisdiction with respect to matters arising under this Act in respect of which matrimonial causes (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of **matrimonial cause** in subsection 4(1)) are instituted under this Act.

(5A)Subject to this Part and to section 111AA, the Federal Magistrates Court has jurisdiction with respect to matters arising under this Act in respect of which proceedings are instituted under:

- (a)regulations made for the purposes of section 109, 110, 111, 111A or 111B; or
  - (b)regulations made for the purposes of paragraph 125(1)(f)
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or (g); or

(c)section 117A; or

(d)proceedings are instituted under Division 4 of Part XIIIAA or under regulations made for the purposes of section 111CZ.

(6)Subject to this Part and to section 111AA, each court of summary jurisdiction of each State is invested with federal jurisdiction, and jurisdiction is conferred on each court of summary jurisdiction of each Territory, with respect to matters arising under this Act in respect of which:

(a)matrimonial causes (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of **matrimonial cause** in subsection 4(1)) are instituted under this Act; or

(b)matrimonial causes (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of **matrimonial cause** in subsection 4(1)) are continued in accordance with section 9; or

(d)proceedings are instituted under:

(i) regulations made for the purposes of section 109, 110, 111, 111A or 111B; or

(ii) regulations made for the purposes of paragraph 125(1) (f) or (g); or

(iii) standard Rules of Court made for the purposes of paragraph 123(1)(r); or

(iv) Rules of Court made for the purposes of paragraph 87(1)(j) of the *Federal Magistrates Act 1999*; or

(da)proceedings are instituted under Division 4 of Part XIIIAA or under regulations made for the purposes of section 111CZ; or

(e)proceedings are instituted under section 117A.

Note: Under section 39A of the *Judiciary Act 1903*, the jurisdiction conferred by this subsection on a State court of summary jurisdiction may only be exercised by certain judicial officers of the court.

(7)The Governor-General may, by Proclamation, fix a day as the day on and after which proceedings in relation to matters arising under this Part may not be instituted in, or transferred to, a court of summary jurisdiction in a specified State or Territory.

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(7AAA)Without limiting the generality of subsection (7), a Proclamation under that subsection may be expressed to apply only in relation to one or more of the following:

- (a)proceedings of specified classes;
- (b)the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction in a specified part of a State or Territory;
- (c)the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction constituted in a specified way.

(7AA)A court of summary jurisdiction in a State or Territory shall not hear or determine proceedings under this Act instituted in or transferred to that court otherwise than in accordance with any Proclamation in force under subsection (7).

(7A)The Governor-General may, by Proclamation, declare that a Proclamation made under subsection (7) is revoked on and from a specified date and, on and after the specified date, this Act (including subsection (7)) has effect as if the revoked Proclamation had not been made, but without prejudice to the effect of the revoked Proclamation in respect of the jurisdiction of courts before the specified date.

(8)Jurisdiction with respect to a matter arising under this Act in respect of which a matrimonial cause is instituted under this Act is not conferred on a court of a Territory unless at least one of the parties to the proceedings is, at the date of the institution of the proceedings or the date of the transfer of the proceedings to the court of the Territory, ordinarily resident in the Territory.

(9)The jurisdiction conferred on or invested in a court by this section includes jurisdiction with respect to matters arising under any law of the Commonwealth in respect of which proceedings are transferred to that court in accordance with this Act.

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## **Division 2—Jurisdiction in de facto financial causes**

### **39A Instituting proceedings**

#### *Instituting proceedings under this Act*

(1) A de facto financial cause may be instituted under this Act in:

- (a) the Family Court; or
- (b) the Federal Magistrates Court; or
- (c) the Supreme Court of the Northern Territory of Australia; or
- (d) a court of summary jurisdiction of a participating jurisdiction.

(2) However:

- (a) in the case of proceedings between the parties to the de facto relationship—either of those parties; or
- (b) in any other case—at least one of the parties to the proceedings;

must be an Australian citizen, ordinarily resident in Australia or present in Australia on the following day:

- (c) if the application instituting the proceedings is filed in a court—the day on which the application is so filed;
- (d) in any other case—the day on which the application instituting the proceedings is made.

(3) Subsection (2) does not apply in relation to proceedings referred to in paragraph (g) of the definition of ***de facto financial cause*** in subsection 4(1).

(4) Subsection (1) has effect subject to this Part.

#### *Proceedings only to be instituted under this Act*

(5) A de facto financial cause that may be instituted under this Act must not, after the commencement of this section, be instituted otherwise than under this Act.

(6) Subsection (5) has effect subject to subsection 90RC(5).

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### **39B Jurisdiction in de facto financial causes**

(1) Jurisdiction is conferred on:

- (a) the Family Court; and
- (b) the Federal Magistrates Court; and
- (c) the Supreme Court of the Northern Territory of Australia; and
- (d) each court of summary jurisdiction of each Territory;

with respect to matters arising under this Act in respect of which de facto financial causes are instituted under this Act.

Note 1: The exercise of this jurisdiction by the Family Court is subject to section 40.

Note 2: The exercise of this jurisdiction by the Federal Magistrates Court is subject to section 40A.

Note 3: The exercise of this jurisdiction by a Territory court is subject to sections 39C, 39D, 39E and 39F.

(2) Each court of summary jurisdiction of each referring State is invested with federal jurisdiction with respect to matters arising under this Act in respect of which de facto financial causes are instituted under this Act.

Note: The exercise of this jurisdiction by a State court is subject to sections 39D and 39E.

(3) This section has effect subject to this Part.

### **39C Ceasing jurisdiction of Supreme Court of the Northern Territory of Australia**

(1) The Governor-General may, by Proclamation, fix a day as the day on and after which a de facto financial cause:

- (a) may not be instituted in, or transferred to, the Supreme Court of the Northern Territory of Australia; or
- (b) may be so instituted or transferred only where specified conditions are complied with.

(2) Without limiting the generality of subsection (1), a Proclamation under that subsection may be expressed to apply only in relation to one or more of the following:

- (a) proceedings of specified classes;
- (b) the institution of proceedings in, or the transfer of

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proceedings to, the Supreme Court of the Northern Territory of Australia.

(3)The Supreme Court of the Northern Territory of Australia must not hear and determine de facto financial causes otherwise than in accordance with any Proclamation in force under subsection (1).

**39D Ceasing jurisdiction of State or Territory courts of summary jurisdiction**

(1)The Governor-General may, by Proclamation, fix a day as the day on and after which a de facto financial cause may not be instituted in, or transferred to, a court of summary jurisdiction in a specified participating jurisdiction.

(2)Without limiting the generality of subsection (1), a Proclamation under that subsection may be expressed to apply only in relation to one or more of the following:

- (a)proceedings of specified classes;
- (b)the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction in a specified part of a participating jurisdiction;
- (c)the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction constituted in a specified way.

(3)A court of summary jurisdiction must not hear and determine de facto financial causes otherwise than in accordance with any Proclamation in force under subsection (1).

**39E Revoking Proclamations ceasing jurisdiction of State or Territory courts**

(1)The Governor-General may, by Proclamation, declare that a Proclamation under section 39C or 39D is revoked on and from a specified day.

(2)If, under subsection (1), the Governor-General declares that a Proclamation under section 39C or 39D is revoked:

- (a)this Part (including sections 39C and 39D) has effect as if the revoked Proclamation had not been made; but
- (b)the effect of the revoked Proclamation on the jurisdiction

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of courts before the specified day is not affected.

**39F Territory court does not have jurisdiction unless a party is ordinarily resident in the Territory**

A court of a Territory must not hear or determine a de facto financial cause unless at least one of the parties to the proceedings is ordinarily resident in the Territory when the proceedings are instituted or are transferred to the court.

**39G Jurisdiction in relation to transferred matters under other Commonwealth laws**

If proceedings in relation to a matter arising under a law of the Commonwealth are transferred under this Act to a court that has jurisdiction conferred on or invested in it by this Division, the jurisdiction so conferred on or invested in the court includes jurisdiction in relation to that matter.

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**Division 3—Other provisions**

**40 Jurisdiction of Family Court**

(1)The jurisdiction of the Family Court under this Act shall not be exercised except in accordance with Proclamations under this section.

(2)The Governor-General may, by Proclamation, fix a date as the date on and after which the jurisdiction of the Family Court under this Act may be exercised in respect of all proceedings, or a class of proceedings, in such States and Territories as are specified in the Proclamation.

(3)The Governor-General may, by Proclamation, fix a date as the date on and after which matrimonial causes, and other proceedings, referred to in subsection 39(5) may not be instituted in or transferred to the Supreme Court of a State or Territory specified in the Proclamation, or may be so instituted or transferred only where specified conditions are complied with, and such a Proclamation may be expressed to apply only to proceedings of a specified class or specified classes and may be expressed to apply only to the institution of proceedings in, or the transfer of proceedings to, a particular Registry or Registries of a Supreme Court referred to in the Proclamation.

(4)The Supreme Court of a State or Territory shall not hear and determine proceedings under this Act instituted in or transferred to that Court otherwise than in accordance with any Proclamation in force under subsection (3), but nothing in this section invalidates a decree made by such a Supreme Court.

(4A)The Governor-General may, by Proclamation, declare that a Proclamation made under subsection (3) is revoked on and from a specified date and, on and after the specified date, this Act (including subsection (3)) has effect as if the revoked Proclamation had not been made, but without prejudice to the effect of the revoked Proclamation in respect of the jurisdiction of courts before the specified date.

(5)Proclamations under subsections (2) and (3) may be made from time to time.

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(6)A party to proceedings instituted or continued under this Act that are at any time pending in the Supreme Court of a State or Territory, being proceedings that could, at the date of the application under this subsection, have been instituted in the Family Court, may apply to the Family Court for an order transferring the proceedings to the Family Court, and the Court may order accordingly.

(7)The standard Rules of Court may make provision in relation to matters arising in or in connexion with the transfer of proceedings in accordance with an order under subsection (6).

(8)This section does not apply in relation to proceedings under Part VII or in relation to jurisdiction conferred on a federal court or a court of a Territory, or invested in a court of a State, by regulations made for the purposes of section 111C.

#### **40A Exercise of jurisdiction of Federal Magistrates Court in certain States and Territories**

The jurisdiction of the Federal Magistrates Court under this Act must not be exercised in respect of a particular proceeding in a particular State or Territory if the corresponding jurisdiction of the Family Court is not capable of being exercised in the State or Territory.

#### **41 Establishment of State Family Courts**

(1)As soon as practicable after the commencement of this Act, the Commonwealth Government shall take steps with a view to the making of agreements with the governments of the States providing for the creation of State courts to be known as Family Courts, being agreements under which the Commonwealth Government will provide the necessary funds for the establishment and administration of those courts (including the provision of counselling facilities for those courts).

(2)Where, whether before or after the commencement of this Act, a State has created a court known as a Family Court, the Governor-General may, by Proclamation, declare that, on and after a date specified in the Proclamation, this section applies to that court.

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(3)Where, by virtue of a Proclamation under subsection (2), this section applies to a court, this Act has effect in relation to the institution of proceedings on or after the date fixed by the Proclamation, and in relation to proceedings so instituted and proceedings transferred to that court in accordance with this Act, as if references in sections 39, 46, 94 and 96 to the Supreme Court of a State were, in relation to the State in which the court referred to in the Proclamation is established, references to that court, and that court is invested with federal jurisdiction accordingly.

(3A)Notwithstanding the issue of a Proclamation under subsection (2) and the provisions of subsection (3):

- (a)proceedings by way of cross-proceedings in relation to proceedings for principal relief that were pending in the Supreme Court of the State concerned immediately before the date fixed by the Proclamation; or
- (b)proceedings of a kind referred to in any of paragraphs (c) to (f) of the definition of **matrimonial cause** in subsection 4(1) that:
  - (i) relate to proceedings for principal relief that were pending in the Supreme Court of the State concerned immediately before the date fixed by the Proclamation; or
  - (ii) are between parties between whom proceedings of a kind referred to in any of paragraphs (c) to (f) of that definition were so pending immediately before that date;

may be instituted, heard and determined in that Supreme Court on or after the date fixed by the Proclamation.

(4)The Governor-General shall not make a Proclamation under this section in respect of a court unless the Governor-General is satisfied that:

- (a)arrangements have been made under which Judges will not be appointed to that court except with the approval of the Attorney-General of the Commonwealth;
  - (b)Judges appointed to that court are by reason of training, experience and personality, suitable persons to deal with matters of family law and cannot hold office beyond the age of 70 years; and
  - (c)appropriate family counselling and family dispute
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resolution services, and family consultants, will be available to that court.

(4A)A party to proceedings instituted or continued under this Act that are at any time pending in the Supreme Court of a State or Territory, being proceedings that could, at the date of the application under this subsection, have been instituted in a Family Court of a State, may apply to a Family Court of a State for an order transferring the proceedings to that Court, and the Court may order accordingly.

(5)References in this Act or the standard Rules of Court to a court of summary jurisdiction shall not be read as including references to a court to which this section applies.

## **42 Law to be applied**

(1)The jurisdiction conferred on a court, or with which a court is invested, by this Act shall be exercised in accordance with this Act and the applicable Rules of Court.

(2)Where it would be in accordance with the common law rules of private international law to apply the laws of any country or place (including a State or Territory), the court shall, subject to the provisions of the *Marriage Act 1961*, apply the laws of that country or place.

Note: Subdivision D of Division 4 of Part XIIIAA (Applicable law) may affect the law to be applied by a court.

## **43 Principles to be applied by courts**

(1)The Family Court shall, in the exercise of its jurisdiction under this Act, and any other court exercising jurisdiction under this Act shall, in the exercise of that jurisdiction, have regard to:

- (a)the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life;
  - (b)the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children;
  - (c)the need to protect the rights of children and to promote
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their welfare;

- (ca)the need to ensure safety from family violence; and
- (d)the means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationship to each other and to their children.

(2)Paragraph (1)(a) does not apply in relation to the exercise of jurisdiction conferred or invested by Division 2.

**44 Institution of proceedings**

(1)Except as otherwise prescribed by the regulations or by the applicable Rules of Court, proceedings under this Act shall be instituted by application.

(1A)Proceedings under this Act for:

- (a)a divorce order in relation to a marriage; or
- (b)a decree of nullity of marriage;

may be instituted by either party to the marriage or jointly by both parties to the marriage.

(1B)An application for a divorce order in relation to a marriage shall not, without the leave of the court granted under subsection (1C), be filed within the period of 2 years after the date of the marriage unless there is filed with the application a certificate:

- (a)stating that the parties to the marriage have considered a reconciliation with the assistance of a specified person, who is:
  - (i) a family counsellor; or
  - (ii) if the court is the Family Court, the Federal Magistrates Court or the Family Court of a State—an individual or an organisation nominated for the parties by a family consultant; or
  - (iii) if the court is not the Family Court, the Federal Magistrates Court or the Family Court of a State—an individual or an organisation nominated for the parties by an appropriately qualified officer of the court; and
- (b)signed by that person or on behalf of that organisation, as the case may be.

(1C)Notwithstanding subsection (1B), if the court is satisfied that

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there are special circumstances by reason of which the hearing of an application for a divorce order in relation to a marriage should proceed notwithstanding that the parties have not considered a reconciliation with assistance of the kind referred to in subsection (1B), the court may:

- (a)if the application has not been filed—give leave for the application to be filed; or
- (b)if the application has been filed—at any time before or during the hearing of the application, declare that it is so satisfied;

and, where the court makes a declaration under paragraph (b), the application shall be deemed to have been duly filed and everything done pursuant to that application shall be as valid and effectual as if the court had, before the application was filed, given leave under paragraph (a) for the application to be filed.

(2)Notwithstanding subsections (3) and (3A), a respondent may, in an answer to an application, include an application for any decree or declaration under this Act.

(3)Where, whether before or after the commencement of section 21 of the *Family Law Amendment Act 1983*:

- (a)a divorce order has taken effect; or

- (b)a decree of nullity of marriage has been made;

proceedings of a kind referred to in paragraph (c), (caa), (ca) or (cb) of the definition of **matrimonial cause** in subsection 4(1) (not being proceedings under section 78 or 79A or proceedings seeking the discharge, suspension, revival or variation of an order previously made in proceedings with respect to the maintenance of a party) shall not be instituted, except by leave of the court in which the proceedings are to be instituted or with the consent of both of the parties to the marriage, after the expiration of 12 months after:

- (c)in a case referred to in paragraph (a)—the date on which the divorce order took effect; or

- (d)in a case referred to in paragraph (b)—the date of the making of the decree.

The court may grant such leave at any time, even if the proceedings have already been instituted.

(3AA)However, if such proceedings are instituted with the consent

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of both of the parties to the marriage, the court may dismiss the proceedings if it is satisfied that, because the consent was obtained by fraud, duress or unconscionable conduct, allowing the proceedings to continue would amount to a miscarriage of justice.

(3A) Notwithstanding subsection (3), where, whether before or after the commencement of section 21 of the *Family Law Amendment Act 1983*:

(a) a divorce order has taken effect or a decree of nullity of marriage has been made; and

(b) the approval under section 87 of a maintenance agreement between the parties to the marriage has been revoked;

proceedings of a kind referred to in paragraph (c), (caa), (ca) or (cb) of the definition of **matrimonial cause** in subsection 4(1) (not being proceedings under section 78 or 79A or proceedings seeking the discharge, suspension, revival or variation of an order previously made in proceedings with respect to the maintenance of a party) may be instituted:

(c) within the period of 12 months after:

(i) the date on which the divorce order took effect or the date of the making of the decree of nullity, as the case may be; or

(ii) the date on which the approval of the maintenance agreement was revoked;

whichever is the later; or

(d) with the leave of the court in which the proceedings are to be instituted;

and not otherwise.

(3B) Despite subsection (3), if, whether before or after the commencement of Schedule 2 to the *Family Law Amendment Act 2000*:

(a) a divorce order has taken effect or a decree of nullity of marriage has been made; and

(b) a financial agreement between the parties to the marriage has been set aside under section 90K or found to be invalid under section 90KA;

proceedings of a kind referred to in paragraph (c), (caa), (ca) or (cb) of the definition of **matrimonial cause** in subsection 4(1) (not being proceedings under section 78 or 79A or proceedings seeking the discharge, suspension, revival or variation of an order

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previously made in proceedings with respect to the maintenance of a party) may be instituted:

- (c)within the period of 12 months after the later of:
  - (i) the date on which the divorce order took effect or the date of the making of the decree of nullity, as the case may be; or
  - (ii) the date on which the financial agreement was set aside, or found to be invalid, as the case may be; or
- (d)with the leave of the court in which the proceedings are to be instituted;

and not otherwise.

(4)The court shall not grant leave under subsection (3) or (3A) unless it is satisfied:

- (a)that hardship would be caused to a party to the relevant marriage or a child if leave were not granted; or
- (b)in the case of proceedings in relation to the maintenance of a party to a marriage—that, at the end of the period within which the proceedings could have been instituted without the leave of the court, the circumstances of the applicant were such that the applicant would have been unable to support himself or herself without an income tested pension, allowance or benefit.

(5)Subject to subsection (6), a party to a de facto relationship may apply for:

- (a)an order under section 90SE, 90SG or 90SM; or
- (b)a declaration under section 90SL;

only if the application is made within the period of 2 years after the end of the de facto relationship (*the standard application period*).

(6)The court may grant the party leave to apply after the end of the standard application period if the court is satisfied that:

- (a)hardship would be caused to the party or a child if leave were not granted; or
- (b)in the case of an application for an order for the maintenance of the party—the party's circumstances were, at the end of the standard application period, such that he or she would have been unable to support himself or herself without an income tested pension, allowance or benefit.

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**44A Proceedings for divorce order**

The regulations may provide that proceedings for a divorce order may not be instituted in, or transferred to, a court of summary jurisdiction other than a prescribed court.

**45 Stay and transfer of proceedings**

(1)Where there are pending in a court proceedings that have been instituted under this Act or are being continued in accordance with any of the provisions of section 9 and it appears to that court that other proceedings that have been so instituted or are being so continued in relation to the same marriage or void marriage or the same matter are pending in another court, the first-mentioned court may stay the first-mentioned proceedings for such time as it considers appropriate or may dismiss the proceedings.

(1A)For the purposes of subsection (1), if the bankruptcy trustee of a bankrupt party to a marriage applies under section 139A of the *Bankruptcy Act 1966* for an order under Division 4A of Part VI of that Act, proceedings relating to that application are taken to be proceedings under this Act in relation to the marriage.

(1B)For the purposes of subsection (1):

- (a)a de facto financial cause instituted in relation to a de facto relationship; and
- (b)proceedings relating to an application, by the bankruptcy trustee of one of the parties to the de facto relationship, under section 139A of the *Bankruptcy Act 1966* for an order under Division 4A of Part VI of that Act;

are taken to be proceedings under this Act in relation to the same matter.

(1C)For the purposes of subsection (1), the first proceedings set out in each item of following table, and the second proceedings set out in that item, are taken to relate to the same matter if one of the parties to each marriage, void marriage or de facto relationship referred to in that item is the same.

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**Proceedings relating to the same matter**

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<b>Item</b>	<b>First proceedings</b>	<b>Second proceedings</b>
1	a matrimonial cause instituted in relation to a marriage (or void marriage)	a de facto financial cause instituted in relation to a de facto relationship
2	a de facto financial cause instituted in relation to a de facto relationship	a de facto financial cause instituted in relation to a de facto relationship

(2)Where there are pending in a court proceedings that have been instituted under this Act or are being continued in accordance with any of the provisions of section 9 and it appears to that court that it is in the interests of justice, or of convenience to the parties, that the proceedings be dealt with in another court having jurisdiction under this Act, the court may transfer the proceedings to the other court. However, this subsection does not apply to particular proceedings if:

- (a)the first-mentioned court is the Family Court and the other court is the Federal Magistrates Court; or
- (b)the first-mentioned court is the Federal Magistrates Court and the other court is the Family Court.

Note 1: For transfers from the Family Court to the Federal Magistrates Court, see section 33B.

Note 2: For transfers from the Federal Magistrates Court to the Family Court, see section 39 of the *Federal Magistrates Act 1999*.

(3)A transfer under subsection (2) may be made on the application of any party to the proceedings.

(4)A transfer under subsection (2) may be made on the transferring court's own initiative if the transfer is:

- (a)from a Family Court of a State to a court of summary jurisdiction prescribed in regulations made for the purposes of section 44A; or
- (b)from a court of summary jurisdiction prescribed in those regulations to a Family Court of a State.

#### **46 Transfer of proceedings from court of summary jurisdiction in certain cases**

(1)Where proceedings are instituted in a court of summary jurisdiction in relation to property of a total value exceeding the

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ceiling amount and the respondent, in answer to the application by which the proceedings are instituted, seeks an order different from that sought in the application:

- (a)the court must, before proceeding to hear and determine the proceedings, inform the parties that, unless each of them consents to the court hearing and determining the proceedings, the court is required to transfer the proceedings to:
  - (i) the Family Court; or
  - (ii) the Supreme Court of a State or Territory; or
  - (iii) the Federal Magistrates Court; and
- (b)unless the parties consent to the court hearing and determining the proceedings—the court must transfer the proceedings to:
  - (i) the Family Court; or
  - (ii) the Supreme Court of a State or Territory; or
  - (iii) the Federal Magistrates Court.

(1AA)For the purposes of subsection (1), the *ceiling amount* is:

- (a)if the court of summary jurisdiction is the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia—the amount specified in the regulations; or
- (b)otherwise—\$20,000.

(1A)A reference in subsection (1) to proceedings with respect to property does not include a reference to proceedings with respect to arrears of maintenance.

(1AB)In determining the value of any property for the purposes of subsection (1), any mortgage, lien, charge or other security over the property is to be disregarded.

(1B)Subject to subsection (1C), if:

- (a)proceedings referred to in subsection (1) are instituted in a court of summary jurisdiction; and
- (b)the parties consent to the proceedings being heard and determined by that court;

a party is not entitled subsequently to object to the proceedings being so heard and determined.

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(1C)If the court subsequently gives leave to a party to object to the proceedings being so heard and determined, the court must transfer the proceedings to:

- (a)the Family Court; or
- (b)the Supreme Court of a State or Territory; or
- (c)the Federal Magistrates Court.

(2)Where proceedings referred to in subsection (1) are before it, the court may transfer the proceedings of its own motion, notwithstanding that the parties would be willing for the court to hear and determine the proceedings.

(2A) If:

- (a)proceedings for a divorce order have been instituted in or transferred to a court of summary jurisdiction; and
  - (b)the proceedings are defended;
- the court is required to transfer the proceedings to:
- (c)the Family Court; or
  - (d)the Supreme Court of a State or Territory; or
  - (e)the Federal Magistrates Court.

(2B)Subsection (2A) does not apply if the court is the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia.

(3)Before transferring proceedings under subsection (1) or (2A), the court may make such orders as it considers necessary pending the disposal of the proceedings by the court to which they are to be transferred.

(3A)If proceedings instituted under this Act, or continued under section 9, are pending in a court of summary jurisdiction, each of the following Courts:

- (a)the Family Court;
- (b)the Supreme Court of a State or Territory;
- (c)the Federal Magistrates Court;

may, on the application of a party or of its own motion, order that the proceedings be removed to that Court.

(4)Where proceedings are transferred or removed to a court in pursuance of this section, that court shall proceed as if the proceedings had been originally instituted in that court.

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(5)Without prejudice to the duty of a court of summary jurisdiction to comply with this section, failure by such a court so to comply does not invalidate any order of the court in the proceedings.

**47 Courts to act in aid of each other**

All courts having jurisdiction under this Act shall severally act in aid of and be auxiliary to each other in all matters under this Act.

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## **Part VI—Divorce and nullity of marriage**

### **48 Divorce**

(1)An application under this Act for a divorce order in relation to a marriage shall be based on the ground that the marriage has broken down irretrievably.

(2)Subject to subsection (3), in a proceeding instituted by such an application, the ground shall be held to have been established, and the divorce order shall be made, if, and only if, the court is satisfied that the parties separated and thereafter lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of the filing of the application for the divorce order.

(3)A divorce order shall not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

### **49 Meaning of separation**

(1)The parties to a marriage may be held to have separated notwithstanding that the cohabitation was brought to an end by the action or conduct of one only of the parties.

(2)The parties to a marriage may be held to have separated and to have lived separately and apart notwithstanding that they have continued to reside in the same residence or that either party has rendered some household services to the other.

### **50 Effect of resumption of cohabitation**

(1)For the purposes of proceedings for a divorce order, where, after the parties to the marriage separated, they resumed cohabitation on one occasion but, within a period of 3 months after the resumption of cohabitation, they again separated and thereafter lived separately and apart up to the date of the filing of the application, the periods of living separately and apart before and after the period of cohabitation may be aggregated as if they were one continuous period, but the period of cohabitation shall not be deemed to be

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part of the period of living separately and apart.

(2)For the purposes of subsection (1), a period of cohabitation shall be deemed to have continued during any interruption of the cohabitation that, in the opinion of the court, was not substantial.

**51 Nullity of marriage**

An application under this Act for a decree of nullity of marriage shall be based on the ground that the marriage is void.

**52 Court not to make divorce order where application for decree of nullity before it**

Where both an application for a decree of nullity of a marriage and an application for a divorce order in relation to that marriage are before a court, the court shall not make a divorce order in relation to the marriage unless it has dismissed the application for a decree of nullity of the marriage.

**53 Circumstances occurring before commencement of Act or outside Australia**

A decree may be made, or refused, under this Part by reason of facts and circumstances notwithstanding that those facts and circumstances, or some of them, took place before the commencement of this Act or outside Australia.

**55 When divorce order takes effect**

(1)Subject to this section, a divorce order made under this Act takes effect by force of this section:

- (a)at the expiration of a period of 1 month from the making of the order; or
  - (b)from the making of an order under section 55A;
- whichever is the later.

(2)If a divorce order has been made in any proceedings, the court of first instance (whether or not it made the order), or a court in which an appeal has been instituted, may, either before or after it has disposed of the proceedings or appeal, and whether or not a previous order has been made under this subsection:

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(a)make an order extending the period at the expiration of which the divorce order will take effect, having regard to the possibility of an appeal or further appeal; or

(b)make an order reducing the period at the expiration of which the divorce order will take effect if it is satisfied that there are special circumstances that justify its so doing.

(3)If an appeal is instituted (whether or not it is the first appeal) before a divorce order has taken effect, then, notwithstanding any order in force under subsection (2) at the time of the institution of the appeal but subject to any such order made after the institution of the appeal, the divorce order, unless reversed or rescinded, takes effect by force of this section:

(a)at the expiration of a period of 1 month from the day on which the appeal is determined or discontinued; or

(b)on the day on which the divorce order would have taken effect under subsection (1) if no appeal had been instituted;

whichever is the later.

(4)A divorce order does not take effect by force of this section if either of the parties to the marriage has died.

(5)In this section:

*appeal*, in relation to a divorce order, means:

(a)an appeal or application for leave to appeal against, or an intervention or application for a re-hearing relating to:

(i) the divorce order; or

(ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or

(b)an application under section 57 or 58 for rescission of the divorce order or an appeal or application for leave to appeal arising out of such an application.

(6)For the purposes of this section, where an application for leave to appeal, or for a re-hearing, is granted, the application shall be deemed not to have been determined or discontinued so long as:

(a)the leave granted remains capable of being exercised; or

(b)an appeal or re-hearing instituted in pursuance of the leave is pending.

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**55A Divorce order where children**

- (1) A divorce order in relation to a marriage does not take effect unless the court has, by order, declared that it is satisfied:
- (a) that there are no children of the marriage who have not attained 18 years of age; or
  - (b) that the only children of the marriage who have not attained 18 years of age are the children specified in the order and that:
    - (i) proper arrangements in all the circumstances have been made for the care, welfare and development of those children; or
    - (ii) there are circumstances by reason of which the divorce order should take effect even though the court is not satisfied that such arrangements have been made.
- (2) Where, in proceedings for a divorce order in relation to a marriage, the court doubts whether the arrangements made for the care, welfare and development of a child of the marriage are proper in all the circumstances, the court may adjourn the proceedings until a report has been obtained from a family consultant regarding those arrangements.
- (3) For the purposes of this section, a child (including an ex-nuptial child of either the husband or the wife, a child adopted by either of them or a child who is not a child of either of them) is a child of the marriage if the child was treated by the husband and wife as a child of their family at the relevant time.
- (4) For the purposes of subsection (3), the relevant time is the time immediately before the time when the husband and wife separated or, if they have separated on more than one occasion, the time immediately before the time when they last separated before the institution of the proceedings in which the divorce order was made.

**56 Certificate as to divorce order**

- (1) If a divorce order takes effect, the Registry Manager of the court by which the order was made must prepare and file a memorandum of the fact and of the date on which the divorce order took effect.

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(2)If a divorce order has taken effect, any person is entitled, on application to the Registry Manager of the court by which the divorce order was made, to receive a certificate signed by the Registrar of that court that the divorce order has taken effect.

(3)A certificate given under subsection (2) is, in all courts (whether exercising federal jurisdiction or not) and for all purposes, evidence of the matters specified in the certificate.

(4)The regulations may provide for the establishment of central records of decrees made under this Act and for the notification of decrees to the appropriate marriage registering authorities of the States and Territories.

### **57 Rescission of divorce order where parties reconciled**

Despite anything contained in this Part, if a divorce order has been made in relation to a marriage, the court may, at any time before the order takes effect, upon the application of the parties to the marriage, rescind the divorce order on the ground that the parties have become reconciled.

### **58 Rescission of divorce order on ground of miscarriage of justice**

If a divorce order has been made in proceedings but has not taken effect, the court by which the divorce order was made may, on the application of a party to the proceedings, or on the intervention of the Attorney-General, if it is satisfied that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence or any other circumstance, rescind the divorce order and, if it thinks fit, order that the proceedings be re-heard.

### **59 Re-marriage**

If a divorce order under this Act in relation to a marriage has taken effect, a party to the marriage may marry again.

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## **Part VII—Children**

### **Division 1—Introductory**

#### **Subdivision A—What this Division does**

##### **60A What this Division does**

This Division contains:

- (a) a statement of the object of this Part and the principles underlying it, and an outline of this Part (Subdivision B); and
- (b) provisions relevant to the interpretation and application of this Part (Subdivision C); and
- (c) provisions relevant to how this Act applies to certain children (Subdivision D).

Note: The extension and application of this Part is also dealt with in Subdivision F of Division 12.

#### **Subdivision B—Object, principles and outline**

##### **60B Objects of Part and principles underlying it**

- (1) The objects of this Part are to ensure that the best interests of children are met by:
  - (a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and
  - (b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and
  - (c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and
  - (d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.

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(2)The principles underlying these objects are that (except when it is or would be contrary to a child's best interests):

- (a)children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
- (b)children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and
- (c)parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and
- (d)parents should agree about the future parenting of their children; and
- (e)children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).

(3)For the purposes of subparagraph (2)(e), an Aboriginal child's or Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:

- (a)to maintain a connection with that culture; and
- (b)to have the support, opportunity and encouragement necessary:
  - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
  - (ii) to develop a positive appreciation of that culture.

## **60C Outline of Part**

An outline of this Part is set out below.

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<b>OUTLINE OF PART</b>	
<b>Item</b>	<b>Divisions and coverage</b>
1	<b>Division 1—Introductory</b> <ul style="list-style-type: none"><li>• object of Part and principles underlying it, and outline of Part</li><li>• interpretation and application of this Part</li><li>• how this Act applies to certain children</li></ul> <p>Note: The extension and application of this Part is also dealt with in Subdivision F of Division 12.</p>
2	<b>Division 2—Parental responsibility</b> <ul style="list-style-type: none"><li>• the concept of parental responsibility</li></ul>
3	<b>Division 3—Reports relating to children under 18</b> preparation of reports for use in proceedings relating to children under 18
4	<b>Division 4—Parenting plans</b> <ul style="list-style-type: none"><li>• what parenting plans are</li></ul>
5	<b>Division 5—Parenting orders—what they are</b> <ul style="list-style-type: none"><li>• what parenting orders are</li></ul>

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<b>OUTLINE OF PART</b>	
<b>Item</b>	<b>Divisions and coverage</b>
1	<p><b>Division 1—Introductory</b></p> <ul style="list-style-type: none"> <li>• object of Part and principles underlying it, and outline of Part</li> <li>• interpretation and application of this Part</li> <li>• how this Act applies to certain children</li> </ul> <p>Note: The extension and application of this Part is also dealt with in Subdivision F of Division 12.</p>
6	<p><b>Division 6—Parenting orders other than child maintenance orders</b></p> <ul style="list-style-type: none"> <li>• applying for and making parenting orders (other than child maintenance orders) after attending, if necessary, family dispute resolution (see section 60I)</li> <li>• general obligations created by parenting orders, other than child maintenance orders</li> <li>• measures to promote the exercise of parental responsibility</li> <li>• dealing with people who have been arrested</li> <li>• obligations under parenting orders, other than child maintenance orders, relating to taking or sending children from Australia</li> </ul>

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<b>OUTLINE OF PART</b>	
<b>Item</b>	<b>Divisions and coverage</b>
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7	<p><b>Division 7—Child maintenance orders</b></p> <ul style="list-style-type: none"> <li>• objects and principles relevant to the making of child maintenance orders</li> <li>• the relationship between Division 7 and the <i>Child Support (Assessment) Act 1989</i></li> <li>• applying for and making child maintenance orders</li> <li>• other aspects of courts' powers in relation to child maintenance orders</li> <li>• when child maintenance orders stop being in force</li> </ul>
8	<p><b>Division 8—Other matters relating to children</b></p> <ul style="list-style-type: none"> <li>• liability of a father to contribute towards child bearing expenses if he is not married to the child's mother</li> <li>• orders for the location and recovery of children</li> <li>• reporting of allegations of child abuse</li> <li>• other orders about children</li> </ul>

<b>OUTLINE OF PART</b>	
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9	<p><b>Division 9—Injunctions</b></p> <ul style="list-style-type: none"> <li>• proceedings for injunctions in relation to children</li> </ul>
10	<p><b>Division 10—The representation of the child’s interests</b> the representation of a child’s interests in proceedings by an independent children’s lawyer</p>
11	<p><b>Division 11—Family violence</b></p> <ul style="list-style-type: none"> <li>• the relationship between certain parenting orders and family violence orders</li> </ul>
12	<p><b>Division 12—Proceedings and jurisdiction</b></p> <ul style="list-style-type: none"> <li>• institution of proceedings and procedure</li> <li>• jurisdiction of courts</li> <li>• presumptions of parentage</li> <li>• parentage evidence</li> <li>• places and people to which this Part extends and applies</li> </ul>
12A	<p><b>Division 12A—Principles for conducting child-related proceedings</b> principles for conducting proceedings under this Part and certain other incidental proceedings duties and powers of the court related to giving effect to the principles</p>

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<b>OUTLINE OF PART</b>	
<b>Item</b>	<b>Divisions and coverage</b>
1	<b>Division 1—Introductory</b> <ul style="list-style-type: none"><li>• object of Part and principles underlying it, and outline of Part</li><li>• interpretation and application of this Part</li><li>• how this Act applies to certain children</li></ul> <p>Note: The extension and application of this Part is also dealt with in Subdivision F of Division 12.</p>
13	<b>Division 13—State, Territory and overseas orders</b> <ul style="list-style-type: none"><li>• registration of State and Territory orders dealing with children</li><li>• registration of overseas orders dealing with children</li><li>• transmission of Australian orders to overseas jurisdictions</li></ul>

<b>OUTLINE OF PART</b>	
<b>Item</b>	<b>Divisions and coverage</b>
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13A	<p><b>Division 13A—Enforcement of orders affecting children</b></p> <ul style="list-style-type: none"> <li>• court may do any or all of the following:</li> </ul> <p>(a) require a person who contravenes an order affecting children to participate in an appropriate post-separation parenting program designed to help in the resolution of conflicts about parenting;</p> <p>(b) make a further parenting order that compensates a person for time that a child did not spend with the person, or for time that a child did not live with the person, as a result of the contravention;</p> <p>(c) adjourn the proceedings to enable an application to be made for a further parenting order;</p> <ul style="list-style-type: none"> <li>• court must take other action in respect of a person who contravenes an order affecting children if the court is satisfied:</li> </ul> <p>(a) where the contravention is an initial contravention—that the person has behaved in a way that showed a serious disregard for his or her parenting obligations; or</p> <p>(b) where the contravention is a second or subsequent contravention—that it is not appropriate for the person to be dealt with by requiring his or her attendance at a post-separation parenting program;</p>

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<b>OUTLINE OF PART</b>	
<b>Item</b>	<b>Divisions and coverage</b>
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14	<b>Division 14—Miscellaneous</b> <ul style="list-style-type: none"><li>• miscellaneous matters relating to children</li></ul>

**Subdivision BA—Best interests of the child**

**60CA Child's best interests paramount consideration in making a parenting order**

In deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

**60CB Proceedings to which Subdivision applies**

(1) This Subdivision applies to any proceedings under this Part in which the best interests of a child are the paramount consideration.

Note: Division 10 also allows a court to make an order for a child's interests to be independently represented by a lawyer in proceedings under this Part in which the best interests of a child are the paramount consideration.

(2) This Subdivision also applies to proceedings, in relation to a child, to which subsection 60G(2), 63F(2) or 63F(6) or section 68R applies.

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## **60CC How a court determines what is in a child's best interests**

### *Determining child's best interests*

(1) Subject to subsection (5), in determining what is in the child's best interests, the court must consider the matters set out in subsections (2) and (3).

#### *Primary considerations*

(2) The primary considerations are:

- (a) the benefit to the child of having a meaningful relationship with both of the child's parents; and
- (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

Note: Making these considerations the primary ones is consistent with the objects of this Part set out in paragraphs 60B(1)(a) and (b).

#### *Additional considerations*

(3) Additional considerations are:

- (a) any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views;
- (b) the nature of the relationship of the child with:
  - (i) each of the child's parents; and
  - (ii) other persons (including any grandparent or other relative of the child);
- (c) the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent;
- (d) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:
  - (i) either of his or her parents; or
  - (ii) any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living;
- (e) the practical difficulty and expense of a child spending

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time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;

(f)the capacity of:

- (i) each of the child's parents; and
- (ii) any other person (including any grandparent or other relative of the child);

to provide for the needs of the child, including emotional and intellectual needs;

(g)the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant;

(h)if the child is an Aboriginal child or a Torres Strait Islander child:

- (i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
- (ii) the likely impact any proposed parenting order under this Part will have on that right;

(i)the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;

(j)any family violence involving the child or a member of the child's family;

(k)any family violence order that applies to the child or a member of the child's family, if:

- (i) the order is a final order; or
- (ii) the making of the order was contested by a person;

(l)whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;

(m)any other fact or circumstance that the court thinks is relevant.

(4)Without limiting paragraphs (3)(c) and (i), the court must consider the extent to which each of the child's parents has fulfilled, or failed to fulfil, his or her responsibilities as a parent and, in particular, the extent to which each of the child's parents:

(a)has taken, or failed to take, the opportunity:

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- (i) to participate in making decisions about major long-term issues in relation to the child; and
  - (ii) to spend time with the child; and
  - (iii) to communicate with the child; and
- (b) has facilitated, or failed to facilitate, the other parent:
- (i) participating in making decisions about major long-term issues in relation to the child; and
  - (ii) spending time with the child; and
  - (iii) communicating with the child; and
- (c) has fulfilled, or failed to fulfil, the parent's obligation to maintain the child.

(4A) If the child's parents have separated, the court must, in applying subsection (4), have regard, in particular, to events that have happened, and circumstances that have existed, since the separation occurred.

#### *Consent orders*

(5) If the court is considering whether to make an order with the consent of all the parties to the proceedings, the court may, but is not required to, have regard to all or any of the matters set out in subsection (2) or (3).

#### *Right to enjoy Aboriginal or Torres Strait Islander culture*

(6) For the purposes of paragraph (3)(h), an Aboriginal child's or a Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:

- (a) to maintain a connection with that culture; and
- (b) to have the support, opportunity and encouragement necessary:
  - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
  - (ii) to develop a positive appreciation of that culture.

### **60CD How the views of a child are expressed**

(1) Paragraph 60CC(3)(a) requires the court to consider any views expressed by a child in deciding whether to make a particular

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parenting order in relation to the child. This section deals with how the court informs itself of views expressed by a child.

- (2)The court may inform itself of views expressed by a child:
- (a)by having regard to anything contained in a report given to the court under subsection 62G(2); or
  - (b)by making an order under section 68L for the child's interests in the proceedings to be independently represented by a lawyer; or
  - (c)subject to the applicable Rules of Court, by such other means as the court thinks appropriate.

Note 1: Paragraph (a)—subsection 62G(3A) generally requires the person giving the report to ascertain the child's views and include those views in the report.

Note 2: Paragraph (b)—paragraph 68LA(5)(b) requires the independent children's lawyer for the child to ensure that the child's views are fully put before the court.

**60CE Children not required to express views**

Nothing in this Part permits the court or any person to require the child to express his or her views in relation to any matter.

**60CF Informing court of relevant family violence orders**

- (1)If a party to the proceedings is aware that a family violence order applies to the child, or a member of the child's family, that party must inform the court of the family violence order.
- (2)If a person who is not a party to the proceedings is aware that a family violence order applies to the child, or a member of the child's family, that person may inform the court of the family violence order.
- (3)Failure to inform the court of the family violence order does not affect the validity of any order made by the court.

**60CG Court to consider risk of family violence**

- (1)In considering what order to make, the court must, to the extent that it is possible to do so consistently with the child's best interests being the paramount consideration, ensure that the order:
  - (a)is consistent with any family violence order; and

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(b)does not expose a person to an unacceptable risk of family violence.

(2)For the purposes of paragraph (1)(b), the court may include in the order any safeguards that it considers necessary for the safety of those affected by the order.

### **Subdivision C—Interpretation and application of Part**

#### **60E Application of Part to void marriages**

This Part applies in relation to a purported marriage that is void as if:

- (a)the purported marriage were a marriage; and
- (b)the parties to the purported marriage were husband and wife.

### **Subdivision D—Interpretation—how this Act applies to certain children**

#### **60EA Definition of *de facto partner***

For the purposes of this Subdivision, a person is the *de facto partner* of another person if:

- (a)a relationship between the person and the other person (whether of the same sex or a different sex) is registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; or
- (b)the person is in a de facto relationship with the other person.

#### **60F Certain children are children of marriage etc.**

(1)A reference in this Act to a child of a marriage includes, subject to subsection (3), a reference to each of the following children:

- (a)a child adopted since the marriage by the husband and wife or by either of them with the consent of the other;
- (b)a child of the husband and wife born before the marriage;
- (c)a child who is, under subsection 60H(1) or section 60HB,

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the child of the husband and wife.

(2)A reference in this Act to a child of a marriage includes a reference to a child of:

- (a)a marriage that has been terminated by divorce or annulled (in Australia or elsewhere); or
- (b)a marriage that has been terminated by the death of one party to the marriage.

(3)A child of a marriage who is adopted by a person who, before the adoption, is not a prescribed adopting parent ceases to be a child of that marriage for the purposes of this Act.

(4)The following provisions apply in relation to a child of a marriage who is adopted by a prescribed adopting parent:

- (a)if a court granted leave under section 60G for the adoption proceedings to be commenced—the child ceases to be a child of the marriage for the purposes of this Act;
- (b)in any other case—the child continues to be a child of the marriage for the purposes of this Act.

(4A)To avoid doubt, for the purposes of this Act, a child of a marriage is a child of the husband and of the wife in the marriage.

(5)In this section:

***this Act*** includes:

- (a)the standard Rules of Court; and
- (b)the related Federal Magistrates Rules.

**60G Family Court may grant leave for adoption proceedings by prescribed adopting parent**

(1)Subject to subsection (2), the Family Court, the Supreme Court of the Northern Territory or the Family Court of a State may grant leave for proceedings to be commenced for the adoption of a child by a prescribed adopting parent.

(2)In proceedings for leave under subsection (1), the court must consider whether granting leave would be in the child's best interests, having regard to the effect of paragraph 60F(4)(a), or paragraph 60HA(3)(a), and of sections 61E and 65J.

Note:      Sections 60CB to 60CG deal with how a court determines a child's

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best interests.

## **60H Children born as a result of artificial conception procedures**

(1) If:

(a) a child is born to a woman as a result of the carrying out of an artificial conception procedure while the woman was married to, or a de facto partner of, another person (the *other intended parent*); and

(b) either:

(i) the woman and the other intended parent consented to the carrying out of the procedure, and any other person who provided genetic material used in the procedure consented to the use of the material in an artificial conception procedure; or

(ii) under a prescribed law of the Commonwealth or of a State or Territory, the child is a child of the woman and of the other intended parent;

then, whether or not the child is biologically a child of the woman and of the other intended parent, for the purposes of this Act:

(c) the child is the child of the woman and of the other intended parent; and

(d) if a person other than the woman and the other intended parent provided genetic material—the child is not the child of that person.

(2) If:

(a) a child is born to a woman as a result of the carrying out of an artificial conception procedure; and

(b) under a prescribed law of the Commonwealth or of a State or Territory, the child is a child of the woman;

then, whether or not the child is biologically a child of the woman, the child is her child for the purposes of this Act.

(3) If:

(a) a child is born to a woman as a result of the carrying out of an artificial conception procedure; and

(b) under a prescribed law of the Commonwealth or of a State or Territory, the child is a child of a man;

then, whether or not the child is biologically a child of the man, the child is his child for the purposes of this Act.

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(5)For the purposes of subsection (1), a person is to be presumed to have consented to an artificial conception procedure being carried out unless it is proved, on the balance of probabilities, that the person did not consent.

(6)In this section:

***this Act*** includes:

- (a)the standard Rules of Court; and
- (b)the related Federal Magistrates Rules.

**60HA Children of de facto partners**

(1)For the purposes of this Act, a child is the child of a person who has, or had, a de facto partner if:

- (a)the child is a child of the person and the person's de facto partner; or
- (b)the child is adopted by the person and the person's de facto partner or by either of them with the consent of the other; or
- (c)the child is, under subsection 60H(1) or section 60HB, a child of the person and the person's de facto partner.

This subsection has effect subject to subsection (2).

(2)A child of current or former de facto partners ceases to be a child of those partners for the purposes of this Act if the child is adopted by a person who, before the adoption, is not a prescribed adopting parent.

(3)The following provisions apply in relation to a child of current or former de facto partners who is adopted by a prescribed adopting parent:

- (a)if a court granted leave under section 60G for the adoption proceedings to be commenced—the child ceases to be a child of those partners for the purposes of this Act;
- (b)in any other case—the child continues to be a child of those partners for the purposes of this Act.

(4)In this section:

***this Act*** includes:

- (a)the standard Rules of Court; and

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(b)the related Federal Magistrates Rules.

## **60HB Children born under surrogacy arrangements**

(1)If a court has made an order under a prescribed law of a State or Territory to the effect that:

(a)a child is the child of one or more persons; or

(b)each of one or more persons is a parent of a child;

then, for the purposes of this Act, the child is the child of each of those persons.

(2)In this section:

**this Act** includes:

(a)the standard Rules of Court; and

(b)the related Federal Magistrates Rules.

## **Subdivision E—Family dispute resolution**

### **60I Attending family dispute resolution before applying for Part VII order**

*Object of this section*

(1)The object of this section is to ensure that all persons who have a dispute about matters that may be dealt with by an order under this Part (a **Part VII order**) make a genuine effort to resolve that dispute by family dispute resolution before the Part VII order is applied for.

*Phase 1 (from commencement to 30 June 2007)*

(2)The dispute resolution provisions of the *Family Law Rules 2004* impose the requirements for dispute resolution that must be complied with before an application is made to the Family Court of Australia for a parenting order.

(3)By force of this subsection, the dispute resolution provisions of the *Family Law Rules 2004* also apply to an application to a court (other than the Family Court of Australia) for a parenting order. Those provisions apply to the application with such modifications as are necessary.

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(4) Subsection (3) applies to an application for a parenting order if the application is made:

- (a) on or after the commencement of this section; and
- (b) before 1 July 2007.

*Phase 2 (from 1 July 2007 to 30 June 2008)*

(5) Subsections (7) to (12) apply to an application for a Part VII order in relation to a child if:

- (a) the application is made on or after 1 July 2007 and before 1 July 2008; and
- (b) none of the parties to the proceedings on the application has applied, before 1 July 2007, for a Part VII order in relation to the child.

*Phase 3 (from 1 July 2008)*

(6) Subsections (7) to (12) apply to all applications for a Part VII order in relation to a child that are made on or after 1 July 2008.

*Requirement to attempt to resolve dispute by family dispute resolution before applying for a parenting order*

(7) Subject to subsection (9), a court exercising jurisdiction under this Act must not hear an application for a Part VII order in relation to a child unless the applicant files in the court a certificate given to the applicant by a family dispute resolution practitioner under subsection (8). The certificate must be filed with the application for the Part VII order.

*Certificate by family dispute resolution practitioner*

(8) A family dispute resolution practitioner may give one of these kinds of certificates to a person:

- (a) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but the person's failure to do so was due to the refusal, or the failure, of the other party or parties to the proceedings to attend;
- (aa) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other

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party or parties to the proceedings in relation to the issue or issues that the order would deal with, because the practitioner considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to conduct the proposed family dispute resolution;

(b) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, and that all attendees made a genuine effort to resolve the issue or issues;

(c) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the person, the other party or another of the parties did not make a genuine effort to resolve the issue or issues;

(d) a certificate to the effect that the person began attending family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the practitioner considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to continue the family dispute resolution.

Note: When an applicant files one of these certificates under subsection (7), the court may take the kind of certificate into account in considering whether to make an order referring to parties to family dispute resolution (see section 13C) and in determining whether to award costs against a party (see section 117).

#### *Exception*

(9) Subsection (7) does not apply to an application for a Part VII order in relation to a child if:

(a) the applicant is applying for the order:

- (i) to be made with the consent of all the parties to the proceedings; or
- (ii) in response to an application that another party to the proceedings has made for a Part VII order; or

(b) the court is satisfied that there are reasonable grounds to believe that:

- (i) there has been abuse of the child by one of the parties to

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- the proceedings; or
- (ii) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or
  - (iii) there has been family violence by one of the parties to the proceedings; or
  - (iv) there is a risk of family violence by one of the parties to the proceedings; or
- (c) all the following conditions are satisfied:
- (i) the application is made in relation to a particular issue;
  - (ii) a Part VII order has been made in relation to that issue within the period of 12 months before the application is made;
  - (iii) the application is made in relation to a contravention of the order by a person;
  - (iv) the court is satisfied that there are reasonable grounds to believe that the person has behaved in a way that shows a serious disregard for his or her obligations under the order; or
- (d) the application is made in circumstances of urgency; or
- (e) one or more of the parties to the proceedings is unable to participate effectively in family dispute resolution (whether because of an incapacity of some kind, physical remoteness from dispute resolution services or for some other reason); or
- (f) other circumstances specified in the regulations are satisfied.

*Referral to family dispute resolution when exception applies*

- (10) If:
- (a) a person applies for a Part VII order; and
  - (b) the person does not, before applying for the order, attend family dispute resolution with a family dispute resolution practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with; and
  - (c) subsection (7) does not apply to the application because of subsection (9);
- the court must consider making an order that the person attend family dispute resolution with a family dispute resolution practitioner and the other party or parties to the proceedings in

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relation to that issue or those issues.

(11) The validity of:

- (a) proceedings on an application for a Part VII order; or
- (b) any order made in those proceedings;

is not affected by a failure to comply with subsection (7) in relation to those proceedings.

(12) In this section:

***dispute resolution provisions*** of the *Family Law Rules 2004* means:

- (a) Rule 1.05 of those Rules; and
  - (b) Part 2 of Schedule 1 to those Rules;
- to the extent to which they deal with dispute resolution.

#### **60J Family dispute resolution not attended because of child abuse or family violence**

(1) If:

- (a) subsections 60I(7) to (12) apply to an application for a Part VII order (see subsections 60I(5) and (6)); and
- (b) subsection 60I(7) does not apply to the application because the court is satisfied that there are reasonable grounds to believe that:
  - (i) there has been abuse of the child by one of the parties to the proceedings; or
  - (ii) there has been family violence by one of the parties to the proceedings;

a court must not hear the application unless the applicant has indicated in writing that the applicant has received information from a family counsellor or family dispute resolution practitioner about the services and options (including alternatives to court action) available in circumstances of abuse or violence.

(2) Subsection (1) does not apply if the court is satisfied that there are reasonable grounds to believe that:

- (a) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or
- (b) there is a risk of family violence by one of the parties to the proceedings.

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(3)The validity of:

- (a)proceedings on an application for a Part VII order; or
- (b)any order made in those proceedings;

is not affected by a failure to comply with subsection (1) in relation to those proceedings.

(4) If:

- (a)the applicant indicates in writing that the applicant has not received information about the services and options (including alternatives to court action) available in circumstances of abuse or violence; and
- (b)subsection (2) does not apply;

the principal executive officer of the court concerned must ensure that the applicant is referred to a family counsellor or family dispute resolution practitioner in order to obtain information about those matters.

**60K Court to take prompt action in relation to allegations of child abuse or family violence**

(1)This section applies if:

- (a)an application is made to a court for a Part VII order in relation to a child; and
- (b)a document is filed in the court, on or after the commencement of this section, in relation to the proceedings for the order; and
- (c)the document alleges, as a consideration that is relevant to whether the court should grant or refuse the application, that:
  - (i) there has been abuse of the child by one of the parties to the proceedings; or
  - (ii) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or
  - (iii) there has been family violence by one of the parties to the proceedings; or
  - (iv) there is a risk of family violence by one of the parties to the proceedings; and
- (d)the document is a document of the kind prescribed by the applicable Rules of Court for the purposes of this paragraph.

(2)The court must:

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(a) consider what interim or procedural orders (if any) should be made:

- (i) to enable appropriate evidence about the allegation to be obtained as expeditiously as possible; and
  - (ii) to protect the child or any of the parties to the proceedings; and
- (b) make such orders of that kind as the court considers appropriate; and
- (c) deal with the issues raised by the allegation as expeditiously as possible.

(2A) The court must take the action required by paragraphs (2)(a) and (b):

- (a) as soon as practicable after the document is filed; and
- (b) if it is appropriate having regard to the circumstances of the case—within 8 weeks after the document is filed.

(3) Without limiting subparagraph (2)(a)(i), the court must consider whether orders should be made under section 69ZW to obtain reports from State and Territory agencies in relation to the allegations.

(4) Without limiting paragraph (2)(a)(ii), the court must consider whether orders should be made, or an injunction granted, under section 68B.

(5) A failure to comply with a provision of this section in relation to an application does not affect the validity of any order made in the proceedings in relation to the application.

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## **Division 2—Parental responsibility**

### **61A What this Division does**

This Division deals with the concept of parental responsibility including, in particular:

- (a)what parental responsibility is; and
- (b)who has parental responsibility.

### **61B Meaning of *parental responsibility***

In this Part, ***parental responsibility***, in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

### **61C Each parent has parental responsibility (subject to court orders)**

(1)Each of the parents of a child who is not 18 has parental responsibility for the child.

Note 1: This section states the legal position that prevails in relation to parental responsibility to the extent to which it is not displaced by a parenting order made by the court. See subsection (3) of this section and subsection 61D(2) for the effect of a parenting order.

Note 2: This section does not establish a presumption to be applied by the court when making a parenting order. See section 61DA for the presumption that the court does apply when making a parenting order.

Note 3: Under section 63C, the parents of a child may make a parenting plan that deals with the allocation of parental responsibility for the child.

(2)Subsection (1) has effect despite any changes in the nature of the relationships of the child’s parents. It is not affected, for example, by the parents becoming separated or by either or both of them marrying or re-marrying.

(3)Subsection (1) has effect subject to any order of a court for the time being in force (whether or not made under this Act and whether made before or after the commencement of this section).

Note: Section 111CS may affect the attribution of parental responsibility for a child.

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## **61D Parenting orders and parental responsibility**

- (1)A parenting order confers parental responsibility for a child on a person, but only to the extent to which the order confers on the person duties, powers, responsibilities or authority in relation to the child.
- (2)A parenting order in relation to a child does not take away or diminish any aspect of the parental responsibility of any person for the child except to the extent (if any):
- (a)expressly provided for in the order; or
  - (b)necessary to give effect to the order.

## **61DA Presumption of equal shared parental responsibility when making parenting orders**

- (1)When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

Note: The presumption provided for in this subsection is a presumption that relates solely to the allocation of parental responsibility for a child as defined in section 61B. It does not provide for a presumption about the amount of time the child spends with each of the parents (this issue is dealt with in section 65DAA).

- (2)The presumption does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in:

- (a)abuse of the child or another child who, at the time, was a member of the parent's family (or that other person's family); or
- (b)family violence.

- (3)When the court is making an interim order, the presumption applies unless the court considers that it would not be appropriate in the circumstances for the presumption to be applied when making that order.

- (4)The presumption may be rebutted by evidence that satisfies the court that it would not be in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.
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**61DB Application of presumption of equal shared parental responsibility after interim parenting order made**

If there is an interim parenting order in relation to a child, the court must, in making a final parenting order in relation to the child, disregard the allocation of parental responsibility made in the interim order.

**61E Effect of adoption on parental responsibility**

- (1) This section applies if:
- (a) a child is adopted; and
  - (b) immediately before the adoption, a person had parental responsibility for the child, whether in full or to a limited extent and whether because of section 61C or because of a parenting order.
- (2) The person's parental responsibility for the child ends on the adoption of the child, unless the adoption is by a prescribed adopting parent and leave was not granted under section 60G for the adoption proceedings to be commenced.

**61F Application to Aboriginal or Torres Strait Islander children**

In:

- (a) applying this Part to the circumstances of an Aboriginal or Torres Strait Islander child; or
  - (b) identifying a person or persons who have exercised, or who may exercise, parental responsibility for such a child;
- the court must have regard to any kinship obligations, and child-rearing practices, of the child's Aboriginal or Torres Strait Islander culture.

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## **Division 3—Reports relating to children under 18**

### **62A What this Division does**

This Division deals with the preparation of reports for use in proceedings relating to children who are under 18.

### **62B Court’s obligation to inform people to whom Part VII orders apply about family counselling, family dispute resolution and other family services**

If a court makes an order in proceedings under this Part, the court must inform the parties to the proceedings about the family counselling services, family dispute resolution services and other courses, programs and services available to help the parties adjust to the consequences of that order.

Note: Before informing the parties, the court must consider seeking the advice of a family consultant about the services appropriate to the parties’ needs (see section 11E).

### **62G Reports by family consultants**

(1) This section applies if, in proceedings under this Act, the care, welfare and development of a child who is under 18 is relevant.

(2) The court may direct a family consultant to give the court a report on such matters relevant to the proceedings as the court thinks desirable.

(3) If the court makes a direction under subsection (2), it may, if it thinks it necessary, adjourn the proceedings until the report has been given to the court.

(3A) A family consultant who is directed to give the court a report on a matter under subsection (2) must:

(a) ascertain the views of the child in relation to that matter; and

(b) include the views of the child on that matter in the report.

Note: A person cannot require a child to express his or her views in relation to any matter (see section 60CE).

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(3B) Subsection (3A) does not apply if complying with that subsection would be inappropriate because of:

- (a) the child's age or maturity; or
- (b) some other special circumstance.

(4) The family consultant may include in the report, in addition to the matters required to be included in it, any other matters that relate to the care, welfare or development of the child.

(5) For the purposes of the preparation of the report, the court may make any other orders, or give any other directions, that the court considers appropriate (including orders or directions that a party to proceedings, or the child, attend an appointment or a series of appointments with a family consultant).

Note: Before making orders under this section, the court must consider seeking the advice of a family consultant about the services appropriate to the parties' needs (see section 11E).

(6) If a person fails to comply with an order or direction under subsection (5), the family consultant must report the failure to the court.

(7) On receiving a report under subsection (6), the court may give such further directions in relation to the preparation of the report as it considers appropriate.

(8) A report given to the court pursuant to a direction under subsection (2) may be received in evidence in any proceedings under this Act.

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## **Division 4—Parenting plans**

### **63A What this Division does**

This Division explains what parenting plans are.

### **63B Parents encouraged to reach agreement**

The parents of a child are encouraged:

- (a)to agree about matters concerning the child; and
- (b)to take responsibility for their parenting arrangements and for resolving parental conflict; and
- (c)to use the legal system as a last resort rather than a first resort; and
- (d)to minimise the possibility of present and future conflict by using or reaching an agreement; and
- (e)in reaching their agreement, to regard the best interests of the child as the paramount consideration.

Note: Parents are encouraged to reach an informal agreement between themselves about matters concerning their children by entering into a parenting plan. Parents who seek enforceable arrangements require court orders. These can be obtained by consent.

### **63C Meaning of *parenting plan* and related terms**

(1)A ***parenting plan*** is an agreement that:

- (a)is in writing; and
- (b)is or was made between the parents of a child; and
- (ba)is signed by the parents of the child; and
- (bb)is dated; and
- (c)deals with a matter or matters mentioned in subsection (2).

(1A)An agreement is not a ***parenting plan*** for the purposes of this Act unless it is made free from any threat, duress or coercion.

(2)A parenting plan may deal with one or more of the following:

- (a)the person or persons with whom a child is to live;
- (b)the time a child is to spend with another person or other persons;

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- (c)the allocation of parental responsibility for a child;
- (d)if 2 or more persons are to share parental responsibility for a child—the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility;
- (e)the communication a child is to have with another person or other persons;
- (f)maintenance of a child;
- (g)the process to be used for resolving disputes about the terms or operation of the plan;
- (h)the process to be used for changing the plan to take account of the changing needs or circumstances of the child or the parties to the plan;
- (i)any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.

Note: Paragraph (f)—if the *Child Support (Assessment) Act 1989* applies, provisions in a parenting plan dealing with the maintenance of a child (as distinct from child support under that Act) are unenforceable and of no effect unless the provisions in the plan are a child support agreement (see section 63CAA and subsection 63G(5) of this Act).

(2A)The person referred to in subsection (2) may be, or the persons referred to in that subsection may include, either a parent of the child or a person other than the parent of the child (including a grandparent or other relative of the child).

(2B)Without limiting paragraph (2)(c), the plan may deal with the allocation of responsibility for making decisions about major long-term issues in relation to the child.

(2C)The communication referred to in paragraph (2)(e) includes (but is not limited to) communication by:

- (a) letter; and
- (b)telephone, email or any other electronic means.

(3)An agreement may be a parenting plan:

- (a)whether made before or after the commencement of this section; and
- (b)whether made inside or outside Australia; and
- (c)whether other persons as well as a child's parents are also parties; and
- (d)whether it deals with other matters as well as matters

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mentioned in subsection (2).

Note: One of the other matters with which a parenting plan may deal is child support (see section 63CAA).

(4) Provisions of a parenting plan that deal with matters other than the maintenance of a child are ***child welfare provisions***.

(5) Provisions of a parenting plan that deal with the matter mentioned in paragraph (2)(f) are ***child maintenance provisions***.

(6) A ***registered parenting plan*** is a parenting plan:

(a) that was registered in a court under section 63E as in force at any time before the commencement of the *Family Law Amendment Act 2003*; and

(b) that continued to be registered immediately before the commencement of the *Family Law Amendment Act 2003*.

### **63CAA Parenting plans may include child support provisions**

(1) If a parenting plan includes provisions of a kind referred to in subsection 84(1) of the *Child Support (Assessment) Act 1989*, the provisions do not have effect for the purposes of this Act.

(2) Subsection (1) does not affect the operation of the provisions for any other purpose.

(3) Nothing in this Division is to be taken to prevent the same agreement being both a parenting plan under this Part and a child support agreement under Part 6 of the *Child Support (Assessment) Act 1989*.

### **63D Parenting plan may be varied or revoked by further written agreement**

A parenting plan, other than a plan to which section 63DB applies, may be varied or revoked by agreement in writing between the parties to the plan.

### **63DA Obligations of advisers**

(1) If an adviser gives advice or assistance to people in relation to parental responsibility for a child following the breakdown of the relationship between those people, the adviser must:

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(a)inform them that they could consider entering into a parenting plan in relation to the child; and  
(b)inform them about where they can get further assistance to develop a parenting plan and the content of the plan.

(2)If an adviser gives advice to people in connection with the making by those people of a parenting plan in relation to a child, the adviser must:

- (a)inform them that, if the child spending equal time with each of them is:  
(i) reasonably practicable; and  
(ii) in the best interests of the child;  
they could consider the option of an arrangement of that kind; and  
(b)inform them that, if the child spending equal time with each of them is not reasonably practicable or is not in the best interests of the child but the child spending substantial and significant time with each of them is:  
(i) reasonably practicable; and  
(ii) in the best interests of the child;  
they could consider the option of an arrangement of that kind; and  
(c)inform them that decisions made in developing parenting plans should be made in the best interests of the child; and  
(d)inform them of the matters that may be dealt with in a parenting plan in accordance with subsection 63C(2); and  
(e)inform them that, if there is a parenting order in force in relation to the child, the order may (because of section 64D) include a provision that the order is subject to a parenting plan they enter into; and  
(f)inform them about the desirability of including in the plan:  
(i) if they are to share parental responsibility for the child under the plan—provisions of the kind referred to in paragraph 63C(2)(d) (which deals with the form of consultations between the parties to the plan) as a way of avoiding future conflicts over, or misunderstandings about, the matters covered by that paragraph; and  
(ii) provisions of the kind referred to in paragraph 63C(2)(g) (which deals with the process for resolving disputes between the parties to the plan); and
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- (iii) provisions of the kind referred to in paragraph 63C(2)
  - (h) (which deals with the process for changing the plan to take account of the changing needs or circumstances of the child or the parties to the plan); and
  - (g) explain to them, in language they are likely to readily understand, the availability of programs to help people who experience difficulties in complying with a parenting plan; and
  - (h) inform them that section 65DAB requires the court to have regard to the terms of the most recent parenting plan in relation to the child when making a parenting order in relation to the child if it is in the best interests of the child to do so.

Note: Paragraphs (a) and (b) only require the adviser to inform the people that they could consider the option of the child spending equal time, or substantial and significant time, with each of them. The adviser may, but is not obliged to, advise them as to whether that option would be appropriate in their particular circumstances.

(3) For the purposes of paragraph (2)(b), a child will be taken to spend ***substantial and significant time*** with a parent only if:

- (a) the time the child spends with the parent includes both:
  - (i) days that fall on weekends and holidays; and
  - (ii) days that do not fall on weekends or holidays; and
- (b) the time the child spends with the parent allows the parent to be involved in:
  - (i) the child's daily routine; and
  - (ii) occasions and events that are of particular significance to the child; and
- (c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.

(4) Subsection (3) does not limit the other matters to which regard may be had in determining whether the time a child spends with a parent would be substantial and significant.

(5) In this section:

***adviser*** means a person who is:

- (a) a legal practitioner; or
- (b) a family counsellor; or

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- (c)a family dispute resolution practitioner; or
- (d)a family consultant.

**63DB Registered parenting plans**

*Application of section*

- (1)This section applies to a registered parenting plan.

*Saving of registered parenting plan*

- (2)A registered parenting plan continues in force until revoked in accordance with section 63E, or set aside, varied or discharged as referred to in section 63H.

*No variation of registered parenting plan*

- (3)A registered parenting plan cannot be varied.

*Revocation of registered parenting plan*

- (4)Subject to subsection (5), a registered parenting plan may be revoked by agreement in writing between the parties to the plan.

*Registration of revocation required*

- (5)An agreement revoking a registered parenting plan:
  - (a)may, subject to the applicable Rules of Court, be registered, in a court having jurisdiction under this Part, under section 63E; and
  - (b)does not have effect to revoke the plan until it is so registered.

**63E Registration of a revocation of a registered parenting plan**

- (1)This section applies to a registered parenting plan.

- (2)To apply for registration of an agreement (**revocation agreement**) revoking a registered parenting plan:

- (a)an application for registration of the revocation agreement must be lodged in accordance with the applicable Rules of Court; and
  - (b)the application must be accompanied by:

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- (i) a copy of the revocation agreement; and
  - (ii) the information required by the applicable Rules of Court; and
  - (iii) a statement, in relation to each party, that is to the effect that the party has been provided with independent legal advice as to the meaning and effect of the revocation agreement and that is signed by the practitioner who provided that advice.

(3)The court may register the revocation agreement if it considers it appropriate to do so having regard to the best interests of the child to whom the agreement relates. In determining whether it is appropriate to register the revocation agreement, the court:

- (a)must have regard to the information accompanying the application for registration; and
- (b)may, but is not required to, have regard to all or any of the matters set out in subsections 60CC(2) and (3).

## **63F Child welfare provisions of registered parenting plans**

### *Application of section*

(1)This section applies to a registered parenting plan that contains child welfare provisions.

(2)The court may, by order, vary the child welfare provisions in the plan if it considers the variation is required in the best interests of a child.

(3)The child welfare provisions have effect, subject to subsections (5) and (6), as if they were provisions of a parenting order.

Note: Provisions of this Act relevant to the child welfare provisions having effect as provided in this subsection include:

- (a) Subdivisions C, D and E of Division 6 of this Part (dealing with obligations created by parenting orders (other than child maintenance orders)); and
- (b) Division 13A of this Part and Part XIII (dealing generally with enforcement of orders and sanctions for contravening orders); and
- (c) subsection 65D(2) (providing for discharge, variation, suspension and revival of parenting orders other than child maintenance orders); and

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(d) other provisions of this Act (including subsection 64B(6)) that refer to parenting orders.

(4) If provisions of the plan have effect under subsection (3) as a court order, a person who is a party to the plan is taken (for example, for the purposes of section 65Y) to be a party to the proceedings in which the order was made.

(5) Subsection (3) does not apply to the plan (whenever registered) to the extent (if at all) that the plan purports to determine that the child concerned is to live with a person who is not a parent of the child.

(6) Even though the plan is registered, the court, or another court having jurisdiction under this Part, must not enforce the child welfare provisions if it considers that to do so would be contrary to the best interests of a child.

Note: Sections 60CB to 60CG deal with how a court determines a child's best interests.

**63G Child maintenance provisions of registered parenting plans—where not enforceable as maintenance agreements**

(1) This section applies if:

- (a) a registered parenting plan contains child maintenance provisions; and
- (b) the plan is not a maintenance agreement or, if it is a maintenance agreement, the child concerned is not a child of the relevant marriage.

(2) The child maintenance provisions have effect, subject to subsections (3), (4) and (5), as if they were a child maintenance order made by the court.

Note: Provisions of this Act relevant to the child maintenance provisions having effect as a child maintenance order include:

- (a) Parts XIII and XIII A (dealing generally with enforcement of orders and sanctions for contravening orders); and
- (b) section 66S (providing for discharge, variation, suspension and revival of child maintenance orders); and
- (c) other provisions of this Act that refer to parenting orders, or to child maintenance orders.

(3) Unless the plan provides otherwise, the child maintenance

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provisions (other than provisions for the periodic payment of maintenance) continue to operate in spite of the death of a party to the plan and operate in favour of, and are binding on, the legal personal representative of that party.

(4) If the child maintenance provisions include provisions (the *periodic provisions*) for the periodic payment of maintenance:

- (a) the periodic provisions continue to operate, if the plan so provides, in spite of the death of a party to the plan who is liable to make the periodic payments, and are binding on the legal personal representative of that party; but
- (b) the periodic provisions do not continue to operate, in spite of anything in the plan, after the death of the person entitled to receive the periodic payments.

(5) The child maintenance provisions have no effect, and are not enforceable in any way, at any time when an application could properly be made under the *Child Support (Assessment) Act 1989* by one of the parties to the plan for administrative assessment of child support (within the meaning of that Act) for the child concerned.

Note: This subsection does not affect the operation of provisions of a parenting plan referred to in section 63CAA (child support matters).

(6) Subsection (5) has effect whether or not an application for administrative assessment of child support for the child has in fact been made by a party to the plan.

### **63H Court's powers to set aside, discharge, vary, suspend or revive registered parenting plans**

(1A) This section applies to a registered parenting plan.

(1) The court in which the plan was registered may set aside the plan, and its registration, if the court is satisfied:

- (a) that the concurrence of a party was obtained by fraud, duress or undue influence; or
- (b) that the parties want the plan set aside; or
- (c) that it is in the best interests of a child to set aside the plan.

(2) In proceedings under subsection (1), to the extent that they are proceedings on the ground mentioned in paragraph (1)(c), the best interests of the child concerned are the paramount consideration.

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Note: Sections 60CB to 60CG deal with how a court determines a child's best interests.

(3) Other provisions of this Act under which provisions of the parenting plan may be set aside or otherwise affected are:

- (a) subsection 63F(2)—under that subsection a court may vary child welfare provisions in the plan; and
- (b) subsection 65D(2)—under that subsection a court may make a parenting order that discharges, varies, suspends or revives provisions of the plan that have effect as if they were a parenting order (other than a child maintenance order); and
- (c) section 66S—under that section a court may discharge, vary, suspend or revive provisions of the plan that have effect as if they were a child maintenance order.

(4) Except as permitted by subsection (1) or by a provision mentioned in subsection (3), a court must not set aside, discharge, vary, suspend or revive the whole or a part of the parenting plan.

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## **Division 5—Parenting orders—what they are**

### **64A What this Division does**

This Division explains what parenting orders are.

### **64B Meaning of *parenting order* and related terms**

(1) A *parenting order* is:

- (a) an order under this Part (including an order until further order) dealing with a matter mentioned in subsection (2); or
- (b) an order under this Part discharging, varying, suspending or reviving an order, or part of an order, described in paragraph (a).

(2) A parenting order may deal with one or more of the following:

- (a) the person or persons with whom a child is to live;
- (b) the time a child is to spend with another person or other persons;
- (c) the allocation of parental responsibility for a child;
- (d) if 2 or more persons are to share parental responsibility for a child—the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility;
- (e) the communication a child is to have with another person or other persons;
- (f) maintenance of a child;
- (g) the steps to be taken before an application is made to a court for a variation of the order to take account of the changing needs or circumstances of:
  - (i) a child to whom the order relates; or
  - (ii) the parties to the proceedings in which the order is made;
- (h) the process to be used for resolving disputes about the terms or operation of the order;
- (i) any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.

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The person referred to in this subsection may be, or the persons referred to in this subsection may include, either a parent of the child or a person other than the parent of the child (including a grandparent or other relative of the child).

Note: Paragraph (f)—a parenting order cannot deal with the maintenance of a child if the *Child Support (Assessment) Act 1989* applies.

(3)Without limiting paragraph (2)(c), the order may deal with the allocation of responsibility for making decisions about major long-term issues in relation to the child.

(4)The communication referred to in paragraph (2)(e) includes (but is not limited to) communication by:

- (a) letter; and
- (b)telephone, email or any other electronic means.

(4A)Without limiting paragraphs (2)(g) and (h), the parenting order may provide that the parties to the proceedings must consult with a family dispute resolution practitioner to assist with:

- (a)resolving any dispute about the terms or operation of the order; or
- (b)reaching agreement about changes to be made to the order.

(5)To the extent (if at all) that a parenting order deals with the matter mentioned in paragraph (2)(f), the order is a ***child maintenance order***.

(6)For the purposes of this Act:

- (a)a parenting order that provides that a child is to live with a person is ***made in favour*** of that person; and
- (b)a parenting order that provides that a child is to spend time with a person is ***made in favour*** of that person; and
- (c)a parenting order that provides that a child is to have communication with a person is ***made in favour*** of that person; and
- (d)a parenting order that:
  - (i) allocates parental responsibility for a child to a person; or
  - (ii) provides that a person is to share parental responsibility for a child with another person;is ***made in favour*** of that person.

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(9)In this section:

***this Act*** includes:

- (a)the standard Rules of Court; and
- (b)the related Federal Magistrates Rules.

#### **64C Parenting orders may be made in favour of parents or other persons**

A parenting order in relation to a child may be made in favour of a parent of the child or some other person.

#### **64D Parenting orders subject to later parenting plans**

(1)Subject to subsection (2), a parenting order in relation to a child is taken to include a provision that the order is subject to a parenting plan that is:

- (a)entered into subsequently by the child's parents; and
- (b)agreed to, in writing, by any other person (other than the child) to whom the parenting order applies.

(2)The court may, in exceptional circumstances, include in a parenting order a provision that the parenting order, or a specified provision of the parenting order, may only be varied by a subsequent order of the court (and not by a parenting plan).

(3)Without limiting subsection (2), exceptional circumstances for the purposes of that subsection include the following:

- (a)circumstances that give rise to a need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence;
- (b)the existence of substantial evidence that one of the child's parents is likely to seek to use coercion or duress to gain the agreement of the other parent to a parenting plan.

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## **Division 6—Parenting orders other than child maintenance orders**

### **Subdivision A—Introductory**

#### **65A What this Division does**

(1) This Division deals with:

- (a) applying for and making parenting orders, other than child maintenance orders (Subdivision B); and
- (b) the general obligations created by parenting orders, other than child maintenance orders (Subdivision C); and
- (c) dealing with people who have been arrested (Subdivision D); and
- (d) the obligations under parenting orders, other than child maintenance orders, relating to taking or sending children from Australia (Subdivision E).

Note: Paragraph (a)—section 60I provides that people with disputes about matters that may be dealt with in a Part VII order (which includes a parenting order) should generally make use of family dispute resolution before applying for the order.

(2) Measures designed to improve communication between separated parents and to educate parents about their respective responsibilities in relation to their children are contained in this Division (see section 65DA).

Note: Division 13A provides for the compliance regime for dealing with contraventions, and alleged contraventions, of parenting orders.

#### **65AA Child's best interests paramount consideration in making a parenting order**

Section 60CA provides that in deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

#### **65B Division does not apply to child maintenance orders**

This Division does not apply to parenting orders to the extent that they consist of child maintenance orders. Child maintenance orders

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are dealt with in Division 7.

## **Subdivision B—Applying for and making parenting orders**

### **65C Who may apply for a parenting order**

A parenting order in relation to a child may be applied for by:

- (a) either or both of the child's parents; or
- (b) the child; or
- (ba) a grandparent of the child; or
- (c) any other person concerned with the care, welfare or development of the child.

### **65D Court's power to make parenting order**

(1) In proceedings for a parenting order, the court may, subject to sections 61DA (presumption of equal shared parental responsibility when making parenting orders) and 65DAB (parenting plans) and this Division, make such parenting order as it thinks proper.

Note: Division 4 of Part XIIIIAA (International protection of children) may affect the jurisdiction of a court to make a parenting order.

(2) Without limiting the generality of subsection (1) and subject to section 61DA (presumption of equal shared parental responsibility when making parenting orders) and 65DAB (parenting plans) and this Division, a court may make a parenting order that discharges, varies, suspends or revives some or all of an earlier parenting order.

(3) If the application for the parenting order was made as a result of the adjournment under paragraph 70NEB(1)(c) of proceedings under Subdivision E of Division 13A of Part VII:

- (a) the court must hear and determine the application as soon as practicable; and
- (b) if the court makes a parenting order on the application, the court may, if it thinks it is appropriate to do so, dismiss the proceedings under that Subdivision.

Note: The applicant may apply to the Family Court or to the Federal Magistrates Court for the application for the parenting order or for the proceedings under Subdivision E of Division 13A of Part VII, or both, to be transferred to the Federal Magistrates Court or to the Family Court, as the case requires (see section 33B of this Act and section 39

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of the *Federal Magistrates Act 1999*).

**65DAA Court to consider child spending equal time or substantial and significant time with each parent in certain circumstances**

*Equal time*

- (1) If a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child, the court must:
- (a) consider whether the child spending equal time with each of the parents would be in the best interests of the child; and
  - (b) consider whether the child spending equal time with each of the parents is reasonably practicable; and
  - (c) if it is, consider making an order to provide (or including a provision in the order) for the child to spend equal time with each of the parents.

Note 1: The effect of section 60CA is that in deciding whether to go on to make a parenting order for the child to spend equal time with each of the parents, the court will regard the best interests of the child as the paramount consideration.

Note 2: See subsection (5) for the factors the court takes into account in determining what is reasonably practicable.

*Substantial and significant time*

- (2) If:
- (a) a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child; and
  - (b) the court does not make an order (or include a provision in the order) for the child to spend equal time with each of the parents; and
- the court must:
- (c) consider whether the child spending substantial and significant time with each of the parents would be in the best interests of the child; and
  - (d) consider whether the child spending substantial and significant time with each of the parents is reasonably practicable; and

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(e)if it is, consider making an order to provide (or including a provision in the order) for the child to spend substantial and significant time with each of the parents.

Note 1: The effect of section 60CA is that in deciding whether to go on to make a parenting order for the child to spend substantial time with each of the parents, the court will regard the best interests of the child as the paramount consideration.

Note 2: See subsection (5) for the factors the court takes into account in determining what is reasonably practicable.

(3)For the purposes of subsection (2), a child will be taken to spend ***substantial and significant time*** with a parent only if:

- (a)the time the child spends with the parent includes both:
  - (i) days that fall on weekends and holidays; and
  - (ii) days that do not fall on weekends or holidays; and
- (b)the time the child spends with the parent allows the parent to be involved in:
  - (i) the child's daily routine; and
  - (ii) occasions and events that are of particular significance to the child; and
- (c)the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.

(4)Subsection (3) does not limit the other matters to which a court can have regard in determining whether the time a child spends with a parent would be substantial and significant.

#### *Reasonable practicality*

(5)In determining for the purposes of subsections (1) and (2) whether it is reasonably practicable for a child to spend equal time, or substantial and significant time, with each of the child's parents, the court must have regard to:

- (a)how far apart the parents live from each other; and
- (b)the parents' current and future capacity to implement an arrangement for the child spending equal time, or substantial and significant time, with each of the parents; and
- (c)the parents' current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind; and

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- (d)the impact that an arrangement of that kind would have on the child; and
- (e)such other matters as the court considers relevant.

Note 1: Behaviour of a parent that is relevant for paragraph (c) may also be taken into account in determining what parenting order the court should make in the best interests of the child. Subsection 60CC(3) provides for considerations that are taken into account in determining what is in the best interests of the child. These include:

- (a) the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent (paragraph 60CC(3)(c));
- (b) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents (paragraph 60CC(3) (i)).

Note 2: Paragraph (c) reference to future capacity—the court has power under section 13C to make orders for parties to attend family counselling or family dispute resolution or participate in courses, programs or services.

**65DAB Court to have regard to parenting plans**

When making a parenting order in relation to a child, the court is to have regard to the terms of the most recent parenting plan (if any) that has been entered into between the child's parents (to the extent to which that plan relates to the child) if doing so would be in the best interests of the child.

**65DAC Effect of parenting order that provides for shared parental responsibility**

- (1)This section applies if, under a parenting order:
  - (a)2 or more persons are to share parental responsibility for a child; and
  - (b)the exercise of that parental responsibility involves making a decision about a major long-term issue in relation to the child.
- (2)The order is taken to require the decision to be made jointly by those persons.

Note: Subject to any court orders, decisions about issues that are not major long-term issues are made by the person with whom the child is spending time without a need to consult the other person (see section 65DAE).

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- (3)The order is taken to require each of those persons:
- (a)to consult the other person in relation to the decision to be made about that issue; and
  - (b)to make a genuine effort to come to a joint decision about that issue.
- (4)To avoid doubt, this section does not require any other person to establish, before acting on a decision about the child communicated by one of those persons, that the decision has been made jointly.

#### **65DAE No need to consult on issues that are not major long-term issues**

- (1)If a child is spending time with a person at a particular time under a parenting order, the order is taken not to require the person to consult a person who:
- (a)has parental responsibility for the child; or
  - (b)shares parental responsibility for the child with another person;
- about decisions that are made in relation to the child during that time on issues that are not major-long term issues.

Note: This will mean that the person with whom the child is spending time will usually not need to consult on decisions about such things as what the child eats or wears because these are usually not major long-term issues.

- (2)Subsection (1) applies subject to any provision to the contrary made by a parenting order.

#### **65DA Parenting orders**

- (1)This section applies when a court makes a parenting order.
- (2)It is the duty of the court to include in the order particulars of:
- (a)the obligations that the order creates; and
  - (b)the consequences that may follow if a person contravenes the order.
- (3)If any of the persons to whom the order is directed is not represented by a legal practitioner, it is also the duty of the court to explain to the person, or to each of the persons:
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(a)the availability of programs to help people to understand their responsibilities under parenting orders; and

(b)the availability and use of location and recovery orders to ensure that parenting orders are complied with.

(4)The court may cause to be prepared, and given to persons to whom a parenting order is directed, a document setting out particulars of the matters mentioned in paragraphs (3)(a) and (b).

(5)If a person to whom the order is directed is represented by a legal practitioner, the court may request the practitioner:

(a)to assist in explaining to the person the matters mentioned in paragraphs (2)(a) and (b); and

(b)to explain to the person the matters mentioned in paragraphs (3)(a) and (b).

(6)If a request is made by the court to a legal practitioner under paragraph (5)(a) or (b), it is the duty of the practitioner to comply with the request.

(7)Failure to comply with a requirement of, or with a request made under, this section does not affect the validity of a parenting order.

(8)Any matter that is required by this section to be included in a parenting order or any explanation that is required by this section to be given to a person is to be expressed in language that is likely to be readily understood by the person to whom the order is directed or the explanation is given.

**65F General requirements for counselling before parenting order made**

(2)Subject to subsection (3), a court must not make a parenting order in relation to a child unless:

(a)the parties to the proceedings have attended family counselling to discuss the matter to which the proceedings relate; or

(b)the court is satisfied that there is an urgent need for the parenting order, or there is some other special circumstance (such as family violence), that makes it appropriate to make the order even though the parties to the proceedings have not attended a conference as mentioned in paragraph (a); or

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(c)the court is satisfied that it is not practicable to require the parties to the proceedings to attend a conference as mentioned in paragraph (a).

(3)Subsection (2) does not apply to the making of a parenting order if:

- (a)it is made with the consent of all the parties to the proceedings; or
- (b)it is an order until further order.

(4)In this section:

*proceedings for a parenting order* includes:

- (a)proceedings for the enforcement of a parenting order; and
- (b)any other proceedings in which a contravention of a parenting order is alleged.

#### **65G Special conditions for making parenting order about whom a child lives with or the allocation of parental responsibility by consent in favour of non-parent**

(1)This section applies if:

- (a)a court proposes to make a parenting order that deals with whom a child is to live with; and
- (b)under the order, the child would not live with a parent, grandparent or other relative of the child; and
- (c)the court proposes to make that order with the consent of all the parties to the proceedings.

(1A)This section also applies if:

- (a)a court proposes to make a parenting order that deals with the allocation of parental responsibility for a child; and
- (b)under the order, no parent, grandparent or other relative of the child would be allocated parental responsibility for the child; and
- (c)the court proposes to make that order with the consent of all the parties to the proceedings.

(2)The court must not make the proposed order unless:

- (a)the parties to the proceedings have attended a conference with a family consultant to discuss the matter to be determined by the proposed order; or

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(b)the court is satisfied that there are circumstances that make it appropriate to make the proposed order even though the conditions in paragraph (a) are not satisfied.

**65H Children who are 18 or over or who have married or entered de facto relationships**

(1)A parenting order must not be made in relation to a child who:

- (a)is 18 or over; or
- (b)is or has been married; or
- (c)is in a de facto relationship.

(2)A parenting order in relation to a child stops being in force if the child turns 18, marries or enters into a de facto relationship.

(3)A court having jurisdiction under this Part may make a declaration to the effect that the child is in, or has entered into, a de facto relationship.

(4)A declaration under subsection (3) has effect for the purposes of this Act but does not have effect for any other purpose (including, for example, other laws of the Commonwealth or laws of the States and Territories).

**65J Effect of adoption on parenting order**

(1)This section applies if:

- (a)a child is adopted; and
- (b)immediately before the adoption, a parenting order was in force in relation to the child.

(2)The parenting order stops being in force on the adoption of the child, unless the adoption is by a prescribed adopting parent and leave was not granted under section 60G for the adoption proceedings to be commenced.

**65K What happens when parenting order that deals with whom a child lives with does not make provision in relation to death of parent with whom child lives**

(1)This section applies if:

- (a)a parenting order is in force that provides that a child is to

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live with one of the child's parents; and  
(b)that parent dies; and  
(c)the parenting order does not provide for what is to happen on that parent's death.

- (2)The surviving parent cannot require the child to live with him or her.
- (3)The surviving parent, or another person (subject to section 65C), may apply for a parenting order that deals with the person or persons with whom the child is to live.
- (4)In an application under subsection (3) by a person who does not, at the time of the application, have any parental responsibility for the child, any person who, at that time, has any parental responsibility for the child is entitled to be a party to the proceedings.

#### **65L Family consultants may be required to supervise or assist compliance with parenting orders**

- (1)If a court makes a parenting order in relation to a child, the court may also, subject to subsection (2), make either or both of the following orders:
- (a)an order requiring compliance with the parenting order, as far as practicable, to be supervised by a family consultant;
  - (b)an order requiring a family consultant to give any party to the parenting order such assistance as is reasonably requested by that party in relation to compliance with, and the carrying out of, the parenting order.

- (2)In deciding whether to make a particular order under subsection (1) in relation to a child, a court must regard the best interests of the child as the paramount consideration.

Note: Sections 60CB to 60CG deal with how a court determines a child's best interests.

#### **65LA Court may order attendance at a post-separation parenting program**

- (1)In proceedings for a parenting order, the court may make an order directing a party to the proceedings to attend a

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post-separation parenting program.

Note: Before making an order under this section, the court must consider seeking the advice of a family consultant about the services appropriate to the party's needs (see section 11E).

(2) In deciding whether to make a particular order under subsection (1), a court must regard the best interests of the child as the paramount consideration.

Note: Sections 60CB to 60CG deal with how a court determines a child's best interests.

(3) In this section:

*proceedings for a parenting order* includes:

- (a) proceedings for the enforcement of a parenting order; and
- (b) any other proceedings in which a contravention of a parenting order is alleged.

**65LB Conditions for providers of post-separation parenting programs**

(1) An organisation meets the conditions in this section if:

- (a) it is a recipient organisation (see subsection (2)); or
- (b) there is a recipient organisation in relation to the organisation (see subsection (3)).

(2) An organisation is a recipient organisation for the purposes of paragraph (1)(a) if it receives, or has been approved to receive, funding under a program or a part of a program designated by the Minister under subsection (4) in order to provide services that include post-separation parenting programs.

(3) An organisation is a recipient organisation in relation to another organisation for the purposes of paragraph (1)(b) if:

- (a) both:
  - (i) the other organisation is a member of the organisation; and
  - (ii) the organisation receives, or has been approved to receive, funding under a program or a part of a program designated by the Minister under subsection (4) in order that the organisation's members may provide services that include post-separation parenting programs; or

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- (b) both:
- (i) the organisation acts on behalf of a group of organisations that includes the other organisation; and
  - (ii) the organisation receives, or has been approved to receive, funding under a program or a part of a program designated by the Minister under subsection (4) in order that the organisations on whose behalf it acts may provide services that include post-separation parenting programs.

(4)The Minister may, in writing, designate for the purposes of this section:

- (a) a program; or
- (b) part of a program;

administered by or on behalf of the Commonwealth Government under which money appropriated by the Parliament is provided to organisations for the purposes of making post-separation parenting programs available.

(5)An instrument under this section is not a legislative instrument.

### **Subdivision C—General obligations created by certain parenting orders**

#### **65M General obligations created by parenting order that deals with whom a child lives with**

(1)This section applies to a parenting order that is in force in relation to a child to the extent to which the order deals with whom the child is to live with.

(2)A person must not, contrary to the order:

- (a) remove the child from the care of a person; or
- (b) refuse or fail to deliver or return the child to a person; or
- (c) interfere with the exercise or performance of any of the powers, duties or responsibilities that a person has under the order.

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**65N General obligations created by parenting order that deals with whom a child spends time with**

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order deals with whom the child is to spend time with.
- (2) A person must not:
- (a) hinder or prevent a person and the child from spending time together in accordance with the order; or
  - (b) interfere with a person and the child benefiting from spending time with each other under the order.

**65NA General obligations created by parenting order that deals with whom a child communicates with**

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order deals with whom the child is to communicate with.
- (2) A person must not:
- (a) hinder or prevent a person and the child from communicating with each other in accordance with the order; or
  - (b) interfere with the communication that a person and the child are supposed to have with each other under the order.

**65P General obligations created by parenting order that allocates parental responsibility**

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order allocates parental responsibility for the child to a person (the *carer*).
- (2) A person must not hinder the carer in, or prevent the carer from, discharging that responsibility.

**65Q Court may issue warrant for arrest of alleged offender**

- (1) This section applies if:
- (a) a parenting order provides that:
    - (i) a child is to live with a person; or

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- (ii) a child is to spend time with a person; or
  - (iii) a child is to communicate with a person; and
- (b)a court having jurisdiction under this Part is satisfied, on application by the person referred to in paragraph (1)(a), that there are reasonable grounds for believing that a person (**the alleged offender**) has contravened section 65M, 65N or 65NA in relation to the order; and
- (c)there is an application before the court for the alleged offender to be dealt with under Division 13A for the alleged contravention; and
  - (d)the court is satisfied that the issue of a warrant is necessary to ensure that the alleged offender will attend before a court to be dealt with under Division 13A for the alleged contravention.
- (2)The court may issue a warrant authorising a person to whom it is addressed to arrest the alleged offender.
- (3)A warrant stops being in force:
- (a)if a date not later than 6 months after the issue of the warrant is specified in the warrant as the date when it stops being in force—on that date; or
  - (b)otherwise—6 months after the issue of the warrant.

## **Subdivision D—Dealing with people who have been arrested**

### **65R Situation to which Subdivision applies**

This Subdivision applies if a person:

- (a)is arrested under a warrant issued under subsection 65Q(2); or
- (b)is arrested without warrant under a recovery order.

### **65S Arrested person to be brought before a court**

- (1)The arresting person must:
  - (a)ensure that the alleged offender is brought before a court having jurisdiction under this Part before the end of the holding period applicable under subsection (4); and
  - (b)take all reasonable steps to ensure that, before the alleged offender is brought before a court, the person who applied for

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the warrant or recovery order is aware:

- (i) that the alleged offender has been arrested; and
- (ii) of the court before which the alleged offender is to be brought.

(2)The alleged offender must not be released before the end of the holding period except under an order of a court having jurisdiction under this Part.

(3)This section does not authorise the holding in custody of the alleged offender after the end of the holding period.

(4)The ***holding period*** is:

- (a)if a Saturday, Sunday or public holiday starts within 24 hours after the arrest of the alleged offender—the longer of the following periods:
  - (i) the period starting with the arrest and ending 48 hours later;
  - (ii) the period starting with the arrest and ending at the end of the next day after the day of the arrest that is not a Saturday, Sunday or public holiday; or
- (b)in any other case—the period starting with the arrest and ending 24 hours later.

**65T Obligation of court—where application before it to deal with contravention**

(1)This section applies if:

- (a)the alleged offender is brought before a court under section 65S; and
- (b)there is an application before the court for the alleged offender to be dealt with under Division 13A for the alleged contravention.

(2)The court must, without delay, proceed to hear and determine the application.

**65U Obligation of court—where no application before it, but application before another court, to deal with contravention**

(1)This section applies if:

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(a)the alleged offender is brought before a court under section 65S; and  
(b)there is no application, or no longer any application, before the court for the alleged offender to be dealt with under Division 13A for the alleged contravention; and  
(c)the court is aware that there is an application before another court for the alleged offender to be dealt with under Division 13A for the alleged contravention.

(2)The court must, without delay:

(a)order that the alleged offender is to be released from custody on his or her entering into a recognizance (with or without surety or security) that he or she will attend before the other court on a date, at a time and at a place specified by the court; or  
(b)order the arresting person to arrange for the alleged offender to be brought before the other court on such date and at such time as the court specifies, being a date and time such that the alleged offender is to be brought before the other court as soon as practicable, and in any event not more than 72 hours, after the order is made.

(3)If a court makes an order under paragraph (2)(b) for the alleged offender to be brought before another court:

(a)subject to paragraph (c), the alleged offender may be kept in custody until he or she is brought before the other court; and  
(b)if the alleged offender is brought before the other court as required by the order, the other court must, without delay, proceed to hear and determine the application mentioned in paragraph (1)(c); and  
(c)if the alleged offender is not brought before the other court as required by the order, he or she must be released without delay.

#### **65V Obligation of court—where no application before any court to deal with contravention**

(1)This section applies if:

(a)the alleged offender is brought before a court under section 65S; and

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(b)there is no application, or no longer any application, before the court for the alleged offender to be dealt with under Division 13A for the alleged contravention; and  
(c)so far as the court is aware, there is no application, or no longer any application, before any other court for the alleged offender to be dealt with under Division 13A for the alleged contravention.

(2)The court must, without delay, order the release of the alleged offender.

**65W Applications heard as required by subsection 65T(2) or paragraph 65U(3)(b)**

(1)If a court hearing an application as required by subsection 65T(2) or paragraph 65U(3)(b) adjourns the hearing, the court must:

(a)order the alleged offender to be kept in such custody as the court considers appropriate during the adjournment; or

(b)order that the alleged offender is to be released from custody, either on his or her entering into a recognizance (with or without surety or security) that he or she will attend before the court on the resumption of the hearing or otherwise.

(2)This section does not authorise the holding in custody of the alleged offender during an adjournment of proceedings that:

(a)is expressed to be for a period of more than 24 hours; or

(b)continues for more than 24 hours.

**Subdivision E—Obligations under parenting orders relating to taking or sending children from Australia**

**65X Interpretation**

(1)In this Subdivision:

*parenting order to which this Subdivision applies* means a parenting order to the extent to which it provides, or would provide, that:

- (a)a child is to live with a person; or
- (b)a child is to spend time with a person; or

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- (c)a child is to communicate with a person; or
  - (d)a person is to have parental responsibility for a child.

(2)For the purposes of this Subdivision, if an appeal against a decision of a court in proceedings has been instituted and is pending, the proceedings are taken to be pending and sections 65Z and 65ZB (rather than sections 65Y and 65ZA) apply.

### **65Y Obligations if certain parenting orders have been made**

(1)If a parenting order to which this Subdivision applies is in force, a person who was a party to the proceedings in which the order was made, or a person who is acting on behalf of, or at the request of, a party, must not take or send the child concerned from Australia to a place outside Australia except as permitted by subsection (2).

Penalty: Imprisonment for 3 years.

Note: The ancillary offence provisions of the *Criminal Code*, including section 11.1 (attempts), apply in relation to the offence created by subsection (1).

(2)Subsection (1) does not prohibit taking or sending the child from Australia to a place outside Australia if:

- (a)it is done with the consent in writing (authenticated as prescribed) of each person in whose favour the order referred to in subsection (1) was made; or
- (b)it is done in accordance with an order of a court made, under this Part or under a law of a State or Territory, at the time of, or after, the making of the order referred to in subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

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**65Z Obligations if proceedings for the making of certain parenting orders are pending**

(1) If proceedings (the *Part VII proceedings*) for the making of a parenting order to which this Subdivision applies are pending, a person who is a party to the proceedings, or who is acting on behalf of, or at the request of, a party, must not take or send the child concerned from Australia to a place outside Australia except as mentioned in subsection (2).

Penalty: Imprisonment for 3 years.

Note: The ancillary offence provisions of the *Criminal Code*, including section 11.1 (attempts), apply in relation to the offence created by subsection (1).

(2) Subsection (1) does not prohibit taking or sending the child from Australia to a place outside Australia if:

- (a) it is done with the consent in writing (authenticated as prescribed) of each other party to the Part VII proceedings; or
- (b) it is done in accordance with an order of a court made, under this Part or under a law of a State or Territory, after the institution of the Part VII proceedings.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

**65ZA Obligations of owners etc. of aircraft and vessels if certain parenting orders made**

(1) This section applies if:

- (a) a parenting order to which this Subdivision applies is in force; and
- (b) a person in whose favour the order was made has served on the captain, owner or charterer of an aircraft or vessel a statutory declaration made by the person not earlier than 7 days before the date of service that:
  - (i) relates to the order; and
  - (ii) complies with subsection (4).

(2) The person on whom the declaration is served must not permit the child identified in the declaration to leave a port or place in Australia in the aircraft or vessel for a destination outside Australia except as permitted by subsection (3).

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Penalty: 60 penalty units.

(2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

(3) Subsection (2) does not prohibit permitting the child to leave Australia in the aircraft or vessel if:

- (a) the child leaves in the company, or with the consent in writing (authenticated as prescribed), of the person who made the statutory declaration; or
- (b) the child leaves in accordance with an order of a court made, under this Part or under a law of a State or Territory, at the time of, or after, the making of the order.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) The statutory declaration must contain:

- (a) full particulars of the order, including:
  - (i) the full name and the date of birth of the child to whom the order relates; and
  - (ii) the full names of the parties to the proceedings in which the order was made; and
  - (iii) the terms of the order; and
- (b) such other matters (if any) as are prescribed.

## **65ZB Obligations of owners etc. of aircraft and vessels if proceedings for the making of certain parenting orders are pending**

(1) This section applies if:

- (a) proceedings (the *Part VII proceedings*) for the making of a parenting order to which this Subdivision applies are pending; and
- (b) a party to the proceedings has served on the captain, owner or charterer of a vessel a statutory declaration made by the party not earlier than 7 days before the date of service that:
  - (i) relates to the proceedings; and
  - (ii) complies with subsection (4).

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(2)The person on whom the declaration is served must not permit the child identified in the declaration to leave a port or place in Australia in the aircraft or vessel for a destination outside Australia except as permitted by subsection (3).

Penalty: 60 penalty units.

(2A)Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

(3)Subsection (2) does not prohibit permitting the child to leave Australia in the aircraft or vessel if:

- (a)the child leaves in the company, or with the consent in writing (authenticated as prescribed), of the party who made the statutory declaration; or
- (b)in accordance with an order of a court made, under this Part or under a law of a State or Territory, after the institution of the Part VII proceedings.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4)The statutory declaration must contain:

- (a)full particulars of the Part VII proceedings, including:
  - (i) the full name and the date of birth of the child to whom the proceedings relate; and
  - (ii) the full names of the parties to the proceedings; and
  - (iii) the name of the court, the nature of the proceedings and the date of institution of the proceedings; and
  - (iv) if an appeal has been instituted in the proceedings—the name of the court in which the appeal was instituted and the date on which it was instituted; and
- (b)a statement that the Part VII proceedings are pending at the date of the declaration; and
- (c)such other matters (if any) as are prescribed.

**65ZC General provisions applicable to sections 65ZA and 65ZB**

(1)A declaration under section 65ZA or 65ZB may be served on the owner or charterer of an aircraft or vessel, or on the agent of the owner of an aircraft or vessel, by sending the declaration by

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registered post addressed to the owner, charterer or agent at the principal place of business of the owner, charterer or agent.

(2)The captain, owner or charterer of an aircraft or vessel, or the agent of the owner of an aircraft or vessel, is not liable in any civil or criminal proceedings in respect of anything done in good faith for the purpose of complying with section 65ZA or 65ZB.

(3)If an act or omission by a person that constitutes an offence against subsection 65ZA(2) or 65ZB(2) is also an offence against any other law, the person may be prosecuted and convicted under that other law, but nothing in this subsection makes a person liable to be punished twice in respect of the same act or omission.

#### **65ZD State or Territory laws stopping children leaving Australia not affected**

Nothing in this Subdivision prevents or restricts the operation of any law of a State or Territory under which:

- (a)action may be taken to prevent a child from leaving Australia or being taken or sent outside Australia; or
- (b)a person may be punished in respect of the taking or sending of a child outside Australia.

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## **Division 7—Child maintenance orders**

### **Subdivision A—What this Division does**

#### **66A What this Division does**

This Division:

- (a)contains statements of objects and principles relevant to the making of child maintenance orders (Subdivision B); and
- (b)deals with the relationship between this Division and the *Child Support (Assessment) Act 1989* (Subdivision C); and
- (c)deals with applying for and making child maintenance orders (Subdivision D); and
- (d)deals with other aspects of courts' powers in relation to child maintenance orders (Subdivision E); and
- (da)deals with varying the maintenance of certain children (Subdivision EA); and
- (e)deals with when child maintenance orders stop being in force (Subdivision F).

### **Subdivision B—Objects and principles**

#### **66B Objects**

(1)The principal object of this Division is to ensure that children receive a proper level of financial support from their parents.

(2)Particular objects of this Division include ensuring:

- (a)that children have their proper needs met from reasonable and adequate shares in the income, earning capacity, property and financial resources of both of their parents; and
- (b)that parents share equitably in the support of their children.

#### **66C Principles—parents have primary duty to maintain**

(1)The parents of a child have, subject to this Division, the primary duty to maintain the child.

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(2)Without limiting the generality of subsection (1), the duty of a parent to maintain a child:

- (a)is not of lower priority than the duty of the parent to maintain any other child or another person; and
- (b)has priority over all commitments of the parent other than commitments necessary to enable the parent to support:
  - (i) himself or herself; or
  - (ii) any other child or another person that the parent has a duty to maintain; and
- (c)is not affected by:
  - (i) the duty of any other person to maintain the child; or
  - (ii) any entitlement of the child or another person to an income tested pension, allowance or benefit.

#### **66D Principles—when step-parents have a duty to maintain**

(1)The step-parent of a child has, subject to this Division, the duty of maintaining a child if, and only if, a court, by order under section 66M, determines that it is proper for the step-parent to have that duty.

(2)Any duty of a step-parent to maintain a step-child:

- (a)is a secondary duty subject to the primary duty of the parents of the child to maintain the child; and
- (b)does not derogate from the primary duty of the parents to maintain the child.

#### **Subdivision C—Relationship with Child Support (Assessment) Act**

##### **66E Child maintenance order not to be made etc. if application for administrative assessment of child support could be made**

(1)A court having jurisdiction under this Part must not, at any time, make, revive or vary a child maintenance order in relation to a child on the application of a person (the *applicant*) against, or in favour of, a person (the *respondent*) if an application could properly be made, at that time, by the applicant under the *Child Support (Assessment) Act 1989* for the respondent to be assessed in respect of the costs of the child, or vice versa.

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(2) Subsection (1) has effect whether or not an application for administrative assessment of child support for the child has in fact been made (whether by the applicant, the respondent or another person).

(3) This section does not apply to proceedings under regulations made for the purposes of section 110 or 111A.

**Subdivision D—Applying for and making child maintenance orders**

**66F Who may apply for a child maintenance order**

(1) Unless subsection (2) applies, a child maintenance order in relation to a child may be applied for by:

- (a) either or both of the child's parents; or
- (b) the child; or
- (ba) a grandparent of the child; or
- (c) any other person concerned with the care, welfare or development of the child.

(2) A child maintenance order in relation to a child who is under the guardianship, or in the care (however described), of a person under a child welfare law may only be applied for by:

- (a) the child; or
- (b) a parent of the child who has the daily care of the child; or
- (c) a relative of the child who has the daily care of the child; or
- (d) a child welfare officer of the relevant State or Territory.

**66G Court's power to make child maintenance order**

In proceedings for a child maintenance order, the court may, subject to this Division and to section 111AA, make such child maintenance order as it thinks proper.

**66H Approach to be taken in proceedings for child maintenance order**

In proceedings for the making of a child maintenance order in relation to a child, the court must:

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- (a)consider the financial support necessary for the maintenance of the child (this is expanded on in section 66J); and
- (b)determine the financial contribution, or respective financial contributions, towards the financial support necessary for the maintenance of the child, that should be made by a party, or by parties, to the proceedings (this is expanded on in section 66K).

#### **66J Matters to be taken into account in considering financial support necessary for maintenance of child**

- (1)In considering the financial support necessary for the maintenance of a child, the court must take into account these (and no other) matters:
- (a)the matters mentioned in section 66B; and
  - (b)the proper needs of the child (this is expanded on in subsection (2)); and
  - (c)the income, earning capacity, property and financial resources of the child (this is expanded on in subsection (3)).
- (2)In taking into account the proper needs of the child the court:
- (a)must have regard to:
    - (i) the age of the child; and
    - (ii) the manner in which the child is being, and in which the parents expected the child to be, educated or trained; and
    - (iii) any special needs of the child; and
  - (b)may have regard, to the extent to which the court considers appropriate in the circumstances of the case, to any relevant findings of published research in relation to the maintenance of children.
- (3)In taking into account the income, earning capacity, property and financial resources of the child, the court must:
- (a)have regard to the capacity of the child to earn or derive income, including any assets of, under the control of or held for the benefit of the child that do not produce, but are capable of producing, income; and
  - (b) disregard:
    - (i) the income, earning capacity, property and financial

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resources of any other person unless, in the special circumstances of the case, the court considers it appropriate to have regard to them; and

- (ii) any entitlement of the child or any other person to an income tested pension, allowance or benefit.

(4) Subsections (2) and (3) do not limit, by implication, the matters to which the court may have regard in taking into account the matters referred to in subsection (1).

**66K Matters to be taken into account in determining contribution that should be made by party etc.**

(1) In determining the financial contribution, or respective financial contributions, towards the financial support necessary for the maintenance of a child that should be made by a party, or by parties, to the proceedings, the court must take into account these (and no other) matters:

- (a) the matters mentioned in sections 66B, 66C and 66D; and
- (b) the income, earning capacity, property and financial resources of the party or each of those parties (this is expanded on in subsection (2)); and
- (c) the commitments of the party, or each of those parties, that are necessary to enable the party to support:
  - (i) himself or herself; or
  - (ii) any other child or another person that the person has a duty to maintain; and
- (d) the direct and indirect costs incurred by the parent or other person with whom the child lives in providing care for the child (this is expanded on in subsection (3)); and
- (e) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

(2) In taking into account the income, earning capacity, property and financial resources of a party to the proceedings, the court must have regard to the capacity of the party to earn and derive income, including any assets of, under the control of or held for the benefit of the party that do not produce, but are capable of producing, income.

(3) In taking into account the direct and indirect costs incurred by

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the parent or other person with whom the child lives in providing care for the child, the court must have regard to the income and earning capacity forgone by the parent or other person in providing that care.

(4) In determining the financial contribution, or respective financial contributions, that should be made by a party, or by parties, to the proceedings, the court must disregard:

- (a) any entitlement of the child, or the person with whom the child lives, to an income tested pension, allowance or benefit; and
- (b) the income, earning capacity, property and financial resources of any person who does not have a duty to maintain the child, or has such a duty but is not a party to the proceedings, unless, in the special circumstances of the case, the court considers it appropriate to have regard to them.

(5) In determining the financial contribution, or respective financial contributions, that should be made by a party, or by parties, to the proceedings, the court must consider the capacity of the party, or each of those parties, to provide maintenance by way of periodic payments before considering the capacity of the party, or each of those parties, to provide maintenance:

- (a) by way of lump sum payment; or
- (b) by way of transfer or settlement of property; or
- (c) in any other way.

(6) Subsections (2) to (5) do not limit, by implication, the matters to which the court may have regard in taking into account the matters referred to in subsection (1).

#### **66L Children who are 18 or over**

(1) A court must not make a child maintenance order in relation to a child who is 18 or over unless the court is satisfied that the provision of the maintenance is necessary:

- (a) to enable the child to complete his or her education; or
- (b) because of a mental or physical disability of the child.

The court may make such a child maintenance order, in relation to a child who is 17, to take effect when or after the child turns 18.

(2) A court must not make a child maintenance order in relation to a

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child that extends beyond the day on which the child will turn 18 unless the court is satisfied that the provision of the maintenance beyond that day is necessary:

- (a)to enable the child to complete his or her education; or
- (b)because of a mental or physical disability of the child.

(3)A child maintenance order in relation to a child stops being in force when the child turns 18 unless the order is expressed to continue in force after then.

**66M When step-parents have a duty to maintain**

(1)As stated in section 66D, a step-parent of a child has a duty of maintaining a child if, and only if, there is an order in force under this section.

(2)A court having jurisdiction under this Part may, by order, determine that it is proper for a step-parent to have a duty of maintaining a step-child.

(3)In making an order under subsection (2), the court must have regard to these (and no other) matters:

- (a)the matters referred to in sections 60F, 66B and 66C; and
- (b)the length and circumstances of the marriage to, or relationship with, the relevant parent of the child; and
- (c)the relationship that has existed between the step-parent and the child; and
- (d)the arrangements that have existed for the maintenance of the child; and
- (e)any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

**66N Determining financial contribution of step-parent**

In determining the financial contribution towards the financial support necessary for the maintenance of the child that should be made by a party to the proceedings who is a step-parent of the child, the court must take into account:

- (a)the matters referred to in sections 60F, 66B, 66C, 66D and 66K; and
- (b)the extent to which the primary duty of the parents to

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maintain the child is being, and can be fulfilled.

## **Subdivision E—Other aspects of courts' powers**

### **66P General powers of court**

(1)In proceedings for a child maintenance order, a court may do all or any of the following:

- (a)order payment of a lump sum, whether in one amount or by instalments;
- (b)order payment of a weekly, monthly, yearly or other periodic amount;
- (c)order that a specified transfer or settlement of property be made by way of maintenance for a child;
- (d)order that payment of an amount ordered to be paid be wholly or partly secured as the court specifies;
- (e)order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
- (f)order that payment be made to a specified person or public authority or into court;
- (g)make a permanent order, an order pending the disposal of proceedings, an order for a fixed period, an order until a child attains a specified age or an order until further order;
- (h)make an order imposing terms and conditions;
- (i)make an order by consent;
- (j)make any other order (whether or not of the same nature as those referred to in paragraphs (a) to (i)) that it considers appropriate;
- (k)make an order under this Division at any time.

(2)The making of an order of a kind referred to in paragraph (1)(c), or of any other order under this Division, in relation to the maintenance of a child does not prevent a court from making a subsequent order in relation to the maintenance of the child.

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(3)The applicable Rules of Court may make provision with respect to the making of orders under this Division (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.

**66Q Urgent child maintenance orders**

If, in proceedings for a child maintenance order in relation to a child:

(a)the court considers that the child is in immediate need of financial assistance; but

(b)it is not practicable in the circumstances to determine immediately what order (if any) should be made;

the court may order the payment, pending the disposal of the proceedings, of such periodic or other amount as the court considers appropriate.

**66R Specification in orders of payments etc. for child maintenance purposes**

(1) If:

(a)a court makes an order under this Act (whether or not the order is made in proceedings in relation to the maintenance of a child, is made by consent or varies an earlier order) that has the effect of requiring:

(i) payment of a lump sum, whether in one amount or by instalments; or

(ii) the transfer or settlement of property; and

(b)the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a child or children;

the court must:

(c)express the order to be an order to which this section applies; and

(d) specify:

(i) the child or children for whose maintenance provision is made by the payment, transfer or settlement; and

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- (ii) the portion of the payment, or the value of the portion of the property, attributable to the provision of maintenance for the child or each child, as the case may be.
- (2) If:
- (a) a court makes an order of a kind referred to in paragraph (1)(a); and
- (b) the order:
- (i) is not expressed to be an order to which this section applies; or
- (ii) is expressed to be an order to which this section applies, but does not comply with paragraph (1)(d);
- any payment, transfer or settlement of a kind referred to in paragraph (1)(a), that the order has the effect of requiring, is to be taken not to make provision for the maintenance of a child.

## 66S Modification of child maintenance orders

- (1) This section applies if:
- (a) there is in force an order (the *first order*), for the maintenance of a child (whether or not made under this Act and whether made before or after the commencement of this section):
- (i) made by a court; or
- (ii) registered in a court; and
- (b) a person (being someone who could apply for a child maintenance order in relation to the child) or persons (each of whom could do that) apply to the court for an order under this section in relation to the first order.
- (1A) With the consent of all the parties to the first order, the court may, subject to section 111AA, make an order:
- (a) discharging the first order; or
- (b) suspending its operation wholly or in part and either until further order or until a fixed time or the happening of a future event; or
- (c) if the operation of the order has been suspended under paragraph (b) or (2)(b)—reviving its operation wholly or in part; or

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(d)varying the order:

- (i) so as to increase or decrease any amount ordered to be paid by the order; or
- (ii) in any other way.

(1B)However, the court must not make an order under subsection (1A) that allows any entitlement of a child or another person to an income tested pension, allowance or benefit, to affect the duty of that child's parents to maintain the child.

Note: For the duty of a parent to maintain a child, see section 66C.

(2)In any other case, the court may, by order:

- (a)discharge the first order if there is just cause for so doing; or
- (b)suspend its operation wholly or in part and either until further order or until a fixed time or the happening of a future event; or
- (c)if the operation of the order has been suspended under paragraph (b) or (1A)(b), revive its operation wholly or in part; or
- (d)subject to subsection (3), vary the order:
  - (i) so as to increase or decrease any amount ordered to be paid by the order; or
  - (ii) in any other way.

(3)The court must not vary the order so as to increase or decrease any amount ordered to be paid by the order unless it is satisfied:

- (a)that, since the order was made or last varied:
  - (i) the circumstances of the child have changed so as to justify the variation; or
  - (ii) the circumstances of the person liable to make payments under the order have changed so as to justify the variation; or
  - (iii) the circumstances of the person entitled to receive payments under the order have changed so as to justify the variation; or
  - (iv) in the case of an order that operates in favour of, or is binding on, a legal personal representative—the circumstances of the estate are such as to justify the variation; or

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(b)that, since the order was made or last varied, the cost of living has changed to such an extent as to justify its so doing (this is expanded on in subsections (4) and (5)); or  
(c)if the order was made by consent—that the amount ordered to be paid is not proper or adequate (this is expanded on in subsection (6)); or  
(d)that material facts were withheld from the court that made the order or from a court that varied the order, or material evidence previously given before such a court was false.

(4)In satisfying itself for the purposes of paragraph (3)(b), the court must have regard to any changes that have occurred in the Consumer Price Index published by the Australian Statistician.

(5)The court must not, in considering the variation of an order, have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or last varied having regard to a change in the cost of living.

(6)In satisfying itself for the purposes of paragraph (3)(c), the court must have regard to any payments, and any transfer or settlement of property, previously made to the child, or to any other person for the benefit of the child, by the person against whom the order was made.

(7)An order decreasing a periodic amount payable under the order, or discharging the order, may be expressed to be retrospective to such day as the court considers appropriate.

(8)If an order (the **subsequent order**) decreasing a periodic amount payable under the first order is expressed to be retrospective, amounts paid under the first order that are not payable under the first order as varied by the subsequent order may be recovered in a court having jurisdiction under this Part.

(9)If an order discharging the first order is expressed to be retrospective to a specified day, amounts paid under the first order since the specified day may be recovered in a court having jurisdiction under this Part.

(10)For the purposes of this section, the court must have regard to the provisions of Subdivisions B, C and D (to the extent applicable).

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(11)The discharge of the first order does not affect the recovery of arrears due under the order when the discharge takes effect.

**Subdivision EA—Varying the maintenance of certain children**

**66SA Varying the maintenance of certain children**

(1)This section applies to persons who:

- (a)are parties to an agreement (the *original agreement*) dealing with the maintenance of a child; or
- (b)are entitled to receive, or required to pay, maintenance in respect of a child under a court order;

and cannot properly make an application under the *Child Support (Assessment) Act 1989* for the other person to be assessed in respect of the costs of the child.

(2)The persons may, by registering a written agreement in a court having jurisdiction under this Part, vary or revoke the original agreement or order to the extent that it deals with maintenance of the child.

(3)However, the registered agreement is of no effect to the extent that it allows any entitlement of a child or another person to an income tested pension, allowance or benefit to affect the duty of that child's parents to maintain the child.

Note: For the duty of a parent to maintain a child, see section 66C.

(4)If the original agreement or order is varied under subsection (2), it:

- (a)continues to operate despite the death of a party to the agreement or of a person entitled to receive, or required to pay, maintenance under the order; and
- (b)operates in favour of, and is binding on, the legal representative of that party or person;

unless the agreement or order provides otherwise.

(5)However, despite anything in the agreement or order, it does not continue to operate, to the extent that it requires the periodic payment of maintenance, after the death of the person entitled to receive those payments.

(6)This section applies despite anything in Division 4.

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## **Subdivision F—When child maintenance orders stop being in force**

### **66T Effect of child turning 18**

As stated in subsection 66L(3), a child maintenance order in relation to a child stops being in force when the child turns 18, unless the order is expressed to continue in force after then.

### **66U Effect of death of child, person liable to pay or person entitled to receive**

(1)A child maintenance order in relation to a child stops being in force on the death of the child.

(2)A child maintenance order in relation to a child stops being in force on the death of the person liable to make payments under the order.

(3)Subsection (2) does not apply to an order made before the commencement of section 38 of the *Family Law Amendment Act 1983* if the order was expressed to continue in force throughout the life of the person for whose benefit the order was made or for a period that had not expired at the death of the person liable to make payments under the order and, in that case, the order is binding on the legal personal representative of the deceased person.

(4)A child maintenance order in relation to a child stops being in force on the death of the person entitled to receive payments under the order.

(5)Subsection (4) does not apply to an order if:

- (a)the order is expressed to continue in force after the death of the person first entitled to receive payments under the order; and
- (b)the order specifies the person who is to receive the payments after that death.

### **66V Effect of adoption, marriage or entering into a de facto relationship**

(1)A child maintenance order in relation to a child stops being in force if the child is adopted, marries or enters into a de facto

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relationship.

(2)If a child to whom a child maintenance order applies dies, is adopted, marries or enters into a de facto relationship, the person entitled to receive payments under the order must, without delay, inform the person liable to make payments under the order.

(3)Any amounts paid under a child maintenance order in relation to a period after the child dies, is adopted, marries or enters into a de facto relationship may be recovered in a court having jurisdiction under this Part.

(4)A court having jurisdiction under this Part may make a declaration to the effect that a child is in, or has entered into, a de facto relationship.

(5)A declaration under subsection (4) has effect for the purposes of this Act but does not have effect for any other purpose (including, for example, other laws of the Commonwealth or laws of the States and Territories).

**66VA Children who are 18 or over: change of circumstances**

(1)A child maintenance order made under section 66L:

- (a)to enable the child to complete his or her education; or
- (b)because of a mental or physical disability of the child;

stops being in force if the child ceases that education or ceases to have that disability.

(2)The person to whom the maintenance is payable must, as soon as practicable, inform the person required to pay it of that change in circumstances.

(3)Any amounts of maintenance paid under the child maintenance order after it stops being in force may be recovered in a court having jurisdiction under this Part.

**66W Recovery of arrears**

(1)Nothing in subsection 66L(3), or in this Subdivision (apart from subsection (2) of this section), affects the recovery of arrears due under a child maintenance order in relation to a child when the order ceases to be in force.

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- (2) If arrears are due under such an order when the order ceases to be in force, the court may, by order, retrospectively:
- (a) discharge the order if there is just cause for doing so; or
  - (b) vary the order so as to increase or decrease the arrears to be paid under the order if the court is satisfied that:
    - (i) the circumstances of the person liable to pay the arrears are such as to justify the variation; or
    - (ii) the circumstances of the person entitled to receive the arrears are such as to justify the variation; or
    - (iii) in the case of an order that operated in favour of, or that was binding on, a legal personal representative—the circumstances of the estate are such as to justify the variation.

## **Subdivision G—Recovery of amounts paid under maintenance orders**

### **66X Recovery of amounts paid, and property transferred or settled, under maintenance orders**

- (1) This section applies if:
- (a) a court has at any time purported to make an order (the *purported order*) of a kind referred to in paragraph 66P(1)(a), (b) or (c) requiring a person (the *maintenance provider*) to pay an amount, or to transfer or settle property, by way of maintenance for a child; and
  - (b) the maintenance provider has:
    - (i) paid another person an amount or amounts; or
    - (ii) transferred or settled property; in compliance, or partial compliance, with the purported order; and
  - (c) a court has determined that the maintenance provider is not a parent or step-parent of the child.
- (2) If the maintenance provider applies to a court having jurisdiction under this Part for an order under this subsection, the court must make such order as it considers just and equitable in the circumstances, for:
- (a) if the purported order was of a kind referred to in paragraph 66P(1)(a) or (b)—the repayment to the

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maintenance provider, by the person to whom the amount or amounts referred to in subparagraph (1)(b)(i) of this section were paid, of an amount up to, or equal to, that amount or the sum of those amounts; or

(b) if the purported order was of the kind referred to in paragraph 66P(1)(c)—the return to the maintenance provider of:

(i) the property referred to in subparagraph (1)(b)(ii) of this section; or

(ii) an amount up to, or equal to, the value of that property.

The court may only order the repayment of an amount that is less than the amount, or the sum of the amounts, referred to in subparagraph (1)(b)(i) of this section, or the return of an amount that is less than the value of the property referred to in subparagraph (1)(b)(ii) of this section, in exceptional circumstances.

(3) If the purported order was of the kind referred to in paragraph 66P(1)(c) and the court that made the order did so:

(a) in part by way of providing maintenance for the child; and

(b) in part for some other purpose;

the reference in paragraph (2)(b) to the property, or the value of the property, referred to in subparagraph (1)(b)(ii) is taken to be a reference to that property, or the value of that property, only to the extent to which that property was transferred or settled by way of providing maintenance for the child.

(4) Without limiting paragraph (2)(b), the orders that the court may make under that paragraph include the following:

(a) an order that a specified payment be made;

(b) an order that a specified transfer or settlement of property be made;

(c) an order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order.

(5) An amount paid to the Commonwealth under section 30 of the *Child Support (Registration and Collection) Act 1988* is to be taken, for the purposes of this section, to have been paid to the

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person to whom, apart from that section, the amount would have been payable.

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## **Division 8—Other matters relating to children**

### **Subdivision A—What this Division does**

#### **67A What this Division does**

This Division deals with:

- (a)the liability of a father to contribute towards child bearing expenses if he is not married to the child’s mother (Subdivision B); and
- (b)orders for the location and recovery of children (Subdivision C); and
- (c)the reporting of allegations of child abuse (Subdivision D); and
- (d)other orders about children (Subdivision E).

### **Subdivision B—Father’s liability to contribute towards child bearing expenses if not married to mother**

#### **67B Father liable to contribute towards maintenance and expenses of mother**

The father of a child who is not married to the child’s mother is, subject to this Division, liable to make a proper contribution towards:

- (a)the maintenance of the mother for the childbirth maintenance period in relation to the birth of the child; and
- (b)the mother’s reasonable medical expenses in relation to the pregnancy and birth; and
- (c)if the mother dies and the death is as a result of the pregnancy or birth, the reasonable expenses of the mother’s funeral; and
- (d)if the child is stillborn, or dies and the death is related to the birth, the reasonable expenses of the child’s funeral.

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## **67C Matters to be taken into account in proceedings under Subdivision**

(1)In proceedings under this Subdivision in relation to the birth of a child, the court must, in determining the contribution that should be made by the father of the child, take into account the following matters only:

- (a)the income, earning capacity, property and financial resources of the mother and the father of the child;
- (b)commitments of each of those persons that are necessary to enable the person to support:
  - (i) himself or herself; or
  - (ii) any other child or another person that the person has a duty to maintain;
- (c)any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

(2)In taking into account the income, earning capacity, property and financial resources of a person, the court must have regard to the capacity of the person to earn and derive income, including any assets of, under the control of or held for the benefit of the person that do not produce, but are capable of producing, income.

(3)In taking into account the income, earning capacity, property and financial resources of the mother, the court must disregard any entitlement of the mother to an income tested pension, allowance or benefit.

(4)Subsections (2) and (3) do not limit the matters to which the court may have regard in taking into account matters referred to in subsection (1).

## **67D Powers of court in proceedings under Subdivision**

(1)In proceedings under this Subdivision in relation to the birth of a child, the court may make such order as it thinks proper.

(2)In exercising its powers under this Subdivision, a court may do all or any of the following:

- (a)order payment of a lump sum, whether in one amount or by instalments;

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- (b)order payment of a weekly, monthly or other periodic amount;
  - (c)order that payment of an amount ordered to be paid be wholly or partly secured as the court specifies;
  - (d)order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
  - (e)order that payment be made to a specified person or public authority or into court;
  - (f)make a permanent order, an order pending the disposal of proceedings, an order for a fixed period or an order until further order;
  - (g)make an order imposing terms and conditions;
  - (h)make an order by consent;
  - (i)make any other order (whether or not of the same nature as those referred to in paragraphs (a) to (h)) that it considers appropriate;
  - (j)make an order under this Subdivision at any time (whether before or after the birth of the relevant child).
- (3)The applicable Rules of Court may make provision with respect to the making of orders under this Subdivision (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of amounts payable under them.

**67E Urgent orders**

If, in proceedings under this Subdivision in relation to the birth of a child:

- (a)the court is of the opinion that the applicant is in immediate need of financial assistance; but
- (b)it is not practicable in the circumstances to determine immediately what order (if any) should be made (whether because the applicant has not yet given birth to the child or otherwise);

the court may order the payment, pending the disposal of the proceedings, of such periodic or other amount as the court considers appropriate.

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## **67F Who may institute proceedings**

Proceedings under this Subdivision in relation to the birth of a child may be instituted by the mother or by the mother's legal personal representative.

## **67G Time limit for institution of proceedings**

(1) Proceedings under this Subdivision in relation to the birth of a child may be instituted:

- (a) at any time during the pregnancy of the mother; or
- (b) after the birth of the child, but not later than 12 months after the birth except by leave of the court.

(2) The court must not grant leave under paragraph (1)(b) unless it is satisfied that refusal to grant leave would cause hardship to the applicant, the child or another person.

## **Subdivision C—Location and recovery of children**

### **67J Meaning of *location order* and *Commonwealth information order***

(1) A *location order* is an order made by a court requiring:

- (a) a person to provide the Registry Manager of the court with information that the person has or obtains about the child's location; or
- (b) the Secretary of a Department, or an appropriate authority of a Commonwealth instrumentality, to provide the Registry Manager of the court with information about the child's location that is contained in or comes into the records of the Department or instrumentality.

(2) A *Commonwealth information order* is a location order described in paragraph (1)(b).

### **67K Who may apply for a location order**

(1) A location order in relation to a child may be applied for by:

- (a) a person with whom the child is to live under a parenting order; or
- (b) a person with whom the child is to spend time under a

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parenting order; or  
(c)a person with whom the child is to communicate under a parenting order; or  
(caa)a person who has parental responsibility for the child under a parenting order; or  
(ca)a grandparent of the child; or  
(d)any other person concerned with the care, welfare or development of the child.

(2)For the purposes of the Child Protection Convention, a person (including the Commonwealth central authority) may apply to a court for a location order.

(3)In subsection (2):

***Child Protection Convention*** has the same meaning as in section 111CA.

***Commonwealth central authority*** has the same meaning as in section 111CA.

**67L Child's best interests paramount consideration in making a location order**

In deciding whether to make a location order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

Note: Sections 60CB to 60CG deal with how a court determines a child's best interests.

**67M Provisions about location orders, other than Commonwealth information orders**

(1)This section applies to location orders other than Commonwealth information orders.

(2)Subject to section 67L, a court having jurisdiction under this Part or section 111CX, or exercising jurisdiction in proceedings arising under regulations made for the purposes of Part XIIIIAA, may make a location order if it is satisfied that the person to whom the order applies is likely to have information about the child's location.

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(3)If the person to whom a location order applies holds an office or position in, or in relation to, a Department or a Commonwealth instrumentality, the order does not apply to information that the person has or obtains because of holding that office or position.

(4)A location order stays in force for 12 months or such longer period as the court considers appropriate.

(5)While a location order is in force, the person to whom it applies must provide the information sought by the order as soon as practicable, or as soon as practicable after the person obtains it.

(6)The person to whom a location order applies must comply with the order in spite of anything in any other law.

## **67N Provisions about Commonwealth information orders**

(1)This section applies to Commonwealth information orders.

(2)Subject to section 67L, a court having jurisdiction under this Part or section 111CX, or exercising jurisdiction in proceedings arising under regulations made for the purposes of Part XIIIIA, may make a Commonwealth information order if it is satisfied that information about the child's location is likely to be contained in, or to come into, the records of the Department or Commonwealth instrumentality concerned.

(3)A court must not make a Commonwealth information order unless:

- (a)a copy of the application for the order has been served in accordance with the applicable Rules of Court on the person to whom the order will apply (being the Secretary of the Department concerned or an appropriate authority of the Commonwealth instrumentality concerned); and
- (b)if that Department or Commonwealth instrumentality is prescribed for the purposes of this paragraph—either:
  - (i) the period of 7 days after service of that copy of the application has expired; or
  - (ii) the court considers that there are special circumstances because of which the order should be made before the end of that period of 7 days.

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(4)If an application for a Commonwealth information order relates to more than one Department or Commonwealth instrumentality, the court must not make the order in relation to more than one of them unless the court considers it should do so because of exceptional circumstances.

(5)A court may state that a Commonwealth information order only applies to records of a particular kind if the court considers that:

- (a)the information sought by the order is only likely to be contained in records of that kind; and
- (b)to apply the order to all records of the Department or Commonwealth instrumentality concerned would place an unreasonable burden on its resources.

(6)A Commonwealth information order stays in force for 12 months.

(7)While a Commonwealth information order is in force, the person to whom the order applies must, subject to subsection (9), provide the information sought by the order as soon as practicable, or as soon as practicable after it comes into the records of the Department or Commonwealth instrumentality concerned.

(8)If the person (the *official*) to whom a Commonwealth information order applies provides another person (in accordance with the order) with information sought by the order, the official must, at the same time, provide the other person with any information about actual or threatened violence to the child concerned, to a parent of the child, or to another person with whom the child lives, that is in the records of the Department or Commonwealth instrumentality concerned.

(9)A Commonwealth information order does not require the records of the Department or Commonwealth instrumentality concerned to be searched for the information sought by the order more often than once every 3 months unless specifically so ordered by the court.

(10)The person to whom a Commonwealth information order applies must comply with the order in spite of anything in any other law.

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## **67P Information provided under location order not to be disclosed except to limited persons**

(1)Information provided to the Registry Manager of a court under a location order (including a Commonwealth information order) must not be disclosed by the Registry Manager, or by any other person who obtains the information (whether directly or indirectly and whether under this section or otherwise) because of the provision of the information to the Registry Manager, except to:

- (a)the Registry Manager of another court; or
- (b)an officer of the court, or of another court, for the purpose of that officer's responsibilities or duties; or
- (c)a process-server engaged by, or by an officer of, the court or another court; or
- (d)with the leave of the court that made the location order:
  - (i) the legal adviser of the applicant for the order; or
  - (ii) a process-server engaged by that legal adviser; or
- (e)if a recovery order that consists of or includes an authorisation or direction described in paragraph 67Q(b) or
- (f)is in force—a person to whom the authorisation or direction is addressed; or
- (g)with the leave of the court that made the location order:
  - (i) the Commonwealth central authority; or
  - (ii) a central authority or a competent authority of a Convention country.

**Penalty:** 120 penalty units.

**Note:** For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

(2)Nothing in paragraphs (1)(a) to (e) authorises the disclosure of information to the applicant for the location order.

(3)In paragraph (1)(f):

***central authority*** has the same meaning as in section 111CA.

***Commonwealth central authority*** has the same meaning as in section 111CA.

***competent authority*** has the same meaning as in section 111CA.

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***Convention country*** has the same meaning as in section 111CA.

**67Q Meaning of *recovery order***

A ***recovery order*** is an order made by a court doing all or any of the following:

- (a)requiring the return of a child to:
  - (i) a parent of the child; or
  - (ii) a person with whom the child is to live under a parenting order; or
  - (iii) a person with whom the child is to spend time under a parenting order; or
  - (iv) a person with whom the child is to communicate under a parenting order; or
  - (v) a person who has parental responsibility for the child;
- (b)authorising or directing a person or persons, with such assistance as he or she requires or they require, and if necessary by force, to stop and search any vehicle, vessel or aircraft, and to enter and search any premises or place, for the purpose of finding a child;
- (c)authorising or directing a person or persons, with such assistance as he or she requires or they require, and if necessary by force, to recover a child;
- (d)authorising or directing a person to whom a child is returned, or who recovers a child, to deliver the child to:
  - (i) a parent of the child; or
  - (ii) a person described in subparagraph (a)(ii), (iii), (iv) or (v); or
  - (iii) some other person on behalf of a person described in subparagraph (i) or (ii);
- (e)giving directions about the day-to-day care of a child until the child is returned or delivered to another person;
- (f)prohibiting a person from again removing or taking possession of a child;
- (g)authorising or directing a person to arrest, without warrant, a person who again removes or takes possession of a child.

Note 1: Section 122AA authorises the use of reasonable force in making an arrest, and Subdivision D of Division 6 deals with what is to happen to a person arrested without warrant under a recovery order.

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Note 2: If a recovery order authorises a person to recover a child, the person is authorised to recover the child on each occasion that it is necessary to do so while the order remains in force: see subsection 67W(3).

## **67R How recovery orders authorise or direct people**

- (1) An authorisation or direction described in paragraph 67Q(b), (c) or (d) may be addressed to:
  - (a) a named person; or
  - (b) every person from time to time holding or acting in a specified office of the Commonwealth or of a State or Territory.
- (2) Without limiting the generality of subsection (1), an authorisation or direction described in paragraph 67Q(b), (c) or (d) may be addressed to:
  - (a) a named person who holds an appointment as a child recovery officer under subsection (3); or
  - (b) every person from time to time holding or acting in an office of child recovery officer.
- (3) The Attorney-General may appoint persons to be child recovery officers for the purposes of this Subdivision.
- (4) An appointment under subsection (3) may be of:
  - (a) a named person only; or
  - (b) every person from time to time holding or acting in a specified office of the Commonwealth or of a State or Territory.

## **67S How recovery orders to stop and search etc. name or describe vehicles, places etc.**

An authorisation or direction described in paragraph 67Q(b) may be expressed to apply to:

- (a) a vehicle, vessel, aircraft, premises or place named or described either specifically or in general terms; or
- (b) any vehicle, vessel, aircraft, premises or place in which there is, at any time, reasonable cause to believe that the child concerned may be found.

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**67T Who may apply for a recovery order**

A recovery order in relation to a child may be applied for by:

- (a) a person with whom the child is to live under a parenting order; or
- (b) a person with whom the child is to spend time under a parenting order; or
- (c) a person with whom the child is to communicate under a parenting order; or
- (caa) a person who has parental responsibility for the child under a parenting order; or
- (ca) a grandparent of the child; or
- (d) any other person concerned with the care, welfare or development of the child.

**67U Court's power to make recovery order**

In proceedings for a recovery order, the court may, subject to section 67V, make such recovery order as it thinks proper.

**67V Child's best interests paramount consideration in making a recovery order**

In deciding whether to make a recovery order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

Note: Sections 60CB to 60CG deal with how a court determines a child's best interests.

**67W How long recovery order remains in force**

- (1) A recovery order remains in force for the period specified in the order or 12 months, whichever is the shorter period.
- (3) To avoid doubt, unless a recovery order specifically provides to the contrary, each term of the order continues to have effect until the end of the period for which it remains in force regardless of whether anything has previously been done in accordance with the order.

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## **67X Persons not to prevent or hinder taking of action under recovery order**

(1) This section applies to a recovery order that authorises or directs a person or persons to take action as described in paragraph 67Q(b), (c) or (d).

(2) A person must not prevent or hinder the taking of the action by the person or persons authorised or directed to take the action.

(3) If a court having jurisdiction under this Part is satisfied that a person has intentionally, and without reasonable excuse, contravened subsection (2), the court may:

- (a) order the person to pay a fine not exceeding 10 penalty units; or
- (b) order the person to enter into a recognizance (with or without surety or security) on conditions specified by the court; or
- (c) order the person to be imprisoned until he or she enters into a recognizance (with or without surety or security) on conditions specified by the court, or until the person has been imprisoned for 3 months, whichever happens first.

Note: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

(4) A court that makes an order under subsection (3) may make such other orders as it considers necessary to ensure the person does not again contravene subsection (2).

## **67Y Obligation to notify persons of child's return**

(1) This section applies if:

- (a) a recovery order that consists of or includes provisions described in paragraph 67Q(a), (b), (c) or (d) is in force in relation to a child; and
- (b) the child returns, or is returned, to the person who applied for the order.

(2) The person must, as soon as practicable after the child's return, give notice of the child's return to:

- (a) the Registry Manager of the court that issued the recovery order; and

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(b)if a location order in relation to the child is in force and was applied for by the person—the person to whom the location order applies.

**Subdivision D—Allegations of child abuse**

**67Z Where party to proceedings makes allegation of child abuse**

(1)This section applies if a party to proceedings under this Act alleges that a child to whom the proceedings relate has been abused or is at risk of being abused.

(2)The party must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.

(3)If a notice under subsection (2) is filed in a court, the Registry Manager must, as soon as practicable, notify a prescribed child welfare authority.

(4)In this section:

***prescribed form*** means the form prescribed by the applicable Rules of Court.

***Registry Manager*** means:

- (a)in relation to the Family Court—the Registry Manager of the Registry of the Court; and
- (b)in relation to the Family Court of Western Australia—the Principal Registrar, a Registrar or a Deputy Registrar, of the court; and
- (c)in relation to any other court—the principal officer of that court.

**67ZA Where member of the Court personnel, family counsellor, family dispute resolution practitioner or arbitrator suspects child abuse etc.**

(1)This section applies to a person in the course of performing duties or functions, or exercising powers, as:

- (a)the Registrar or a Deputy Registrar of a Registry of the

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Family Court of Australia; or

- (b)the Registrar or a Deputy Registrar of the Family Court of Western Australia; or
- (c)a Registrar of the Federal Magistrates Court; or
- (d)a family consultant; or
- (e)a family counsellor; or
- (f)a family dispute resolution practitioner; or
- (g)an arbitrator; or
- (h)a lawyer independently representing a child's interests.

(2)If the person has reasonable grounds for suspecting that a child has been abused, or is at risk of being abused, the person must, as soon as practicable, notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.

(3)If the person has reasonable grounds for suspecting that a child:

- (a)has been ill treated, or is at risk of being ill treated; or
- (b)has been exposed or subjected, or is at risk of being exposed or subjected, to behaviour which psychologically harms the child;

the person may notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.

(4)The person need not notify a prescribed child welfare authority of his or her suspicion that a child has been abused, or is at risk of being abused, if the person knows that the authority has previously been notified about the abuse or risk under subsection (2) or subsection 67Z(3), but the person may notify the authority of his or her suspicion.

(5)If notice under this section is given orally, written notice confirming the oral notice is to be given to the prescribed child welfare authority as soon as practicable after the oral notice.

(6)If the person notifies a prescribed child welfare authority under this section or subsection 67Z(3), the person may make such disclosures of other information as the person reasonably believes are necessary to enable the authority to properly manage the matter the subject of the notification.

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**67ZB No liability for notification under section 67Z or 67ZA**

- (1)A person:
- (a)must give notice under subsection 67Z(3) or 67ZA(2); or
  - (b)may give notice under subsection 67ZA(3) or (4); or
  - (c)may disclose other information under subsection 67ZA(6);
- in spite of any obligation of confidentiality imposed on the person by this Act, another Act, another law or anything else (including a contract or professional ethics).
- (2)A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of a notification under subsection 67Z(3) or 67ZA(2).
- (3)A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of a notification under subsection 67ZA(3) or (4), or a disclosure under subsection 67ZA(6), if the notification or disclosure is made in good faith.
- (4)Evidence of a notification under subsection 67Z(3) or subsection 67ZA(2), (3) or (4), or a disclosure under subsection 67ZA(6), is not admissible in any court except where that evidence is given by the person who made the notification or disclosure.
- (5)In this section:
- court* means a court (whether or not exercising jurisdiction under this Act) and includes a tribunal or other body concerned with professional ethics.

**Subdivision E—Other orders about children**

**67ZC Orders relating to welfare of children**

- (1)In addition to the jurisdiction that a court has under this Part in relation to children, the court also has jurisdiction to make orders relating to the welfare of children.

Note: Division 4 of Part XIIIIA (International protection of children) may affect the jurisdiction of a court to make an order relating to the welfare of a child.

- (2)In deciding whether to make an order under subsection (1) in

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relation to a child, a court must regard the best interests of the child as the paramount consideration.

Note: Sections 60CB to 60CG deal with how a court determines a child's best interests.

#### **67ZD Orders for delivery of passports**

If a court having jurisdiction under this Part considers that there is a possibility or threat that a child may be removed from Australia, it may order the passport of the child and of any other person concerned to be delivered up to the court upon such conditions as the court considers appropriate.

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## **Division 9—Injunctions**

### **68A What this Division does**

This Division deals with proceedings for injunctions in relation to children.

### **68B Injunctions**

(1) If proceedings are instituted in a court having jurisdiction under this Part for an injunction in relation to a child, the court may make such order or grant such injunction as it considers appropriate for the welfare of the child, including:

- (a) an injunction for the personal protection of the child; or
- (b) an injunction for the personal protection of:
  - (i) a parent of the child; or
  - (ii) a person with whom the child is to live under a parenting order; or
  - (iii) a person with whom the child is to spend time under a parenting order; or
  - (iv) a person with whom the child is to communicate under a parenting order; or
  - (v) a person who has parental responsibility for the child; or
- (c) an injunction restraining a person from entering or remaining in:
  - (i) a place of residence, employment or education of the child; or
  - (ii) a specified area that contains a place of a kind referred to in subparagraph (i); or
- (d) an injunction restraining a person from entering or remaining in:
  - (i) a place of residence, employment or education of a person referred to in paragraph (b); or
  - (ii) a specified area that contains a place of a kind referred to in subparagraph (i).

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(2)A court exercising jurisdiction under this Act (other than in proceedings to which subsection (1) applies) may grant an injunction in relation to a child, by interlocutory order or otherwise, in any case in which it appears to the court to be just or convenient to do so.

(3)An injunction under this section may be granted unconditionally or on such terms and conditions as the court considers appropriate.

## 68C Powers of arrest

(1) If:

(a)an injunction is in force under section 68B for the personal protection of a person (**the *protected person***); and

(b)a police officer believes, on reasonable grounds, that the person (**the *respondent***) against whom the injunction is directed has breached the injunction by:

(i) causing, or threatening to cause, bodily harm to the protected person; or

(ii) harassing, molesting or stalking that person;

the police officer may arrest the respondent without warrant.

Note: Section 122AA authorises the use of reasonable force in making an arrest.

(2)For the purposes of subsection (1), an injunction granted under section 68B is an injunction for the personal protection of a person if, and only if, it is expressed to be for the personal protection of the person.

(3)Subsections 114AA(3), (4), (5) and (7) apply in relation to a person arrested under this section as if:

(a)the person had been arrested under subsection 114AA(1) because he or she was believed to have breached an injunction granted under section 114; and

(b)the person on whose application the injunction was granted under section 68B were the person on whose application the injunction under section 114 had been granted.

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## **Division 10—Independent representation of child’s interests**

### **68L Court order for independent representation of child’s interests**

(1) This section applies to proceedings under this Act in which a child’s best interests are, or a child’s welfare is, the paramount, or a relevant, consideration.

(2) If it appears to the court that the child’s interests in the proceedings ought to be independently represented by a lawyer, the court:

- (a) may order that the child’s interests in the proceedings are to be independently represented by a lawyer; and
- (b) may make such other orders as it considers necessary to secure that independent representation of the child’s interests.

(3) However, if the proceedings arise under regulations made for the purposes of section 111B, the court:

- (a) may order that the child’s interests in the proceedings be independently represented by a lawyer only if the court considers there are exceptional circumstances that justify doing so; and
- (b) must specify those circumstances in making the order.

Note: Section 111B is about the Convention on the Civil Aspects of International Child Abduction.

(4) A court may make an order for the independent representation of the child’s interests in the proceedings by a lawyer:

- (a) on its own initiative; or
- (b) on the application of:
  - (i) the child; or
  - (ii) an organisation concerned with the welfare of children; or
  - (iii) any other person.

(5) Without limiting paragraph (2)(b), the court may make an order under that paragraph for the purpose of allowing the lawyer who is to represent the child’s interests to find out what the child’s views are on the matters to which the proceedings relate.

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Note: A person cannot require a child to express his or her views in relation to any matter, see section 60CE.

(6) Subsection (5) does not apply if complying with that subsection would be inappropriate because of:

- (a) the child's age or maturity; or
- (b) some other special circumstance.

## **68LA Role of independent children's lawyer**

### *When section applies*

(1) This section applies if an independent children's lawyer is appointed for a child in relation to proceedings under this Act.

### *General nature of role of independent children's lawyer*

(2) The independent children's lawyer must:

- (a) form an independent view, based on the evidence available to the independent children's lawyer, of what is in the best interests of the child; and
- (b) act in relation to the proceedings in what the independent children's lawyer believes to be the best interests of the child.

(3) The independent children's lawyer must, if satisfied that the adoption of a particular course of action is in the best interests of the child, make a submission to the court suggesting the adoption of that course of action.

(4) The independent children's lawyer:

- (a) is not the child's legal representative; and
- (b) is not obliged to act on the child's instructions in relation to the proceedings.

### *Specific duties of independent children's lawyer*

(5) The independent children's lawyer must:

- (a) act impartially in dealings with the parties to the proceedings; and
- (b) ensure that any views expressed by the child in relation to the matters to which the proceedings relate are fully put before the court; and
- (c) if a report or other document that relates to the child is to

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be used in the proceedings:

- (i) analyse the report or other document to identify those matters in the report or other document that the independent children's lawyer considers to be the most significant ones for determining what is in the best interests of the child; and
- (ii) ensure that those matters are properly drawn to the court's attention; and
- (d) endeavour to minimise the trauma to the child associated with the proceedings; and
- (e) facilitate an agreed resolution of matters at issue in the proceedings to the extent to which doing so is in the best interests of the child.

*Disclosure of information*

(6) Subject to subsection (7), the independent children's lawyer:

- (a) is not under an obligation to disclose to the court;
- (b) cannot be required to disclose to the court;

any information that the child communicates to the independent children's lawyer.

(7) The independent children's lawyer may disclose to the court any information that the child communicates to the independent children's lawyer if the independent children's lawyer considers the disclosure to be in the best interests of the child.

(8) Subsection (7) applies even if the disclosure is made against the wishes of the child.

**68M Order that child be made available for examination**

(1) This section applies if an independent children's lawyer is appointed to independently represent a child's interests in relation to proceedings under this Act.

(2) The court may, on application by the independent children's lawyer, order a person mentioned in subsection (3) to make the child available, as specified in the order, for an examination to be made for the purpose of preparing a report about the child for use by the independent children's lawyer in connection with the proceedings.

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- (3)The order may be directed to:
- (a)a parent of the child; or
  - (b)a person with whom the child is to live under a parenting order; or
  - (c)a person with whom the child is to spend time under a parenting order; or
  - (d)a person with whom the child is to communicate under a parenting order; or
  - (e)a person who has parental responsibility for the child.

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## **Division 11—Family violence**

### **68N Purposes of this Division**

The purposes of this Division are:

- (a)to resolve inconsistencies between:
  - (i) family violence orders; and
  - (ii) certain orders, injunctions and arrangements made under this Act that provide for a child to spend time with a person or require or authorise a person to spend time with a child; and
- (aa)to ensure that orders, injunctions and arrangements of the kind referred to in subparagraph (a)(ii) do not expose people to family violence; and
- (b)to achieve the objects and principles in section 60B.

Note: Other provisions dealing with family violence and family violence orders are section 4 (definitions), paragraphs 60B(1)(b) and 60CC(2) (i) and (j), sections 60CF and 60CG, subsection 60I(9), section 60K, subsection 61DA(2), paragraph 65F(2)(b) and section 65P.

### **68P Obligations of court making an order or granting an injunction under this Act that is inconsistent with an existing family violence order**

(1)This section applies if:

- (a) a court:
  - (i) makes a parenting order that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; or
  - (ii) makes a recovery order (as defined in section 67Q) or any other order under this Act that expressly or impliedly requires or authorises a person to spend time with a child; or
  - (iii) grants an injunction under section 68B or 114 that expressly or impliedly requires or authorises a person to spend time with a child; and
- (b)the order made or injunction granted is inconsistent with an existing family violence order.

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(2)The court must, to the extent to which the order or injunction provides for the child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with the child:

- (a)specify in the order or injunction that it is inconsistent with an existing family violence order; and
- (b)give a detailed explanation in the order or injunction of how the contact that it provides for is to take place; and
- (c)explain (or arrange for someone else to explain) the order or injunction to:
  - (i) the applicant and respondent in the proceedings for the order or injunction; and
  - (ii) the person against whom the family violence order is directed (if that person is not the applicant or respondent); and
  - (iii) the person protected by the family violence order (if that person is not the applicant or respondent); and
- (d)include (or arrange to be included) in the explanation, in language those persons are likely to readily understand:
  - (i) the purpose of the order or injunction; and
  - (ii) the obligations created by the order or injunction, including how the contact that it provides for is to take place; and
  - (iii) the consequences that may follow if a person fails to comply with the order or injunction; and
  - (iv) the court's reasons for making an order or granting an injunction that is inconsistent with a family violence order; and
  - (v) the circumstances in which a person may apply for variation or revocation of the order or injunction.

(3)As soon as practicable after making the order or granting the injunction (and no later than 14 days after making or granting it), the court must give a copy to:

- (a)the applicant and respondent in the proceedings for the order or injunction; and
  - (b)the person against whom the family violence order is directed (if that person is not the applicant or respondent); and
  - (c)the person protected by the family violence order (if that
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person is not the applicant or respondent); and

(d)the Registrar, Principal Officer or other appropriate officer of the court that last made or varied the family violence order; and

(e)the Commissioner or head (however described) of the police force of the State or Territory in which the person protected by the family violence order resides; and

(f)a child welfare officer in relation to the State or Territory in which the person protected by the family violence order resides.

(4)Failure to comply with this section does not affect the validity of the order or injunction.

**68Q Relationship of order or injunction made under this Act with existing inconsistent family violence order**

(1)To the extent to which:

- (a)an order or injunction mentioned in paragraph 68P(1)(a) is made or granted that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; and
- (b)the order or injunction is inconsistent with an existing family violence order;
- the family violence order is invalid.

(2)An application for a declaration that the order or injunction is inconsistent with the family violence order may be made, to a court that has jurisdiction under this Part, by:

- (a)the applicant or respondent in the proceedings for the order or injunction mentioned in paragraph 68P(1)(a); or
- (b)the person against whom the family violence order is directed (if that person is not the applicant or respondent); or
- (c)the person protected by the family violence order (if that person is not the applicant or respondent).

(3)The court must hear and determine the application and make such declarations as it considers appropriate.

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**68R Power of court making a family violence order to revive, vary, discharge or suspend an existing order, injunction or arrangement under this Act**

*Power*

(1) In proceedings to make or vary a family violence order, a court of a State or Territory that has jurisdiction in relation to this Part may revive, vary, discharge or suspend:

- (a) a parenting order, to the extent to which it provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with the child; or
- (b) a recovery order (as defined in section 67Q) or any other order under this Act, to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child; or
- (c) an injunction granted under section 68B or 114, to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child; or
- (d) to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child:
  - (i) an undertaking given to, and accepted by, a court exercising jurisdiction under this Act; or
  - (ii) a registered parenting plan within the meaning of subsection 63C(6); or
  - (iii) a recognisance entered into under an order under this Act.

(2) The court may do so:

- (a) on its own initiative; or
- (b) on application by any person.

*Limits on power*

(3) The court must not do so unless:

- (a) it also makes or varies a family violence order in the proceedings (whether or not by interim order); and
- (b) if the court proposes to revive, vary, discharge or suspend an order or injunction mentioned in paragraph (1)(a), (b) or (c)—the court has before it material that was not before the

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court that made that order or injunction.

- (4)The court must not exercise its power under subsection (1) to discharge an order, injunction or arrangement in proceedings to make an interim family violence order or an interim variation of a family violence order.

*Relevant considerations*

- (5)In exercising its power under subsection (1), the court must:
- (a)have regard to the purposes of this Division (stated in section 68N); and
  - (b)have regard to whether contact with both parents is in the best interests of the child concerned; and
  - (c)if varying, discharging or suspending an order or injunction mentioned in paragraph (1)(a), (b) or (c) that, when made or granted, was inconsistent with an existing family violence order—be satisfied that it is appropriate to do so because a person has been exposed, or is likely to be exposed, to family violence as a result of the operation of that order or injunction.

Note: Sections 60CB to 60CG deal with how a court determines a child's best interests.

*Registration of revival, variation, discharge or suspension of orders and other arrangements*

- (6)The regulations may require a copy of the court's decision to revive, vary, discharge or suspend an order, injunction or arrangement to be registered in accordance with the regulations. Failure to comply with the requirement does not affect the validity of the court's decision.

**68S Application of Act and Rules when exercising section 68R power**

- (1)The following provisions do not apply to a court exercising the power under section 68R:
- (a)section 65C (who may apply for a parenting order);
  - (b)subsection 65F(2) (parenting order not to be made unless parties attend family counselling);
  - (c)section 60CG (court to consider risk of family violence);
  - (d)section 69N (requirement to transfer certain proceedings);

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(e)any provisions (for example, section 60CA) that would otherwise make the best interests of the child the paramount consideration;

Note: Even though the best interests of the child are not paramount, they must still be taken into account under paragraph 68R(5)(b).

(f)any provisions of this Act or the applicable Rules of Court specified in the regulations.

(2)If a court is exercising the power under section 68R in proceedings to make an interim family violence order or an interim variation of a family violence order:

(a)the court has a discretion about whether to apply paragraph 60CC(3)(a) (about taking into account a child's views etc.); and

(b)any provisions of this Act or the applicable Rules of Court specified in the regulations do not apply.

(3)A court exercising the power under section 68R may, as it thinks appropriate, dispense with any otherwise applicable Rules of Court.

#### **68T Special provisions relating to proceedings to make an interim (or interim variation of) family violence order**

(1)If, in proceedings to make an interim family violence order or an interim variation of a family violence order, the court revives, varies or suspends an order, injunction or arrangement under section 68R, that revival, variation or suspension ceases to have effect at the earlier of:

(a)the time the interim order stops being in force; and

(b)the end of the period of 21 days starting when the interim order was made.

(2)No appeal lies in relation to the revival, variation or suspension.

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## **Division 12—Proceedings and jurisdiction**

### **Subdivision A—What this Division does**

#### **69A What this Division does**

This Division deals with:

- (a)the institution of proceedings and procedure (Subdivision B); and
- (b)jurisdiction of courts (Subdivision C); and
- (c)presumptions of parentage (Subdivision D); and
- (d)parentage evidence (Subdivision E); and
- (e)the places and people to which this Part extends and applies (Subdivision F).

### **Subdivision B—Institution of proceedings and procedure**

#### **69B Certain proceedings to be instituted only under this Part**

(1)Proceedings that may be instituted under this Part must not, after the commencement of this section, be instituted otherwise than under this Part.

(2)Subsection (1) does not apply in relation to the institution of proceedings under the *Child Support (Assessment) Act 1989* or the *Child Support (Registration and Collection) Act 1988*.

#### **69C Who may institute proceedings**

(1)Sections 65C, 66F, 67F, 67K and 67T and subsection 68T(4) are express provisions dealing with who may institute particular kinds of proceedings in relation to children.

(2)Any other kind of proceedings under this Act in relation to a child may, unless a contrary intention appears, be instituted by:

- (a)either or both of the child's parents; or
- (b) the child; or
- (c)a grandparent of the child; or
- (d)any other person concerned with the care, welfare or development of the child.

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#### **69D Institution of maintenance proceedings by authorised authority or person**

- (1)The regulations may make provision with respect to authorising:
- (a)a specified authority of the Commonwealth or of a State or Territory; or
  - (b)the person from time to time holding or acting in a specified office established under a law of the Commonwealth or of a State or Territory;
- to institute and conduct, on behalf of a child, in the authority's or person's discretion, proceedings with respect to the maintenance of the child.
- (2)Proceedings instituted on behalf of a child under regulations covered by subsection (1) are taken, for the purposes of section 69C and the provisions referred to in it, to have been instituted by the child.

#### **69E Child or parent to be present in Australia etc.**

- (1)Proceedings may be instituted under this Act in relation to a child only if:
- (a)the child is present in Australia on the relevant day (as defined in subsection (2)); or
  - (b)the child is an Australian citizen, or is ordinarily resident in Australia, on the relevant day; or
  - (c)a parent of the child is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, on the relevant day; or
  - (d)a party to the proceedings is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, on the relevant day; or
  - (e)it would be in accordance with a treaty or arrangement in force between Australia and an overseas jurisdiction, or the common law rules of private international law, for the court to exercise jurisdiction in the proceedings.

(2)In this section:

*relevant day*, in relation to proceedings, means:

- (a)if the application instituting the proceedings is filed in a court—the day on which the application is filed; or

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(b)in any other case—the day on which the application instituting the proceedings is made.

Note: Division 4 of Part XIIIAA (International protection of children) has effect despite this section.

**69F Applicant may be in contempt**

A court may proceed with the hearing of proceedings in relation to a child even though the person who instituted the proceedings has failed to comply with an order of the court or of another court having jurisdiction under this Act.

**Subdivision C—Jurisdiction of courts**

**69G Interpretation**

In this Subdivision:

***matters arising under this Part*** includes proceedings under Division 9 or section 68S.

**69H Jurisdiction of Family Court, State Family Courts, Northern Territory Supreme Court and Federal Magistrates Court**

(1)Jurisdiction is conferred on the Family Court in relation to matters arising under this Part.

(2)Each Family Court of a State is invested with federal jurisdiction in relation to matters arising under this Part.

(3)Subject to section 69K, jurisdiction is conferred on the Supreme Court of the Northern Territory in relation to matters arising under this Part.

(4)Jurisdiction is conferred on the Federal Magistrates Court in relation to matters arising under this Part (other than proceedings for leave under section 60G).

**69J Jurisdiction of courts of summary jurisdiction**

(1)Subject to subsection (5), each court of summary jurisdiction of each State is invested with federal jurisdiction in relation to matters arising under this Part (other than proceedings for leave under

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section 60G).

Note: Under section 39A of the *Judiciary Act 1903*, the jurisdiction conferred by this subsection on a State court of summary jurisdiction may only be exercised by certain judicial officers of the court.

(2) Subject to subsection (5) and section 69K, jurisdiction is conferred on each court of summary jurisdiction of each Territory in relation to matters arising under this Part (other than proceedings for leave under section 60G).

(3) The Governor-General may, by Proclamation, fix a day as the day on and after which proceedings in relation to matters arising under this Part may not be instituted in, or transferred to, a court of summary jurisdiction in a specified State or Territory.

(4) Without limiting the generality of subsection (3), a Proclamation under that subsection may be expressed to apply only in relation to one or more of the following:

- (a) proceedings of specified classes;
- (b) the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction in a specified part of a State or Territory;
- (c) the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction constituted in a specified way.

(5) A court of summary jurisdiction must not hear and determine proceedings under this Part otherwise than in accordance with any Proclamation in force under subsection (3).

(6) The Governor-General may, by Proclamation, declare that a Proclamation under subsection (3) is revoked on and from a specified day.

(7) If, under subsection (6), the Governor-General declares that a Proclamation under subsection (3) is revoked:

- (a) this Part (including subsection (3)) has effect as if the revoked Proclamation had not been made; but
  - (b) the effect of the revoked Proclamation on the jurisdiction of courts before the specified day is not affected.
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**69K Territory court does not have jurisdiction unless a party is ordinarily resident in the Territory**

A court of a Territory must not hear or determine proceedings under this Part unless at least one of the parties to the proceedings is ordinarily resident in the Territory when the proceedings are instituted or are transferred to the court.

**69L Jurisdiction in relation to transferred matters under other Commonwealth laws**

If proceedings in relation to a matter arising under a law of the Commonwealth are transferred under this Act to a court that has jurisdiction conferred on or invested in it by this Division, the jurisdiction so conferred on or invested in the court includes jurisdiction in relation to that matter.

**69M Jurisdiction is additional to other jurisdiction**

The jurisdiction conferred on or invested in a court by this Division is in addition to any jurisdiction conferred on or invested in the court apart from this Division.

**69N Transfer of proceedings from courts of summary jurisdiction in certain cases**

(1) This section applies if:

- (a) proceedings for a parenting order (other than a child maintenance order) are instituted in a court of summary jurisdiction (other than the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia); and
- (b) the respondent, in answer to the application by which the proceedings were instituted, seeks an order different from that sought in the application.

(2) The court must, before going on to hear and determine the proceedings, inform the parties that, unless each of them consents to the court hearing and determining the proceedings, the court is required to transfer the proceedings to:

- (a) the Family Court; or
- (b) a Family Court of a State; or

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- (c)the Supreme Court of the Northern Territory; or
  - (d)the Federal Magistrates Court.

(3)If the parties do not consent to the court hearing and determining the proceedings, the court must transfer the proceedings to:

- (a)the Family Court; or
- (b)a Family Court of a State; or
- (c)the Supreme Court of the Northern Territory; or
- (d)the Federal Magistrates Court.

(4)Before transferring the proceedings, the court may make such orders (including an order under subsection 62F(2)) as it considers necessary pending the disposal of the proceedings by the court to which they are transferred.

(5)If the parties consent to the court hearing and determining the proceedings:

- (a)a party is not entitled, without leave of the court, subsequently to object to the proceedings being heard and determined by the court; but
- (b)the court may, on its own initiative, transfer the proceedings to:
  - (i) the Family Court; or
  - (ii) a Family Court of a State; or
  - (iii) the Supreme Court of the Northern Territory; or
  - (iv) the Federal Magistrates Court.

(6)If the court subsequently gives leave to a party to object to the proceedings being heard and determined by the court, the court must transfer the proceedings to:

- (a)the Family Court; or
- (b)a Family Court of a State; or
- (c)the Supreme Court of the Northern Territory; or
- (d)the Federal Magistrates Court.

(7)A court to which proceedings are transferred must deal with the proceedings as if they had been instituted in the court.

(8)Failure by a court of summary jurisdiction to comply with this section in relation to proceedings does not invalidate any order

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made by the court in the proceedings.

(9) Subsection (8) does not affect the duty of a court of summary jurisdiction to comply with this section.

**Subdivision D—Presumptions of parentage**

**69P Presumptions of parentage arising from marriage**

(1) If a child is born to a woman while she is married, the child is presumed to be a child of the woman and her husband.

(2) If:

(a) at a particular time:

(i) a marriage to which a woman is a party is ended by death; or

(ii) a purported marriage to which a woman is a party is annulled; and

(b) a child is born to the woman within 44 weeks after that time;

the child is presumed to be a child of the woman and the husband or purported husband.

(3) If:

(a) the parties to a marriage separated at any time; and

(b) after the separation, they resumed cohabitation on one occasion; and

(c) within 3 months after the resumption of cohabitation, they separated again and lived separately and apart; and

(d) a child is born to the woman within 44 weeks after the end of the cohabitation, but after the divorce of the parties;

the child is presumed to be a child of the woman and the husband.

**69Q Presumption of paternity arising from cohabitation**

If:

(a) a child is born to a woman; and

(b) at any time during the period beginning not earlier than 44 weeks and ending not less than 20 weeks before the birth, the woman cohabited with a man to whom she was not married;

the child is presumed to be a child of the man.

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## **69R Presumption of parentage arising from registration of birth**

If a person's name is entered as a parent of a child in a register of births or parentage information kept under a law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction, the person is presumed to be a parent of the child.

## **69S Presumptions of parentage arising from findings of courts**

(1) If:

(a) during the lifetime of a particular person, a prescribed court (other than a court of a prescribed overseas jurisdiction) has:

- (i) found expressly that the person is a parent of a particular child; or
  - (ii) made a finding that it could not have made unless the person was a parent of a particular child; and
- (b) the finding has not been altered, set aside or reversed; the person is conclusively presumed to be a parent of the child.

(1A) If:

(a) during the lifetime of a particular person, a court of a reciprocating jurisdiction within the meaning of section 110 or a jurisdiction mentioned in Schedule 4 or 4A to the regulations has:

- (i) found expressly that the person is a parent of a particular child; or
  - (ii) made a finding that it could not have made unless the person was a parent of a particular child; and
- (b) the finding has not been altered, set aside or reversed; the person is presumed to be a parent of the child.

(2) If:

(a) after the death of a particular person, a prescribed court has:

- (i) found expressly that the person was a parent of a particular child; or
  - (ii) made a finding that it could not have made unless the person was a parent of a particular child; and
- (b) the finding has not been altered, set aside or reversed;

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the person is presumed to have been a parent of the child.

(3) In this section:

**prescribed court** means a federal court, a court of a State or Territory or a court of a prescribed overseas jurisdiction.

**69T Presumption of paternity arising from acknowledgments**

If:

(a) under the law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction, a man has executed an instrument acknowledging that he is the father of a specified child; and

(b) the instrument has not been annulled or otherwise set aside;

the man is presumed to be the father of the child.

**69U Rebuttal of presumptions etc.**

(1) A presumption arising under this Subdivision is rebuttable by proof on a balance of probabilities.

(2) Where:

(a) 2 or more presumptions arising under this Subdivision are relevant in any proceedings; and

(b) those presumptions, or some of those presumptions, conflict with each other and are not rebutted in the proceedings;

the presumption that appears to the court to be the more or most likely to be correct prevails.

(3) This section does not apply to a presumption arising under subsection 69S(1).

**Subdivision E—Parentage evidence**

**69V Evidence of parentage**

If the parentage of a child is a question in issue in proceedings under this Act, the court may make an order requiring any person to give such evidence as is material to the question.

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## **69VA Declarations of parentage**

As well as deciding, after receiving evidence, the issue of the parentage of a child for the purposes of proceedings, the court may also issue a declaration of parentage that is conclusive evidence of parentage for the purposes of all laws of the Commonwealth.

## **69W Orders for carrying out of parentage testing procedures**

(1)If the parentage of a child is a question in issue in proceedings under this Act, the court may make an order (a *parentage testing order*) requiring a parentage testing procedure to be carried out on a person mentioned in subsection (3) for the purpose of obtaining information to assist in determining the parentage of the child.

(2)A court may make a parentage testing order:

- (a)on its own initiative; or
- (b)on the application of:
  - (i) a party to the proceedings; or
  - (ii) an independent children's lawyer representing the child's interests under an order made under section 68L.

(3)A parentage testing order may be made in relation to:

- (a) the child; or
- (b)a person known to be the mother of the child; or
- (c)any other person, if the court is of the opinion that, if the parentage testing procedure were to be carried out in relation to the person, the information that could be obtained might assist in determining the parentage of the child.

(4)A parentage testing order may be made subject to terms and conditions.

(5)This section does not affect the generality of section 69V.

## **69X Orders associated with parentage testing orders**

(1)If a court makes a parentage testing order, it may also make orders under subsection (2) or (4).

(2)The court may make such orders as it considers necessary or desirable:

- (a)to enable the parentage testing procedure to be carried out;

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or

(b)to make the parentage testing procedure more effective or reliable.

(3)Some examples of the kinds of orders the court may make under subsection (2) are as follows:

- (a)an order requiring a person to submit to a medical procedure;
- (b)an order requiring a person to provide a bodily sample;
- (c)an order requiring a person to provide information relevant to the person's medical or family history.

(4)The court may make such orders as it considers just in relation to costs incurred in relation to:

- (a)the carrying out of the parentage testing procedure or other orders made by the court in relation to the parentage testing procedure; or
- (b)the preparation of reports relating to the information obtained as a result of carrying out the parentage testing procedure.

**69XA Matters related particularly to parentage testing for purposes of an international agreement or arrangement**

(1)The Secretary may commence or continue proceedings under section 69W if it is necessary or convenient to do so for the purposes of an international agreement or arrangement.

(2)Despite section 69X, a court must order that the costs of any parentage testing procedure ordered in proceedings mentioned in subsection (1) are payable by a party to those proceedings who:

- (a)contested the making of a maintenance assessment or court order for child support on the ground of not being the parent of the child; or
- (b)contested the enforcement of an overseas maintenance order, agreement or assessment on the ground of not being the parent of the child.

(3)If a parentage testing procedure that is ordered by a court in proceedings mentioned in subsection (1) establishes that a party contesting parentage in those proceedings was not a parent of the child, the court may order that the costs of the procedure are

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payable by the Secretary.

(4)A report in relation to information obtained as a result of a parentage testing procedure, received by the Secretary from an administrative or judicial authority in a reciprocating jurisdiction within the meaning of section 110 or a jurisdiction mentioned in Schedule 4 or 4A to the regulations, may be received in evidence in any proceedings under this Act.

#### **69Y Orders directed to persons 18 or over**

(1)If a person who is 18 or over contravenes a parentage testing order or an order under section 69X, the person is not liable to any penalty in relation to the contravention.

(2)The court may draw such inferences from the contravention as appear just in the circumstances.

#### **69Z Orders directed to children under 18**

(1)This section applies if a parentage testing order, or an order under section 69X, requires a medical procedure or other act to be carried out in relation to a child who is under 18.

(2)The procedure or act must not be carried out in relation to the child under the order without the consent of:

- (a)a parent of the child; or
- (b)a guardian of the child; or
- (c)a person who, under a parenting order, has responsibility for the child's long-term or day-to-day care, welfare and development.

(3)The court may draw such inferences from a failure or refusal to consent as mentioned in subsection (2) as appear just in the circumstances.

#### **69ZA No liability if parent etc. consents**

(1)A person who carries out, or who assists in the carrying out of, a medical procedure or other act in relation to a child under a parentage testing order is not liable to any civil or criminal action in relation to the proper carrying out of the procedure or act if it is carried out with the consent of:

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(a)a parent of the child; or  
(b)a guardian of the child; or  
(c)a person who, under a parenting order, has responsibility for the child's long-term or day-to-day care, welfare and development.

(2)Subsection (1) does not affect any liability of a person for an act done negligently, or negligently omitted to be done, in relation to the carrying out of the medical procedure or act.

**69ZB Regulations about carrying out, and reporting on, parentage testing procedures**

The regulations may make provision relating to:

- (a)the carrying out of parentage testing procedures under parentage testing orders; and
- (b)the preparation of reports relating to the information obtained as the result of carrying out such procedures.

**69ZC Reports of information obtained may be received in evidence**

(1)A report made in accordance with regulations covered by paragraph 69ZB(b) may be received in evidence in any proceedings under this Act.

(2)If, under subsection (1), a report is received in evidence in proceedings under this Act, the court may make an order requiring the person who made the report, or any person whose evidence may be relevant in relation to the report, to appear before the court and give evidence in relation to the report.

(3)A court may make an order under subsection (2):

- (a)on its own initiative; or
- (b)on the application of:
  - (i) a party to the proceedings; or
  - (ii) an independent children's lawyer representing the relevant child's interests under an order made under section 68L.

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## **69ZD Parentage testing for purposes of international maintenance agreements**

For the purpose of the carrying out of any of Australia's obligations under:

- (a)an arrangement with a reciprocating jurisdiction, or with a jurisdiction with restricted reciprocity, within the meaning of section 110; or
- (b)the Convention referred to in section 111; or
- (ba)the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations signed at The Hague on 2 October 1973; or
- (bb)the Agreement between the Government of Australia and the Government of New Zealand on Child and Spousal Maintenance signed at Canberra on 12 April 2000; or
- (bc)the Agreement between the Government of the United States of America and the Government of Australia for the Enforcement of Maintenance (Support) Obligations, which was concluded and entered into force on 12 December 2002;

the regulations may make provision:

- (c)conferring jurisdiction on a court to make an order requiring a parentage testing procedure to be carried out at the request of:
  - (i) a court or authority in a foreign country; or
  - (ii) the Secretary to the Department, or a person authorised by the Secretary; or
- (d)for the carrying out of a parentage testing procedure, and the preparation of a report in relation to the information obtained as a result of the carrying out of the procedure; or
- (e)for the admissibility in legal proceedings of a report, in relation to the information obtained as a result of the carrying out of a parentage testing procedure, received from an authority in a foreign country;

whether or not there is any express provision in the relevant arrangement or in the Convention authorising the carrying out of a parentage testing procedure.

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**Subdivision F—Extension, application and additional operation of Part**

**69ZE Extension of Part to the States**

(1) Subject to this section and section 69ZF, this Part extends to New South Wales, Victoria, Queensland, South Australia and Tasmania.

(2) Subject to this section and section 69ZF, this Part extends to Western Australia if:

(a) the Parliament of Western Australia refers to the Parliament of the Commonwealth the following matters or matters that include, or are included in, the following matters:

(i) the maintenance of children and the payment of expenses in relation to children or child bearing;

(ii) parental responsibility for children; or

(b) Western Australia adopts this Part.

(3) This Part extends to a State under subsection (1) or (2) only for so long as there is in force:

(a) an Act of the Parliament of the State by which there is referred to the Parliament of the Commonwealth:

(i) the matters referred to in subparagraphs (2)(a)(i) and (ii); or

(ii) matters that include, or are included in, those matters; or

(b) a law of the State adopting this Part.

(4) This Part extends to a State at any time under subsection (1) or paragraph (2)(a) only in so far as it makes provision with respect to:

(a) the matters that are at that time referred to the Parliament of the Commonwealth by the Parliament of the State; or

(b) matters incidental to the execution of any power vested by the Constitution in the Parliament of the Commonwealth in relation to those matters.

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### **69ZF Unless declaration in force, Part's extension to a State has effect subject to modifications**

(1)The Governor-General may, by Proclamation, declare that all the child welfare law provisions of this Part extend to a specified State.

(2)Despite anything in section 69ZE, if no declaration under subsection (1) is in force in relation to a particular State, this Part, as it extends to that State because of section 69ZE, has effect as if:

- (a)subsection 66F(2) were omitted; and
- (b)subsections 69ZE(1) and (2) were amended by omitting “and section 69ZF”; and
- (c)section 69ZF were omitted; and
- (d)paragraph 69ZK(1)(b) were omitted; and
- (e)subsection 69ZK(2) were amended by adding at the end the following word and paragraphs:
  - “; or (d) the jurisdiction of a court under a child welfare law to make an order in relation to the maintenance of the child; or
  - (e) an order of the kind referred to in paragraph (d).”.

(3)A Proclamation that was in force in relation to a State under subsection 60E(6) of this Act as in force before the commencement of this section has effect, after that commencement, as if it were a Proclamation under subsection (1) of this section.

Note: This section preserves the effect of subsections 60E(6) and (7) of this Act as in force before the commencement of this section. Under those subsections, the amendments of this Act made by the *Law and Justice Legislation Amendment Act 1992* did not extend to a State unless a Proclamation was in force in relation to the State.

### **69ZG Application of Part in, and in relation to, Territories**

This Part applies in and in relation to the Territories.

### **69ZH Additional application of Part**

(1)Without prejudice to its effect apart from this section, this Part also has effect as provided by this section.

(2)By virtue of this subsection, Subdivision BA of Division 1,

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Divisions 2 to 7 (inclusive) (other than Subdivisions C, D and E of Division 6 and sections 66D, 66M and 66N), Subdivisions C and E of Division 8, Divisions 9, 10 and 11 and Subdivisions B and C of Division 12 (other than section 69D) have the effect, subject to subsection (3), that they would have if:

- (a)each reference to a child were, by express provision, confined to a child of a marriage; and
- (b)each reference to the parents of the child were, by express provision, confined to the parties to the marriage.

(3)The provisions mentioned in subsection (2) only have effect as mentioned in that subsection so far as they make provision with respect to the parental responsibility of the parties to a marriage for a child of the marriage, including (but not being limited to):

- (a)the duties, powers, responsibilities and authority of those parties in relation to:
  - (i) the maintenance of the child and the payment of expenses in relation to the child; or
  - (ii) whom the child lives with, whom the child spends time with and other aspects of the care, welfare and development of the child; and
- (b)other aspects of duties, powers, responsibilities and authority in relation to the child:
  - (i) arising out of the marital relationship; or
  - (ii) in relation to concurrent, pending or completed divorce or validity of marriage proceedings between those parties; or
  - (iii) in relation to the divorce of the parties to that marriage, an annulment of that marriage or a legal separation of the parties to that marriage, that is effected in accordance with the law of an overseas jurisdiction and that is recognised as valid in Australia under section 104.

(4)By virtue of this subsection, Division 1, Subdivisions C, D and E of Division 6, section 69D, Subdivisions D and E of Division 12 and Divisions 13 and 14 and this Subdivision, have effect according to their tenor.

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## **69ZJ Additional jurisdiction of courts**

In addition to the jurisdiction that, apart from this section, is invested in or conferred on a court under this Part, the court is invested with jurisdiction or jurisdiction is conferred on the court, as the case requires, in matters between residents of different States, being matters with respect to:

- (a)the maintenance of children and the payment of expenses in relation to children or child bearing; or
- (b)parental responsibility in relation to children.

## **69ZK Child welfare laws not affected**

(1)A court having jurisdiction under this Act must not make an order under this Act (other than an order under Division 7) in relation to a child who is under the care (however described) of a person under a child welfare law unless:

- (a)the order is expressed to come into effect when the child ceases to be under that care; or
- (b)the order is made in proceedings relating to the child in respect of the institution or continuation of which the written consent of a child welfare officer of the relevant State or Territory has been obtained.

(2)Nothing in this Act, and no decree under this Act, affects:

- (a)the jurisdiction of a court, or the power of an authority, under a child welfare law to make an order, or to take any other action, by which a child is placed under the care (however described) of a person under a child welfare law; or
- (b)any such order made or action taken; or
- (c)the operation of a child welfare law in relation to a child.

(3)If it appears to a court having jurisdiction under this Act that another court or an authority proposes to make an order, or to take any other action, of the kind referred to in paragraph (2)(a) in relation to a child, the first-mentioned court may adjourn any proceedings before it that relate to the child.

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## **Division 12A—Principles for conducting child-related proceedings**

### **Subdivision A—Proceedings to which this Division applies**

#### **69ZM Proceedings to which this Division applies**

(1) This Division applies to proceedings that are wholly under this Part.

(2) This Division also applies to proceedings that are partly under this Part:

- (a) to the extent that they are proceedings under this Part; and
- (b) if the parties to the proceedings consent—to the extent that they are not proceedings under this Part.

(3) This Division also applies to other proceedings between the parties that involve the court exercising jurisdiction under this Act if:

- (a) the proceedings:
  - (i) arise from the breakdown of the parties' marital relationship; or
  - (ii) are a de facto financial cause; and
- (b) the parties to the proceedings consent.

(4) Proceedings to which this Division applies are *child-related proceedings*.

(5) Consent given for the purposes of paragraph (2)(b) or subsection (3) must be:

- (a) free from coercion; and
- (b) given in the form prescribed by the applicable Rules of Court.

(6) A party to proceedings may, with the leave of the court, revoke a consent given for the purposes of paragraph (2)(b) or subsection (3).

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## **Subdivision B—Principles for conducting child-related proceedings**

### **69ZN Principles for conducting child-related proceedings**

#### *Application of the principles*

(1)The court must give effect to the principles in this section:

- (a)in performing duties and exercising powers (whether under this Division or otherwise) in relation to child-related proceedings; and
- (b)in making other decisions about the conduct of child-related proceedings.

Failure to do so does not invalidate the proceedings or any order made in them.

(2)Regard is to be had to the principles in interpreting this Division.

#### *Principle 1*

(3)The first principle is that the court is to consider the needs of the child concerned and the impact that the conduct of the proceedings may have on the child in determining the conduct of the proceedings.

#### *Principle 2*

(4)The second principle is that the court is to actively direct, control and manage the conduct of the proceedings.

#### *Principle 3*

(5)The third principle is that the proceedings are to be conducted in a way that will safeguard:

- (a)the child concerned against family violence, child abuse and child neglect; and
- (b)the parties to the proceedings against family violence.

#### *Principle 4*

(6)The fourth principle is that the proceedings are, as far as possible, to be conducted in a way that will promote cooperative

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and child-focused parenting by the parties.

*Principle 5*

(7)The fifth principle is that the proceedings are to be conducted without undue delay and with as little formality, and legal technicality and form, as possible.

**69ZO This Division also applies to proceedings in Chambers**

A judge, Judicial Registrar, Registrar, Federal Magistrate or magistrate, who is hearing child-related proceedings in Chambers, has all of the duties and powers that a court has under this Division.

Note: An order made in Chambers has the same effect as an order made in open court.

**69ZP Powers under this Division may be exercised on court's own initiative**

The court may exercise a power under this Division:

- (a)on the court's own initiative; or
- (b)at the request of one or more of the parties to the proceedings.

**Subdivision C—Duties and powers related to giving effect to the principles**

**69ZQ General duties**

(1)In giving effect to the principles in section 69ZN, the court must:

- (a)decide which of the issues in the proceedings require full investigation and hearing and which may be disposed of summarily; and
- (b)decide the order in which the issues are to be decided; and
- (c)give directions or make orders about the timing of steps that are to be taken in the proceedings; and
- (d)in deciding whether a particular step is to be taken—consider whether the likely benefits of taking the step justify the costs of taking it; and

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- (e)make appropriate use of technology; and
  - (f)if the court considers it appropriate—encourage the parties to use family dispute resolution or family counselling; and
  - (g)deal with as many aspects of the matter as it can on a single occasion; and
  - (h)deal with the matter, where appropriate, without requiring the parties' physical attendance at court.

(2)Subsection (1) does not limit subsection 69ZN(1).

(3)A failure to comply with subsection (1) does not invalidate an order.

### **69ZR Power to make determinations, findings and orders at any stage of proceedings**

(1)If, at any time after the commencement of child-related proceedings and before making final orders, the court considers that it may assist in the determination of the dispute between the parties, the court may do any or all of the following:

- (a)make a finding of fact in relation to the proceedings;
- (b)determine a matter arising out of the proceedings;
- (c)make an order in relation to an issue arising out of the proceedings.

Note: For example, the court may choose to use this power if the court considers that making a finding of fact at a particular point in the proceedings will help to focus the proceedings.

(2)Subsection (1) does not prevent the court doing something mentioned in paragraph (1)(a), (b) or (c) at the same time as making final orders.

(3)To avoid doubt, a judge, Judicial Registrar, Registrar, Federal Magistrate or magistrate who exercises a power under subsection (1) in relation to proceedings is not, merely because of having exercised the power, required to disqualify himself or herself from a further hearing of the proceedings.

### **69ZS Use of family consultants**

At any time during child-related proceedings, the court may designate a family consultant as the family consultant in relation to

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the proceedings.

Note 1: Family consultants have the functions described in section 11A. These include assisting and advising people involved in proceedings, and this assistance and advice may involve helping people to better understand the effect of things on the child concerned. Family consultants can also inform people about other services available to help them.

Note 2: The court may also order parties to proceedings to attend appointments with a family consultant. See section 11F.

**Subdivision D—Matters relating to evidence**

**69ZT Rules of evidence not to apply unless court decides**

(1)These provisions of the *Evidence Act 1995* do not apply to child-related proceedings:

(a)Divisions 3, 4 and 5 of Part 2.1 (which deal with general rules about giving evidence, examination in chief, re-examination and cross-examination), other than sections 26, 30, 36 and 41;

Note: Section 26 is about the court's control over questioning of witnesses. Section 30 is about interpreters. Section 36 relates to examination of a person without subpoena or other process. Section 41 is about improper questions.

(b)Parts 2.2 and 2.3 (which deal with documents and other evidence including demonstrations, experiments and inspections);

(c)Parts 3.2 to 3.8 (which deal with hearsay, opinion, admissions, evidence of judgments and convictions, tendency and coincidence, credibility and character).

(2)The court may give such weight (if any) as it thinks fit to evidence admitted as a consequence of a provision of the *Evidence Act 1995* not applying because of subsection (1).

(3)Despite subsection (1), the court may decide to apply one or more of the provisions of a Division or Part mentioned in that subsection to an issue in the proceedings, if:

(a)the court is satisfied that the circumstances are exceptional; and

(b)the court has taken into account (in addition to any other matters the court thinks relevant):

(i) the importance of the evidence in the proceedings; and

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- (ii) the nature of the subject matter of the proceedings; and
  - (iii) the probative value of the evidence; and
  - (iv) the powers of the court (if any) to adjourn the hearing, to make another order or to give a direction in relation to the evidence.

(4) If the court decides to apply a provision of a Division or Part mentioned in subsection (1) to an issue in the proceedings, the court may give such weight (if any) as it thinks fit to evidence admitted as a consequence of the provision applying.

(5) Subsection (1) does not revive the operation of:

- (a) a rule of common law; or
- (b) a law of a State or a Territory;

that, but for subsection (1), would have been prevented from operating because of a provision of a Division or Part mentioned in that subsection.

## **69ZU Evidence of family consultants**

The court must not, without the consent of the parties to the proceedings, take into account an opinion expressed by a family consultant, unless the consultant gave the opinion as sworn evidence.

## **69ZV Evidence of children**

(1) This section applies if the court applies the law against hearsay under subsection 69ZT(2) to child-related proceedings.

(2) Evidence of a representation made by a child about a matter that is relevant to the welfare of the child or another child, which would not otherwise be admissible as evidence because of the law against hearsay, is not inadmissible in the proceedings solely because of the law against hearsay.

(3) The court may give such weight (if any) as it thinks fit to evidence admitted under subsection (2).

(4) This section applies despite any other Act or rule of law.

(5) In this section:

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**child** means a person under 18.

**representation** includes an express or implied representation, whether oral or in writing, and a representation inferred from conduct.

**69ZW Evidence relating to child abuse or family violence**

(1)The court may make an order in child-related proceedings requiring a prescribed State or Territory agency to provide the court with the documents or information specified in the order.

(2)The documents or information specified in the order must be documents recording, or information about, one or more of these:

- (a)any notifications to the agency of suspected abuse of a child to whom the proceedings relate or of suspected family violence affecting the child;
- (b)any assessments by the agency of investigations into a notification of that kind or the findings or outcomes of those investigations;
- (c)any reports commissioned by the agency in the course of investigating a notification.

(3)Nothing in the order is to be taken to require the agency to provide the court with:

- (a)documents or information not in the possession or control of the agency; or
- (b)documents or information that include the identity of the person who made a notification.

(4)A law of a State or Territory has no effect to the extent that it would, apart from this subsection, hinder or prevent an agency complying with the order.

(5)The court must admit into evidence any documents or information, provided in response to the order, on which the court intends to rely.

(6)Despite subsection (5), the court must not disclose the identity of the person who made a notification, or information that could identify that person, unless:

- (a)the person consents to the disclosure; or
  - (b)the court is satisfied that the identity or information is
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critically important to the proceedings and that failure to make the disclosure would prejudice the proper administration of justice.

(7) Before making a disclosure for the reasons in paragraph (6)(b), the court must ensure that the agency that provided the identity or information:

- (a) is notified about the intended disclosure; and
- (b) is given an opportunity to respond.

## **69ZX Court's general duties and powers relating to evidence**

(1) In giving effect to the principles in section 69ZN, the court may:

- (a) give directions or make orders about the matters in relation to which the parties are to present evidence; and
- (b) give directions or make orders about who is to give evidence in relation to each remaining issue; and
- (c) give directions or make orders about how particular evidence is to be given; and
- (d) if the court considers that expert evidence is required—give directions or make orders about:
  - (i) the matters in relation to which an expert is to provide evidence; and
  - (ii) the number of experts who may provide evidence in relation to a matter; and
  - (iii) how an expert is to provide the expert's evidence; and
- (e) ask questions of, and seek evidence or the production of documents or other things from, parties, witnesses and experts on matters relevant to the proceedings.

(2) Without limiting subsection (1) or section 69ZR, the court may give directions or make orders:

- (a) about the use of written submissions; or
- (b) about the length of written submissions; or
- (c) limiting the time for oral argument; or
- (d) limiting the time for the giving of evidence; or
- (e) that particular evidence is to be given orally; or
- (f) that particular evidence is to be given by affidavit; or
- (g) that evidence in relation to a particular matter not be presented by a party; or

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- (h)that evidence of a particular kind not be presented by a party; or
- (i)limiting, or not allowing, cross-examination of a particular witness; or
- (j)limiting the number of witnesses who are to give evidence in the proceedings.

(3)The court may, in child-related proceedings:

- (a)receive into evidence the transcript of evidence in any other proceedings before:
  - (i) the court; or
  - (ii) another court; or
  - (iii) a tribunal;and draw any conclusions of fact from that transcript that it thinks proper; and
- (b)adopt any recommendation, finding, decision or judgment of any court, person or body of a kind mentioned in any of subparagraphs (a)(i) to (iii).

Note: This subsection may be particularly relevant for Aboriginal or Torres Strait Islander children.

(4)The court must not, in proceedings under this Part in which the court is required to regard the best interests of the child as the paramount consideration, direct under:

- (a)subsection 126B(1) of the *Evidence Act 1995*; or
- (b)a law of a State or Territory relating to professional confidential relationship privilege specified in the regulations;

that evidence not be adduced if the court considers that adducing the evidence would be in the best interests of the child.

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## **Division 13—State, Territory and overseas orders**

### **Subdivision A—What this Division does**

#### **70A What this Division does**

This Division provides for:

- (a)the registration of State and Territory orders dealing with children (Subdivision B); and
- (b)the registration of overseas orders dealing with children (Subdivision C); and
- (c)the transmission of Australian orders to overseas jurisdictions (Subdivision D).

### **Subdivision B—Registration of State and Territory orders**

#### **70C General registration of orders made under law of prescribed State**

The applicable Rules of Court may make provision for and in relation to the registration in a court having jurisdiction under this Part of State child orders made under a law of a prescribed State.

#### **70D Registration of orders in a particular State**

The applicable Rules of Court may make provision for and in relation to the registration in a State in a court having jurisdiction under this Act of State child orders made by a court in another State.

#### **70E Effect of registration**

A State child order registered in a court under section 70C or 70D has the same force and effect as if it were an order made by that court under this Part.

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**Subdivision C—Registration of overseas orders**

**70G Registration of orders**

The regulations may make provision for and in relation to the registration in courts in Australia of overseas child orders, other than excluded orders.

**70H Effect of registration—general**

An overseas child order registered in a court under section 70G has the same force and effect as if it were an order made by that court under this Part.

Note: Division 4 of Part XIIIAA (International protection of children) may affect the operation of a registered overseas child order.

**70J Effect of registration on exercise of jurisdiction**

(1)A court in Australia that is aware that an overseas child order is registered under section 70G must not exercise jurisdiction in proceedings for the making of a Subdivision C parenting order in relation to the child concerned unless:

- (a) each person:
  - (i) with whom the child is supposed to live; or
  - (ii) who is to spend time with the child; or
  - (iii) who is to have contact with the child; or
  - (iv) who has rights of custody or access in relation to the child;

under the overseas order consents to the exercise of jurisdiction by the court in the proceedings; or

(b)the court is satisfied that there are substantial grounds for believing that the child's welfare requires that the court exercise jurisdiction in the proceedings.

(2)If a court exercises jurisdiction in proceedings for a Subdivision C parenting order in relation to a child who is the subject of an overseas child order, the court must not make a Subdivision C parenting order in relation to the child unless it is satisfied:

- (a)that the welfare of the child is likely to be adversely affected if the order is not made; or
- (b)that there has been such a change in the circumstances of

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the child since the making of the overseas child order that the Subdivision C parenting order ought to be made.

#### **70K Cancellation of registration if Subdivision C parenting order made**

If a court:

- (a)is aware that an overseas child order is registered under section 70G; and
- (b)makes a Subdivision C parenting order in relation to the child concerned;

the court must cancel the registration of the overseas child order.

#### **70L Relationship between Australian orders and registered overseas child orders**

(1)In this section:

*Australian child order* means:

- (a)a Subdivision C parenting order; or
- (b)a State child order.

*responsible person*, in relation to an Australian child order or an overseas child order, means a person:

- (a)with whom the child is supposed to live under the order; or
- (aa)whom the child is supposed to spend time with under the order; or
- (ab)whom the child is supposed to have contact with under the order; or
- (b)who is responsible for the child's day-to-day care, welfare and development under the order; or
- (c)who has a right to custody of, or access to, the child under the order.

(2)This section applies if:

- (a)an Australian child order, whether made under this Part or another law, is in force under this Part in relation to a child; and
- (b)an overseas child order, other than an excluded order, that relates to the child but that has a different effect from the

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Australian order has been registered under section 70G (whether before or after the making of the Australian child order) and its registration has not been cancelled.

(3) A responsible person under the overseas child order may apply to a court having jurisdiction under this Part for the discharge of the Australian child order.

(4) A responsible person under the Australian child order may apply to a court having jurisdiction under this Part for the cancellation of the registration of the overseas child order.

(5) If an application is made under subsection (3) or (4), the court must:

- (a) if a condition specified in subsection (6) is satisfied—cancel the registration of the overseas child order; or
- (b) in any other case—discharge the Australian child order.

(6) For the purposes of paragraph (5)(a), the conditions are:

- (a) each responsible person under the overseas child order consents to the cancellation of the registration of the order; or
- (b) the court is satisfied that there are substantial grounds for believing that the child's welfare will be adversely affected if the overseas child order continues to operate in relation to the child; or
- (c) the court is satisfied that there has been a change in the circumstances of the child since the overseas child order was made that makes it inappropriate for the order to continue to operate in relation to the child.

**Subdivision D—Transmission of Australian orders to overseas jurisdictions**

**70M Registrar to send documents etc. to overseas jurisdiction**

(1) This section applies if:

- (a) a court in Australia makes, in relation to a child who is under 18:
  - (i) a parenting order, other than a child maintenance order; or
  - (ii) a State child order; and
- (b) the order is enforceable in a prescribed overseas

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jurisdiction under provisions corresponding to Subdivision C.

(1A) This section also applies if:

- (a) a court in Australia makes, in relation to a child who is under 18, an order under regulations made for the purposes of section 111B; and
- (b) the order is enforceable in a convention country (within the meaning of those regulations) under provisions corresponding to Subdivision C.

(2) A person referred to in subsection (3) may, in writing, request the Registry Manager of the court to send to an appropriate court or authority in the overseas jurisdiction or convention country the documents and information necessary for securing the enforcement of the order in the overseas jurisdiction or convention country.

(3) A request under subsection (2) may be made by:

- (a) a person with whom the child is supposed to live under the order; or
- (aa) a person with whom the child is supposed to spend time under the order; or
- (ab) a person with whom the child is supposed to have contact under the order; or
- (b) a person who has a right to custody of, or of access to, the child under the order.

(4) The Registry Manager of the court must comply with a request under subsection (2).

#### **70N Regulations may deal with sending Australian orders etc. to overseas jurisdiction**

(1) The regulations may make provision for and in relation to the sending to a prescribed overseas jurisdiction of copies of, and documents relating to:

- (a) a parenting order, other than a child maintenance order; or
- (b) a State child order;

that relates to a child to whom an overseas child order relates.

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(2)The regulations may make provision for and in relation to the sending to a convention country (within the meaning of the regulations made for the purposes of section 111B) of copies of, and documents relating to, an order under regulations made for the purposes of that section, that relates to a child to whom an overseas child order relates.

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## **Division 13A—Consequences of failure to comply with orders, and other obligations, that affect children**

### **Subdivision A—Preliminary**

#### **70NAA Simplified outline of Division**

- (1) This Division deals with the powers that a court with jurisdiction under this Act has to make orders to enforce compliance with orders under this Act affecting children.
- (2) The court always has the power to vary the order under Subdivision B. In doing so, the court will have regard to any parenting plan that has been entered into since the order was made (see section 70NBB).
- (3) The other orders that the court can make depend on whether:
  - (a) a contravention is alleged to have occurred but is not established (Subdivision C); or
  - (b) the court finds that a contravention has occurred but there is a reasonable excuse for the contravention (Subdivision D); or
  - (c) the court finds that there was a contravention and there is no reasonable excuse for the contravention (Subdivision E for less serious contraventions and Subdivision F for more serious contraventions).

#### **70NAB Application of Division**

Despite anything contained in any other provision of this Division, this Division does not apply in respect of a contravention, committed before this Division commences, of an order under this Act affecting children if a court made an order, in respect of that contravention before this Division commences, under this Act as previously in force.

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**70NAC Meaning of *contravened* an order**

A person is taken for the purposes of this Division to have ***contravened*** an order under this Act affecting children if, and only if:

- (a)where the person is bound by the order—he or she has:
  - (i) intentionally failed to comply with the order; or
  - (ii) made no reasonable attempt to comply with the order;  
or
- (b)otherwise—he or she has:
  - (i) intentionally prevented compliance with the order by a person who is bound by it; or
  - (ii) aided or abetted a contravention of the order by a person who is bound by it.

Note: Parenting orders may be subject to any subsequent parenting plan (see section 64D). This means that an action that would otherwise contravene a parenting order may not be a contravention, because of a subsequent inconsistent parenting plan. Whether this is the case or not depends on the terms of the parenting order.

**70NAD Requirements taken to be included in certain orders**

For the purposes of this Division:

- (a)a parenting order that deals with whom a child is to live with is taken to include a requirement that people act in accordance with section 65M in relation to the order; and
- (b)a parenting order that deals with whom a child is to spend time with is taken to include a requirement that people act in accordance with section 65N in relation to the order; and
- (c)a parenting order that deals with whom a child is to communicate with is taken to include a requirement that people act in accordance with section 65NA in relation to the order; and
- (d)a parenting order to which section 65P applies is taken to include a requirement that people act in accordance with that section in relation to the order.

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## **70NAE Meaning of *reasonable excuse for contravening* an order**

(1)The circumstances in which a person may be taken to have had, for the purposes of this Division, a ***reasonable excuse for contravening*** an order under this Act affecting children include, but are not limited to, the circumstances set out in subsections (2), (4), (5), (6) and (7).

(2)A person (the **respondent**) is taken to have had a ***reasonable excuse for contravening*** an order under this Act affecting children if:

- (a)the respondent contravened the order because, or substantially because, he or she did not, at the time of the contravention, understand the obligations imposed by the order on the person who was bound by it; and
- (b)the court is satisfied that the respondent ought to be excused in respect of the contravention.

(3)If a court decides that a person had a reasonable excuse for contravening an order under this Act for the reason referred to in paragraph (2)(a), it is the duty of the court to explain to the person, in language likely to be readily understood by the person, the obligations imposed on him or her by the order and the consequences that may follow if he or she again contravenes the order.

(4)A person (the **respondent**) is taken to have had a reasonable excuse for contravening a parenting order to the extent to which it deals with whom a child is to live with in a way that resulted in the child not living with a person in whose favour the order was made if:

- (a)the respondent believed on reasonable grounds that the actions constituting the contravention were necessary to protect the health or safety of a person (including the respondent or the child); and
- (b)the period during which, because of the contravention, the child did not live with the person in whose favour the order was made was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).

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(5)A person (the **respondent**) is taken to have had a reasonable excuse for contravening a parenting order to the extent to which it deals with whom a child is to spend time with in a way that resulted in a person and a child not spending time together as provided for in the order if:

- (a)the respondent believed on reasonable grounds that not allowing the child and the person to spend time together was necessary to protect the health or safety of a person (including the respondent or the child); and
- (b)the period during which, because of the contravention, the child and the person did not spend time together was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).

(6)A person (the **respondent**) is taken to have had a reasonable excuse for contravening a parenting order to the extent to which it deals with whom a child is to communicate with in a way that resulted in a person and a child not having the communication provided for under the order if:

- (a)the respondent believed on reasonable grounds that not allowing the child and the person to communicate together was necessary to protect the health or safety of a person (including the respondent or the child); and
- (b)the period during which, because of the contravention, the child and the person did not communicate was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).

(7)A person (the **respondent**) is taken to have had a reasonable excuse for contravening a parenting order to which section 65P applies by acting contrary to section 65P if:

- (a)the respondent believed on reasonable grounds that the action constituting the contravention was necessary to protect the health or safety of a person (including the respondent or the child); and
- (b)the period during which, because of that action, a person in whose favour the order was made was hindered in or prevented from discharging responsibilities under the order was not for longer than was necessary to protect the health or safety of the person referred to in paragraph (a).

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## **70NAF Standard of proof**

(1) Subject to subsection (3), the standard of proof to be applied in determining matters in proceedings under this Division is proof on the balance of probabilities.

(2) Without limiting subsection (1), that subsection applies to the determination of whether a person who contravened an order under this Act affecting children had a reasonable excuse for the contravention.

(3) The court may only make an order under:

- (a) paragraph 70NFB(2)(a), (d) or (e); or
- (b) paragraph 70NFF(3)(a);

if the court is satisfied beyond reasonable doubt that the grounds for making the order exist.

## **Subdivision B—Court’s power to vary parenting order**

### **70NBA Variation of parenting order**

(1) A court having jurisdiction under this Act may make an order varying a primary order if:

- (a) proceedings in relation to the primary order are brought before a court having jurisdiction under this Act; and
- (b) it is alleged in those proceedings that a person committed a contravention of the primary order and either:
  - (i) the court does not find that the person committed a contravention of the primary order; or
  - (ii) the court finds that the person committed a contravention of the primary order.

(2) If Subdivision F applies to the contravention, when making an order under subsection (1) varying a primary order, the court, in addition to regarding, under section 60CA, the best interests of the child as the paramount consideration, must, if any of the following considerations is relevant, take that consideration into account:

- (a) the person who contravened the primary order did so after having attended, after having refused or failed to attend, or after having been found to be unsuitable to take any further part in, a post-separation parenting program or a part of such a program;

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(b)there was no post-separation parenting program that the person who contravened the primary order could attend;  
(c)because of the behaviour of the person who contravened the primary order, it was not appropriate, in the court's opinion, for the person to attend a post-separation parenting program, or a part of such a program;  
(d)the primary order was a compensatory parenting order made under paragraph 70NEB(1)(b) or 70NFB(2)(c) after the person had contravened a previous order under this Act affecting children.

(3)This section does not limit the circumstances in which a court having jurisdiction under this Act may vary a primary order.

**70NBB Effect of parenting plan**

(1)This section applies if:

(a)a parenting order has been made in relation to a child (whether before or after the commencement of this section); and  
(b)after the parenting order was made, the parents of the child made a parenting plan that dealt with a matter (the **relevant matter**) that was dealt with in the parenting order.

(2) If:

(a)section 70NBA applies to proceedings brought in relation to the parenting order in relation to the relevant matter; and  
(b)the parenting plan was in force when the contravention of the parenting order:

- (i) is alleged to have been committed; or  
(ii) occurred;

the court must, in exercising its powers under section 70NBA:

(c)have regard to the terms of the parenting plan; and  
(d)consider whether to exercise its powers under section 70NBA to make an order varying the parenting order to include (with or without modification) some or all of the provisions of the parenting plan.

Note: An action that would otherwise contravene a parenting order may not be a contravention because of a subsequent inconsistent parenting plan. Whether this is the case or not depends on the terms of the parenting order (see section 64D).

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## **Subdivision C—Contravention alleged but not established**

### **70NCA Application of Subdivision**

This Subdivision applies if:

- (a) a primary order has been made, whether before or after the commencement of this Subdivision; and
- (b) proceedings in relation to the primary order are brought before a court having jurisdiction under this Act; and
- (c) it is alleged in those proceedings that a person (the *respondent*) committed a contravention of the primary order; and
- (d) the court does not find that the respondent committed a contravention of the primary order.

Note: The court may also vary the primary order under Subdivision B.

### **70NCB Costs**

(1) The court may make an order that the person who brought the proceedings (the *applicant*) pay some or all of the costs of another party, or other parties, to the proceedings.

(2) The court must consider making an order under subsection (1) if:

- (a) the applicant has previously brought proceedings in relation to the primary order or another primary order in which the applicant alleged that the respondent committed a contravention of the primary order or that other primary order; and
- (b) on the most recent occasion on which the applicant brought proceedings of the kind referred to in paragraph (a), the court before which the proceedings were brought:
  - (i) was not satisfied that the respondent had committed a contravention of the primary order or that other primary order; or
  - (ii) was satisfied that the respondent had committed a contravention of the primary order or that other primary order but did not make an order under section 70NBA, 70NDB, 70NDC, 70NEB or 70NFB in relation to the contravention.

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**Subdivision D—Contravention established but reasonable excuse for contravention**

**70NDA Application of Subdivision**

This Subdivision applies if:

- (a) a primary order has been made, whether before or after the commencement of this Subdivision; and
- (b) a court having jurisdiction under this Act is satisfied that a person (**the respondent**) has, whether before or after the commencement, committed a contravention (**the current contravention**) of the primary order; and
- (c) the respondent proves that he or she had a reasonable excuse for the current contravention.

Note: The court may also vary the primary order under Subdivision B.

**70NDB Order compensating person for time lost**

(1) If:

- (a) the primary order is a parenting order in relation to a child; and
- (b) the current contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period);

the court:

- (c) may make a further parenting order that compensates the person for time the person did not spend with the child (or the time the child did not live with the person) as a result of the current contravention; and
- (d) must consider making that kind of order.

Note: If the person does not have a reasonable excuse for a contravention, the court has the power to make an order compensating a person for time lost under paragraph 70NEB(1)(b) or 70NFB(2)(c).

(2) The court must not make an order under paragraph (1)(c) if it would not be in the best interests of the child for the court to do so.

**70NDC Costs**

(1) If the court does not make an order under section 70NDB in relation to the current contravention, the court may make an order

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that the person who brought the proceedings (the *applicant*) pay some or all of the costs of another party, or other parties, to the proceedings.

(2)The court must consider making an order under subsection (1) if:

- (a)the applicant has previously brought proceedings in relation to the primary order or another primary order in which the applicant alleged that the respondent committed a contravention of the primary order or that other primary order; and
- (b)on the most recent occasion on which the applicant brought proceedings of the kind referred to in paragraph (a), the court before which the proceedings were brought:
  - (i) was not satisfied that the respondent had committed a contravention of the primary order or that other primary order; or
  - (ii) was satisfied that the respondent had committed a contravention of the primary order or that other primary order but did not make an order under section 70NBA, 70NDB, 70NEB or 70NFB in relation to the contravention.

### **Subdivision E—Contravention without reasonable excuse (less serious contravention)**

#### **70NEA Application of Subdivision**

- (1)Subject to subsection (4), this Subdivision applies if:
- (a)a primary order has been made, whether before or after the commencement of this Division; and
  - (b)a court having jurisdiction under this Act is satisfied that a person has, whether before or after that commencement, committed a contravention (the *current contravention*) of the primary order; and
  - (c)the person does not prove that he or she had a reasonable excuse for the current contravention; and
  - (d)either subsection (2) or (3) applies;
- and, if the primary order is an order for the maintenance of a child, this Subdivision applies irrespective of the period since the current contravention occurred.
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(2)For the purposes of paragraph (1)(d), this subsection applies if no court has previously:

- (a)made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
- (b)under paragraph 70NEB(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order.

(3)For the purposes of paragraph (1)(d), this subsection applies if:

- (a)a court has previously:
  - (i) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
  - (ii) under paragraph 70NEB(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order; and
- (b)the court, in dealing with the current contravention, is satisfied that it is more appropriate for that contravention to be dealt with under this Subdivision.

(4)This Subdivision does not apply if, in circumstances mentioned in subsection (2), the court dealing with the current contravention is satisfied that the person who contravened the primary order has behaved in a way that showed a serious disregard for his or her obligations under the primary order.

**70NEB Powers of court**

(1)If this Subdivision applies, the court may do any or all of the following:

- (a)make an order directing:
  - (i) the person who committed the current contravention; or
  - (ii) that person and another specified person;
- (b)to attend a post-separation parenting program;
- (c)if the current contravention is a contravention of a parenting order in relation to a child—make a further parenting order that compensates a person for time the person did not spend with the child (or time the child did not live with the person) as a result of the current contravention;
- (d)adjourn the proceedings to allow either or both of the parties to the primary order to apply for a further parenting

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order under Division 6 of Part VII that discharges, varies or suspends the primary order or revives some or all of an earlier parenting order;

(d)make an order requiring the person who committed the current contravention to enter into a bond in accordance with section 70NEC;

(e) if:

- (i) the current contravention is a contravention of a parenting order in relation to a child; and
- (ii) the current contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period); and
- (iii) the person referred to in subparagraph (ii) reasonably incurs expenses as a result of the contravention;

make an order requiring the person who committed the current contravention to compensate the person referred to in subparagraph (ii) for some or all of the expenses referred to in subparagraph (iii);

(f)make an order that the person who committed the current contravention pay some or all of the costs of another party, or other parties, to the proceedings under this Division; and

(g)if the court makes no other orders in relation to the current contravention—order that the person who brought the proceedings in relation to the current contravention pay some or all of the costs of the person who committed the current contravention.

Note 1: The court may also vary the primary order under Subdivision B.

Note 2: Paragraph (1)(a)—before making an order under this paragraph, the court must consider seeking the advice of a family consultant about the services appropriate to the person's needs (see section 11E).

(2)The court must not make an order under paragraph (1)(a) directed to a person other than the person who committed the current contravention unless:

- (a)the person brought the proceedings before the court in relation to the current contravention or is otherwise a party to those proceedings; and
- (b)the court is satisfied that it is appropriate to direct the order to the person because of the connection between the current contravention and the carrying out by the person of his or her parental responsibilities in relation to the child or

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children to whom the primary order relates.

(3) If the court makes an order under paragraph (1)(a), the principal executive officer of the court must ensure that the provider of the program concerned is notified of the making of the order.

(4) If:

- (a) the current contravention is a contravention of a parenting order in relation to a child; and
- (b) the contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period);

the court must consider making an order under paragraph (1)(b) to compensate the person for the time the person did not spend with the child (or the time the child did not live with the person) as a result of the contravention.

(5) The court must not make an order under paragraph (1)(b) if it would not be in the best interests of the child for the court to do so.

(6) In deciding whether to adjourn the proceedings as mentioned in paragraph (1)(c), the court must have regard to the following:

- (a) whether the primary order was made by consent;
- (b) whether either or both of the parties to the proceedings in which the primary order was made were represented in those proceedings by a legal practitioner;
- (c) the length of the period between the making of the primary order and the occurrence of the current contravention;
- (d) any other matters that the court thinks relevant.

(7) The court must consider making an order under paragraph (1)(g) if:

- (a) the person (the **applicant**) who brought the proceedings in relation to the current contravention has previously brought proceedings in relation to the primary order or another primary order in which the applicant alleged that the person (the **respondent**) who committed the current contravention committed a contravention of the primary order or that other primary order; and
- (b) on the most recent occasion on which the applicant brought proceedings of the kind referred to in paragraph (a), the court before which the proceedings were brought:

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- (i) was not satisfied that the respondent had committed a contravention of the primary order or that other primary order; or
  - (ii) was satisfied that the respondent had committed a contravention of the primary order or that other primary order but did not make an order under section 70NDB, 70NDC, 70NEB, 70NFB or 70NBA in relation to the contravention.

### **70NEC Bonds**

(1) This section provides for bonds that a court may require a person to enter into under paragraph 70NEB(1)(d).

(2) A bond is to be for a specified period of up to 2 years.

(3) A bond may be:

- (a) with or without surety; and
- (b) with or without security.

(4) The conditions that may be imposed on a person by a bond include (without limitation) conditions that require the person:

- (a) to attend an appointment (or a series of appointments) with a family consultant; or
- (b) to attend family counselling; or
- (c) to attend family dispute resolution; or
- (d) to be of good behaviour.

(5) If a court proposes to require a person to enter into a bond, it must, before making the requirement, explain to the person, in language likely to be readily understood by the person:

- (a) the purpose and effect of the proposed requirement; and
- (b) the consequences that may follow if the person:
  - (i) fails to enter into the bond; or
  - (ii) having entered into the bond—fails to act in accordance with the bond.

### **70NED Duties of provider of post-separation parenting program**

The provider of a post-separation parenting program must inform the court if:

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- (a)the provider considers that a person ordered to attend the program under paragraph 70NEB(1)(a) is unsuitable to attend the program, or to continue attending the program; or
- (b)a person ordered to attend the program under paragraph 70NEB(1)(a) fails to attend the program, or a part of it.

**70NEF Evidence**

- (1)Evidence of anything said, or of any admission made, by a person attending a post-separation parenting program is not admissible:
  - (a)in any court (whether exercising federal jurisdiction or not); or
  - (b)in any proceedings before a person authorised by a law of the Commonwealth, of a State or of a Territory, or by the consent of the parties, to hear evidence.
- (2)Subsection (1) does not apply to the following:
  - (a)an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse;
  - (b)a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse;unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

**70NEG Court may make further orders in relation to attendance at program**

The court may make such orders as it considers appropriate, other than the orders referred to in subsection 70NFB(2), in respect of a person, if:

- (a)it appears to the court that the person has not attended a post-separation parenting program that the person was ordered to attend; or
- (b)the person was assessed as unsuitable to attend a program.

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## **Subdivision F—Contravention without reasonable excuse (more serious contravention)**

### **70NFA Application of Subdivision**

- (1) Subject to subsection (2), this Subdivision applies if:
  - (a) a primary order has been made, whether before or after the commencement of this Division; and
  - (b) a court having jurisdiction under this Act is satisfied that a person has, whether before or after that commencement, committed a contravention (the *current contravention*) of the primary order; and
  - (c) the person does not prove that he or she had a reasonable excuse for the current contravention; and
  - (d) either subsection (2) or (3) applies.

Note: For the standard of proof to be applied in determining whether a contravention of the primary order has been committed, see section 70NAF.

- (2) For the purposes of paragraph (1)(d), this subsection applies if:
  - (a) no court has previously:
    - (i) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
    - (ii) under paragraph 70NEB(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order; and
  - (b) the court dealing with the current contravention is satisfied that the person has behaved in a way that showed a serious disregard of his or her obligations under the primary order.
- (3) For the purposes of paragraph (1)(d), this subsection applies if a court has previously:
  - (a) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
  - (b) under paragraph 70NEB(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order.
- (4) This Subdivision does not apply if the court dealing with the current contravention is satisfied that it is more appropriate for that

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contravention to be dealt with under Subdivision E.

(5) This Subdivision applies whether the primary order was made, and whether the current contravention occurred, before or after the commencement of this Division.

**70NFB Powers of court**

(1) If this Subdivision applies, the court must, in relation to the person who committed the current contravention:

- (a) make an order under paragraph (2)(g), unless the court is satisfied that it would not be in the best interests of the child concerned to make that order; and
- (b) if the court makes an order under paragraph (2)(g)— consider making another order (or other orders) under subsection (2) that the court considers to be the most appropriate of the orders under subsection (2) in the circumstances; and
- (c) if the court does not make an order under paragraph (2)(g)— make at least one order under subsection (2), being the order (or orders) that the court considers to be the most appropriate of the orders under subsection (2) in the circumstances.

(2) The orders that are available to be made by the court are:

- (a) if the court is empowered under section 70NFC to make a community service order—to make such an order; or
- (b) to make an order requiring the person to enter into a bond in accordance with section 70NFE; or
- (c) if the current contravention is a contravention of a parenting order in relation to a child—to make a further parenting order that compensates a person for time the person did not spend with the child (or the time the child did not live with the person) as a result of the current contravention, unless it would not be in the best interests of the child concerned to make that order; or
- (d) to fine the person not more than 60 penalty units; or
- (e) subject to subsection (7), to impose a sentence of imprisonment on the person in accordance with section 70NFG; or

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- (f) if:
- (i) the current contravention is a contravention of a parenting order in relation to a child; and
  - (ii) the current contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period); and
  - (iii) the person referred to in subparagraph (ii) reasonably incurs expenses as a result of the contravention;
- to make an order requiring the person who committed the current contravention to compensate the person referred to in subparagraph (ii) for some or all of the expenses referred to in subparagraph (iii); or
- (g) to make an order that the person who committed the current contravention pay all of the costs of another party, or other parties, to the proceedings under this Division; or
  - (h) to make an order that the person who committed the current contravention pay some of the costs of another party, or other parties, to the proceedings under this Division.

Note: The court may also vary the primary order under Subdivision B.

(3) If a court varies or discharges under section 70NFD a community service order made under paragraph (2)(a), the court may give any directions as to the effect of the variation or discharge that the court considers appropriate.

(4) The court must not make an order imposing a sentence of imprisonment on a person under this section in respect of a contravention of a child maintenance order made under this Act unless the court is satisfied that the contravention was intentional or fraudulent.

(5) The court must not make an order imposing a sentence of imprisonment on a person under this section in respect of:

- (a) a contravention of an administrative assessment of child support made under the *Child Support (Assessment) Act 1989*; or
- (b) a breach of a child support agreement made under that Act; or

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(c)a contravention of an order made by a court under Division 4 of Part 7 of that Act for a departure from such an assessment (including such an order that contains matters mentioned in section 141 of that Act).

(6)An order under this section may be expressed to take effect immediately, at the end of a specified period or on the occurrence of a specified event.

(7)When a court makes an order under this section, the court may make any other orders that the court considers necessary to ensure compliance with the order that was contravened.

**70NFC When court is empowered to make a community service order**

(1)Subject to this section, if, under the law of a participating State or a participating Territory, a court is empowered (whether generally or in particular cases) to make a community service order in respect of a person convicted of an offence against the law of the State or Territory, a court exercising jurisdiction in the State or Territory may, under paragraph 70NFB(2)(a) make a community service order.

(2)A community service order made under paragraph 70NFB(2)

(a):

(a)is to be such that the total number of hours during which the order regulates the conduct of the person in respect of whom it is made does not exceed the maximum period in relation to the State or Territory in which the order is made; and

(b)ceases to have effect 2 years after it was made, or after such lesser period as is specified in the order.

(3)A community service order may be an order of any of the following kinds:

(a)an order known as:

- (i) a community service order; or
- (ii) a work order; or
- (iii) an attendance centre order; or
- (iv) an attendance order; or
- (v) a community based order;

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- (b)an order that is similar to an order referred to in paragraph (a);
  - (c)an order prescribed for the purposes of this paragraph.
- (4)If a court exercising jurisdiction under section 70NFB in a particular State or Territory makes a community service order under paragraph 70NFB(2)(a), the provisions of the laws of the State or Territory with respect to a community service order that is made under those laws are, to the extent provided by the regulations and subject to such modifications as are specified in the regulations, to apply in relation to the order.
- (5)If a court proposes to make a community service order under paragraph 70NFB(2)(a), it must, before doing so, explain to the person in respect of whom it is made, in language likely to be readily understood by the person:
- (a)the purpose and effect of the proposed order; and
  - (b)the consequences that may follow if the person fails to comply with the proposed order or with any requirements made in relation to the order by or under the applied provisions; and
  - (c)if the proposed order may be revoked or varied under the applied provisions—that the proposed order may be so revoked or varied.

(6)In this section:

***maximum period***, in relation to a State or Territory, means 500 hours or such lesser period as is prescribed in relation to the State or Territory.

***participating State*** means a State in relation to which an agreement under section 70NFI is in force.

***participating Territory*** means a Territory in relation to which an agreement under section 70NFI is in force.

#### **70NFD Variation and discharge of community service orders**

A community service order made under paragraph 70NFB(2)(a) may be varied or discharged:

- (a)if the court that made the order is the Family Court or the Federal Magistrates Court—by either of those Courts; or

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(b)otherwise—by the court that made the order or the Family Court.

**70NFE Bonds**

(1)This section provides for bonds that a court may require a person to enter into under paragraph 70NFB(2)(b).

(2)A bond is to be for a specified period of up to 2 years.

(3)A bond may be:

- (a)with or without surety; and
- (b)with or without security.

(4)The conditions that may be imposed on a person by a bond include (without limitation) conditions that require the person:

- (a)to attend an appointment (or a series of appointments) with a family consultant; or
- (b)to attend family counselling; or
- (c)to attend family dispute resolution; or
- (d)to be of good behaviour.

Note: Before imposing a condition under this subsection, the court must consider seeking the advice of a family consultant about the services appropriate to the person's needs (see section 11E).

(5)If a court proposes to require a person to enter into a bond, it must, before making the requirement, explain to the person, in language likely to be readily understood by the person:

- (a)the purpose and effect of the proposed requirement; and
- (b)the consequences that may follow if the person:
  - (i) fails to enter into the bond; or
  - (ii) having entered into the bond—fails to act in accordance with the bond.

**70NFF Procedure for enforcing community service orders or bonds**

(1)If a court makes a community service order under paragraph 70NFB(2)(a) in respect of a person, or an order under paragraph 70NFB(2)(b) requiring a person to enter into a bond in accordance with section 70NFE, the following provisions have effect.

(2)If the court (whether or not constituted by the judge or

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magistrate who made the community service order or required the bond to be entered into in accordance with section 70NFE) is satisfied that the person has, without reasonable excuse, failed to comply with the order or bond, the court may take action under subsection (3).

(3)The court may:

- (a)without prejudice to the continuance of the community service order or the bond entered into in accordance with section 70NFE, impose a fine not exceeding 10 penalty units on the person; or
- (b)revoke the community service order or the bond entered into in accordance with section 70NFE and, subject to subsection (4), deal with the person, for the contravention in respect of which the community service order was made or the bond was entered into, in any manner in which the person could have been dealt with for the contravention if:
  - (i) the community service order had not been made or the bond had not been entered into; and
  - (ii) the person was before the court under section 70NFB in respect of the contravention.

(4)In dealing with the person as mentioned in paragraph (3)(b), the court must, in addition to any other matters that it considers should be taken into account, take into account:

- (a)the fact that the community service order was made or the bond was entered into; and
- (b)anything done under the community service order or pursuant to the bond; and
- (c)any fine imposed, and any other order made, for or in respect of the contravention.

## **70NFG Sentences of imprisonment**

(1)A sentence of imprisonment imposed on a person under paragraph 70NFB(2)(e) is to be expressed to be:

- (a)for a specified period of 12 months or less; or
- (b)for a period ending when the person:
  - (i) complies with the order concerned; or
  - (ii) has been imprisoned under the sentence for 12 months or such lesser period as is specified by the court;

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whichever happens first.

(2)A court must not sentence a person to imprisonment under paragraph 70NFB(2)(e) unless the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention under any of the other paragraphs of subsection 70NFB(2).

(3)If a court sentences a person to imprisonment under paragraph 70NFB(2)(e), the court must:

- (a)state the reasons why it is satisfied as mentioned in subsection (2); and
- (b)cause those reasons to be entered in the records of the court.

(4)The failure of a court to comply with subsection (3) does not invalidate a sentence.

(5)A court that sentences a person to imprisonment under paragraph 70NFB(2)(e) may:

- (a)suspend the sentence upon the terms and conditions determined by the court; and
- (b)terminate a suspension made under paragraph (a).

(6)A court, when sentencing a person to imprisonment under paragraph 70NFB(2)(e), may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a bond described in subsection (7) after he or she has served a specified part of the term of imprisonment.

(7)A bond for the purposes of subsection (6) is a bond (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.

(8)A court that has sentenced a person to imprisonment for a period expressed as provided by paragraph (1)(b) may order the release of the person if it is satisfied that the person will, if he or she is released, comply with the order concerned.

(9)To avoid doubt, the serving by a person of a period of imprisonment under a sentence imposed on the person under paragraph 70NFB(2)(e) for failure to make a payment under a child maintenance order does not affect the person's liability to make the payment.

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## **70NFH Relationship between Subdivision and other laws**

- (1)This section applies where an act or omission by a person:
  - (a)constitutes a contravention of an order under this Act affecting children; and
  - (b)is also an offence against any law.
- (2)If the person is prosecuted in respect of the offence, a court in which proceedings have been brought under section 70NFB in respect of the contravention of the order must:
  - (a)adjourn those proceedings until the prosecution has been completed; or
  - (b)dismiss those proceedings.
- (3)The person may be prosecuted for, and convicted of, the offence.
- (4)Nothing in this section renders the person liable to be punished twice in respect of the same act or omission.

## **70NFI Arrangements with States and Territories for carrying out of sentences and orders**

An arrangement made under section 112AN for or in relation to the carrying out of sentences imposed, or orders made, under Division 2 of Part XIIIIA is taken to extend to the carrying out of sentences imposed, or orders made, under this Subdivision.

## **70NFJ Subdivision does not limit operation of section 105**

Nothing in this Subdivision is intended to limit the operation of section 105.

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## Division 14—Miscellaneous

### 70P What this Division does

This Division deals with miscellaneous matters relating to children.

### 70Q Certain instruments not liable to duty

(1)The following instruments are not subject to any duty or charge under any law of a State or Territory or any law of the Commonwealth that applies only in relation to a Territory:

- (a)an instrument executed under, or for the purposes of, an order made under this Part;
- (b)an eligible parenting plan that confers a benefit in relation to a child, to the extent to which it confers the benefit;
- (c)an instrument executed under, or for the purposes of, an eligible parenting plan and that confers a benefit in relation to a child, to the extent to which it confers the benefit.

(2)An *eligible parenting plan* is a parenting plan:

- (a)that is a registered parenting plan within the meaning of subsection 63C(6); and
- (b)that is not a maintenance agreement, or, if it is a maintenance agreement, it relates to a child who is not a child of the marriage to which the maintenance agreement relates; and
- (c)            that:
  - (i) is made by the parties to a de facto relationship in connection with the breakdown of that relationship; or
  - (ii) relates to a child whose parents (being parties to the plan) were neither married to each other, nor living with each other in a de facto relationship, at the time of the child's conception.

(3)In this section, a reference to an instrument that *confers a benefit in relation to a child* includes a reference to an instrument that confers an entitlement to property in relation to a child even though the instrument also deprives the child or another person of an entitlement to other property in relation to the child.

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## **Part VIII—Property, spousal maintenance and maintenance agreements**

### **71 Interpretation**

In this Part:

***marriage*** includes a void marriage.

***re-marriage***, in relation to a person who was a party to a purported marriage that is void, means marriage.

### **71A This Part does not apply to certain matters covered by binding financial agreements**

(1) This Part does not apply to:

- (a) financial matters to which a financial agreement that is binding on the parties to the agreement applies; or
- (b) financial resources to which a financial agreement that is binding on the parties to the agreement applies.

(2) Subsection (1) does not apply in relation to proceedings of a kind referred to in paragraph (caa) or (cb) of the definition of ***matrimonial cause*** in subsection 4(1).

### **72 Right of spouse to maintenance**

(1) A party to a marriage is liable to maintain the other party, to the extent that the first-mentioned party is reasonably able to do so, if, and only if, that other party is unable to support herself or himself adequately whether:

- (a) by reason of having the care and control of a child of the marriage who has not attained the age of 18 years;
- (b) by reason of age or physical or mental incapacity for appropriate gainful employment; or
- (c) for any other adequate reason;

having regard to any relevant matter referred to in subsection 75(2).

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(2)The liability under subsection (1) of a bankrupt party to a marriage to maintain the other party may be satisfied, in whole or in part, by way of the transfer of vested bankruptcy property in relation to the bankrupt party if the court makes an order under this Part for the transfer.

**74 Power of court in spousal maintenance proceedings**

(1)In proceedings with respect to the maintenance of a party to a marriage, the court may make such order as it considers proper for the provision of maintenance in accordance with this Part.

(2) If:

(a)an application is made for an order under this section in proceedings between the parties to a marriage with respect to the maintenance of a party to the marriage; and

(b)either of the following subparagraphs apply to a party to the marriage:

(i) when the application was made, the party was a bankrupt;

(ii) after the application was made but before the proceedings are finally determined, the party became a bankrupt; and

(c)the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and

(d)the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings;

the court must join the bankruptcy trustee as a party to the proceedings.

(3)If a bankruptcy trustee is a party to proceedings with respect to the maintenance of a party to a marriage, then, except with the leave of the court, the bankrupt party to the marriage is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.

(4)The court must not grant leave under subsection (3) unless the court is satisfied that there are exceptional circumstances.

(5) If:

(a)an application is made for an order under this section in

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proceedings between the parties to a marriage with respect to the maintenance of a party to the marriage; and

(b)either of the following subparagraphs apply to a party to the marriage (the *debtor party*):

(i) when the application was made, the party was a debtor subject to a personal insolvency agreement; or

(ii) after the application was made but before it is finally determined, the party becomes a debtor subject to a personal insolvency agreement; and

(c)the trustee of the agreement applies to the court to be joined as a party to the proceedings; and

(d)the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings;

the court must join the trustee of the agreement as a party to the proceedings.

(6)If the trustee of a personal insolvency agreement is a party to proceedings with respect to the maintenance of a party to a marriage, then, except with the leave of the court, the party to the marriage who is the debtor subject to the agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.

(7)The court must not grant leave under subsection (6) unless the court is satisfied that there are exceptional circumstances.

(8)For the purposes of subsections (2) and (5), an application for an order under this section is taken to be finally determined when:

(a)the application is withdrawn or dismissed; or

(b)an order (other than an interim order) is made as a result of the application.

## **75 Matters to be taken into consideration in relation to spousal maintenance**

(1)In exercising jurisdiction under section 74, the court shall take into account only the matters referred to in subsection (2).

(2)The matters to be so taken into account are:

(a)the age and state of health of each of the parties; and

(b)the income, property and financial resources of each of the

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parties and the physical and mental capacity of each of them for appropriate gainful employment; and

(c)whether either party has the care or control of a child of the marriage who has not attained the age of 18 years; and

(d)commitments of each of the parties that are necessary to enable the party to support:

- (i) himself or herself; and
- (ii) a child or another person that the party has a duty to maintain; and

(e)the responsibilities of either party to support any other person; and

(f)subject to subsection (3), the eligibility of either party for a pension, allowance or benefit under:

- (i) any law of the Commonwealth, of a State or Territory or of another country; or
- (ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia;

and the rate of any such pension, allowance or benefit being paid to either party; and

(g)where the parties have separated or divorced, a standard of living that in all the circumstances is reasonable; and

(h)the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income; and

(ha)the effect of any proposed order on the ability of a creditor of a party to recover the creditor's debt, so far as that effect is relevant; and

(j)the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party; and

(k)the duration of the marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration; and

(l)the need to protect a party who wishes to continue that party's role as a parent; and

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- (m)if either party is cohabiting with another person—the financial circumstances relating to the cohabitation; and
- (n)the terms of any order made or proposed to be made under section 79 in relation to:
- (i) the property of the parties; or
  - (ii) vested bankruptcy property in relation to a bankrupt party; and
- (naa)the terms of any order or declaration made, or proposed to be made, under Part VIIIAB in relation to:
- (i) a party to the marriage; or
  - (ii) a person who is a party to a de facto relationship with a party to the marriage; or
  - (iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or
  - (iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii); and
- (na)any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage; and
- (o)any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; and
- (p) the terms of any financial agreement that is binding on the parties to the marriage; and
  - (q)the terms of any Part VIIIAB financial agreement that is binding on a party to the marriage.

(3)In exercising its jurisdiction under section 74, a court shall disregard any entitlement of the party whose maintenance is under consideration to an income tested pension, allowance or benefit.

(4)In this section:

*party* means a party to the marriage concerned.

## **77 Urgent spousal maintenance cases**

Where, in proceedings with respect to the maintenance of a party to a marriage, it appears to the court that the party is in immediate

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need of financial assistance, but it is not practicable in the circumstances to determine immediately what order, if any, should be made, the court may order the payment, pending the disposal of the proceedings, of such periodic sum or other sums as the court considers reasonable.

**77A Specification in orders of payments etc. for spouse maintenance purposes**

(1) Where:

- (a) a court makes an order under this Act (whether or not the order is made in proceedings in relation to the maintenance of a party to a marriage, is made by consent or varies an earlier order), and the order has the effect of requiring:
  - (i) payment of a lump sum, whether in one amount or by instalments; or
  - (ii) the transfer or settlement of property; and
- (b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a party to a marriage;

the court shall:

- (c) express the order to be an order to which this section applies; and
- (d) specify the portion of the payment, or the value of the portion of the property, attributable to the provision of maintenance for the party.

(2) Where:

- (a) a court makes an order of a kind referred to in paragraph (1)(a); and
- (b) the order:
  - (i) is not expressed to be an order to which this section applies; or
  - (ii) is expressed to be an order to which this section applies, but does not comply with paragraph (1)(d);

any payment, transfer or settlement of a kind referred to in paragraph (1)(a), that the order has the effect of requiring, shall be taken not to make provision for the maintenance of a party to the relevant marriage.

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## **78 Declaration of interests in property**

(1) In proceedings between the parties to a marriage with respect to existing title or rights in respect of property, the court may declare the title or rights, if any, that a party has in respect of the property.

(2) Where a court makes a declaration under subsection (1), it may make consequential orders to give effect to the declaration, including orders as to sale or partition and interim or permanent orders as to possession.

## **79 Alteration of property interests**

(1) In property settlement proceedings, the court may make such order as it considers appropriate:

- (a) in the case of proceedings with respect to the property of the parties to the marriage or either of them—altering the interests of the parties to the marriage in the property; or
- (b) in the case of proceedings with respect to the vested bankruptcy property in relation to a bankrupt party to the marriage—altering the interests of the bankruptcy trustee in the vested bankruptcy property;

including:

- (c) an order for a settlement of property in substitution for any interest in the property; and
  - (d) an order requiring:
    - (i) either or both of the parties to the marriage; or
    - (ii) the relevant bankruptcy trustee (if any);
- to make, for the benefit of either or both of the parties to the marriage or a child of the marriage, such settlement or transfer of property as the court determines.

(1A) An order made under subsection (1) in property settlement proceedings may, after the death of a party to the marriage, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(1B) The court may adjourn property settlement proceedings, except where the parties to the marriage are:

- (a) parties to concurrent, pending or completed divorce or validity of marriage proceedings; or
- (b) parties to a marriage who have divorced under the law of

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an overseas country, where that divorce is recognised as valid in Australia under section 104; or

(bb)parties to a marriage that has been annulled under the law of an overseas country, where that annulment is recognised as valid in Australia under section 104; or

(c)parties to a marriage who have been granted a legal separation under the law of an overseas country, where that legal separation is recognized as valid in Australia under section 104;

on such terms and conditions as it considers appropriate, for such period as it considers necessary to enable the parties to the marriage to consider the likely effects (if any) of an order under this section on the marriage or the children of the marriage, but nothing in this subsection shall be taken to limit any other power of the court to adjourn such proceedings.

(1C)Where the period for which a court has adjourned property settlement proceedings as provided by subsection (1B) has not expired and:

(a)divorce or validity of marriage proceedings are instituted by one or both of the parties to the marriage; or

(ba)the parties to the marriage have divorced under the law of an overseas country and the divorce is recognised as valid in Australia under section 104; or

(bb)the marriage is annulled under the law of an overseas country and the annulment is recognised as valid in Australia under section 104; or

(c)the parties to the marriage are granted a legal separation under the law of an overseas country and the legal separation is recognized as valid in Australia under section 104;

a party to the first-mentioned proceedings may apply to the court for the hearing of those proceedings to be continued.

(2)The court shall not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

(4)In considering what order (if any) should be made under this section in property settlement proceedings, the court shall take into account:

(a)the financial contribution made directly or indirectly by or

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on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them; and

(b)the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them; and

(c)the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of homemaker or parent; and

(d)the effect of any proposed order upon the earning capacity of either party to the marriage; and

(e)the matters referred to in subsection 75(2) so far as they are relevant; and

(f)any other order made under this Act affecting a party to the marriage or a child of the marriage; and

(g)any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage.

(5)Without limiting the power of any court to grant an adjournment in proceedings under this Act, where, in property settlement proceedings, a court is of the opinion:

(a)that there is likely to be a significant change in the financial circumstances of the parties to the marriage or either of them and that, having regard to the time when that change is likely to take place, it is reasonable to adjourn the proceedings; and

(b)that an order that the court could make with respect to:

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- (i) the property of the parties to the marriage or either of them; or
  - (ii) the vested bankruptcy property in relation to a bankrupt party to the marriage;
- if that significant change in financial circumstances occurs is more likely to do justice as between the parties to the marriage than an order that the court could make immediately with respect to:
- (iii) the property of the parties to the marriage or either of them; or
  - (iv) the vested bankruptcy property in relation to a bankrupt party to the marriage;

the court may, if so requested by either party to the marriage or the relevant bankruptcy trustee (if any), adjourn the proceedings until such time, before the expiration of a period specified by the court, as that party to the marriage or the relevant bankruptcy trustee, as the case may be, applies for the proceedings to be determined, but nothing in this subsection requires the court to adjourn any proceedings in any particular circumstances.

(6)Where a court proposes to adjourn proceedings as provided by subsection (5), the court may, before so adjourning the proceedings, make such interim order or orders or such other order or orders (if any) as it considers appropriate with respect to:

- (a)any of the property of the parties to the marriage or of either of them; or
- (b)any of the vested bankruptcy property in relation to a bankrupt party to the marriage.

(7)The court may, in forming an opinion for the purposes of subsection (5) as to whether there is likely to be a significant change in the financial circumstances of either or both of the parties to the marriage, have regard to any change in the financial circumstances of a party to the marriage that may occur by reason that the party to the marriage:

- (a)is a contributor to a superannuation fund or scheme, or participates in any scheme or arrangement that is in the nature of a superannuation scheme; or

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(b)may become entitled to property as the result of the exercise in his or her favour, by the trustee of a discretionary trust, of a power to distribute trust property; but nothing in this subsection shall be taken to limit the circumstances in which the court may form the opinion that there is likely to be a significant change in the financial circumstances of a party to the marriage.

(8)Where, before property settlement proceedings are completed, a party to the marriage dies:

(a)the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings;

(b)if the court is of the opinion:

(i) that it would have made an order with respect to property if the deceased party had not died; and

(ii) that it is still appropriate to make an order with respect to property;

the court may make such order as it considers appropriate with respect to:

(iii) any of the property of the parties to the marriage or either of them; or

(iv) any of the vested bankruptcy property in relation to a bankrupt party to the marriage; and

(c)an order made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(9)The Family Court, or a Family Court of a State, shall not make an order under this section in property settlement proceedings (other than an order until further order or an order made with the consent of all the parties to the proceedings) unless:

(a)the parties to the proceedings have attended a conference in relation to the matter to which the proceedings relate with a Registrar or Deputy Registrar of the Family Court, or a Registrar or Deputy Registrar of the Family Court of that State, as the case may be;

(b)the court is satisfied that, having regard to the need to make an order urgently, or to any other special circumstance,

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it is appropriate to make the order notwithstanding that the parties to the proceedings have not attended a conference as mentioned in paragraph (a); or

(c)the court is satisfied that it is not practicable to require the parties to the proceedings to attend a conference as mentioned in paragraph (a).

(10)The following are entitled to become a party to proceedings in which an application is made for an order under this section by a party to a marriage (the **subject marriage**):

(a)a creditor of a party to the proceedings if the creditor may not be able to recover his or her debt if the order were made;

(aa) a person:

(i) who is a party to a de facto relationship with a party to the subject marriage; and

(ii) who could apply, or has an application pending, for an order under section 90SM, or a declaration under section 90SL, in relation to the de facto relationship;

(ab)a person who is a party to a Part VIIIAB financial agreement (that is binding on the person) with a party to the subject marriage;

(b)any other person whose interests would be affected by the making of the order.

(10A)Subsection (10) does not apply to a creditor of a party to the proceedings:

(a)if the party is a bankrupt—to the extent to which the debt is a provable debt (within the meaning of the *Bankruptcy Act 1966*); or

(b)if the party is a debtor subject to a personal insolvency agreement—to the extent to which the debt is covered by the personal insolvency agreement.

(10B)If a person becomes a party to proceedings under this section because of paragraph (10)(aa), the person may, in the proceedings, apply for:

(a)an order under section 90SM; or

(b)a declaration under section 90SL;

in relation to the de facto relationship described in that paragraph.

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(11) If:

- (a) an application is made for an order under this section in proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either of them; and
- (b) either of the following subparagraphs apply to a party to the marriage:
  - (i) when the application was made, the party was a bankrupt;
  - (ii) after the application was made but before it is finally determined, the party became a bankrupt; and
- (c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and
- (d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings;

the court must join the bankruptcy trustee as a party to the proceedings.

(12) If a bankruptcy trustee is a party to property settlement proceedings, then, except with the leave of the court, the bankrupt party to the marriage is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.

(13) The court must not grant leave under subsection (12) unless the court is satisfied that there are exceptional circumstances.

(14) If:

- (a) an application is made for an order under this section in proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either of them; and
- (b) either of the following subparagraphs apply to a party to the marriage (the *debtor party*):
  - (i) when the application was made, the party was a debtor subject to a personal insolvency agreement; or
  - (ii) after the application was made but before it is finally determined, the party becomes a debtor subject to a personal insolvency agreement; and
- (c) the trustee of the agreement applies to the court to be

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joined as a party to the proceedings; and

(d)the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings;

the court must join the trustee of the agreement as a party to the proceedings.

(15)If the trustee of a personal insolvency agreement is a party to property settlement proceedings, then, except with the leave of the court, the party to the marriage who is the debtor subject to the agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.

(16)The court must not grant leave under subsection (15) unless the court is satisfied that there are exceptional circumstances.

(17)For the purposes of subsections (11) and (14), an application for an order under this section is taken to be finally determined when:

- (a)the application is withdrawn or dismissed; or
- (b)an order (other than an interim order) is made as a result of the application.

**79A Setting aside of orders altering property interests**

(1)Where, on application by a person affected by an order made by a court under section 79 in property settlement proceedings, the court is satisfied that:

- (a)there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence (including failure to disclose relevant information), the giving of false evidence or any other circumstance; or
- (b)in the circumstances that have arisen since the order was made it is impracticable for the order to be carried out or impracticable for a part of the order to be carried out; or
- (c)a person has defaulted in carrying out an obligation imposed on the person by the order and, in the circumstances that have arisen as a result of that default, it is just and equitable to vary the order or to set the order aside and make another order in substitution for the order; or
- (d)in the circumstances that have arisen since the making of the order, being circumstances of an exceptional nature

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relating to the care, welfare and development of a child of the marriage, the child or, where the applicant has caring responsibility for the child (as defined in subsection (1AA)), the applicant, will suffer hardship if the court does not vary the order or set the order aside and make another order in substitution for the order; or

(e)a proceeds of crime order has been made covering property of the parties to the marriage or either of them, or a proceeds of crime order has been made against a party to the marriage;

the court may, in its discretion, vary the order or set the order aside and, if it considers appropriate, make another order under section 79 in substitution for the order so set aside.

(1A)A court may, on application by a person affected by an order made by a court under section 79 in property settlement proceedings, and with the consent of all the parties to the proceedings in which the order was made, vary the order or set the order aside and, if it considers appropriate, make another order under section 79 in substitution for the order so set aside.

(1AA)For the purposes of paragraph (1)(d), a person has *caring responsibility* for a child if:

- (a)the person is a parent of the child with whom the child lives; or
- (b)a parenting order provides that:
  - (i) the child is to live with the person; or
  - (ii) the person has parental responsibility for the child.

(1B)An order varied or made under subsection (1) or (1A) may, after the death of a party to the marriage in which the order was so varied or made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(1C)Where, before proceedings under this section in relation to an order made under section 79 are completed, a party to the marriage dies:

- (a)the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings;

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(b)if the court is of the opinion:

- (i) that it would have exercised its powers under subsection (1) or (1A) in relation to the order if the deceased party had not died; and
  - (ii) that it is still appropriate to exercise its powers under subsection (1) or (1A) in relation to the order;
- the court may vary the order, set the order aside, or set the order aside and make another order under section 79 in substitution for the order so set aside; and
- (c)an order varied or made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(2)In the exercise of its powers under subsection (1), (1A) or (1C), a court shall have regard to the interests of, and shall make any order proper for the protection of, a *bona fide* purchaser or other person interested.

(3)In this section, a reference to an order made by a court under section 79 includes a reference to an order made by a court under section 86 of the repealed Act.

(4)For the purposes of this section, a creditor of a party to the proceedings in which the order under section 79 was made is taken to be a person whose interests are affected by the order if the creditor may not be able to recover his or her debt because the order has been made.

(5)For the purposes of this section, if:

- (a)an order is made by a court under section 79 in proceedings with respect to the property of the parties to a marriage or either of them; and
  - (b)either of the following subparagraphs apply to a party to the marriage:
    - (i) when the order was made, the party was a bankrupt;
    - (ii) after the order was made, the party became a bankrupt;
- the bankruptcy trustee is taken to be a person whose interests are affected by the order.

(6)For the purposes of this section, if:

- (a)a party to a marriage is a bankrupt; and
- (b)an order is made by a court under section 79 in

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proceedings with respect to the vested bankruptcy property in relation to the bankrupt party;

the bankruptcy trustee is taken to be a person whose interests are affected by the order.

(7) For the purposes of this section, if:

- (a) an order is made by a court under section 79 in proceedings with respect to the property of the parties to a marriage or either of them; and
- (b) either of the following subparagraphs apply to a party to the marriage:
  - (i) when the order was made, the party was a debtor subject to a personal insolvency agreement;
  - (ii) after the order was made, the party became a debtor subject to a personal insolvency agreement;

the trustee of the agreement is taken to be a person whose interests are affected by the order.

## **79B Notification of proceeds of crime orders etc.**

(1) If:

- (a) a person makes an application for an order, under this Part, with respect to:
    - (i) the property of the parties to a marriage or either of them; or
    - (ii) the maintenance of a party to a marriage; and
  - (b) the person knows that the property of the parties to the marriage or either of them is covered by:
    - (i) a proceeds of crime order; or
    - (ii) a forfeiture application;
- the person must:
- (c) disclose in the application the proceeds of crime order or forfeiture application; and
  - (d) give to the court a sealed copy of that order or application.

(2) A person who does not comply with subsection (1) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

(3) If:

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- (a)a person is a party to property settlement or spousal maintenance proceedings under this Part; and
  - (b)the person is notified by the DPP that the property of the parties to the marriage or either of them is covered by:
    - (i) a proceeds of crime order; or
    - (ii) a forfeiture application;
- the person must notify the Registry Manager in writing of the proceeds of crime order or forfeiture application.
- (4)A person who does not comply with subsection (3) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

**79C Court to stay property or spousal maintenance proceedings affected by proceeds of crime orders etc.**

- (1)A court in which property settlement or spousal maintenance proceedings are pending must stay those proceedings if notified under section 79B in relation to the proceedings.
- (1A)The court may, before staying proceedings under subsection (1), invite or require the DPP to make submissions relating to staying the proceedings.
- (2)A court must, on the application of the DPP, stay property settlement or spousal maintenance proceedings under this Part if the property of the parties to the marriage or either of them is covered by:
  - (a) a proceeds of crime order; or
  - (b) a forfeiture application.
- (3)A court must notify the DPP if the court stays property settlement or spousal maintenance proceedings under subsection (1) or (2).
- (4)The DPP must notify the Registry Manager if:
  - (a) a proceeds of crime order ceases to be in force; or
  - (b) a forfeiture application is finally determined.
- (5)For the purposes of subsection (4), a forfeiture application is taken to be finally determined when:
  - (a) the application is withdrawn; or

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- (b)if the application is successful—the resulting forfeiture order comes into force; or
  - (c)if the application is unsuccessful—the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.

#### **79D Lifting a stay**

- (1)A court that stayed the property settlement or spousal maintenance proceedings under section 79C must wholly or partially lift the stay if:
  - (a)either party to the proceedings makes an application for the stay to be lifted and the DPP consents to such an application; or
  - (b)the DPP makes an application for the stay to be lifted.
- (2)A court that stayed the property settlement or spousal maintenance proceedings under section 79C may, on its own motion, wholly or partially lift the stay if the DPP consents to such a motion.
- (3)Giving the Registry Manager written notice of the DPP's consent under this section is taken to be the giving of that consent, unless the court requires the DPP to appear in the proceedings. The notice may be given by the DPP or by a party to the proceedings.

#### **79E Intervention by DPP**

- (1)The DPP may intervene in any property settlement or spousal maintenance proceedings in relation to which a court is notified under section 79B, or in any proceedings under section 79C or 79D in which the DPP is not already a party.
- (2)If the DPP intervenes, the DPP is taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

#### **79F Notifying third parties about application**

The applicable Rules of Court may specify the circumstances in which a person who:

- (a)applies for an order under this Part; or
  - (b)is a party to proceedings for an order under this Part;
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is to give notice of the application to a person who is not a party to the proceedings.

Note: The applicable Rules of Court may, for example, require notice to be given to persons referred to in subsection 79(10) whose interests could be affected by proceedings for an order under section 79.

**79G Notifying bankruptcy trustee etc. about application under section 74, 78, 79 or 79A**

(1)The applicable Rules of Court may make provision for a bankrupt who becomes a party to a proceeding for an application under section 74, 78, 79 or 79A to give notice of the application to the bankruptcy trustee.

(2)The applicable Rules of Court may make provision for a debtor subject to a personal insolvency agreement who becomes a party to a proceeding for an application under section 74, 78, 79 or 79A to give notice of the application to the trustee of the agreement.

**79H Notifying court about bankruptcy etc.**

*Bankruptcy*

(1)The applicable Rules of Court may make provision for a person who:

- (a)is a party to a marriage; and
- (b)is a party to a proceeding for an application under section 74, 78, 79 or 79A; and
- (c)before that application is finally determined, becomes a bankrupt;

to notify a court exercising jurisdiction under this Act that the person has become a bankrupt.

*Debtor subject to a personal insolvency agreement*

(2)The applicable Rules of Court may make provision for a person who:

- (a)is a party to a marriage; and
- (b)is a party to a proceeding for an application under section 74, 78, 79 or 79A; and
- (c)before that application is finally determined, becomes a debtor subject to a personal insolvency agreement;

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to notify a court exercising jurisdiction under this Act that the person has become a debtor subject to a personal insolvency agreement.

*Institution of proceeding under the Bankruptcy Act 1966*

(3)The applicable Rules of Court may make provision for a person who:

- (a)is a party to a marriage; and
- (b)is a party to a proceeding for an application under section 74, 78, 79 or 79A; and
- (c)before that application is finally determined, becomes a party to a proceeding before the Federal Court or the Federal Magistrates Court under the *Bankruptcy Act 1966* that relates to:
  - (i) the bankruptcy of the person; or
  - (ii) the person's capacity as a debtor subject to a personal insolvency agreement;

to notify a court exercising jurisdiction under this Act of the institution of the proceeding under the *Bankruptcy Act 1966*.

(4)The applicable Rules of Court may make provision for a person who:

- (a)is the bankruptcy trustee of a bankrupt party to a marriage; and
- (b)applies under section 139A of the *Bankruptcy Act 1966* for an order under Division 4A of Part VI of that Act;

to notify a court exercising jurisdiction under this Act of the making of the application.

*When application finally determined*

(5)For the purposes of this section, an application for an order under section 74, 79 or 79A is taken to be finally determined when:

- (a)the application is withdrawn or dismissed; or
- (b)an order (other than an interim order) is made as a result of the application.

(6)For the purposes of this section, an application for a declaration under section 78 is taken to be finally determined when:

- (a)the application is withdrawn or dismissed; or

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(b)a declaration is made as a result of the application.

**79J Notifying non-bankrupt spouse about application under section 139A of the *Bankruptcy Act 1966***

The applicable Rules of Court may make provision for a person who:

- (a)is the bankruptcy trustee of a bankrupt party to a marriage; and
- (b)applies under section 139A of the *Bankruptcy Act 1966* for an order under Division 4A of Part VI of that Act in relation to an entity (other than the other party to the marriage);

to notify the other party to the marriage of the making of the application.

**80 General powers of court**

(1)The court, in exercising its powers under this Part, may do any or all of the following:

- (a)order payment of a lump sum, whether in one amount or by instalments;
- (b)order payment of a weekly, monthly, yearly or other periodic sum;
- (ba)order that a specified transfer or settlement of property be made by way of maintenance for a party to a marriage;
- (c)order that payment of any sum ordered to be paid be wholly or partly secured in such manner as the court directs;
- (d)order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
- (e)appoint or remove trustees;
- (f)order that payments be made direct to a party to the marriage, to a trustee to be appointed or into court or to a public authority for the benefit of a party to the marriage;
- (h)make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for a life or during joint lives or until further order;

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- (i)impose terms and conditions;
  - (j)make an order by consent;
  - (k)make any other order (whether or not of the same nature as those mentioned in the preceding paragraphs of this section), which it thinks it is necessary to make to do justice; and
  - (l)subject to this Act and the applicable Rules of Court, make an order under this Part at any time before or after the making of a decree under another Part.
- (2)The making of an order of a kind referred to in paragraph (1)(ba), or of any other order under this Part, in relation to the maintenance of a party to a marriage does not prevent a court from making a subsequent order in relation to the maintenance of the party.
- (3)The applicable Rules of Court may make provision with respect to the making of orders under this Part in relation to the maintenance of parties to marriages (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.
- (4)If a bankruptcy trustee is a party to a proceeding before the court, the court may make an order under paragraph (1)(d) directed to the bankrupt.
- (5)If the trustee of a personal insolvency agreement is a party to a proceeding before the court, the court may make an order under paragraph (1)(d) directed to the debtor subject to the agreement.
- (6)Subsections (4) and (5) do not limit paragraph (1)(d).

## **81 Duty of court to end financial relations**

In proceedings under this Part, other than proceedings under section 78 or proceedings with respect to maintenance payable during the subsistence of a marriage, the court shall, as far as practicable, make such orders as will finally determine the financial relationships between the parties to the marriage and avoid further proceedings between them.

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**82 Cessation of spousal maintenance orders**

- (1)An order with respect to the maintenance of a party to a marriage ceases to have effect upon the death of the party.
- (2)Subject to subsection (3), an order with respect to the maintenance of a party to a marriage ceases to have effect upon the death of the person liable to make payments under the order.
- (3)Subsection (2) does not apply in relation to an order made before the date of commencement of section 38 of the *Family Law Amendment Act 1983* if the order is expressed to continue in force throughout the life of the person for whose benefit the order was made or for a period that had not expired at the time of the death of the person liable to make payments under the order and, in that case, the order is binding upon the legal personal representative of the deceased person.
- (4)An order with respect to the maintenance of a party to a marriage ceases to have effect upon the re-marriage of the party unless in special circumstances a court having jurisdiction under this Act otherwise orders.
- (6)Where a re-marriage referred to in subsection (4) takes place, it is the duty of the person for whose benefit the order was made to inform without delay the person liable to make payments under the order of the date of the re-marriage.
- (7)Any moneys paid in respect of a period after the event referred to in subsection (4) may be recovered in a court having jurisdiction under this Act.
- (8)Nothing in this section affects the recovery of arrears due under an order at the time when the order ceased to have effect.

**83 Modification of spousal maintenance orders**

- (1)If there is in force an order (whether made before or after the commencement of this Act) with respect to the maintenance of a party to a marriage:
  - (a)made by the court; or

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(b)made by another court and registered in the first-mentioned court in accordance with the applicable Rules of Court;

the court may, subject to section 111AA:

(c)discharge the order if there is any just cause for so doing;

(d)suspend its operation wholly or in part and either until further order or until a fixed time or the happening of some future event;

(e)revive wholly or in part an order suspended under paragraph (d); or

(f)subject to subsection (2), vary the order so as to increase or decrease any amount ordered to be paid or in any other manner.

(1A)The court's jurisdiction under subsection (1) may be exercised:

(a)in any case—in proceedings with respect to the maintenance of a party to the marriage; or

(b)if there is a bankrupt party to the marriage—on the application of the bankruptcy trustee; or

(c)if a party to the marriage is a debtor subject to a personal insolvency agreement—on the application of the trustee of the agreement.

(2)The court shall not make an order increasing or decreasing an amount ordered to be paid by an order unless it is satisfied:

(a)that, since the order was made or last varied:

(i) the circumstances of a person for whose benefit the order was made have so changed (including the person entering into a stable and continuing de facto relationship);

(ii) the circumstances of the person liable to make payments under the order have so changed; or

(iii) in the case of an order that operates in favour of, or is binding on, a legal personal representative—the circumstances of the estate are such;

as to justify its so doing;

(b)that, since the order was made, or last varied, the cost of living has changed to such an extent as to justify its so doing;

(ba)in a case where the order was made by consent—that the

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amount ordered to be paid is not proper or adequate;  
(c)that material facts were withheld from the court that made the order or from a court that varied the order or material evidence previously given before such a court was false.

(3)Subsection (2) does not prevent the court from making an order varying an order made before the date of commencement of this Act if the first-mentioned order is made for the purpose of giving effect to this Part.

(4)In satisfying itself for the purposes of paragraph (2)(b), the court shall have regard to any changes that have occurred in the Consumer Price Index published by the Australian Statistician.

(5)The court shall not, in considering the variation of an order, have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or was last varied having regard to a change in the cost of living.

(5A)In satisfying itself for the purposes of paragraph (2)(ba), the court shall have regard to any payments, and any transfer or settlement of property, previously made by a party to the marriage, or by the bankruptcy trustee of a party to the marriage, to:

- (a)the other party; or
- (b)any other person for the benefit of the other party.

(6)An order decreasing the amount of a periodic sum payable under an order or discharging an order may be expressed to be retrospective to such date as the court considers appropriate.

(6A)Where, as provided by subsection (6), an order decreasing the amount of a periodic sum payable under an order is expressed to be retrospective to a specified date, any moneys paid under the second-mentioned order since the specified date, being moneys that would not have been required to be paid under the second-mentioned order as varied by the first-mentioned order, may be recovered in a court having jurisdiction under this Act.

(6B)Where, as provided by subsection (6), an order discharging an order is expressed to be retrospective to a specified date, any moneys paid under the second-mentioned order since the specified date may be recovered in a court having jurisdiction under this Act.

(7)For the purposes of this section, the court shall have regard to

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the provisions of sections 72 and 75.

(8)The discharge of an order does not affect the recovery of arrears due under the order at the time as at which the discharge takes effect.

#### **85A Ante-nuptial and post-nuptial settlements**

(1)The court may, in proceedings under this Act, make such order as the court considers just and equitable with respect to the application, for the benefit of all or any of the parties to, and the children of, the marriage, of the whole or part of property dealt with by ante-nuptial or post-nuptial settlements made in relation to the marriage.

(2)In considering what order (if any) should be made under subsection (1), the court shall take into account the matters referred to in subsection 79(4) so far as they are relevant.

(3)A court cannot make an order under this section in respect of matters that are included in a financial agreement.

#### **86A Certain maintenance agreements ineffective**

A maintenance agreement made after the commencement of this section that is not a financial agreement does not have any effect and is not enforceable in any way.

#### **86 Registered maintenance agreements**

(1)A maintenance agreement other than an agreement to which section 87 applies may be registered, as prescribed by the applicable Rules of Court, in any court having jurisdiction under this Act.

(1A)A maintenance agreement made after the commencement of this subsection cannot be registered.

(2)Section 66S applies in relation to the variation of a maintenance agreement registered under subsection (1), in so far as the agreement makes provision for the maintenance of a child of the relevant marriage, as if the agreement were an order made by consent under Part VII by the court in which the agreement is registered.

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(2A)Section 83 applies in relation to the variation of a maintenance agreement registered under subsection (1), in so far as the agreement makes provision for the maintenance of a party to the relevant marriage, as if the agreement were an order made by consent under this Act by the court in which the agreement is registered.

(3)The court in which a maintenance agreement is registered under subsection (1) may set aside the agreement if, and only if, the court is satisfied that the concurrence of a party was obtained by fraud or undue influence or that the parties desire the agreement to be set aside.

(3A)Where a maintenance agreement has been registered under subsection (1), then:

(a)unless the agreement otherwise provides, the agreement (other than a provision in the agreement providing for the payment by way of maintenance of a periodic sum) continues to operate notwithstanding the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party; and

(b)if the agreement so provides, a provision in the agreement providing for the payment to a person by way of maintenance of a periodic sum continues to operate notwithstanding the death of any party to the agreement who is liable to make payments pursuant to that provision and is binding on the legal personal representative of that party but, notwithstanding any provision in the agreement, does not continue to operate after the death of the person who is entitled to receive those payments.

(3B)Where:

(a)a maintenance agreement is, at any time, registered under subsection (1); and

(b)the maintenance agreement makes provision for the maintenance of a child; and

(c)an application could properly be made, at that time, under the *Child Support (Assessment) Act 1989* by one of the parties to the agreement for the other party to the agreement to be assessed in respect of the costs of the child (whether or not such an application has in fact been made by the party or by another person);

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the maintenance agreement, so far as it makes provision for the maintenance of the child, has no effect and is not enforceable in any way.

(4)Subject to section 89, this section does not apply to overseas maintenance agreements.

## **87 Operation of maintenance agreements entered into in substitution for rights under Act** [see Note 2]

(1)Subject to this section, a maintenance agreement may make provision to the effect that the agreement shall operate, in relation to the financial matters dealt within the agreement, in substitution for any rights of the parties to the agreement under this Part.

(1A)Subsection (1) does not apply to a maintenance agreement made after the commencement of this subsection.

(2)Where a maintenance agreement makes provision as mentioned in subsection (1), the maintenance agreement has no effect, and is not enforceable in any way, unless it has been approved by the court.

(3)In proceedings for the approval of a maintenance agreement, if the court is satisfied that the provisions of the agreement with respect to financial matters are proper, the court shall, by order, approve the agreement, but if the court is not so satisfied, it shall, by order, refuse to approve the agreement.

(4)Where a maintenance agreement that makes provision as mentioned in subsection (1) is approved by the court:

(a)any order having effect under this Part or any order made under Part VIII of the repealed Act and continued in effect by virtue of paragraph 3(2)(c) ceases to have effect in so far as it relates to the financial matters dealt with in the agreement and, whether or not the approval of the agreement is revoked, has no further effect; and

(b)subject to subsections (4A) to (4C) (inclusive), no court having jurisdiction under this Act may make an order (other than an order under this section or an order in connection with the enforcement of the agreement) with respect to those financial matters unless the approval of the agreement is revoked.

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(4A)The approval, after the commencement of this subsection, of a maintenance agreement under this section does not exclude or limit the power of a court having jurisdiction under this Act to make an order in relation to the maintenance of a party to the relevant marriage if the court is satisfied that, at the time the agreement was approved, the circumstances of the party were such that, taking into account the terms and effect of the agreement, the party would have been unable to support himself or herself without an income tested pension, allowance or benefit.

(4B)Where subsection (4A) applies in relation to an approved maintenance agreement, section 83 applies in relation to the variation of the agreement, in so far as the agreement makes provision for the maintenance of a party to the marriage, as if the agreement were an order made by consent under this Act by a court in which the agreement is registered or deemed to be registered.

(4C)The approval, whether before or after the commencement of this subsection, of a maintenance agreement under this section does not exclude or limit the power of a court having jurisdiction under Part VII to make any order under that Part in relation to a child of the relevant marriage and, where the agreement makes provision for the maintenance of a child of the marriage, section 66S applies in relation to the variation of the agreement, in so far as it makes that provision, as if the agreement were an order made by consent under that Part by a court in which the agreement is registered or deemed to be registered.

(4D)Where:

- (a)a maintenance agreement that makes provision as mentioned in subsection (1) is, at any time, approved by the court; and
- (b)the maintenance agreement makes provision for the maintenance of a child; and
- (c)an application could properly be made, at that time, under the *Child Support (Assessment) Act 1989* by one of the parties to the agreement for administrative assessment of child support (within the meaning of that Act) for the child seeking payment of the child support by the other party to the agreement (whether or not such an application has in fact been made by the party or by another person);

the maintenance agreement, so far as it makes provision for the

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maintenance of the child, has no effect and is not enforceable in any way.

(5)Notwithstanding any rule of law or equity, an approved maintenance agreement shall not be taken to be void, voidable or unenforceable by reason that it makes provision as mentioned in subsection (1).

(6)Where a court has approved a maintenance agreement, the agreement shall be deemed to be registered in that court.

(7)An agreement that is by virtue of subsection (6) deemed to be registered in a court may be registered, as prescribed by the applicable Rules of Court, in another court having jurisdiction under this Act.

(8)A court may, by order, revoke the approval of a maintenance agreement under this section if, and only if, the agreement is registered or deemed to be registered in that court and the court is satisfied that:

- (a)the approval was obtained by fraud;
- (b)the parties to the agreement desire the revocation of the approval;
- (c)the agreement is void, voidable or unenforceable; or
- (d)in the circumstances that have arisen since the agreement was approved it is impracticable for the agreement to be carried out or impracticable for a part of the agreement to be carried out.

(9)Where the approval of a maintenance agreement under this section is revoked by a court:

- (a)the agreement ceases, for all purposes, to be in force; and
- (b)the court may, in proceedings for the revocation of the approval or on application by a party to the agreement or any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of the parties to the agreement and any other interested persons;

and, in exercising its powers under paragraph (b), the court shall have regard to the ground on which it revoked the approval of the agreement.

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(10)Where a maintenance agreement has been approved by a court as provided by this section, then:

- (a)unless the agreement otherwise provides, the agreement (other than a provision in the agreement providing for the payment by way of maintenance of a periodic sum) continues to operate notwithstanding the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party; and
- (b)if the agreement so provides, a provision in the agreement providing for the payment to a person by way of maintenance of a periodic sum continues to operate notwithstanding the death of any party to the agreement who is liable to make payments pursuant to that provision and is binding on the legal personal representative of that party but, notwithstanding any provision in the agreement, does not continue to operate after the death of the person who is entitled to receive those payments.

(11)Apart from the provision made by subsections (2), (4A), (4C), (5), (9) and (10), the validity, enforceability and effect of an approved maintenance agreement shall be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts, and, in proceedings of the kind referred to in subparagraph (ea)(iii) of the definition of **matrimonial cause** in subsection 4(1), being proceedings instituted in a court in which the approved maintenance agreement is registered or deemed to be registered, the court:

- (a)subject to paragraph (b), has the same powers, may grant the same remedies and shall have the same regard to the rights of third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction;
- (b)has power to make an order for the payment, by a party to the agreement to another party to the agreement, of interest on an amount payable pursuant to the agreement, from the time when the amount became or becomes due and payable, at a rate not exceeding the rate prescribed by the Rules of the Court; and
- (c)in addition to, or instead of, making an order or orders

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pursuant to paragraph (a) or (b), may order that the agreement, or a specified part of the agreement, be enforced as if it were an order of the court.

(12) Where the approval of a maintenance agreement under this section has been revoked, a court shall, in considering whether, and if so, how, to exercise any powers under this Part, have regard to:

- (a) anything done or omitted to be done by a party to the agreement pursuant to the agreement;
- (b) any change in the circumstances of a party to the agreement arising out of the doing of any act by a person, or the failure of a person to do an act, pursuant to the agreement;
- (c) any order made by that court or another court exercising jurisdiction under this Act in connection with the agreement while the agreement was in force; and
- (d) any order made under paragraph (9)(b) in connection with the revocation of the approval of the agreement.

(15) In this section, ***approved maintenance agreement*** means a maintenance agreement that has been approved under this section and the approval of which has not been revoked.

(16) Nothing in this Act affects the operation of an agreement sanctioned under paragraph 87(1)(k) of the repealed Act or the rights and obligations of a person under such an agreement.

(17) Subject to section 89, this section does not apply to overseas maintenance agreements.

#### **87A Specification in maintenance agreements of payments etc. for maintenance purposes**

(1) Where:

- (a) a maintenance agreement (whether or not registered under section 86 or approved under section 87) has the effect of requiring:
  - (i) payment of a lump sum, whether in one amount or by instalments; or
  - (ii) the transfer or settlement of property; and
- (b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the

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maintenance of a party to a marriage or a child or children of a marriage;  
the agreement shall:

- (c) state that the agreement is an agreement to which this section applies; and
- (d) specify:
  - (i) the person or persons for whose maintenance provision is made by the payment, transfer or settlement; and
  - (ii) the portion of the payment, or the value of the portion of the property, attributable to the provision of maintenance for that person or each of those persons, as the case may be.

(2) Where a maintenance agreement of a kind referred to in paragraph (1)(a):

(a) does not state that the agreement is an agreement to which this section applies; or  
(b) states that the agreement is an agreement to which this section applies, but does not comply with paragraph (1)(d);  
any payment, transfer or settlement of a kind referred to in paragraph (1)(a), that the agreement has the effect of requiring, shall be taken not to make provision for the maintenance of a party to the relevant marriage or of a child of the relevant marriage.

**88 Enforcement of maintenance agreements**

(1) A maintenance agreement that has been registered, or is deemed to have been registered, in a court may be enforced as if it were an order of that court.

(2) Subsection (1) does not apply in relation to maintenance agreements that have been approved under section 87.

**89 Overseas maintenance agreements**

The regulations may make provision for and in relation to:

- (a) the application of sections 86 and 87, with such additions, exceptions and modifications as are prescribed, to overseas maintenance agreements; and
- (b) the transmission to appropriate courts or authorities of prescribed overseas jurisdictions of, or of copies of,

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maintenance agreements and of agreements for maintenance of ex-nuptial children for the purpose of securing the enforcement of those agreements in those jurisdictions.

#### **89A Institution of spousal maintenance proceedings by authority or person**

The regulations may make provision for and in relation to the authorizing of a prescribed authority of the Commonwealth, of a State or of a Territory, or the person for the time being holding a prescribed office under a law of the Commonwealth, of a State or of a Territory, in the discretion of the authority or person, to institute and prosecute proceedings with respect to the maintenance of a party to a marriage, on behalf of that party.

#### **90 Certain instruments not liable to duty**

(1)The following agreements, deeds and other instruments are not subject to any duty or charge under any law of a State or Territory or any law of the Commonwealth that applies only to or in relation to a Territory:

- (a)a deed or other instrument executed by a person for the purposes of, or in accordance with, an order made under this Part;
- (b)a relevant maintenance agreement that confers a benefit upon a party to, or a child of, the marriage to which the maintenance agreement relates, to the extent that the maintenance agreement confers that benefit;
- (c)a deed or other instrument executed by a person for the purposes of, or in accordance with, a relevant maintenance agreement, being a deed or other instrument that confers a benefit upon a party to, or a child of, the marriage to which the maintenance agreement relates, to the extent that the deed or other instrument confers that benefit.

(2)The following maintenance agreements are relevant maintenance agreements for the purposes of this section:

- (a)a registered maintenance agreement made in connection with the termination of the marriage to which the maintenance agreement relates by divorce or the annulment of the marriage to which the maintenance agreement relates;
- (b)a registered maintenance agreement (other than a

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maintenance agreement referred to in paragraph (a)) made in contemplation of the termination of the marriage to which the maintenance agreement relates by divorce or the annulment of the marriage to which the maintenance agreement relates;

(c)a registered maintenance agreement (other than a maintenance agreement referred to in paragraph (a) or (b)) made in connection with the breakdown of the marriage to which the maintenance agreement relates;

(d)an approved maintenance agreement made in connection with the termination of the marriage to which the maintenance agreement relates by divorce or the annulment of the marriage to which the maintenance agreement relates;

(e)an approved maintenance agreement (other than a maintenance agreement referred to in paragraph (d)) made in contemplation of the termination of the marriage to which the maintenance agreement relates by divorce or the annulment of the marriage to which the maintenance agreement relates;

(f)an approved maintenance agreement (other than a maintenance agreement referred to in paragraph (d) or (e)) made in connection with the breakdown of the marriage to which the maintenance agreement relates.

(3)For the purposes of this section, a maintenance agreement, deed or other instrument that confers an entitlement to property on a person may be taken to confer a benefit upon the person notwithstanding that the maintenance agreement, deed or other instrument also deprives the person of an entitlement to other property of an equal or greater value.

(4)In this section:

- (a)**approved maintenance agreement** means a maintenance agreement approved by a court by order under section 87;
- (b)**registered maintenance agreement** means a maintenance agreement registered in a court under section 86 or a maintenance agreement that is registered in a court under regulations made pursuant to section 89; and
- (c)a reference to the marriage to which a maintenance agreement relates is a reference to the marriage the parties to which are parties to the maintenance agreement.

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## **Part VIIIAA—Orders and injunctions binding third parties**

### **Division 1—Preliminary**

#### **Subdivision A—Scope of this Part**

##### **90AA Object of this Part**

The object of this Part is to allow the court, in relation to the property of a party to a marriage, to:

- (a)make an order under section 79 or 114; or
- (b)grant an injunction under section 114;

that is directed to, or alters the rights, liabilities or property interests of a third party.

##### **90AB Definitions**

In this Part:

*marriage* includes a void marriage.

*third party*, in relation to a marriage, means a person who is not a party to the marriage.

##### **90AC This Part overrides other laws, trust deeds etc.**

(1)This Part has effect despite anything to the contrary in any of the following (whether made before or after the commencement of this Part):

- (a)any other law (whether written or unwritten) of the Commonwealth, a State or Territory;
- (b)anything in a trust deed or other instrument.

(2)Without limiting subsection (1), nothing done in compliance with this Part by a third party in relation to a marriage is to be treated as resulting in a contravention of a law or instrument referred to in subsection (1).

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**90ACA This Part not to apply to certain annuities**

The powers of the court under this Part do not apply to superannuation annuities (within the meaning of the *Income Tax Assessment Act 1997*).

**90AD Extended meaning of *matrimonial cause* and *property***

- (1)For the purposes of this Part, a debt owed by a party to a marriage is to be treated as property for the purposes of paragraph (ca) of the definition of ***matrimonial cause*** in section 4.
- (2)For the purposes of paragraph 114(1)(e), ***property*** includes a debt owed by a party to a marriage.

**90ADA Other provisions of this Act not affected by this Part**

This Part does not affect the operation of any other provision of this Act.

Example: Paragraph 90AE(3)(e) and subsection 90AE(4) do not limit the operation of any other provisions of this Act that require or permit the court to take matters into account in making an order in proceedings under section 79.

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## **Division 2—Orders under section 79**

### **90AE Court may make an order under section 79 binding a third party**

(1) In proceedings under section 79, the court may make any of the following orders:

- (a) an order directed to a creditor of the parties to the marriage to substitute one party for both parties in relation to the debt owed to the creditor;
- (b) an order directed to a creditor of one party to a marriage to substitute the other party, or both parties, to the marriage for that party in relation to the debt owed to the creditor;
- (c) an order directed to a creditor of the parties to the marriage that the parties be liable for a different proportion of the debt owed to the creditor than the proportion the parties are liable to before the order is made;
- (d) an order directed to a director of a company or to a company to register a transfer of shares from one party to the marriage to the other party.

(2) In proceedings under section 79, the court may make any other order that:

- (a) directs a third party to do a thing in relation to the property of a party to the marriage; or
- (b) alters the rights, liabilities or property interests of a third party in relation to the marriage.

(3) The court may only make an order under subsection (1) or (2) if:

- (a) the making of the order is reasonably necessary, or reasonably appropriate and adapted, to effect a division of property between the parties to the marriage; and
- (b) if the order concerns a debt of a party to the marriage—it is not foreseeable at the time that the order is made that to make the order would result in the debt not being paid in full; and
- (c) the third party has been accorded procedural fairness in relation to the making of the order; and

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- (d)the court is satisfied that, in all the circumstances, it is just and equitable to make the order; and
- (e)the court is satisfied that the order takes into account the matters mentioned in subsection (4).

(4)The matters are as follows:

- (a)the taxation effect (if any) of the order on the parties to the marriage;
- (b)the taxation effect (if any) of the order on the third party;
- (c)the social security effect (if any) of the order on the parties to the marriage;
- (d)the third party's administrative costs in relation to the order;
- (e)if the order concerns a debt of a party to the marriage—the capacity of a party to the marriage to repay the debt after the order is made;

Note: See paragraph (3)(b) for requirements for making the order in these circumstances.

Example: The capacity of a party to the marriage to repay the debt would be affected by that party's ability to repay the debt without undue hardship.

- (f)the economic, legal or other capacity of the third party to comply with the order;

Example: The legal capacity of the third party to comply with the order could be affected by the terms of a trust deed. However, after taking the third party's legal capacity into account, the court may make the order despite the terms of the trust deed. If the court does so, the order will have effect despite those terms (see section 90AC).

- (g)if, as a result of the third party being accorded procedural fairness in relation to the making of the order, the third party raises any other matters—those matters;

Note: See paragraph (3)(c) for the requirement to accord procedural fairness to the third party.

- (h)any other matter that the court considers relevant.

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## **Division 3—Orders or injunctions under section 114**

### **90AF Court may make an order or injunction under section 114 binding a third party**

- (1) In proceedings under section 114, the court may:
- (a) make an order restraining a person from repossessing property of a party to a marriage; or
  - (b) grant an injunction restraining a person from commencing legal proceedings against a party to a marriage.
- (2) In proceedings under section 114, the court may make any other order, or grant any other injunction that:
- (a) directs a third party to do a thing in relation to the property of a party to the marriage; or
  - (b) alters the rights, liabilities or property interests of a third party in relation to the marriage.
- (3) The court may only make an order or grant an injunction under subsection (1) or (2) if:
- (a) the making of the order, or the granting of the injunction, is reasonably necessary, or reasonably appropriate and adapted, to effect a division of property between the parties to the marriage; and
  - (b) if the order or injunction concerns a debt of a party to the marriage—it is not foreseeable at the time that the order is made, or the injunction granted, that to make the order or grant the injunction would result in the debt not being paid in full; and
  - (c) the third party has been accorded procedural fairness in relation to the making of the order or injunction; and
  - (d) for an injunction or order under subsection 114(1)—the court is satisfied that, in all the circumstances, it is proper to make the order or grant the injunction; and
  - (e) for an injunction under subsection 114(3)—the court is satisfied that, in all the circumstances, it is just or convenient to grant the injunction; and
  - (f) the court is satisfied that the order or injunction takes into account the matters mentioned in subsection (4).

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(4)The matters are as follows:

- (a)the taxation effect (if any) of the order or injunction on the parties to the marriage;
- (b)the taxation effect (if any) of the order or injunction on the third party;
- (c)the social security effect (if any) of the order or injunction on the parties to the marriage;
- (d)the third party's administrative costs in relation to the order or injunction;
- (e)if the order or injunction concerns a debt of a party to the marriage—the capacity of a party to the marriage to repay the debt after the order is made or the injunction is granted;

Note: See paragraph (3)(b) for requirements for making the order or granting the injunction in these circumstances.

Example: The capacity of a party to the marriage to repay the debt would be affected by that party's ability to repay the debt without undue hardship.

- (f)the economic, legal or other capacity of the third party to comply with the order or injunction;

Example: The legal capacity of the third party to comply with the order or injunction could be affected by the terms of a trust deed. However, after taking the third party's legal capacity into account, the court may make the order or grant the injunction despite the terms of the trust deed. If the court does so, the order or injunction will have effect despite those terms (see section 90AC).

- (g)if, as a result of the third party being accorded procedural fairness in relation to the making of the order or the granting of the injunction, the third party raises any other matters—those matters;

Note: See paragraph (3)(c) for the requirement to accord procedural fairness to the third party.

- (h)any other matter that the court considers relevant.

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## **Division 4—Other matters**

### **90AG Orders and injunctions binding on trustees**

If an order or injunction binds a person in the capacity of trustee in relation to property, then the order or injunction is also binding (by force of this section) on any person who subsequently becomes the trustee.

### **90AH Protection for a third party**

A third party in relation to a marriage is not liable for loss or damage suffered by any person because of things done (or not done) by the third party in good faith in reliance on an order or injunction made or granted by a court in accordance with this Part.

### **90AI Service of documents on a third party**

(1) If a document is required or permitted to be served for the purposes of this Part on a third party in relation to a marriage, the document may be served in any of the ways in which a document may be served under the applicable Rules of Court.

(2) Subsection (1) is in addition to any other method of service permitted by law.

### **90AJ Expenses of third party**

(1) Subsection (2) applies if:

- (a) the court has made an order or granted an injunction in accordance with this Part in relation to a marriage; and
- (b) a third party in relation to the marriage has incurred expense as a necessary result of the order or injunction.

(2) The court may make such order as it considers just for the payment of the reasonable expenses of the third party incurred as a necessary result of the order or injunction.

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(3) In deciding whether to make an order under subsection (2), subject to what the court considers just, the court must take into account the principle that the parties to the marriage should bear the reasonable expenses of the third party equally.

(4) The regulations may provide, in situations where the court has not made an order under subsection (2):

- (a) for the charging by the third party of reasonable fees to cover the reasonable expenses of the third party incurred as a necessary result of the order or injunction; and
- (b) if such fees are charged—that each of the parties to the marriage is separately liable to pay the third party an amount equal to half of those fees; and
- (c) for conferring jurisdiction on a particular court or courts in relation to the collection or recovery of such fees.

**90AK Acquisition of property**

(1) The court must not make an order or grant an injunction in accordance with this Part if the order or injunction would:

- (a) result in the acquisition of property from a person otherwise than on just terms; and
- (b) be invalid because of paragraph 51(xxi) of the Constitution.

(2) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxi) of the Constitution.

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## **Part VIIIA—Financial agreements**

### **90A Definitions**

In this Part:

*dealt with* includes the meaning given by subsection 90F(2).

*marriage* includes a void marriage.

### **90B Financial agreements before marriage**

(1) If:

(a) people who are contemplating entering into a marriage with each other make a written agreement with respect to any of the matters mentioned in subsection (2); and

(aa) at the time of the making of the agreement, the people are not the spouse parties to any other binding agreement (whether made under this section or section 90C or 90D) with respect to any of those matters; and

(b) the agreement is expressed to be made under this section; the agreement is a *financial agreement*. The people may make the financial agreement with one or more other people.

(2) The matters referred to in paragraph (1)(a) are the following:

(a) how, in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of the spouse parties at the time when the agreement is made, or at a later time and before divorce, is to be dealt with;

(b) the maintenance of either of the spouse parties:

(i) during the marriage; or

(ii) after divorce; or

(iii) both during the marriage and after divorce.

(3) A financial agreement made as mentioned in subsection (1) may also contain:

(a) matters incidental or ancillary to those mentioned in subsection (2); and

(b) other matters.

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(4)A financial agreement (the ***new agreement***) made as mentioned in subsection (1) may terminate a previous financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

**90C Financial agreements during marriage**

(1) If:

(a)the parties to a marriage make a written agreement with respect to any of the matters mentioned in subsection (2); and  
(aa)at the time of the making of the agreement, the parties to the marriage are not the spouse parties to any other binding agreement (whether made under this section or section 90B or 90D) with respect to any of those matters; and

(b)the agreement is expressed to be made under this section; the agreement is a ***financial agreement***. The parties to the marriage may make the financial agreement with one or more other people.

(2)The matters referred to in paragraph (1)(a) are the following:

(a)how, in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of the spouse parties at the time when the agreement is made, or at a later time and during the marriage, is to be dealt with;  
(b)the maintenance of either of the spouse parties:  
(i) during the marriage; or  
(ii) after divorce; or  
(iii) both during the marriage and after divorce.

(2A)For the avoidance of doubt, a financial agreement under this section may be made before or after the marriage has broken down.

(3)A financial agreement made as mentioned in subsection (1) may also contain:

(a)matters incidental or ancillary to those mentioned in subsection (2); and  
(b) other matters.

(4)A financial agreement (the ***new agreement***) made as mentioned in subsection (1) may terminate a previous financial agreement (however made) if all of the parties to the previous agreement are

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parties to the new agreement.

#### **90D Financial agreements after divorce order is made**

(1) If:

(a)after a divorce order is made in relation to a marriage (whether it has taken effect or not), the parties to the former marriage make a written agreement with respect to any of the matters mentioned in subsection (2); and

(aa)at the time of the making of the agreement, the parties to the former marriage are not the spouse parties to any other binding agreement (whether made under this section or section 90B or 90C) with respect to any of those matters; and

(b)the agreement is expressed to be made under this section; the agreement is a ***financial agreement***. The parties to the former marriage may make the financial agreement with one or more other people.

(2)The matters referred to in paragraph (1)(a) are the following:

(a)how all or any of the property or financial resources that either or both of the spouse parties had or acquired during the former marriage is to be dealt with;

(b)the maintenance of either of the spouse parties.

(3)A financial agreement made as mentioned in subsection (1) may also contain:

(a)matters incidental or ancillary to those mentioned in subsection (2); and

(b) other matters.

(4)A financial agreement (the ***new agreement***) made as mentioned in subsection (1) may terminate a previous financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

#### **90DA Need for separation declaration for certain provisions of financial agreement to take effect**

(1)A financial agreement that is binding on the parties to the agreement, to the extent to which it deals with how, in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of the spouse parties:

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(a)at the time when the agreement is made; or  
(b)at a later time and before the termination of the marriage by divorce;  
are to be dealt with, is of no force or effect until a separation declaration is made.

Note: Before the separation declaration is made, the financial agreement will be of force and effect in relation to the other matters it deals with (except for any matters covered by section 90DB).

(1A)Subsection (1) ceases to apply if:

- (a)the spouse parties divorce; or
- (b)either or both of them die.

Note: This means the financial agreement will be of force and effect in relation to the matters mentioned in subsection (1) from the time of the divorce or death(s).

(2)A separation declaration is a written declaration that complies with subsections (3) and (4), and may be included in the financial agreement to which it relates.

(3)The declaration must be signed by at least one of the spouse parties to the financial agreement.

(4)The declaration must state that:

- (a)the spouse parties have separated and are living separately and apart at the declaration time; and
- (b)in the opinion of the spouse parties making the declaration, there is no reasonable likelihood of cohabitation being resumed.

(5)In this section:

***declaration time*** means the time when the declaration was signed by a spouse party to the financial agreement.

***separated*** has the same meaning as in section 48 (as affected by section 49).

**90DB Whether or when certain other provisions of financial agreements take effect**

(1)A financial agreement that is binding on the parties to the agreement, to the extent to which it provides for a third party to

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contribute to the maintenance of a spouse party during the marriage, is of no force or effect.

(2)A financial agreement that is binding on the parties to the agreement, to the extent to which it provides for matters covered by paragraph 90B(3)(b) or 90C(3)(b), is of no force or effect unless and until the marriage breaks down.

#### **90E Requirements with respect to provisions in financial agreements relating to the maintenance of a party or a child or children**

A provision of a financial agreement that relates to the maintenance of a spouse party to the agreement or a child or children is void unless the provision specifies:

- (a)the party, or the child or children, for whose maintenance provision is made; and
- (b)the amount provided for, or the value of the portion of the relevant property attributable to, the maintenance of the party, or of the child or each child, as the case may be.

#### **90F Certain provisions in agreements**

(1)No provision of a financial agreement excludes or limits the power of a court to make an order in relation to the maintenance of a party to a marriage if subsection (1A) applies.

(1A)This subsection applies if the court is satisfied that, when the agreement came into effect, the circumstances of the party were such that, taking into account the terms and effect of the agreement, the party was unable to support himself or herself without an income tested pension, allowance or benefit.

(2)To avoid doubt, a provision in an agreement made as mentioned in subsection 90B(1), 90C(1) or 90D(1) that provides for property or financial resources owned by a spouse party to the agreement to continue in the ownership of that party is taken, for the purposes of that section, to be a provision with respect to how the property or financial resources are to be dealt with.

#### **90G When financial agreements are binding**

(1)A financial agreement is binding on the parties to the agreement

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if, and only if:

- (a)the agreement is signed by all parties; and
- (b)the agreement contains, in relation to each spouse party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, as certified in an annexure to the agreement, with independent legal advice from a legal practitioner as to the following matters:
  - (i) the effect of the agreement on the rights of that party;
  - (ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement; and
- (c)the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and
- (d)the agreement has not been terminated and has not been set aside by a court; and
- (e)after the agreement is signed, the original agreement is given to one of the spouse parties and a copy is given to each of the other parties.

Note: For the manner in which the contents of a financial agreement may be proved, see section 48 of the *Evidence Act 1995*.

(2)A court may make such orders for the enforcement of a financial agreement that is binding on the parties to the agreement as it thinks necessary.

**90H Effect of death of party to financial agreement**

A financial agreement that is binding on the parties to the agreement continues to operate despite the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party.

**90J Termination of financial agreement**

- (1)The parties to a financial agreement may terminate the agreement only by:
  - (a)including a provision to that effect in another financial agreement as mentioned in subsection 90B(4), 90C(4) or 90D(4); or

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(b)making a written agreement (a **termination agreement**) to that effect.

(2)A termination agreement is binding on the parties if, and only if:

(a)the agreement is signed by all parties to the agreement; and

(b)the agreement contains, in relation to each spouse party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, as certified in an annexure to the agreement, with independent legal advice from a legal practitioner as to the following matters:

(i) the effect of the agreement on the rights of that party;

(ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement; and

(c)the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and

(d)the agreement has not been set aside by a court; and

(e)after the agreement is signed, the original agreement is given to one of the spouse parties and a copy is given to each of the other parties.

(3)A court may, on an application by a person who was a party to the financial agreement that has been terminated, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.

Note: For the manner in which the contents of a financial agreement may be proved, see section 48 of the *Evidence Act 1995*.

## **90K Circumstances in which court may set aside a financial agreement or termination agreement**

(1)A court may make an order setting aside a financial agreement or a termination agreement if, and only if, the court is satisfied that:

(a)the agreement was obtained by fraud (including

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- non-disclosure of a material matter); or
- (aa)a party to the agreement entered into the agreement:
- (i) for the purpose, or for purposes that included the purpose, of defrauding or defeating a creditor or creditors of the party; or
  - (ii) with reckless disregard of the interests of a creditor or creditors of the party; or
- (ab)a party (*the **agreement party***) to the agreement entered into the agreement:
- (i) for the purpose, or for purposes that included the purpose, of defrauding another person who is a party to a de facto relationship with a spouse party; or
  - (ii) for the purpose, or for purposes that included the purpose, of defeating the interests of that other person in relation to any possible or pending application for an order under section 90SM, or a declaration under section 90SL, in relation to the de facto relationship; or
  - (iii) with reckless disregard of those interests of that other person; or
- (b)the agreement is void, voidable or unenforceable; or
- (c)in the circumstances that have arisen since the agreement was made it is impracticable for the agreement or a part of the agreement to be carried out; or
- (d)since the making of the agreement, a material change in circumstances has occurred (being circumstances relating to the care, welfare and development of a child of the marriage) and, as a result of the change, the child or, if the applicant has caring responsibility for the child (as defined in subsection (2)), a party to the agreement will suffer hardship if the court does not set the agreement aside; or
- (e)in respect of the making of a financial agreement—a party to the agreement engaged in conduct that was, in all the circumstances, unconscionable; or
- (f)a payment flag is operating under Part VIIIB on a superannuation interest covered by the agreement and there is no reasonable likelihood that the operation of the flag will be terminated by a flag lifting agreement under that Part; or
- (g)the agreement covers at least one superannuation interest that is an unsplittable interest for the purposes of Part VIIIB.
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(1A)For the purposes of paragraph (1)(aa), *creditor*, in relation to a party to the agreement, includes a person who could reasonably have been foreseen by the party as being reasonably likely to become a creditor of the party.

(2)For the purposes of paragraph (1)(d), a person has *caring responsibility* for a child if:

- (a)the person is a parent of the child with whom the child lives; or
- (b)a parenting order provides that:
  - (i) the child is to live with the person; or
  - (ii) the person has parental responsibility for the child.

(3)A court may, on an application by a person who was a party to the financial agreement that has been set aside, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.

(4)An order under subsection (1) or (3) may, after the death of a party to the proceedings in which the order was made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(5)If a party to proceedings under this section dies before the proceedings are completed:

- (a)the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and
- (b)if the court is of the opinion:
  - (i) that it would have exercised its powers under this section if the deceased party had not died; and
  - (ii) that it is still appropriate to exercise those powers;the court may make any order that it could have made under subsection (1) or (3); and
- (c)an order under paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

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(6)The court must not make an order under this section if the order would:

- (a)result in the acquisition of property from a person otherwise than on just terms; and
- (b)be invalid because of paragraph 51(xxi) of the Constitution.

For this purpose, ***acquisition of property*** and ***just terms*** have the same meanings as in paragraph 51(xxi) of the Constitution.

**90KA Validity, enforceability and effect of financial agreements and termination agreements**

The question whether a financial agreement or a termination agreement is valid, enforceable or effective is to be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts, and, in proceedings relating to such an agreement, the court:

- (a)subject to paragraph (b), has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction; and
- (b)has power to make an order for the payment, by a party to the agreement to another party to the agreement, of interest on an amount payable under the agreement, from the time when the amount became or becomes due and payable, at a rate not exceeding the rate prescribed by the applicable Rules of Court; and
- (c)in addition to, or instead of, making an order or orders under paragraph (a) or (b), may order that the agreement, or a specified part of the agreement, be enforced as if it were an order of the court.

**90L Financial and other agreements etc. not liable to duty**

None of the following is subject to any duty or charge under any law of a State or Territory or any law of the Commonwealth that applies only in relation to a Territory:

- (a)a financial agreement;

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- (b)a termination agreement;
  - (c)a deed or other instrument executed by a person for the purposes of, or in accordance with, an order or financial agreement made under this Part.

#### **90M Notification of proceeds of crime orders etc.**

(1) If:

- (a)a person makes an application for an order, under this Part, with respect to:
    - (i) the property of the parties to a marriage or either or them; or
    - (ii) the maintenance of a party to a marriage; and
  - (b)the person knows that the property of the parties to the marriage or either of them is covered by:
    - (i) a proceeds of crime order; or
    - (ii) a forfeiture application;
- the person must:
- (c)disclose in the application the proceeds of crime order or forfeiture application; and
  - (d)give to the court a sealed copy of that order or application.

(2)A person who does not comply with subsection (1) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

(3) If:

- (a)a person is a party to property settlement or spousal maintenance proceedings under this Part; and
- (b)the person is notified by the DPP that the property of the parties to the marriage or either of them is covered by:
  - (i) a proceeds of crime order; or
  - (iii) a forfeiture application;

the person must notify the Registry Manager in writing of the proceeds of crime order or forfeiture application.

(4)A person who does not comply with subsection (3) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

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**90N Court to stay property or spousal maintenance proceedings affected by proceeds of crime orders etc.**

(1)A court in which property settlement or spousal maintenance proceedings are pending must stay those proceedings if notified under section 90M in relation to the proceedings.

(1A)The court may, before staying proceedings under subsection (1), invite or require the DPP to make submissions relating to staying the proceedings.

(2)A court must, on the application of the DPP, stay property settlement or spousal maintenance proceedings under this Part if the property of the parties to the marriage or either of them is covered by:

- (a)a proceeds of crime order; or
- (b)a forfeiture application.

(3)A court must notify the DPP if the court stays property settlement or spousal maintenance proceedings under subsection (1) or (2).

(4)The DPP must notify the Registry Manager if:

- (a)a proceeds of crime order ceases to be in force; or
- (b)a forfeiture application is finally determined.

(5)For the purposes of subsection (4), a forfeiture application is taken to be finally determined when:

- (a)the application is withdrawn; or
- (b)if the application is successful—the resulting forfeiture order comes into force; or
- (c)if the application is unsuccessful—the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.

**90P Lifting a stay**

(1)A court that stayed the property settlement or spousal maintenance proceedings under section 90N must wholly or partially lift the stay if:

- (a)either party to the proceedings makes an application for the stay to be lifted and the DPP consents to such an

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application; or

(b)the DPP makes an application for the stay to be lifted.

(2)A court that stayed the property settlement or spousal maintenance proceedings under section 90N may, on its own motion, wholly or partially lift the stay if the DPP consents to such a motion.

(3)Giving the Registry Manager written notice of the DPP's consent under this section is taken to be the giving of that consent, unless the court requires the DPP to appear in the proceedings. The notice may be given by the DPP or by a party to the proceedings.

#### **90Q Intervention by DPP**

(1)The DPP may intervene in any property settlement or spousal maintenance proceedings in relation to which a court is notified under section 90M, or in any proceedings under section 90N or 90P in which the DPP is not already a party.

(2)If the DPP intervenes, the DPP is taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

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## **Part VIIIAB—Financial matters relating to de facto relationships**

### **Division 1—Preliminary**

#### **Subdivision A—Meaning of key terms**

##### **90RA Participating jurisdictions**

*Participating jurisdictions*

(1)For the purposes of this Act, the following are the *participating jurisdictions*:

- (a)each referring State;
- (b)each Territory.

*Referring States*

(2)A State is a *referring State* if:

- (a)the Parliament of the State has referred, or refers, to the Parliament of the Commonwealth financial matters relating to the parties to de facto relationships arising out of the breakdown of those de facto relationships; and
- (b)the referral of the financial matters is made:
  - (i) for the purposes of paragraph 51(xxxvii) of the Constitution; and
  - (ii) to the extent that the financial matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution).

This subsection has effect subject to subsection (5).

(3)To avoid doubt, a State is not a *referring State* if its Parliament has referred, or refers, to the Parliament of the Commonwealth only a limited class of the matters referred to in paragraph (2)(a).

(4)A State is a *referring State* even if a law of the State provides that a reference to the Commonwealth Parliament described in subsection (2) is to terminate in particular circumstances.

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(5)A State ceases to be a *referring State* if the State's reference to the Commonwealth Parliament described in subsection (2) terminates.

### **90RB Meaning of *child of a de facto relationship***

For the purposes of this Part, a child is a *child of a de facto relationship* if the child is the child of both of the parties to the de facto relationship.

Note: To determine who is a child of a person see Subdivision D of Division 1 of Part VII.

## **Subdivision B—Relationship with State and Territory laws**

### **90RC Relationship with State and Territory laws**

#### *De facto financial provisions*

(1)In this section:

*de facto financial provisions* means the following provisions:

- (a) this Part;
- (b)Part VIIIAA (as applied by section 90TA);
- (c)Part VIIIB, to the extent to which it relates to a superannuation interest to be allocated between the parties to a de facto relationship;
- (d)subsection 114(2A).

#### *State and Territory laws do not apply to financial matters*

(2)Parliament intends that the de facto financial provisions are to apply to the exclusion of any law of a State or Territory to the extent that the law:

- (a)deals with financial matters relating to the parties to de facto relationships arising out of the breakdown of those de facto relationships; and
- (b)deals with those matters by referring expressly to de facto relationships (regardless of how the State or Territory law describes those relationships).

Note 1: If, for example, both this Part and a law of a non-referring State deal with the distribution of property between the parties to a de facto relationship that has broken down after the commencement of this

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section, then the parties can only seek to distribute the property under this Part. Subsection (2) has the effect of preventing the parties from seeking to distribute the property under the State law.

Note 2: For *de facto relationship*, see section 4AA.

*Exception—insufficient link to a participating jurisdiction or Division 2 not applicable because of section 90SB*

(3) Despite subsection (2), Parliament does not intend that the de facto financial provisions are to apply to the exclusion of a law of a State or Territory in relation to a financial matter relating to the parties to a de facto relationship arising out of the breakdown of the relationship if:

(a) a court cannot make an order under this Part in relation to that financial matter because of section 90SB, 90SD or 90SK; and

(b) there is no Part VIIIAB financial agreement that is binding on the parties dealing with that financial matter.

Example 1: Abbey and Bob are parties to a de facto relationship that has broken down, and have never been ordinarily resident in a participating jurisdiction. Subsection (3) has the effect that State law will govern financial matters arising out of the breakdown of their relationship.

Example 2: Cleo and Dan are parties to a de facto relationship that has broken down after the commencement of this section. Early in their relationship, they made a financial agreement under the law of a non-referring State, but later spent most of their relationship in a participating jurisdiction. Cleo and Dan now have a sufficient geographical link with a participating jurisdiction for either of them to apply for an order under this Part in relation to financial matters arising out of the breakdown of their relationship. This means that subsection (3) will not apply and that their financial agreement will not be enforceable under State law because of subsection (2). However, their financial agreement will be enforceable under this Part as a Part VIIIAB financial agreement (see section 90UE).

*Exception—laws facilitating this Act*

(4) Despite subsection (2), Parliament does not intend that the de facto financial provisions are to apply to the exclusion of a law of a State or Territory to the extent that the law facilitates the operation of this Act.

Note: This Part is not intended to apply to the exclusion of, for example, a State law that deals with superannuation entitlements by acknowledging superannuation splitting under Part VIIIB of this Act.

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*Exception—prescribed State or Territory laws*

(5)Despite subsection (2), Parliament does not intend that the de facto financial provisions are to apply to the exclusion of a law of a State or Territory if the law is prescribed in regulations made for the purposes of this subsection.

## **Subdivision C—Declarations about existence of de facto relationships**

### **90RD Declarations about existence of de facto relationships**

(1) If:

(a)an application is made for an order under section 90SE, 90SG or 90SM, or a declaration under section 90SL; and

(b)a claim is made, in support of the application, that a de facto relationship existed between the applicant and another person;

the court may, for the purposes of those proceedings (the *primary proceedings*), declare that a de facto relationship existed, or never existed, between those 2 persons.

(2)A declaration under subsection (1) of the existence of a de facto relationship may also declare any or all of the following:

(a)the period, or periods, of the de facto relationship for the purposes of paragraph 90SB(a);

(b)whether there is a child of the de facto relationship;

(c)whether one of the parties to the de facto relationship made substantial contributions of a kind mentioned in paragraph 90SM(4)(a), (b) or (c);

(d)when the de facto relationship ended;

(e)where each of the parties to the de facto relationship was ordinarily resident during the de facto relationship.

Note: For *child of a de facto relationship*, see section 90RB.

### **90RE Effect of declarations**

(1)A section 90RD declaration has effect as a judgment of the court.

(2)For the purposes of this Act (other than Part VII), a

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section 90RD declaration has effect according to its terms.

**90RF Applying for declarations**

Any party to the primary proceedings may apply for a section 90RD declaration.

**90RG Geographical requirement**

A court may make a section 90RD declaration only if the court is satisfied that a person referred to in paragraph 90RD(1)(b), or both of those persons, were ordinarily resident in a participating jurisdiction when the primary proceedings commenced.

**90RH Setting aside declarations**

(1)If, in the primary proceedings, a person (the *affected person*) affected by a section 90RD declaration made in those proceedings applies under this subsection, and the court is satisfied that:

- (a)a fact or circumstance has arisen that has not previously been disclosed to the court; and
- (b)if the affected person was a party to the primary proceedings at the time the application for the declaration was made—the fact or circumstance was not within the affected person's knowledge at that time;

the court may do any of the following:

- (c)vary the declaration;
- (d)set the declaration aside;
- (e)set the declaration aside and make another section 90RD declaration in substitution for the declaration so set aside.

(2)The setting aside of a declaration does not affect anything done in reliance on the declaration while it remained in force.

(3)If the court sets aside a section 90RD declaration, the court may, on application by the affected person or any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of placing as far as practicable any person affected by the setting aside of the declaration in the same position as that person would have been in if the declaration had not been made.

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## **Division 2—Maintenance, declarations of property interests and alterations of property interests**

### **Subdivision A—Application of Division**

#### **90SA This Division does not apply to certain matters covered by binding financial agreements**

(1)This Division does not apply to any of the following matters to which a Part VIIIAB financial agreement that is binding on the parties to the agreement applies:

- (a)the maintenance of one of the spouse parties;
- (b)the property of the spouse parties or of either of them;
- (c)the financial resources of the spouse parties or of either of them.

(2)Subsection (1) does not apply in relation to:

- (a)proceedings between:
  - (i) a party to a de facto relationship; and
  - (ii) the bankruptcy trustee of a bankrupt party to the de facto relationship;  
with respect to the maintenance of the first-mentioned party after the breakdown of the de facto relationship; or
- (b)proceedings between:
  - (i) a party to a de facto relationship; and
  - (ii) the bankruptcy trustee of a bankrupt party to the de facto relationship;  
with respect to the distribution, after the breakdown of the de facto relationship, of any vested bankruptcy property in relation to the bankrupt party.

(3)Despite subsection (1), a party to a de facto relationship is not prevented from bringing property settlement proceedings under this Part if a Part VIIIAB financial agreement is not binding on that party.

Example: Before Amy and Ben's de facto relationship breaks down, Ben and Cathy make a Part VIIIAB financial agreement. Ben and Cathy's Part VIIIAB financial agreement does not prevent Amy from bringing property settlement proceedings against Ben.

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**90SB When this Division applies—length of relationship etc.**

A court may make an order under section 90SE, 90SG or 90SM, or a declaration under section 90SL, in relation to a de facto relationship only if the court is satisfied:

- (a)that the period, or the total of the periods, of the de facto relationship is at least 2 years; or
- (b)that there is a child of the de facto relationship; or
- (c)          that:
  - (i) the party to the de facto relationship who applies for the order or declaration made substantial contributions of a kind mentioned in paragraph 90SM(4)(a), (b) or (c); and
  - (ii) a failure to make the order or declaration would result in serious injustice to the applicant; or
- (d)that the relationship is or was registered under a prescribed law of a State or Territory.

Note: For *child of a de facto relationship*, see section 90RB.

**90SC This Division ceases to apply in relation to a de facto relationship if the parties marry each other**

(1)This Division (other than subsections 90SJ(2) to (5)) ceases to apply in relation to a de facto relationship if the parties to the de facto relationship later marry each other.

(2)Despite subsection (1), a declaration, order or injunction:

- (a)made in property settlement proceedings under this Division in relation to the de facto relationship; and
- (b)in force when the parties marry each other;

may, after the marriage, be enforced, varied or set aside in accordance with this Act.

(3)If a declaration, order or injunction is set aside as described in subsection (2), another declaration, order or injunction may be made under this Division in substitution for that declaration, order or injunction.

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## **Subdivision B—Maintenance**

### **90SD Geographical requirement**

(1)A court may make an order under section 90SE or 90SG in relation to a de facto relationship only if the court is satisfied:

- (a)that either or both of the parties to the de facto relationship were ordinarily resident in a participating jurisdiction when the application for the order was made (the *application time*); and
- (b) that either:
  - (i) both parties to the de facto relationship were ordinarily resident during at least a third of the de facto relationship; or
  - (ii) the applicant for the order made substantial contributions, in relation to the de facto relationship, of a kind mentioned in paragraph 90SM(4)(a), (b) or (c); in one or more States or Territories that are participating jurisdictions at the application time;

or that the alternative condition in subsection (1A) is met.

(1A)The alternative condition is that the parties to the de facto relationship were ordinarily resident in a participating jurisdiction when the relationship broke down.

(2)For the purposes of paragraph (1)(b), a State need not have been a participating jurisdiction during the de facto relationship.

(3)If each State is a referring State, the Governor-General may, by Proclamation, fix a day as the day on which paragraph (1)(b), and the alternative condition in subsection (1A), cease to apply in relation to new applications.

Note: Paragraph (1)(b) and subsection (1A) will continue to apply in relation to applications made before the proclaimed day.

(4) If:

- (a) a Proclamation under subsection (3) is in force; and
- (b) a State ceases to be a referring State on a particular day;

the Proclamation is revoked by force of this subsection on and from that day.

(5)If, under subsection (4), a Proclamation under subsection (3) is

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revoked:

- (a) this section has effect as if the revoked Proclamation had not been made; but
- (b) the effect of the revoked Proclamation on applications made before the specified day is not affected.

**90SE Power of court in maintenance proceedings**

(1) After the breakdown of a de facto relationship, a court may make such order as it considers proper for the maintenance of one of the parties to the de facto relationship in accordance with this Division.

Note 1: The geographical requirement in section 90SD must be satisfied.

Note 2: The court must be satisfied of at least one of the matters in section 90SB.

(2) If:

- (a) an application is made for an order under this section in proceedings between the parties to a de facto relationship with respect to the maintenance of a party to the de facto relationship; and
- (b) either of the following subparagraphs apply to a party to the de facto relationship:
  - (i) when the application was made, the party was a bankrupt;
  - (ii) after the application was made but before the proceedings are finally determined, the party became a bankrupt; and
- (c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and
- (d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings;

the court must join the bankruptcy trustee as a party to the proceedings.

(3) If, under subsection (2), a bankruptcy trustee is a party to proceedings with respect to the maintenance of a party to a de facto relationship, then, except with the leave of the court, the bankrupt party to the de facto relationship is not entitled to make a submission to the court in connection with any vested bankruptcy

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property in relation to the bankrupt party.

(4)The court must not grant leave under subsection (3) unless the court is satisfied that there are exceptional circumstances.

(5) If:

(a)an application is made for an order under this section in proceedings between the parties to a de facto relationship with respect to the maintenance of a party to the de facto relationship; and

(b)either of the following subparagraphs apply to a party to the de facto relationship (the *debtor party*):

(i) when the application was made, the debtor party was a debtor subject to a personal insolvency agreement;

(ii) after the application was made but before it is finally determined, the debtor party becomes a debtor subject to a personal insolvency agreement; and

(c)the trustee of the agreement applies to the court to be joined as a party to the proceedings; and

(d)the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings;

the court must join the trustee of the agreement as a party to the proceedings.

(6)If, under subsection (5), the trustee of a personal insolvency agreement is a party to proceedings with respect to the maintenance of a party to a de facto relationship, then, except with the leave of the court, the debtor party is not entitled to make a submission to the court in connection with any property subject to the agreement.

(7)The court must not grant leave under subsection (6) unless the court is satisfied that there are exceptional circumstances.

(8)For the purposes of subsections (2) and (5), an application for an order under this section is taken to be finally determined when:

(a)the application is withdrawn or dismissed; or

(b)an order (other than an interim order) is made as a result of the application.

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**90SF Matters to be taken into consideration in relation to maintenance**

(1) In exercising jurisdiction under section 90SE (after being satisfied of the matters in subsections 44(5) and (6) and sections 90SB and 90SD), the court must apply the principle that a party to a de facto relationship must maintain the other party to the de facto relationship:

- (a) only to the extent that the first-mentioned party is reasonably able to do so; and
- (b) only if the second-mentioned party is unable to support himself or herself adequately whether:
  - (i) by reason of having the care and control of a child of the de facto relationship who has not attained the age of 18 years; or
  - (ii) by reason of age or physical or mental incapacity for appropriate gainful employment; or
  - (iii) for any other adequate reason.

Note: For *child of a de facto relationship*, see section 90RB.

(2) In applying this principle, the court must take into account only the matters referred to in subsection (3).

(3) The matters to be so taken into account are:

- (a) the age and state of health of each of the parties to the de facto relationship (*the subject de facto relationship*); and
- (b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment; and
- (c) whether either party has the care or control of a child of the de facto relationship who has not attained the age of 18 years; and
- (d) commitments of each of the parties that are necessary to enable the party to support:
  - (i) himself or herself; and
  - (ii) a child or another person that the party has a duty to maintain; and
- (e) the responsibilities of either party to support any other person; and
- (f) subject to subsection (4), the eligibility of either party for a

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pension, allowance or benefit under:

- (i) any law of the Commonwealth, of a State or Territory or of another country; or
  - (ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia;
- and the rate of any such pension, allowance or benefit being paid to either party; and
- (g) a standard of living that in all the circumstances is reasonable; and
  - (h) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income; and
  - (i) the effect of any proposed order on the ability of a creditor of a party to recover the creditor's debt, so far as that effect is relevant; and
  - (j) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party; and
  - (k) the duration of the de facto relationship and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration; and
  - (l) the need to protect a party who wishes to continue that party's role as a parent; and
  - (m) if either party is cohabiting with another person—the financial circumstances relating to the cohabitation; and
  - (n) the terms of any order made or proposed to be made under section 90SM in relation to:
    - (i) the property of the parties; or
    - (ii) vested bankruptcy property in relation to a bankrupt party; and
  - (o) the terms of any order or declaration made, or proposed to be made, under this Part in relation to:
    - (i) a party to the subject de facto relationship (in relation to another de facto relationship); or

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- (ii) a person who is a party to another de facto relationship with a party to the subject de facto relationship; or
- (iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or
- (iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii); and
- (p)the terms of any order or declaration made, or proposed to be made, under Part VIII in relation to:
  - (i) a party to the subject de facto relationship; or
  - (ii) a person who is a party to a marriage with a party to the subject de facto relationship; or
  - (iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or
  - (iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii); and
- (q)any child support under the *Child Support (Assessment) Act 1989* that a party to the subject de facto relationship has provided, is to provide, or might be liable to provide in the future, for a child of the subject de facto relationship; and
- (r)any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; and
- (s)the terms of any Part VIIIAB financial agreement that is binding on either or both of the parties to the subject de facto relationship; and
- (t)the terms of any financial agreement that is binding on a party to the subject de facto relationship.

(4)In exercising its jurisdiction under section 90SE, a court must disregard any entitlement of the party whose maintenance is under consideration to an income tested pension, allowance or benefit.

**90SG Urgent maintenance cases**

If, in proceedings with respect to the maintenance of a party to a de facto relationship in accordance with this Division, it appears to the court that:

- (a)the party is in immediate need of financial assistance; and
- (b)it is not practicable in the circumstances to determine

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immediately what order, if any, should be made; the court may order the payment, pending the disposal of the proceedings, of such periodic sum or other sums as the court considers reasonable.

Note 1: The geographical requirement in section 90SD must be satisfied.

Note 2: The court must be satisfied of at least one of the matters in section 90SB.

## **90SH Specification in orders of payments etc. for maintenance purposes**

(1) If:

(a) a court makes an order under this Act (whether or not the order is made in proceedings in relation to the maintenance of a party to a de facto relationship in accordance with this Division, is made by consent or varies an earlier order), and the order has the effect of requiring:

(i) payment of a lump sum, whether in one amount or by instalments; or

(ii) the transfer or settlement of property; and

(b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a party to a de facto relationship in relation to the breakdown of the de facto relationship;

the court must:

(c) express the order to be an order to which this section applies; and

(d) specify the portion of the payment, or the value of the portion of the property, attributable to the maintenance of the party.

(2) If:

(a) a court makes an order of a kind referred to in paragraph (1)(a); and

(b) the order:

(i) is not expressed to be an order to which this section applies; or

(ii) is expressed to be an order to which this section applies, but does not comply with paragraph (1)(d);

any payment, transfer or settlement of a kind referred to in

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paragraph (1)(a), that the order has the effect of requiring, must be taken not to make provision for the maintenance of a party to the relevant de facto relationship.

**90SI Modification of maintenance orders**

(1) If there is in force an order with respect to the maintenance of a party to a de facto relationship in accordance with this Division:

- (a) made by the court; or
  - (b) made by another court and registered in the first-mentioned court in accordance with the applicable Rules of Court;
- the court may:
- (c) discharge the order if there is any just cause for so doing; or
  - (d) suspend its operation wholly or in part and either until further order or until a fixed time or the happening of some future event; or
  - (e) revive wholly or in part an order suspended under paragraph (d); or
  - (f) subject to subsection (3), vary the order so as to increase or decrease any amount ordered to be paid or in any other manner.

(2) The court's jurisdiction under subsection (1) may be exercised:

- (a) in any case—in proceedings with respect to the maintenance of a party to the de facto relationship in accordance with this Division; or
- (b) if there is a bankrupt party to the de facto relationship—on the application of the bankruptcy trustee; or
- (c) if a party to the de facto relationship is a debtor subject to a personal insolvency agreement—on the application of the trustee of the agreement.

(3) The court must not make an order increasing or decreasing an amount ordered to be paid by an order unless it is satisfied:

- (a) that, since the order was made or last varied:
  - (i) the circumstances of a person for whose benefit the order was made have so changed (including the person entering into a stable and continuing de facto relationship); or

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- (ii) the circumstances of the person liable to make payments under the order have so changed; or
  - (iii) in the case of an order that operates in favour of, or is binding on, a legal personal representative—the circumstances of the estate are such; as to justify its so doing; or
- (b) that, since the order was made, or last varied, the cost of living has changed to such an extent as to justify its so doing; or
- (c) in a case where the order was made by consent—that the amount ordered to be paid is not proper or adequate; or
- (d) that:
- (i) material facts were withheld from the court that made the order, or from a court that varied the order; or
  - (ii) material evidence previously given before such a court was false.

(4) In satisfying itself for the purposes of paragraph (3)(b), the court must have regard to any changes that have occurred in the Consumer Price Index published by the Australian Statistician.

(5) The court must not, in considering the variation of an order, have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or was last varied having regard to a change in the cost of living.

(6) In satisfying itself for the purposes of paragraph (3)(c), the court must have regard to any payments, and any transfer or settlement of property, previously made by a party to the de facto relationship, or by the bankruptcy trustee of a party to the de facto relationship, to:

- (a) the other party; or
- (b) any other person for the benefit of the other party.

(7) An order decreasing the amount of a periodic sum payable under an order or discharging an order may be expressed to be retrospective to such date as the court considers appropriate.

(8) If, as provided by subsection (7), an order decreasing the amount of a periodic sum payable under an order is expressed to be retrospective to a specified date, any money paid under the second-mentioned order since the specified date, being money that

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would not have been required to be paid under the second-mentioned order as varied by the first-mentioned order, may be recovered in a court having jurisdiction under this Act.

(9)If, as provided by subsection (7), an order discharging an order is expressed to be retrospective to a specified date, any money paid under the second-mentioned order since the specified date may be recovered in a court having jurisdiction under this Act.

(10)For the purposes of this section, the court must have regard to the provisions of section 90SF.

(11)The discharge of an order does not affect the recovery of arrears due under the order at the time as at which the discharge takes effect.

**90SJ Cessation of maintenance orders**

(1)An order with respect to the maintenance of a party to a de facto relationship in accordance with this Division ceases to have effect upon:

- (a)the death of the party; or
- (b)the death of the person liable to make payments under the order.

(2)An order with respect to the maintenance of a party to a de facto relationship in accordance with this Division ceases to have effect upon the marriage of the party unless in special circumstances a court having jurisdiction under this Act otherwise orders.

(3)If a marriage referred to in subsection (2) takes place, it is the duty of the person for whose benefit the order was made to inform without delay the person liable to make payments under the order of the date of the marriage.

(4)Any money paid in respect of a period after the event referred to in subsection (2) may be recovered in a court having jurisdiction under this Act.

(5)Nothing in this section affects the recovery of arrears due under an order at the time when the order ceased to have effect.

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## **Subdivision C—Declarations and alterations of property interests**

### **90SK Geographical requirement**

(1)A court may make a declaration under section 90SL, or an order under section 90SM, in relation to a de facto relationship only if the court is satisfied:

- (a)that either or both of parties to the de facto relationship were ordinarily resident in a participating jurisdiction when the application for the declaration or order was made (the *application time*); and
- (b) that either:
  - (i) both parties to the de facto relationship were ordinarily resident during at least a third of the de facto relationship; or
  - (ii) the applicant for the declaration or order made substantial contributions in relation to the de facto relationship, of a kind mentioned in paragraph 90SM(4) (a), (b) or (c);  
in one or more States or Territories that are participating jurisdictions at the application time;

or that the alternative condition in subsection (1A) is met.

(1A)The alternative condition is that the parties to the de facto relationship were ordinarily resident in a participating jurisdiction when the relationship broke down.

(2)For the purposes of paragraph (1)(b), a State need not have been a participating jurisdiction during the de facto relationship.

(3)If each State is a referring State, the Governor-General may, by Proclamation, fix a day as the day on which paragraph (1)(b), and the alternative condition in subsection (1A), cease to apply in relation to new applications.

Note: Paragraph (1)(b) and subsection (1A) will continue to apply in relation to applications made before the proclaimed day.

(4) If:

- (a) a Proclamation under subsection (3) is in force; and
- (b) a State ceases to be a referring State on a particular day;

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the Proclamation is revoked by force of this subsection on and from that day.

(5)If, under subsection (4), a Proclamation under subsection (3) is revoked:

- (a)this section has effect as if the revoked Proclamation had not been made; but
- (b)the effect of the revoked Proclamation on applications made before the specified day is not affected.

**90SL Declaration of interests in property**

(1)In proceedings between the parties to a de facto relationship:

- (a)after the breakdown of the de facto relationship; and
- (b)with respect to existing title or rights in respect of property;

the court may declare the title or rights, if any, that a party has in respect of the property.

Note 1: The geographical requirement in section 90SK must be satisfied.

Note 2: The court must be satisfied of at least one of the matters in section 90SB.

(2)If a court makes a declaration under subsection (1), it may make consequential orders to give effect to the declaration, including orders as to sale or partition and interim or permanent orders as to possession.

**90SM Alteration of property interests**

(1)In property settlement proceedings after the breakdown of a de facto relationship, the court may make such order as it considers appropriate:

- (a)in the case of proceedings with respect to the property of the parties to the de facto relationship or either of them—altering the interests of the parties to the de facto relationship in the property; or
- (b)in the case of proceedings with respect to the vested bankruptcy property in relation to a bankrupt party to the de facto relationship—altering the interests of the bankruptcy trustee in the vested bankruptcy property;

including:

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- (c)an order for a settlement of property in substitution for any interest in the property; and
- (d)an order requiring:
- (i) either or both of the parties to the de facto relationship; or
  - (ii) the relevant bankruptcy trustee (if any);
- to make, for the benefit of either or both of the parties to the de facto relationship or a child of the de facto relationship, such settlement or transfer of property as the court determines.

Note 1: The geographical requirement in section 90SK must be satisfied.

Note 2: The court must be satisfied of at least one of the matters in section 90SB.

Note 3: For *child of a de facto relationship*, see section 90RB.

(2)If a party to the de facto relationship dies after the breakdown of the de facto relationship, an order made under subsection (1) in property settlement proceedings may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(3)The court must not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

(4)In considering what order (if any) should be made under this section in property settlement proceedings, the court must take into account:

- (a)the financial contribution made directly or indirectly by or on behalf of a party to the de facto relationship, or a child of the de facto relationship:
  - (i) to the acquisition, conservation or improvement of any of the property of the parties to the de facto relationship or either of them; or
  - (ii) otherwise in relation to any of that last-mentioned property;

whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the de facto relationship or either of them; and

- (b)the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a party to the de facto relationship, or a child of the de facto relationship:

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- (i) to the acquisition, conservation or improvement of any of the property of the parties to the de facto relationship or either of them; or
- (ii) otherwise in relation to any of that last-mentioned property;  
whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the de facto relationship or either of them; and
- (c) the contribution made by a party to the de facto relationship to the welfare of the family constituted by the parties to the de facto relationship and any children of the de facto relationship, including any contribution made in the capacity of homemaker or parent; and
- (d) the effect of any proposed order upon the earning capacity of either party to the de facto relationship; and
- (e) the matters referred to in subsection 90SF(3) so far as they are relevant; and
- (f) any other order made under this Act affecting a party to the de facto relationship or a child of the de facto relationship; and
- (g) any child support under the *Child Support (Assessment) Act 1989* that a party to the de facto relationship has provided, is to provide, or might be liable to provide in the future, for a child of the de facto relationship.

(5) Without limiting the power of any court to grant an adjournment in proceedings under this Act, if, in property settlement proceedings in relation to the parties to a de facto relationship, a court is of the opinion:

- (a) that there is likely to be a significant change in the financial circumstances of the parties to the de facto relationship or either of them and that, having regard to the time when that change is likely to take place, it is reasonable to adjourn the proceedings; and
  - (b) that an order that the court could make with respect to:
    - (i) the property of the parties to the de facto relationship or either of them; or
    - (ii) the vested bankruptcy property in relation to a bankrupt de facto party to the de facto relationship;
- if that significant change in financial circumstances occurs is

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more likely to do justice as between the parties to the de facto relationship than an order that the court could make immediately with respect to:

- (iii) the property of the parties to the de facto relationship or either of them; or
- (iv) the vested bankruptcy property in relation to a bankrupt party to the de facto relationship;

the court may, if so requested by either party to the de facto relationship or the relevant bankruptcy trustee (if any), adjourn the proceedings until such time, before the expiration of a period specified by the court, as that party to the de facto relationship or the relevant bankruptcy trustee, as the case may be, applies for the proceedings to be determined, but nothing in this subsection requires the court to adjourn any proceedings in any particular circumstances.

(6) If a court proposes to adjourn proceedings as provided by subsection (5), the court may, before so adjourning the proceedings, make such interim order or orders or such other order or orders (if any) as it considers appropriate with respect to:

- (a) any of the property of the parties to the de facto relationship or of either of them; or
- (b) any of the vested bankruptcy property in relation to a bankrupt party to the de facto relationship.

(7) The court may, in forming an opinion for the purposes of subsection (5) as to whether there is likely to be a significant change in the financial circumstances of either or both of the parties to the de facto relationship, have regard to any change in the financial circumstances of a party to the de facto relationship that may occur by reason that the party to the de facto relationship:

- (a) is a contributor to a superannuation fund or scheme, or participates in any scheme or arrangement that is in the nature of a superannuation scheme; or
- (b) may become entitled to property as the result of the exercise in his or her favour, by the trustee of a discretionary trust, of a power to distribute trust property;

but nothing in this subsection limits the circumstances in which the court may form the opinion that there is likely to be a significant change in the financial circumstances of a party to the de facto relationship.

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(8) If a party to the de facto relationship dies after the breakdown of the de facto relationship, but before property settlement proceedings are completed:

- (a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and
  - (b) if the court is of the opinion:
    - (i) that it would have made an order with respect to property if the deceased party had not died; and
    - (ii) that it is still appropriate to make an order with respect to property;
- the court may make such order as it considers appropriate with respect to:
- (iii) any of the property of the parties to the de facto relationship or either of them; or
  - (iv) any of the vested bankruptcy property in relation to a bankrupt de facto party to the de facto relationship; and
- (c) an order made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(9) The Family Court must not make an order under this section in property settlement proceedings (other than an order until further order or an order made with the consent of all the parties to the proceedings) unless:

- (a) the parties to the proceedings have attended a conference in relation to the matter to which the proceedings relate with a Registrar or Deputy Registrar of the Family Court; or
- (b) the court is satisfied that, having regard to the need to make an order urgently, or to any other special circumstance, it is appropriate to make the order notwithstanding that the parties to the proceedings have not attended a conference as mentioned in paragraph (a); or
- (c) the court is satisfied that it is not practicable to require the parties to the proceedings to attend a conference as mentioned in paragraph (a).

(10) The following are entitled to become a party to proceedings in which an application is made for an order under this section by a

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party to a de facto relationship (the *subject de facto relationship*):

- (a) a creditor of a party to the proceedings if the creditor may not be able to recover his or her debt if the order were made;
- (b) a person:
  - (i) who is a party to a de facto relationship (the *other de facto relationship*) with a party to the subject de facto relationship; and
  - (ii) who could apply, or has an application pending, for an order under section 90SM, or a declaration under section 90SL, in relation to the other de facto relationship;
- (c) a person who is a party to a Part VIIIB financial agreement (that is binding on the person) with a party to the subject de facto relationship;
- (d) a person:
  - (i) who is a party to a marriage with a party to the subject de facto relationship; and
  - (ii) who could apply, or has an application pending, for an order under section 79, or a declaration under section 78, in relation to the marriage (or void marriage);
- (e) a person who is a party to a financial agreement (that is binding on the person) with a party to the subject de facto relationship;
- (f) any other person whose interests would be affected by the making of the order.

(11) Subsection (10) does not apply to a creditor of a party to the proceedings:

- (a) if the party is a bankrupt—to the extent to which the debt is a provable debt (within the meaning of the *Bankruptcy Act 1966*); or
- (b) if the party is a debtor subject to a personal insolvency agreement—to the extent to which the debt is covered by the personal insolvency agreement.

(12) If a person becomes a party to proceedings under this section because of paragraph (10)(b), the person may, in the proceedings, apply for:

- (a) an order under section 90SM; or

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(b)a declaration under section 90SL;  
in relation to the other de facto relationship described in that paragraph.

(13)If a person becomes a party to proceedings under this section because of paragraph (10)(d), the person may, in the proceedings, apply for:

- (a)an order under section 79; or
- (b)a declaration under section 78;

in relation to the marriage (or void marriage) described in that paragraph.

(14) If:

- (a)an application is made for an order under this section in proceedings between the parties to a de facto relationship with respect to the property of the parties to the de facto relationship or either of them; and
- (b)either of the following subparagraphs apply to a party to the de facto relationship:
  - (i) when the application was made, the party was a bankrupt;
  - (ii) after the application was made but before it is finally determined, the party became a bankrupt; and
- (c)the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and
- (d)the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings;

the court must join the bankruptcy trustee as a party to the proceedings.

(15)If a bankruptcy trustee is a party to property settlement proceedings in relation to the parties to a de facto relationship, then, except with the leave of the court, the bankrupt party to the de facto relationship is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.

(16)The court must not grant leave under subsection (15) unless the court is satisfied that there are exceptional circumstances.

(17) If:

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(a)an application is made for an order under this section in proceedings between the parties to a de facto relationship with respect to the property of the parties to the de facto relationship or either of them; and

(b)either of the following subparagraphs apply to a party to the de facto relationship (the *debtor party*):

- (i) when the application was made, the party was a debtor subject to a personal insolvency agreement;
- (ii) after the application was made but before it is finally determined, the party becomes a debtor subject to a personal insolvency agreement; and

(c)the trustee of the agreement applies to the court to be joined as a party to the proceedings; and

(d)the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings;

the court must join the trustee of the agreement as a party to the proceedings.

(18)If the trustee of a personal insolvency agreement is a party to property settlement proceedings in relation to the parties to a de facto relationship, then, except with the leave of the court, the party to the de facto relationship who is the debtor subject to the agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.

(19)The court must not grant leave under subsection (18) unless the court is satisfied that there are exceptional circumstances.

(20)For the purposes of subsections (14) and (17), an application for an order under this section is taken to be finally determined when:

- (a)the application is withdrawn or dismissed; or
- (b)an order (other than an interim order) is made as a result of the application.

#### **90SN Varying and setting aside orders altering property interests**

(1)If, on application by a person affected by an order made by a court under section 90SM in property settlement proceedings, the court is satisfied that:

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(a)there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence (including failure to disclose relevant information), the giving of false evidence or any other circumstance; or  
(b)in the circumstances that have arisen since the order was made it is impracticable for the order to be carried out or impracticable for a part of the order to be carried out; or  
(c)a person has defaulted in carrying out an obligation imposed on the person by the order and, in the circumstances that have arisen as a result of that default, it is just and equitable to vary the order or to set the order aside and make another order in substitution for the order; or  
(d)in the circumstances that have arisen since the making of the order, being circumstances of an exceptional nature relating to the care, welfare and development of a child of the de facto relationship, the child or, where the applicant has caring responsibility for the child (as defined in subsection (3)), the applicant, will suffer hardship if the court does not vary the order or set the order aside and make another order in substitution for the order; or  
(e)a proceeds of crime order has been made covering property of the parties to the de facto relationship or either of them, or a proceeds of crime order has been made against a party to the de facto relationship;

the court may, in its discretion, vary the order or set the order aside and, if it considers appropriate, make another order under section 90SM in substitution for the order so set aside.

Note: For *child of a de facto relationship*, see section 90RB.

(2)A court may, on application by a person affected by an order made by a court under section 90SM in property settlement proceedings, and with the consent of all the parties to the proceedings in which the order was made, vary the order or set the order aside and, if it considers appropriate, make another order under section 90SM in substitution for the order so set aside.

(3)For the purposes of paragraph (1)(d), a person has *caring responsibility* for a child if:

- (a)the person is a parent of the child with whom the child lives; or
- (b)a parenting order provides that:

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- (i) the child is to live with the person; or
  - (ii) the person has parental responsibility for the child.

(4) An order varied or made under subsection (1) or (2) may, after the death of a party to the de facto relationship in relation to which the order was so varied or made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(5) If, before proceedings under this section in relation to an order made under section 90SM are completed, a party to the de facto relationship dies:

- (a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and
- (b) if the court is of the opinion:
  - (i) that it would have exercised its powers under subsection (1) or (2) in relation to the order if the deceased party had not died; and
  - (ii) that it is still appropriate to exercise its powers under subsection (1) or (2) in relation to the order;the court may vary the order, set the order aside, or set the order aside and make another order under section 90SM in substitution for the order so set aside; and
- (c) an order varied or made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(6) In the exercise of its powers under subsection (1), (2) or (5), a court must have regard to the interests of, and must make any order proper for the protection of, a bona fide purchaser or other person interested.

(7) For the purposes of this section, a creditor of a party to the proceedings in which the order under section 90SM was made is taken to be a person whose interests are affected by the order if the creditor may not be able to recover his or her debt because the order has been made.

(8) For the purposes of this section, if:

- (a) an order is made by a court under section 90SM in

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proceedings with respect to the property of the parties to a de facto relationship or either of them; and

(b)either of the following subparagraphs apply to a party to the de facto relationship:

(i) when the order was made, the party was a bankrupt;

(ii) after the order was made, the party became a bankrupt;

the bankruptcy trustee is taken to be a person whose interests are affected by the order.

(9)For the purposes of this section, if:

(a)a party to a de facto relationship is a bankrupt; and

(b)an order is made by a court under section 90SM in proceedings with respect to the vested bankruptcy property in relation to the bankrupt party;

the bankruptcy trustee is taken to be a person whose interests are affected by the order.

(10)For the purposes of this section, if:

(a)an order is made by a court under section 90SM in proceedings with respect to the property of the parties to a de facto relationship or either of them; and

(b)either of the following subparagraphs apply to a party to the de facto relationship:

(i) when the order was made, the party was a debtor subject to a personal insolvency agreement;

(ii) after the order was made, the party became a debtor subject to a personal insolvency agreement;

the trustee of the agreement is taken to be a person whose interests are affected by the order.

**Subdivision D—Notification of application**

**90SO Notifying third parties about application**

The applicable Rules of Court may specify the circumstances in which a person who:

(a)applies for an order under this Division; or

(b)is a party to a proceeding for an order under this Division; is to give notice of the application to a person who is not a party to the proceedings.

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Note: The applicable Rules of Court may, for example, make provision for the notification of a person married to, or in a de facto relationship with, the applicant or respondent to the proceedings.

### **90SP Notifying bankruptcy trustee etc. about application under section 90SE, 90SL, 90SM or 90SN**

- (1)The applicable Rules of Court may make provision for a bankrupt who becomes a party to a proceeding for an application under section 90SE, 90SL, 90SM or 90SN to give notice of the application to the bankruptcy trustee.
- (2)The applicable Rules of Court may make provision for a debtor subject to a personal insolvency agreement who becomes a party to a proceeding for an application under section 90SE, 90SL, 90SM or 90SN to give notice of the application to the trustee of the agreement.

### **90SQ Notifying court about bankruptcy etc.**

#### *Bankruptcy*

- (1)The applicable Rules of Court may make provision for a person who:
  - (a)is a party to a de facto relationship that has broken down; and
  - (b)is a party to a proceeding for an application under section 90SE, 90SL, 90SM or 90SN; and
  - (c)before that application is finally determined, becomes a bankrupt;to notify a court exercising jurisdiction under this Act that the person has become a bankrupt.

#### *Debtor subject to a personal insolvency agreement*

- (2)The applicable Rules of Court may make provision for a person who:
  - (a)is a party to a de facto relationship that has broken down; and
  - (b)is a party to a proceeding for an application under section 90SE, 90SL, 90SM or 90SN; and
  - (c)before that application is finally determined, becomes a

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debtor subject to a personal insolvency agreement; to notify a court exercising jurisdiction under this Act that the person has become a debtor subject to a personal insolvency agreement.

*Institution of proceeding under the Bankruptcy Act 1966*

(3)The applicable Rules of Court may make provision for a person who:

- (a)is a party to a de facto relationship that has broken down; and
- (b)is a party to a proceeding for an application under section 90SE, 90SL, 90SM or 90SN; and
- (c)before that application is finally determined, becomes a party to a proceeding before the Federal Court or the Federal Magistrates Court under the *Bankruptcy Act 1966* that relates to:
  - (i) the bankruptcy of the person; or
  - (ii) the person's capacity as a debtor subject to a personal insolvency agreement;

to notify a court exercising jurisdiction under this Act of the institution of the proceeding under the *Bankruptcy Act 1966*.

(4)The applicable Rules of Court may make provision for a person who:

- (a)is the bankruptcy trustee of a bankrupt party to a de facto relationship; and
  - (b)the de facto relationship has broken down; and
  - (c)applies under section 139A of the *Bankruptcy Act 1966* for an order under Division 4A of Part VI of that Act;
- to notify a court exercising jurisdiction under this Act of the making of the application.

*When application finally determined*

(5)For the purposes of this section, an application for an order under section 90SE, 90SM or 90SN is taken to be finally determined when:

- (a)the application is withdrawn or dismissed; or
- (b)an order (other than an interim order) is made as a result of the application.

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(6)For the purposes of this section, an application for a declaration under section 90SL is taken to be finally determined when:

- (a)the application is withdrawn or dismissed; or
- (b)a declaration is made as a result of the application.

#### **90SR Notifying non-bankrupt de facto party about application under section 139A of the *Bankruptcy Act 1966***

The applicable Rules of Court may make provision for a person who:

- (a)is the bankruptcy trustee of a bankrupt party to a de facto relationship; and
- (b)applies under section 139A of the *Bankruptcy Act 1966* for an order under Division 4A of Part VI of that Act in relation to an entity (other than the other party to the de facto relationship);

to notify the other party to the de facto relationship of the making of the application if that bankruptcy trustee is aware that the de facto relationship has broken down.

### **Subdivision E—Court powers**

#### **90SS General powers of court**

##### *General powers*

(1)The court, in exercising its powers under this Division, may do any or all of the following:

- (a)order payment of a lump sum, whether in one amount or by instalments;
- (b)order payment of a weekly, monthly, yearly or other periodic sum;
- (c)order that a specified transfer or settlement of property be made by way of maintenance for a party to a de facto relationship;
- (d)order that payment of any sum ordered to be paid be wholly or partly secured in such manner as the court directs;
- (e)order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be

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carried out effectively or to provide security for the due performance of an order;

(f)appoint or remove trustees;

(g)order that payments be made direct to a party to the de facto relationship, to a trustee to be appointed or into court or to a public authority for the benefit of a party to the de facto relationship;

(h)make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for a life or during joint lives or until further order;

(i)impose terms and conditions;

(j)make an order by consent;

(k)make any other order, or grant any other injunction, (whether or not of the same nature as those mentioned in the preceding paragraphs of this section) which it thinks it is necessary to make to do justice;

(l)subject to this Act and the applicable Rules of Court, make an order under this Division at any time before or after the making of a decree under another provision of this Act.

Note: The court also has specific powers in relation to third parties (see Division 3 of Part VIIIAA (as that Division has effect because of section 90TA)).

*Limitation for orders or injunctions covered by section 90AF*

(2)Subsection (1) has effect subject to subsection 90AF(3) (as that subsection has effect because of section 90TA).

Note: An order or injunction made or granted under subsection (1) that is of a kind covered by subsection 90AF(1) or (2) can only be made or granted in accordance with subsection 90AF(3).

*Maintenance orders*

(3)The making of an order of a kind referred to in paragraph (1)(c), or of any other order under this Division, in relation to the maintenance of a party to a de facto relationship does not prevent a court from making a subsequent order in relation to the maintenance of the party.

(4)The applicable Rules of Court may make provision with respect to the making of orders under this Division in relation to the maintenance of parties to de facto relationships (whether as to their

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form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.

*Injunctions*

(5)Without limiting paragraph (1)(k), the court may:

- (a) grant:
  - (i) an interlocutory injunction; or
  - (ii) an injunction in aid of the enforcement of a decree; in any case in which it appears to the court to be just or convenient to do so; and
- (b) grant an injunction either unconditionally or upon such terms and conditions as the court considers appropriate.

*Bankruptcy and insolvency*

(6)If a bankruptcy trustee is a party to a proceeding before the court, the court may make an order under paragraph (1)(e) directed to the bankrupt.

(7)If the trustee of a personal insolvency agreement is a party to a proceeding before the court, the court may make an order under paragraph (1)(e) directed to the debtor subject to the agreement.

(8)Subsections (6) and (7) do not limit paragraph (1)(e).

(9)If a party to a de facto relationship is a bankrupt, a court may, on the application of the other party to the de facto relationship, by interlocutory order, grant an injunction under subsection (1) restraining the bankruptcy trustee from declaring and distributing dividends amongst the bankrupt's creditors.

(10)If a party to a de facto relationship is a debtor subject to a personal insolvency agreement, a court may, on the application of the other party to the de facto relationship, by interlocutory order, grant an injunction under subsection (1) restraining the trustee of the agreement from disposing of (whether by sale, gift or otherwise) property subject to the agreement.

(11)Subsections (9) and (10) do not limit subsections (1) and (5).

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**90ST Duty of court to end financial relations**

In proceedings under this Division, other than proceedings under section 90SL, the court must, as far as practicable, make such orders as will finally determine the financial relationships between the parties to the de facto relationship and avoid further proceedings between them.

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## Division 3—Orders and injunctions binding third parties

### 90TA Orders and injunctions binding third parties

(1) In addition to the effect Part VIIIAA has apart from this section, that Part also has effect in relation to:

- (a) orders and injunctions under Division 2; and
- (b) proceedings for orders or injunctions under Division 2; with the modifications provided for in subsections (2) and (3).

(2) Part VIIIAA has effect in accordance with subsection (1) as if the following substitutions were made:

<b>Substitutions to be made</b>		
<b>Item</b>	<b>For a reference in Part VIIIAA to ...</b>	<b>substitute a reference to ...</b>
1	marriage	de facto relationship
2	section 79	section 90SM
3	section 114	section 90SS
4	paragraph (ca) of the definition of <b><i>matrimonial cause</i></b>	paragraph (c) of the definition of <b><i>de facto financial cause</i></b>
5	orders or injunctions under section 114	orders or injunctions under Division 2 of Part VIIIB
6	proceedings under section 114	proceedings under Division 2 of Part VIIIB
7	an injunction under subsection 114(3)	an injunction covered by subsection 90SS(5)

(3) Part VIIIAA has effect in accordance with subsection (1) as if:

- (a) subsection 90AD(2) were replaced with the following:

“(2) For the purposes of section 90SS (to the extent that it provides for the granting of an injunction in relation to the property of a party to a de facto relationship), **property** includes a debt owed by a party to the de facto relationship.”; and

- (b) paragraph 90AF(3)(d) were omitted; and
- (c) the following paragraph were inserted after paragraph 90AF(3)(e):

“(ea) for any other injunction—the court is satisfied that, in

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all the circumstances, it is necessary to grant the injunction to do justice; and”;

(d)the following subsection were added at the end of section 90AF:

“(5)Subsections (1) and (2) do not limit subsection 90SS(1).”.

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## **Division 4—Financial agreements**

### **90UA Geographical requirement for agreements made in participating jurisdictions**

Two or more people can make a Part VIIIAB financial agreement under section 90UB, 90UC or 90UD only if the spouse parties are ordinarily resident in a participating jurisdiction when they make the agreement.

### **90UB Financial agreements before de facto relationship**

(1) If:

(a) people who are contemplating entering into a de facto relationship with each other make a written agreement with respect to any of the matters mentioned in subsection (2) in the event of the breakdown of the de facto relationship; and  
(b) at the time of the making of the agreement, the people are not the spouse parties to any other Part VIIIAB financial agreement that is binding on them with respect to any of those matters; and

(c) the agreement is expressed to be made under this section; the agreement is a ***Part VIIIAB financial agreement***. The people may make the Part VIIIAB financial agreement with one or more other people.

(2) The matters referred to in paragraph (1)(a) are the following:

(a) how all or any of the:

- (i) property; or
- (ii) financial resources;

of either or both of the spouse parties at the time when the agreement is made, or at a later time and during the de facto relationship, is to be distributed;

(b) the maintenance of either of the spouse parties.

(3) A Part VIIIAB financial agreement made as mentioned in subsection (1) may also contain matters incidental or ancillary to those mentioned in subsection (2).

(4) A Part VIIIAB financial agreement (the ***new agreement***) made

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as mentioned in subsection (1) may terminate a previous Part VIIIAB financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

**90UC Financial agreements during de facto relationship**

- (1) If:
- (a)while in a de facto relationship, the parties to the de facto relationship make a written agreement about any of the matters mentioned in subsection (2) in the event of the breakdown of the de facto relationship; and
  - (b)at the time of the making of the agreement, the parties to the de facto relationship are not the spouse parties to any other Part VIIIAB financial agreement that is binding on them with respect to any of those matters; and
  - (c)the agreement is expressed to be made under this section; the agreement is a **Part VIIIAB financial agreement**. The parties to the de facto relationship may make the Part VIIIAB financial agreement with one or more other people.
- (2)The matters referred to in paragraph (1)(a) are the following:
- (a)how all or any of the:
    - (i) property; or
    - (ii) financial resources;of either or both of the spouse parties at the time when the agreement is made, or at a later time and during the de facto relationship, is to be distributed;
  - (b)the maintenance of either of the spouse parties.
- (3)A Part VIIIAB financial agreement made as mentioned in subsection (1) may also contain matters incidental or ancillary to those mentioned in subsection (2).

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(4)A Part VIIIAB financial agreement (the *new agreement*) made as mentioned in subsection (1) may terminate a previous Part VIIIAB financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

#### **90UD Financial agreements after breakdown of a de facto relationship**

(1) If:

(a)after the breakdown of a de facto relationship, the parties to the former de facto relationship make a written agreement with respect to any of the matters mentioned in subsection (2); and

(b)at the time of the making of the agreement, the parties to the former de facto relationship are not the spouse parties to any other Part VIIIAB financial agreement that is binding on them with respect to any of those matters; and

(c)the agreement is expressed to be made under this section; the agreement is a *Part VIIIAB financial agreement*. The parties to the former de facto relationship may make the Part VIIIAB financial agreement with one or more other people.

(2)The matters referred to in paragraph (1)(a) are the following:

(a)how all or any of the:

(i) property; or

(ii) financial resources;

that either or both of the spouse parties had or acquired during the former de facto relationship is to be distributed;

(b)the maintenance of either of the spouse parties.

(3)A Part VIIIAB financial agreement made as mentioned in subsection (1) may also contain matters incidental or ancillary to those mentioned in subsection (2).

(4)A Part VIIIAB financial agreement (the *new agreement*) made as mentioned in subsection (1) may terminate a previous Part VIIIAB financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

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**90UE Agreements made in non-referring States that become  
Part VIIIAB financial agreements**

*How State agreements can become Part VIIIAB financial  
agreements*

(1) This section applies if:

- (a) 2 people (the **couple**) have made a written agreement, signed by both of them, with respect to any of the matters (the **eligible agreed matters**) mentioned in subsection (3); and
- (b) the agreement was made under a non-referring State de facto financial law; and
- (c) either:
  - (i) a court could not, because of that law, make an order under that law that is inconsistent with the agreement with respect to any of the eligible agreed matters; or
  - (ii) a court could not, because of that law, make an order under that law that is with respect to any of the eligible agreed matters to which the agreement applies; and
- (d) at the time the agreement was made, the members of the couple were not the spouse parties to any Part VIIIAB financial agreement that is binding on them with respect to any of the eligible agreed matters; and
- (e) at a later time (the **transition time**), the couple's circumstances change so that:
  - (i) if the de facto relationship has not broken down—sections 90SB, 90SD and 90SK would not prevent a court from making an order or declaration under this Part in relation to the eligible agreed matters if the de facto relationship were to break down; or
  - (ii) if the de facto relationship has broken down—sections 90SB, 90SD and 90SK do not prevent a court from making an order or declaration under this Part in relation to the eligible agreed matters; and
- (f) immediately before the transition time:
  - (i) the agreement was in force under the non-referring State de facto financial law; and
  - (ii) the couple were not married to each other.

Paragraph (a) extends to agreements made before the

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commencement of this section, and to agreements made with one or more other people.

Note 1: This section extends to agreements made in contemplation of a de facto relationship, during a de facto relationship or after a de facto relationship has broken down.

Note 2: Part 2 of Schedule 1 to the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* deems certain agreements, made under a law of a State that is or becomes a participating jurisdiction, or made under a law of a Territory, to be Part VIIIAB financial agreements.

(2)For the purposes of this Act, the agreement is taken, on and after the transition time, to be a ***Part VIIIAB financial agreement*** to the extent that the agreement deals with:

- (a)the eligible agreed matters; and
- (b)matters incidental or ancillary to the eligible agreed matters.

Note: This means that, after the transition time, the agreement can only be enforced, varied, terminated or otherwise set aside under this Act.

*Eligible agreed matters*

(3)The matters referred to in paragraph (1)(a) are the following:

- (a)how all or any of the:
  - (i) property; or
  - (ii) financial resources;of either member, or both members, of the couple at the time when the agreement is made, or at a later time and during a de facto relationship between them, is to be distributed;
- (b)the maintenance of either member of the couple;  
in the event of the breakdown of a de facto relationship between them, or in relation to a de facto relationship between them that has broken down, as the case requires.

(4)For the purposes of paragraph (1)(c), disregard whether the non-referring State de facto financial law permits the court to make such an order if the court varies or sets aside the agreement.

#### **90UF Need for separation declaration for certain provisions of financial agreement to take effect**

(1)A Part VIIIAB financial agreement that is binding on the parties

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to the agreement, to the extent to which it deals with how, in the event of the breakdown of the de facto relationship, all or any of the property or financial resources of either or both of the spouse parties:

(a)at the time when the agreement is made; or

(b)at a later time and during the de facto relationship;

are to be dealt with, is of no force or effect until a separation declaration is made.

Note: Before the separation declaration is made, the financial agreement will be of force and effect in relation to the other matters it deals with (except for any matters covered by section 90UG).

(2)Subsection (1) ceases to apply if either or both of the spouse parties die.

Note: This means the financial agreement will be of force and effect in relation to the matters mentioned in subsection (1) from the time of the death(s).

*Requirements for a valid separation declaration*

(3)A separation declaration is a written declaration that complies with subsections (4) and (5), and may be included in the Part VIIIAB financial agreement to which it relates.

(4)The declaration must be signed by at least one of the spouse parties to the Part VIIIAB financial agreement.

(5)The declaration must state that:

(a)the spouse parties lived in a de facto relationship; and

(b)the spouse parties have separated and are living separately and apart at the declaration time; and

(c)in the opinion of the spouse parties making the declaration, there is no reasonable likelihood of cohabitation being resumed.

*Meaning of **declaration time***

(6)In this section:

**declaration time** means the time when the declaration was signed by a spouse party to the Part VIIIAB financial agreement.

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## **90UG Whether or when certain other provisions of financial agreements take effect**

A Part VIIIAB financial agreement that is binding on the parties to the agreement, to the extent to which it provides for matters covered by subsection 90UB(3) or 90UC(3) or paragraph 90UE(2)(b), is of no force or effect unless and until the de facto relationship breaks down.

## **90UH Requirements with respect to provisions in financial agreements relating to the maintenance of a party or a child or children**

(1)A provision of a Part VIIIAB financial agreement that relates to the maintenance of a spouse party to the agreement or a child or children is void unless the provision specifies:

- (a)the party, or the child or children, for whose maintenance provision is made; and
- (b)the amount provided for, or the value of the portion of the relevant property attributable to, the maintenance of the party, or of the child or each child, as the case may be.

Note: While Part VIIIAB financial agreements are not made with respect to child maintenance, provisions about child maintenance could be included in the same document for child support (or other non-Part VIIIAB) purposes.

(2)Subsection (1) does not apply in relation to a Part VIIIAB financial agreement covered by section 90UE.

## **90UI Certain provisions in financial agreements**

(1)No provision of a Part VIIIAB financial agreement excludes or limits the power of a court to make an order under Division 2 in relation to the maintenance of a party to the agreement if subsection (2) applies.

(2)This subsection applies if the court is satisfied that, when the agreement came into effect, the circumstances of the party were such that, taking into account the terms and effect of the agreement, the party was unable to support himself or herself without an income tested pension, allowance or benefit.

(3)To avoid doubt, a provision in a Part VIIIAB financial

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agreement:

(a)made as mentioned in subsection 90UB(1), 90UC(1) or  
90UD(1); or

(b)covered by section 90UE;

that provides for property or financial resources owned by a spouse party to the agreement to continue in the ownership of that party is taken, for the purposes of that subsection or section, to be a provision with respect to how the property or financial resources are to be distributed.

**90UJ When financial agreements are binding**

(1)A Part VIIIB financial agreement (other than an agreement covered by section 90UE) is binding on the parties to the agreement if, and only if:

(a)the agreement is signed by all parties; and

(b)the agreement contains, in relation to each spouse party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, as certified in an annexure to the agreement, with independent legal advice from a legal practitioner as to the following matters:

(i) the effect of the agreement on the rights of that party;

(ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement; and

(c)the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and

(d)the agreement has not been terminated and has not been set aside by a court; and

(e)after the agreement is signed, the original agreement is given to one of the spouse parties and a copy is given to each of the other parties.

Note: For the manner in which the contents of a financial agreement may be proved, see section 48 of the *Evidence Act 1995*.

(2)A Part VIIIB financial agreement covered by section 90UE is binding on the parties to the agreement if, and only if, the agreement has not been terminated and has not been set aside by a court.

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(3)A Part VIIIB financial agreement ceases to be binding if, after making the agreement, the parties to the agreement marry each other.

(4)A court may make such orders for the enforcement of a Part VIIIB financial agreement that is binding on the parties to the agreement as it thinks necessary.

## **90UK Effect of death of party to financial agreement**

A Part VIIIB financial agreement that is binding on the parties to the agreement continues to operate despite the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party.

Note: If the parties are still in the de facto relationship when one of them dies, the de facto relationship is not taken to have broken down for the purposes of enforcing the matters mentioned in the financial agreement (see the definition of *breakdown* in subsection 4(1)).

## **90UL Termination of financial agreement**

(1)The parties to a Part VIIIB financial agreement may terminate the agreement for the purposes of this Act only by:

- (a)including a provision to that effect in another Part VIIIB financial agreement as mentioned in subsection 90UB(4), 90UC(4) or 90UD(4); or
- (b)making a written agreement (a *Part VIIAB termination agreement*) to that effect.

(2)A Part VIIIB termination agreement is binding on the parties if, and only if:

- (a)the termination agreement is signed by all parties to the Part VIIIB financial agreement; and
- (b)the termination agreement contains, in relation to each spouse party, a statement to the effect that the party to whom the statement relates has been provided, before the termination agreement was signed by him or her, as certified in an annexure to the termination agreement, with independent legal advice from a legal practitioner as to the following matters:
  - (i) the effect of the termination agreement on the rights of that party;

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- (ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the termination agreement; and
  - (c) the annexure to the termination agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and
  - (d) the termination agreement has not been set aside by a court; and
  - (e) after the termination agreement is signed, the original termination agreement is given to one of the spouse parties and a copy is given to each of the other parties.
- (3) A court may, on an application by:
- (a) a person who was a party to the Part VIIIB financial agreement; or
  - (b) any other interested person;
- make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of:
- (c) persons who were parties to the Part VIIIB financial agreement; and
  - (d) any other interested persons.

Note: For the manner in which the contents of a Part VIIIB financial agreement may be proved, see section 48 of the *Evidence Act 1995*.

**90UM Circumstances in which court may set aside a financial agreement or termination agreement**

- (1) A court may make an order setting aside, for the purposes of this Act, a Part VIIIB financial agreement or a Part VIIIB termination agreement if, and only if, the court is satisfied that:
- (a) the agreement was obtained by fraud (including non-disclosure of a material matter); or
  - (b) a party to the agreement entered into the agreement:
    - (i) for the purpose, or for purposes that included the purpose, of defrauding or defeating a creditor or creditors of the party; or
    - (ii) with reckless disregard of the interests of a creditor or creditors of the party; or
  - (c) a party (the *agreement party*) to the agreement entered

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into the agreement:

- (i) for the purpose, or for purposes that included the purpose, of defrauding another person who is a party to a de facto relationship (the *other de facto relationship*) with a spouse party; or
  - (ii) for the purpose, or for purposes that included the purpose, of defeating the interests of that other person in relation to any possible or pending application for an order under section 90SM, or a declaration under section 90SL, in relation to the other de facto relationship; or
  - (iii) with reckless disregard of those interests of that other person; or
- (d)a party (the *agreement party*) to the agreement entered into the agreement:
- (i) for the purpose, or for purposes that included the purpose, of defrauding another person who is a party to a marriage with a spouse party; or
  - (ii) for the purpose, or for purposes that included the purpose, of defeating the interests of that other person in relation to any possible or pending application for an order under section 79, or a declaration under section 78, in relation to the marriage (or void marriage); or
  - (iii) with reckless disregard of those interests of that other person; or
- (e)the agreement is void, voidable or unenforceable; or
- (f)in the circumstances that have arisen since the agreement was made it is impracticable for the agreement or a part of the agreement to be carried out; or
- (g)since the making of the agreement, a material change in circumstances has occurred (being circumstances relating to the care, welfare and development of a child of the de facto relationship) and, as a result of the change, the child or, if the applicant has caring responsibility for the child (as defined in subsection (4)), a party to the agreement will suffer hardship if the court does not set the agreement aside; or
- (h)in respect of the making of a Part VIIIAB financial agreement—a party to the agreement engaged in conduct that was, in all the circumstances, unconscionable; or
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- (i)a payment flag is operating under Part VIIIB on a superannuation interest covered by the agreement and there is no reasonable likelihood that the operation of the flag will be terminated by a flag lifting agreement under that Part; or
- (j)the agreement covers at least one superannuation interest that is an unsplittable interest for the purposes of Part VIIIB; or
- (k)if the agreement is a Part VIIIAB financial agreement covered by section 90UE—subsection (5) applies.

Note: For *child of a de facto relationship*, see section 90RB.

(2)For the purposes of paragraph (1)(b), **creditor**, in relation to a party to the agreement, includes a person who could reasonably have been foreseen by the party as being reasonably likely to become a creditor of the party.

(3)For the purposes of the application of subparagraph (1)(c)(ii) to a Part VIIIAB financial agreement covered by section 90UE:

- (a)the reference in that subparagraph to an order under section 90SM is taken to include a reference to an order (however described) under a corresponding provision (if any) of the non-referring State de facto financial law concerned; and
- (b)the reference in that subparagraph to a declaration under section 90SL is taken to include a reference to a declaration (however described) under a corresponding provision (if any) of the non-referring State de facto financial law concerned.

(4)For the purposes of paragraph (1)(g), a person has **caring responsibility** for a child if:

- (a)the person is a parent of the child with whom the child lives; or
- (b)a parenting order provides that:
  - (i) the child is to live with the person; or
  - (ii) the person has parental responsibility for the child.

(5)This subsection applies if:

- (a)at least one of the spouse parties to the agreement was not provided, before signing the agreement, with independent legal advice from a legal practitioner about the following:
  - (i) the effect of the agreement on the rights of that party;

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- (ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement; or
  - (b) if the advice was provided to one of the spouse parties—a signed statement by the legal practitioner stating that the advice was provided was neither:
    - (i) included in, or attached to, the agreement; or
    - (ii) given to the party;
- and it would be unjust and inequitable, having regard to the eligible agreed matters (within the meaning of section 90UE) for the agreement, if the court does not set the agreement aside.
- (6) A court may, on an application by a person who was a party to the Part VIIIAB financial agreement that has been set aside, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.
- (7) An order under subsection (1) or (6) may, after the death of a party to the proceedings in which the order was made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (8) If a party to proceedings under this section dies before the proceedings are completed:
- (a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and
  - (b) if the court is of the opinion:
    - (i) that it would have exercised its powers under this section if the deceased party had not died; and
    - (ii) that it is still appropriate to exercise those powers; the court may make any order that it could have made under subsection (1) or (6); and
  - (c) an order under paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

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(9)The court must not make an order under this section if the order would:

- (a)result in the acquisition of property from a person otherwise than on just terms; and
- (b)be invalid because of paragraph 51(xxi) of the Constitution.

For this purpose, ***acquisition of property*** and ***just terms*** have the same meanings as in paragraph 51(xxi) of the Constitution.

**90UN Validity, enforceability and effect of financial agreements and termination agreements**

The question whether a Part VIIIAB financial agreement or a Part VIIIAB termination agreement is valid, enforceable or effective is to be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts, and, in proceedings relating to such an agreement, the court:

- (a)subject to paragraph (b), has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction; and
- (b)has power to make an order for the payment, by a party to the agreement to another party to the agreement, of interest on an amount payable under the agreement, from the time when the amount became or becomes due and payable, at a rate not exceeding the rate prescribed by the applicable Rules of Court; and
- (c)in addition to, or instead of, making an order or orders under paragraph (a) or (b), may order that the agreement, or a specified part of the agreement, be enforced as if it were an order of the court.

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## **Division 5—Proceeds of crime and forfeiture**

### **90VA Notification of proceeds of crime orders etc.**

(1) If:

(a) a person makes an application for an order, under this Part, with respect to:

- (i) the property of the parties to a de facto relationship or either of them; or
- (ii) the maintenance of a party to a de facto relationship; and

(b) the person knows that the property of the parties to the de facto relationship or either of them is covered by:

- (i) a proceeds of crime order; or
- (ii) a forfeiture application;

the person must:

(c) disclose in the application the proceeds of crime order or forfeiture application; and

(d) give to the court a sealed copy of that order or application.

(2) A person who does not comply with subsection (1) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

(3) If:

(a) a person is a party to de facto property settlement or maintenance proceedings under this Part; and

(b) the person is notified by the DPP that the property of the parties to the de facto relationship or either of them is covered by:

- (i) a proceeds of crime order; or
- (ii) a forfeiture application;

the person must notify the Registry Manager in writing of the proceeds of crime order or forfeiture application.

(4) A person who does not comply with subsection (3) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

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**90VB Court to stay property or maintenance proceedings affected by proceeds of crime orders etc.**

- (1)A court in which property settlement, or maintenance proceedings, are pending must stay those proceedings if notified under section 90VA in relation to the proceedings.
- (2)The court may, before staying proceedings under subsection (1), invite or require the DPP to make submissions relating to staying the proceedings.
- (3)A court must, on the application of the DPP, stay de facto property settlement or maintenance proceedings under this Part if the property of the parties to the de facto relationship or either of them is covered by:
- (a)a proceeds of crime order; or
  - (b)a forfeiture application.
- (4)A court must notify the DPP if the court stays de facto property settlement or maintenance proceedings under subsection (1) or (3).
- (5)The DPP must notify the Registry Manager if:
- (a)a proceeds of crime order ceases to be in force; or
  - (b)a forfeiture application is finally determined.
- (6)For the purposes of subsection (5), a forfeiture application is taken to be ***finally determined*** when:
- (a)the application is withdrawn; or
  - (b)if the application is successful—the resulting forfeiture order comes into force; or
  - (c)if the application is unsuccessful—the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.

**90VC Lifting a stay**

- (1)A court that stayed the de facto property settlement or maintenance proceedings under section 90VB must wholly or partially lift the stay if:
- (a)either party to the proceedings makes an application for the stay to be lifted and the DPP consents to such an application; or

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(b)the DPP makes an application for the stay to be lifted.

(2)A court that stayed the de facto property settlement or maintenance proceedings under section 90VB may, on its own motion, wholly or partially lift the stay if the DPP consents to such a motion.

(3)Giving the Registry Manager written notice of the DPP's consent under this section is taken to be the giving of that consent, unless the court requires the DPP to appear in the proceedings. The notice may be given by the DPP or by a party to the proceedings.

#### **90VD Intervention by DPP**

(1)The DPP may intervene in any de facto property settlement or maintenance proceedings in relation to which a court is notified under section 90VA, or in any proceedings under section 90VB or 90VC in which the DPP is not already a party.

(2)If the DPP intervenes, the DPP is taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

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**Division 6—Instruments not liable to duty**

**90WA Certain instruments not liable to duty**

(1)None of the following is subject to any duty or charge under any law of a State or Territory or any law of the Commonwealth that applies only in relation to a Territory:

- (a)a deed or other instrument executed by a person for the purposes of, or in accordance with, an order made under Division 2;
- (b)a Part VIIIAB financial agreement;
- (c)a Part VIIIAB termination agreement;
- (d)a deed or other instrument executed by a person for the purposes of, or in accordance with, an order or Part VIIIAB financial agreement made under Division 4.

(2)Subsection (1) does not apply to a liability to pay duty or charge (if any) in relation to a Part VIIIAB financial agreement covered by section 90UE if the liability arises before the transition time (within the meaning of that section) for the agreement.

(3)Despite any State law, a failure to discharge a liability covered by subsection (2) in relation to an agreement has no effect for the purposes of this Act. In particular, the failure does not affect whether the agreement may be presented in evidence in a court for the purposes of this Act.

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## **Part VIIIIB—Superannuation interests**

### **Division 1—Preliminary**

#### **Subdivision A—Scope of this Part**

##### **90MA Object of this Part**

The object of this Part is to allow certain payments (splittable payments) in respect of a superannuation interest to be allocated between:

- (a)the parties to a marriage; or
  - (b)the parties to a de facto relationship;
- either by agreement or by court order.

##### **90MB This Part overrides other laws, trust deeds etc.**

(1)Subject to subsection (3), this Part has effect despite anything to the contrary in any of the following instruments (whether made before or after the commencement of this Part):

- (a)any other law of the Commonwealth;
- (b)any law of a State or Territory;
- (c)anything in a trust deed or other instrument.

(2)Without limiting subsection (1), nothing done in compliance with this Part by the trustee of an eligible superannuation plan is to be treated as resulting in a contravention of a law or instrument referred to in subsection (1).

(3)This Part has effect subject to the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

##### **90MC Extended meanings of matrimonial cause and de facto financial cause**

(1)A superannuation interest is to be treated as property for the purposes of paragraph (ca) of the definition of **matrimonial cause** in section 4.

(2)A superannuation interest is to be treated as property for the

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purposes of paragraph (c) of the definition of *de facto financial cause* in section 4.

## Subdivision B—Interpretation

### 90MD Definitions

In this Part, unless the contrary intention appears:

**approved deposit fund** has the same meaning as in the SIS Act.

**business day** means any day except:

- (a) a Saturday or Sunday; or
- (b) a day that is a public holiday in the place concerned.

**declaration time**, in relation to a separation declaration, means the time when the declaration was signed by a spouse (or last signed by a spouse, if both spouses have signed).

Note: If a spouse has died, the spouse's legal personal representative may sign a declaration (see subsection 90MP(2)).

**eligible superannuation plan** means any of the following:

- (a) a superannuation fund within the meaning of the SIS Act;
- (b) an approved deposit fund;
- (c) an RSA;
- (d) an account within the meaning of the *Small Superannuation Accounts Act 1995*;
- (e) a superannuation annuity (within the meaning of the *Income Tax Assessment Act 1997*).

**flagging order** means an order mentioned in subsection 90MU(1).

**flag lifting agreement** has the meaning given by section 90MN.

**in force**, in relation to an agreement, has the meaning given by section 90MG.

**interest** includes a prospective or contingent interest, and also includes an expectancy.

**marriage** includes a void marriage.

**member**, in relation to an eligible superannuation plan, includes a beneficiary (including a contingent or prospective beneficiary).

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**member spouse**, in relation to a superannuation interest, means the spouse who has the superannuation interest.

**non-member spouse**, in relation to a superannuation interest, means the spouse who is not the member spouse in relation to that interest.

***operative time:***

- (a)in relation to a payment split under a superannuation agreement or flag lifting agreement—has the meaning given by section 90MI; or
- (b)in relation to a payment flag under a superannuation agreement—has the meaning given by section 90MK or paragraph 90MLA(2)(c) as appropriate; or
- (c)in relation to a payment split under a court order—means the time specified in the order.

***payment flag*** means:

- (a)the application of section 90ML in relation to a superannuation interest; or
- (b)the application of a flagging order in relation to a superannuation interest.

***payment split*** means:

- (a)the application of section 90MJ in relation to a splittable payment; or
- (b)the application of a splitting order in relation to a splittable payment.

***percentage-only interest*** means a superannuation interest prescribed by the regulations for the purposes of this definition.

***regulated superannuation fund*** has the same meaning as in the SIS Act.

***reversionary beneficiary*** means a person who becomes entitled to a benefit in respect of a superannuation interest of a spouse, after the spouse dies.

***reversionary interest*** has the meaning given by section 90MF.

**RSA** means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997*.

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**secondary government trustee** means a trustee that:

- (a)is the Commonwealth, a State or Territory; and
- (b)is a trustee only because of the operation of section 90MDA.

**separation declaration** has the meaning given by section 90MP.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993*.

**splittable payment** has the meaning given by section 90ME.

**splitting order** means an order mentioned in subsection 90MT(1).

**spouse** means:

- (a)a party to a marriage; or
- (b)a party to a de facto relationship.

**superannuation agreement** has the meaning given by sections 90MH and 90MHA.

**superannuation interest** means an interest that a person has as a member of an eligible superannuation plan, but does not include a reversionary interest.

**trustee**, in relation to an eligible superannuation plan, means:

- (a)if the plan is a fund that has a trustee (within the ordinary meaning of that word)—the trustee of the plan; or
- (b)if paragraph (a) does not apply and a person is identified in accordance with the regulations as the trustee of the plan for the purposes of this definition—the person identified in accordance with the regulations; or
- (c)in any other case—the person who manages the plan.

**unflagitable interest** means a superannuation interest prescribed by the regulations for the purposes of this definition.

**unsplittable interest** means a superannuation interest prescribed by the regulations for the purposes of this definition.

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## **90MDA Extended meaning of *trustee***

If a person who is not the trustee of an eligible superannuation plan nevertheless has the power to make payments to members of the plan, then references in this Part to the trustee of the plan include references to that person.

## **90ME Splittable payments**

(1) Each of the following payments in respect of a superannuation interest of a spouse is a ***splittable payment***:

- (a) a payment to the spouse;
- (b) a payment to another person for the benefit of the spouse;
- (c) a payment to the legal personal representative of the spouse, after the death of the spouse;
- (d) a payment to a reversionary beneficiary, after the death of the spouse;
- (e) a payment to the legal personal representative of a reversionary beneficiary covered by paragraph (d), after the death of the reversionary beneficiary.

(2) A payment is not a splittable payment if it is prescribed by the regulations for the purposes of this subsection. The regulations may prescribe a payment either:

- (a) generally (that is, for the purposes of all payment splits in respect of a superannuation interest); or
- (b) only for the purposes of applying this Part to a particular payment split in respect of a superannuation interest.

(3) If a payment is made to another person for the benefit of 2 or more persons who include the spouse, then the payment is nevertheless a splittable payment, to the extent to which it is paid for the benefit of the spouse.

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**90MF Reversionary interest**

For the purposes of this Part, a person's interest in an eligible superannuation plan is a ***reversionary interest*** at any time while the person's entitlement to benefits in respect of the interest is conditional on the death of another person who is still living.

**90MG Meaning of *in force***

- (1)A financial agreement is ***in force*** at any time when it is binding on the parties in accordance with section 90G.
- (1A)A Part VIIIAB financial agreement is ***in force*** at any time when it is binding on the parties in accordance with section 90UJ.
- (2)A superannuation agreement is ***in force*** at any time when the relevant financial agreement, or relevant Part VIIIAB financial agreement, is in force.
- (3)A flag lifting agreement is ***in force*** if, and only if:
  - (a)it meets the requirements set out in subsection 90MN(3);  
and
  - (b)it has not been set aside by a court and has not been terminated.

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## **Division 2—Payment splitting or flagging by agreement**

### **Subdivision A—Superannuation agreements**

#### **90MH Superannuation agreement to be included in financial agreement if about a marriage**

(1)A financial agreement under Part VIIIIA may include an agreement that deals with superannuation interests of either or both of the spouse parties to the agreement as if those interests were property. It does not matter whether or not the superannuation interests are in existence at the time the agreement is made.

(2)The part of the financial agreement that deals with superannuation interests is a *superannuation agreement* for the purposes of this Part.

(3)A superannuation agreement has effect only in accordance with this Part. In particular, it cannot be enforced under Part VIIIIA.

(4)A superannuation agreement that is included in a financial agreement under section 90B (in contemplation of marriage) has no effect unless and until the spouse parties marry.

(5)In applying sections 90B, 90C and 90D for the purposes of this Division, a superannuation interest of a spouse party to a financial agreement is treated as being acquired at the time when that party first becomes a member of the eligible superannuation plan in respect of that interest.

#### **90MHA Superannuation agreement to be included in Part VIIIAB financial agreement if about a de facto relationship**

(1)A Part VIIIAB financial agreement may include an agreement that deals with superannuation interests of either or both of the spouse parties to the agreement as if those interests were property. It does not matter whether or not the superannuation interests are in existence at the time the agreement is made.

(2)The part of the Part VIIIAB financial agreement that deals with superannuation interests is a *superannuation agreement* for the purposes of this Part.

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(3)A superannuation agreement has effect only in accordance with this Part. In particular, it cannot be enforced under Part VIIIAB.

(4)A superannuation agreement that is included in a Part VIIIAB financial agreement under section 90UB (in contemplation of a de facto relationship) has no effect unless and until the spouse parties enter into that de facto relationship.

(5)In applying sections 90UB, 90UC, 90UD and 90UE for the purposes of this Division, a superannuation interest of a spouse party to a Part VIIIAB financial agreement is treated as being acquired at the time when that party first becomes a member of the eligible superannuation plan in respect of that interest.

**Subdivision B—Payment splitting**

**90MI Operative time for payment split**

(1)The *operative time* for a payment split under a superannuation agreement or flag lifting agreement is the beginning of the fourth business day after the day on which a copy of the agreement is served on the trustee, accompanied by:

- (a)if the parties are divorced—a copy of the divorce order that has terminated the marriage; and
- (aa)if, in the case of a payment split under a superannuation agreement:
  - (i) the parties are not divorced; and
  - (ii) a separation declaration is not part of the superannuation agreement;a separation declaration; and
- (b)if the agreement specifies a method for calculating a base amount—a document setting out the amount calculated using that method; and
- (c)if a form of declaration is prescribed for the purposes of this paragraph—a declaration in that form.

Note: The base amount is used to calculate the entitlement of the non-member spouse under the regulations.

(2)For the purposes of subsection (1), the separation declaration must have a declaration time that is not more than 28 days before the service on the trustee.

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## **90MJ Payment split under superannuation agreement or flag lifting agreement**

- (1) This section applies to a superannuation interest if:
- (a) the interest is identified in a superannuation agreement or flag lifting agreement; and
  - (b) if the interest is a percentage-only interest—the agreement does one of the following:
    - (i) it specifies a percentage that is to apply for the purposes of this sub-paragraph;
    - (ii) it specifies a percentage that is to apply to all splittable payments in respect of the interest; and
  - (c) if the interest is not a percentage-only interest—the agreement does one of the following:
    - (i) it specifies an amount as a base amount in relation to the interest for the purposes of this Part;
    - (ii) it specifies a method by which such a base amount can be calculated at the time when the agreement is served on the trustee under section 90MI;
    - (iii) it specifies a percentage that is to apply to all splittable payments in respect of the interest; and
  - (d) the agreement is in force at the operative time; and
  - (da) if the agreement relates to a marriage—the marriage is broken down at the operative time; and
  - (db) if the agreement relates to a de facto relationship—the de facto relationship is broken down at the operative time; and
  - (e) the interest is not an unsplittable interest.

Note: The base amount is used to calculate the entitlement of the non-member spouse under the regulations.

(2) The following provisions begin to apply to the interest at the operative time.

(3) Whenever a splittable payment becomes payable in respect of the interest:

- (a) the non-member spouse is entitled to be paid the amount (if any) that is calculated under subsection (4); and
- (b) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been

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made but for the payment split.

(4)The amount is calculated as follows:

- (a)if the agreement specifies a percentage as mentioned in subparagraph (1)(b)(ii) or subparagraph (1)(c)(iii)—the amount is calculated by applying the specified percentage to the splittable payment; or
- (b)otherwise—the amount is calculated in accordance with the regulations.

(5)Subject to section 90MV, this section continues to apply to the superannuation interest even if the agreement referred to in subsection (1) later ceases to be in force.

### **Subdivision C—Payment flagging**

#### **90MK Operative time for payment flag**

(1)The ***operative time*** for a payment flag under a superannuation agreement is:

- (a)the service time, if the eligible superannuation plan is a self-managed superannuation fund; or
- (b)otherwise, the beginning of the fourth business day after the day on which the service time occurs.

(2)In this section:

***self-managed superannuation fund*** has the same meaning as in the SIS Act.

***service time*** means the time when a copy of the agreement is served on the trustee, accompanied by:

- (a)if the parties are divorced—a copy of the divorce order that has terminated the marriage; and
- (aa)if the parties are not divorced—a separation declaration with a declaration time that is not more than 28 days before the service on the trustee; and
- (b)if a form of declaration is prescribed for the purposes of this paragraph—a declaration in that form.

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## **90ML Payment flag**

- (1) This section applies to a superannuation interest if:
- (a) the interest is identified in a superannuation agreement; and
  - (b) the agreement provides that the interest is to be subject to a payment flag under this Part; and
  - (c) the agreement is in force at the operative time; and
  - (d) the interest is not an unflappable interest.
- (2) A payment flag starts to operate on the superannuation interest at the operative time and continues to operate until either:
- (a) a court terminates the operation of the payment flag by an order mentioned in section 90MM; or
  - (b) a flag lifting agreement is served on the trustee as mentioned in section 90MI in respect of the superannuation interest.
- (3) If a payment flag ceases to operate because of paragraph (2)(b), the cessation is not affected by a later termination of the flag lifting agreement.
- (4) While a payment flag is operating on a superannuation interest, the trustee must not make any splittable payment to any person in respect of the interest.

**Penalty:** 50 penalty units.

**Note:** The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

(4A) Subsection (4) does not apply if the splittable payment is made in circumstances in which section 90MLA applies.

**Note:** A defendant bears an evidential burden in relation to the matter in subsection (4A) (see subsection 13.3(3) of the *Criminal Code*).

(5) If a splittable payment becomes payable in respect of a superannuation interest while a payment flag is operating, the trustee must, within 14 days after it became payable, give written notice to the member spouse and the non-member spouse.

**Penalty:** 50 penalty units.

**Note:** The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

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(6) Subsection (5) does not apply if the trustee has previously given a notice under that subsection, for an earlier splittable payment, in respect of the payment flag.

(7) If either spouse dies while a payment flag is operating:

- (a) the payment flag nevertheless continues to operate; and
- (b) the legal personal representative of the deceased spouse has all the rights the deceased spouse would have had in respect of the payment flag.

Note: The rights of the legal personal representative under paragraph (b) include the right to enter into a flag lifting agreement under section 90MN.

**90MLA Some splittable payments payable if payment flag operating**

(1) This section applies if:

- (a) a superannuation interest (*original interest*) a person has in an eligible superannuation plan (*old ESP*) is identified in a superannuation agreement; and
- (b) a payment flag under section 90ML is operating on the original interest; and
- (c) a splittable payment is made by the trustee of the old ESP to the trustee of another eligible superannuation plan (*new ESP*) in respect of the original interest as part of a successor fund transfer.

(2) If this section applies, then:

- (a) the new interest in the new ESP is taken to be the original interest identified in the superannuation agreement; and
- (b) the payment flag operates on the new interest; and
- (c) despite section 90MK, the operative time for the payment flag in respect of the new interest is the time that the payment to the trustee of the new ESP is made.

(3) In this section:

***successor fund transfer*** means the transfer of a person's superannuation interest in the old ESP in circumstances where:

- (a) the new ESP confers on the person, in relation to the new interest, equivalent rights to the rights the person had in relation to the original interest; and
- (b) before the transfer, the trustee of the new ESP had agreed

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with the trustee of the old ESP to the conferral of such rights.

### **90MM Payment flag may be terminated by court**

(1) If a court makes an order under section 90K setting aside a financial agreement in respect of which a payment flag is operating, the court may also make an order terminating the operation of the flag.

Note: Under section 90MH, a superannuation agreement must be part of a financial agreement. Therefore, setting aside the financial agreement also has the effect of setting aside the superannuation agreement.

(2) If a court makes an order under section 90UM setting aside a Part VIIIIB financial agreement in respect of which a payment flag is operating, the court may also make an order terminating the operation of the flag.

Note: Under section 90MHA, a superannuation agreement relating to a de facto relationship must be part of a Part VIIIIB financial agreement. Therefore, setting aside the financial agreement also has the effect of setting aside the superannuation agreement.

### **90MN Flag lifting agreement etc.**

(1) At any time when a payment flag is operating on a superannuation interest, the spouses may make an agreement (a *flag lifting agreement*) that either:

- (a) provides that the flag is to cease operating without any payment split; or
- (b) specifies an amount, method or percentage in accordance with subsection 90MJ(1).

(2) If the flag lifting agreement provides for a payment split, the spouses may at any time make an agreement (a *termination agreement*) that terminates the flag lifting agreement.

(3) A flag lifting agreement or termination agreement has no effect unless it complies with the following requirements:

- (a) the agreement must be signed by both spouses;
- (b) for each spouse, the agreement must contain a statement that the spouse has been provided with independent legal advice from a legal practitioner as to the legal effect of the agreement;
- (c) a certificate must be attached to the agreement, signed by

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the person who provided the legal advice and stating that the advice was provided;

(d)after the agreement is signed by the spouses, each spouse must be provided with a copy of the agreement.

(4)A court may make an order setting aside a flag lifting agreement or termination agreement if, and only if, the court is satisfied as to:

(a)if the spouses are parties to a marriage—any of the grounds set out in subsection 90K(1) (other than paragraph 90K(1)(f)); or

(b)if the spouses are parties to a de facto relationship—any of the grounds set out in subsection 90UM(1) (other than paragraph 90UM(1)(i)).

(5)An order setting aside a flag lifting agreement also operates to set aside the related financial agreement or Part VIIIB financial agreement.

(6)An order under section 90K setting aside a financial agreement also operates to set aside the related flag lifting agreement.

(7)An order under section 90UM setting aside a Part VIIIB financial agreement also operates to set aside the related flag lifting agreement.

**Subdivision D—Miscellaneous**

**90MO Limitation on section 79 or 90SM order**

(1)A court cannot make an order under section 79 or 90SM with respect to a superannuation interest if:

(a)the superannuation interest is covered by a superannuation agreement that is in force; or

(b)the non-member spouse has served a waiver notice on the trustee under section 90MZA in respect of the interest; or

(c)a payment flag is operating on the superannuation interest.

Note: Under section 90MM, the court can terminate the operation of a payment flag in certain circumstances.

(2)Subsection (1) does not prevent the court taking superannuation interests into account when making an order with respect to other property of the spouses.

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## **90MP Separation declaration**

(1)A **separation declaration** is a written declaration that complies with this section, and may be included in the superannuation agreement to which it relates.

(2)The declaration must be signed by at least one of the spouses. For this purpose, if a spouse has died the spouse's legal personal representative may sign the declaration.

*Spouses who are parties to a marriage*

(2A)Subsections (3) to (5) apply if the spouses are parties to a marriage.

(3)If section 90MQ applies to the declaration, then the declaration must state that:

- (a)the spouses are married; and
- (b)the spouses separated and thereafter lived separately and apart for a continuous period of at least 12 months immediately before the declaration time; and
- (c)in the opinion of the spouse (or spouses) making the declaration, there is no reasonable likelihood of cohabitation being resumed.

(4)If section 90MQ does not apply to the declaration, then the declaration must state that the spouses are married, but are separated, at the declaration time.

(4A)If either or both of the spouses have died, then the declaration must state:

- (a)if section 90MQ applies to the declaration—that at the most recent time when both spouses were alive:
  - (i) the spouses were married; but
  - (ii) the spouses were separated and had lived separately and apart for a continuous period of at least 12 months immediately before that time; or
- (b)if section 90MQ does not apply to the declaration—that the spouses were married, but separated, at the most recent time when both spouses were alive.

Subsections (3) and (4) have effect subject to this subsection.

(5)For the purposes of subsections (3) to (4A), the question

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whether spouses lived separately and apart for a continuous period of not less than 12 months before a particular date is to be determined in the same way as it is under section 48.

(6)In subsections (3) to (5):

**separated** has the same meaning as in section 48 (as affected by sections 49 and 50).

*Spouses who are parties to a de facto relationship*

(7)Subsections (8) to (12) apply if the spouses are parties to a de facto relationship.

(8)If section 90MQ applies to the declaration, then the declaration must state that:

- (a)the spouses lived in a de facto relationship; and
- (b)the spouses separated and thereafter lived separately and apart for a continuous period of at least 12 months immediately before the declaration time; and
- (c)in the opinion of the spouse (or spouses) making the declaration, there is no reasonable likelihood of cohabitation being resumed.

(9)If section 90MQ does not apply to the declaration, then the declaration must state that the spouses lived in a de facto relationship, but are separated, at the declaration time.

(10)If either or both of the spouses have died, then the declaration must state:

- (a)if section 90MQ applies to the declaration—that
  - (i) the spouses lived in a de facto relationship; but
  - (ii) at the most recent time when both spouses were alive, the spouses were separated and had lived separately and apart for a continuous period of at least 12 months immediately before that time; or
- (b)if section 90MQ does not apply to the declaration—that the spouses:
  - (i) lived in a de facto relationship; but
  - (ii) were separated at the most recent time when both spouses were alive.

Subsections (8) and (9) have effect subject to this subsection.

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(11)For the purposes of subsection (8) and paragraph (10)(a), the spouses can have separated and be living separately and apart even if:

- (a)their cohabitation was brought to an end by the action or conduct of one only of them; or
- (b)they have continued to reside in the same residence; or
- (c)either of them has rendered some household services to the other.

(12)For the purposes of subsection (8) and paragraph (10)(a), if, after the spouses separated, they resumed cohabitation on one occasion but, within a period of 3 months after the resumption of cohabitation, they again separated and thereafter lived separately and apart up to the relevant time referred to in paragraph (8)(b) or (10)(a):

- (a)the periods of living separately and apart before and after the period of cohabitation may be aggregated as if they were one continuous period; but
- (b)the period of cohabitation shall not be taken to be part of the period of living separately and apart.

## **90MQ Superannuation interests in excess of low rate cap amount**

(1)This section applies to a declaration if:

- (a)if both spouses are alive at the declaration time—at the declaration time; or
- (b)otherwise—at the most recent time when both spouses were alive;

the total withdrawal value for all the superannuation interests of the member spouse is more than the member spouse's low rate cap amount for the income year in which that time occurs.

(2)This section does not apply in the circumstances (if any) prescribed by the regulations.

(3)In this section:

**low rate cap amount** has the meaning given by the *Income Tax Assessment Act 1997* (disregarding subsection 307-345(2) of that Act and section 307-345 of the *Income Tax (Transitional Provisions) Act 1997*).

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***total withdrawal value*** means the amount determined in accordance with the regulations.

**90MR Enforcement by court order**

- (1)A court may make such orders as it thinks necessary for the enforcement of a payment split or payment flag under this Division.
- (2)The question whether a superannuation agreement or flag lifting agreement is valid, enforceable or effective is to be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts.
- (3)Without limiting subsection (2), in proceedings relating to a superannuation agreement or flag lifting agreement, the court has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction.

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## **Division 3—Payment splitting or flagging by court order**

### **90MS Order under section 79 or 90SM may include orders in relation to superannuation interests**

(1) In proceedings under section 79 or 90SM with respect to the property of spouses, the court may, in accordance with this Division, also make orders in relation to superannuation interests of the spouses.

Note 1: Although the orders are made in accordance with this Division, they will be made under either section 79 or 90SM. Therefore they will be generally subject to all the same provisions as other orders made under that section.

Note 2: Sections 71A and 90MO limit the scope of section 79.

Note 3: Subsections 44(5) and (6) and sections 90SB, 90SK and 90MO limit the scope of section 90SM.

(2) A court cannot make an order under section 79 or 90SM in relation to a superannuation interest except in accordance with this Part.

### **90MT Splitting order**

(1) A court, in accordance with section 90MS, may make the following orders in relation to a superannuation interest (other than an unsplittable interest):

(a) if the interest is not a percentage-only interest—an order to the effect that, whenever a splittable payment becomes payable in respect of the interest:

(i) the non-member spouse is entitled to be paid the amount (if any) calculated in accordance with the regulations; and

(ii) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order;

(b) an order to the effect that, whenever a splittable payment becomes payable in respect of the interest:

(i) the non-member spouse is entitled to be paid a specified percentage of the splittable payment; and

(ii) there is a corresponding reduction in the entitlement of

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- the person to whom the splittable payment would have been made but for the order;
- (c)if the interest is a percentage-only interest—an order to the effect that, whenever a splittable payment becomes payable in respect of the interest:
- (i) the non-member spouse is entitled to be paid the amount (if any) calculated in accordance with the regulations by reference to the percentage specified in the order;
  - (ii) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order;
- (d)such other orders as the court thinks necessary for the enforcement of an order under paragraph (a), (b) or (c).
- (2)Before making an order referred to in subsection (1), the court must make a determination under paragraph (a) or (b) as follows:
- (a)if the regulations provide for the determination of an amount in relation to the interest, the court must determine the amount in accordance with the regulations;
  - (b)otherwise, the court must determine the value of the interest by such method as the court considers appropriate.
- (2A)The amount determined under paragraph (2)(a) is taken to be the value of the interest.
- (3)Regulations for the purposes of paragraph (2)(a) may provide for the amount to be determined wholly or partly by reference to methods or factors that are approved in writing by the Minister for the purposes of the regulations.
- (4)Before making an order referred to in paragraph (1)(a), the court must allocate a base amount to the non-member spouse, not exceeding the value determined under subsection (2).

Note: The base amount is used to calculate the entitlement of the non-member spouse under the regulations.

**90MU Flagging order**

- (1)A court, in accordance with section 90MS, may make an order in relation to a superannuation interest (other than an unflaggable interest):
- (a)directing the trustee not to make any splittable payment in

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respect of the interest without the leave of the court; and

(b)requiring the trustee to notify the member spouse and the non-member spouse, within a period specified in the order, of the next occasion when a splittable payment becomes payable in respect of the interest.

(2)In deciding whether to make an order in accordance with this section, the court may take into account such matters as it considers relevant and, in particular, may take into account the likelihood that a splittable payment will soon become payable in respect of the superannuation interest.

#### **90MUA Some splittable payments may be made without leave of court**

(1)A flagging order made under subsection 90MU(1) in relation to a superannuation interest (*original interest*) a person has in an eligible superannuation plan (*old ESP*) does not apply to a splittable payment if the splittable payment is made by the trustee of the old ESP to the trustee of another eligible superannuation plan (*new ESP*) in respect of the original interest as part of a successor fund transfer.

(2)If the splittable payment is made, then the flagging order is taken to be made in relation to the new interest from the time that the payment to the trustee of the new ESP is made.

(3)In this section:

***successor fund transfer*** means the transfer of a person's superannuation interest in the old ESP in circumstances where:

- (a)the new ESP confers on the person, in relation to the new interest, equivalent rights to the rights the person had in relation to the original interest; and
- (b)before the transfer, the trustee of the new ESP had agreed with the trustee of the old ESP to the conferral of such rights.

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## **Division 4—General provisions about payment splitting**

### **90MV Court may cancel payment split**

- (1)A court may, under section 79 or 90SM, make an order terminating the operation of a payment split if:
- (a)the superannuation agreement in respect of the payment split has ceased to be in force; and
  - (b)the non-member spouse has not served a waiver notice on the trustee under section 90MZA in respect of the payment split.
- (2)The termination has effect for splittable payments that become payable after the date specified in the order.

### **90MW Deductions from splittable payment before calculating payment split**

Any deduction that the trustee is entitled to make from a splittable payment is to be deducted from the splittable payment before calculating any payment split and before applying section 90MX.

### **90MX Multiple payment splits applying to the same splittable payment**

- (1)This section applies if 2 or more payment splits apply to the same splittable payment.
- (2)The payments splits are to be calculated in order of their operative times, starting with the earliest time.
- (3)For the purpose of calculating each of those payment splits (other than the one with the earliest operative time), the amount of the splittable payment is taken to be reduced by the amount to which a person other than the member spouse is entitled under the payment split with the next earlier operative time.

Example 1: W has a superannuation interest that is subject to 3 payment splits in respect of W's marriages to X, Y and Z (in that order). The operative times of the payment splits are in the same order as the marriages.

Assume each payment split provides for a 50% share to the non-member spouse. W becomes entitled to a splittable payment of \$100. The final payment entitlements are as follows: X gets \$50. Y

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gets \$25. Z gets \$12.50. W gets the remaining \$12.50.

Example 2: W has a superannuation interest that is subject to 3 payment splits in respect of W's de facto relationship with X, W's marriage to Y and W's de facto relationship with Z (in that order). The operative times of the payment splits are in the same order as the relationships. Assume each payment split provides for a 50% share to the non-member spouse. W becomes entitled to a splittable payment of \$100. The final payment entitlements are as follows: X gets \$50. Y gets \$25. Z gets \$12.50. W gets the remaining \$12.50.

## **90MY Fees payable to trustee**

- (1)The regulations may:
  - (a)allow trustees to charge reasonable fees:
    - (i) in respect of a payment split; or
    - (ii) otherwise in respect of the operation of this Part in relation to a superannuation interest; and
  - (b)prescribe the person or persons liable to pay those fees.
- (2)If any such fee remains unpaid after the time it is due for payment, then the trustee may recover any unpaid amount by deduction from amounts that would otherwise become payable by the trustee, in respect of the superannuation interest, to the person who is liable to pay the fee.

## **90MZ Superannuation preservation requirements**

- (1)If the eligible superannuation plan for a payment split is a regulated superannuation fund or approved deposit fund, then the entitlement of the non-member spouse is subject to any regulations made under the SIS Act that provide for payment of that entitlement to a regulated superannuation fund, approved deposit fund, RSA or exempt public sector superannuation scheme within the meaning of the SIS Act for the benefit of the non-member spouse.
- (2)If the eligible superannuation plan for a payment split is an RSA, then the entitlement of the non-member spouse is subject to any regulations made under the *Retirement Savings Accounts Act 1997* that provide for payment of that entitlement to a regulated superannuation fund, approved deposit fund, RSA or exempt public sector superannuation scheme within the meaning of the SIS Act for the benefit of the non-member spouse.

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(3)If the eligible superannuation plan for a payment split is a constitutionally protected fund (within the meaning of the *Income Tax Assessment Act 1997*) or an exempt public sector superannuation scheme within the meaning of the SIS Act, then the entitlement of the non-member spouse is subject to any law or other instrument that provides for payment of that entitlement to a regulated superannuation fund, approved deposit fund, RSA or exempt public sector superannuation scheme within the meaning of the SIS Act for the benefit of the non-member spouse.

**90MZA Waiver of rights under payment split**

(1)If the non-member spouse serves a waiver notice on the trustee in respect of a payment split, then the following provisions apply for each splittable payment that becomes payable after the date specified in the waiver notice:

- (a)the non-member spouse is not entitled to be paid any amount under the payment split in respect of the splittable payment;
- (b)the entitlement of the person to whom the splittable payment would have been made but for the payment split continues to be reduced in the same way as it would have been reduced if the entitlement of the non-member spouse had not been terminated.

Example: X has a superannuation interest that is subject to a 50:50 payment split in favour of Y. Y serves a waiver notice on the trustee, in exchange for a lump sum payment made by the trustee to another fund for the benefit of Y. The effect is that X's payments will continue to be reduced by half, but Y will receive no further payments under the payment split.

(2)To be effective for the purposes of this section, a waiver notice must be in the prescribed form and must be accompanied by:

- (a)a statement to the effect that the non-member spouse has been provided with independent financial advice from a prescribed financial adviser as to the financial effect of the waiver notice; and
- (b)a certificate signed by the person who provided the financial advice, stating that the advice was provided.

**90MZB Trustee to provide information**

(1)An eligible person may make an application to the trustee of an

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eligible superannuation plan for information about a superannuation interest of a member of the plan.

(2)The application must be accompanied by:

- (a)a declaration, in the prescribed form, stating that the applicant requires the information for either or both of the following purposes:
  - (i) to assist the applicant to properly negotiate a superannuation agreement;
  - (ii) to assist the applicant in connection with the operation of this Part in relation to the applicant; and
- (b)the fee (if any) payable under regulations made for the purposes of section 90MY.

(3)If the trustee receives an application that complies with this section, the trustee must, in accordance with the regulations, provide information about the superannuation interest to the applicant.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

(4)Regulations for the purposes of subsection (3) may specify circumstances in which the trustee is not required to provide information.

Example: The regulations might provide that a secondary government trustee is not required to provide information where there is another trustee of the eligible superannuation plan who is better able to provide the information.

(5)The trustee must not, in response to an application under this section by a spouse of the member, provide the spouse with any address of the member. For this purpose, **address** includes a postal address.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

(6)If the trustee receives an application under this section from a person other than the member, the trustee must not inform the member that the application has been received.

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Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

(7)The regulations may require the trustee of an eligible superannuation plan, after the operative time for a payment split, to provide information to the non-member spouse about the superannuation interest concerned. Such regulations may prescribe penalties for contravention, not exceeding 10 penalty units.

(8)In this section:

***eligible person***, in relation to a superannuation interest of a member of an eligible superannuation plan, means:

- (a)the member; or
- (aa)if the member has died—the legal personal representative of the member; or
- (b)a spouse of the member; or
- (ba)if a spouse of the member has died—the legal personal representative of the spouse; or
- (c)a person who intends to enter into a superannuation agreement with the member.

**90MZC Death of non-member spouse**

If the non-member spouse dies after the operative time for a payment split:

- (a)the payment split nevertheless continues to operate; and
- (b)the payment split then operates in favour of the legal personal representative of the deceased spouse and is binding on that legal personal representative; and
- (c)the legal personal representative has all the rights the deceased spouse would have had in respect of the payment split, including the right to serve a waiver notice under section 90MZA.

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## **Division 5—Miscellaneous**

### **90MZD Orders binding on trustee**

(1) An order under this Part in relation to a superannuation interest may be expressed to bind the person who is the trustee of the eligible superannuation plan at the time when the order takes effect. However:

- (a) in the case of a trustee who is not a secondary government trustee—the court cannot make such an order unless the trustee has been accorded procedural fairness in relation to the making of the order; and
- (b) in the case of a secondary government trustee:
  - (i) the court cannot make such an order unless another trustee of the eligible superannuation plan has been accorded procedural fairness in relation to the making of the order; and
  - (ii) the court may, if it thinks fit, require that the secondary government trustee also be accorded procedural fairness.

(2) If an order is binding on the person who is the trustee of an eligible superannuation plan at the time when the order takes effect, then the order is also binding (by force of this subsection) on:

- (a) any person who subsequently becomes the trustee of that eligible superannuation plan; or
- (b) in a case where section 90MUA applies—a person who is the trustee, or any person who subsequently becomes the trustee, of the new ESP.

### **90MZE Protection for trustee**

The trustee of an eligible superannuation plan is not liable for loss or damage suffered by any person because of things done (or not done) by the trustee in good faith in reliance on:

- (a) any document served on the trustee for the purposes of this Part; or
- (b) an order made by a court in accordance with this Part.

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**90MZF Service of documents on trustee**

(1) If a document is required or permitted to be served for the purposes of this Part on the trustee of an eligible superannuation plan, the document may be served in any of the ways in which a document may be served under the Rules of Court.

(2) Subsection (1) is in addition to any other method of service permitted by law.

**90MZG False declarations**

(1) A person is guilty of an offence if:

- (a) the person makes a statement in a declaration, knowing that the statement is false or misleading; and
- (b) the declaration is served on the trustee of an eligible superannuation plan for the purposes of this Part.

(2) An offence against subsection (1) is punishable by imprisonment for a period of up to 12 months.

(3) Subsection (1) does not apply if the statement is not false or misleading in a material particular.

(4) Subsection (1) does not apply in relation to a declaration if a spouse to which the declaration relates died before the declaration was made.

**90MZH Terminating employment because of payment flag etc.**

A person must not terminate the employment of an employee on either of the following grounds:

- (a) a payment flag is operating in respect of a superannuation interest of the employee;
- (b) a superannuation agreement or splitting order is in force in respect of a superannuation interest of the employee.

Penalty: 100 penalty units.

Note: The penalty for a body corporate is 500 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

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## **Part IX—Intervention**

### **91 Intervention by Attorney-General**

(1)The Attorney-General may intervene in, and contest or argue any question arising in:

- (a)any proceedings under this Act where the court requests the Attorney-General to do so or a matter arises that affects the public interest; or
- (b)any proceedings under this Act for or in relation to:
  - (i) a parenting order, other than a child maintenance order; or
  - (ii) an order under section 67ZC.

(1A)At any time after a divorce order has been made in any proceedings and before it has taken effect, the Attorney-General may intervene in the proceedings for the purpose of bringing to the notice of the court matters relevant to the exercise of its powers under section 58.

(2)Where the Attorney-General intervenes in any proceedings, the Attorney-General shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

### **91A Delegation by Attorney-General**

(1)Where, in a State, there is a Family Court of the State, the Attorney-General may, either generally or as otherwise provided by the instrument of delegation, by writing, delegate all or any of his or her powers and functions under section 91 in respect of intervention in proceedings in the Family Court of that State and in other courts of that State to the person occupying from time to time, while the delegation is in force, the office of Attorney-General of that State.

(2)A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3)A delegation under this section does not prevent the exercise of

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a power or the performance of a function by the Attorney-General.

(4)Where the Attorney-General of a State intervenes in any proceedings in accordance with a delegation under this section, the Attorney-General of the State shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

**91B Intervention by child welfare officer**

(1)In any proceedings under this Act that affect, or may affect, the welfare of a child, the court may request the intervention in the proceedings of an officer of a State, of a Territory or of the Commonwealth, being the officer who is responsible for the administration of the laws of the State or Territory in which the proceedings are being heard that relate to child welfare.

(2)Where the court has, under subsection (1), requested an officer to intervene in proceedings:

- (a)the officer may intervene in those proceedings; and
- (b)where the officer so intervenes, the officer shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

**92 Intervention by other persons**

(1)In proceedings (other than divorce or validity of marriage proceedings), any person may apply for leave to intervene in the proceedings, and the court may make an order entitling that person to intervene in the proceedings.

(1A)In divorce or validity of marriage proceedings, a person in relation to whom an order has been made under subsection 69W(1) requiring a parentage testing procedure to be carried out may apply for leave to intervene in the proceedings, and the court may make an order entitling the person to intervene in the proceedings.

(2)An order under this section may be made upon such conditions as the court considers appropriate.

(3)Where a person intervenes in any proceedings by leave of the court the person shall, unless the court otherwise orders, be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

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## **92A Intervention in child abuse cases**

(1)This section applies to proceedings under this Act in which it has been alleged that a child has been abused or is at risk of being abused.

(2)Each of the following persons is entitled to intervene in the proceedings:

- (a)a guardian of the child;
- (b)a parent of the child with whom the child lives;
- (ba)a person with whom the child is to live under a parenting order;
- (bb)a person who has parental responsibility for the child under a parenting order;
- (c)any other person responsible for the care, welfare or development of the child;
- (d)a prescribed child welfare authority;
- (e)a person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.

(3)Where a person intervenes in proceedings pursuant to this section, the person is, unless the court otherwise orders, to be taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

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## **Part X—Appeals**

### **93 No appeal after divorce order takes effect**

An appeal does not lie from a divorce order after the order has taken effect.

### **93A Appellate jurisdiction of Family Court**

(1)The Family Court has jurisdiction with respect to matters arising under this Act or under any other law made by the Parliament in respect of which:

- (a)appeals referred to in section 94 are instituted; or
- (aa)appeals referred to in subsection 94AAA(1) or (1A) are instituted; or
- (b)appeals referred to in section 96 are instituted.

(2)Subject to section 96, in an appeal the Family Court shall have regard to the evidence given in the proceedings out of which the appeal arose and has power to draw inferences of fact and, in its discretion, to receive further evidence upon questions of fact, which evidence may be given:

- (a)by affidavit; or
- (b)by oral examination before the Family Court or a Judge; or
- (c)as provided for in Division 2 of Part XI.

### **94 Appeals to Family Court from courts other than the Federal Magistrates Court and the Magistrates Court of Western Australia**

(1)Subject to sections 94AAA and 94AA, an appeal lies to a Full Court of the Family Court from:

- (a)a decree of the Family Court, constituted otherwise than as a Full Court, exercising original or appellate jurisdiction:
  - (i) under this Act; or
  - (ii) under any other law; or
- (b) a decree of:

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(i) a Family Court of a State; or  
(ii) a Supreme Court of a State or Territory constituted by a single Judge;  
exercising original or appellate jurisdiction under this Act or in proceedings continued in accordance with any of the provisions of section 9.

(1AA) An appeal lies to a Full Court of the Family Court from a decree or decision of a Judge exercising original or appellate jurisdiction under this Act rejecting an application that he or she disqualify himself or herself from further hearing a matter.

(1A) An appeal under subsection (1) or (1AA) shall be instituted within the time prescribed by the standard Rules of Court or within such further time as is allowed in accordance with the standard Rules of Court.

(2) Upon such an appeal, the Full Court may affirm, reverse or vary the decree or decision the subject of the appeal and may make such decree or decision as, in the opinion of the court, ought to have been made in the first instance, or may, if it considers appropriate, order a re-hearing, on such terms and conditions, if any, as it considers appropriate.

(2A) If, in dismissing an appeal under subsection (1) or (1AA), the Full Court is of the opinion that the appeal does not raise any question of general principle, it may give reasons for its decision in short form.

(2B) A Full Court of the Family Court, or a Judge of the Appeal Division or other Judge if there is no Judge of the Appeal Division available, may:

- (a) join or remove a party to an appeal under subsection (1) or (1AA); or
- (b) make an order by consent disposing of an appeal under subsection (1) or (1AA) (including an order for costs); or
- (c) give directions about the conduct of an appeal under subsection (1) or (1AA), including directions about the use of written submissions and limiting the time for oral argument.

(2C) The standard Rules of Court may make provision enabling matters of the kind mentioned in subsection (2B) to be dealt with, subject to conditions prescribed by the standard Rules of Court,

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without an oral hearing.

- (2D) Applications of a procedural nature, including applications:
- (a) for an extension of time within which to institute an appeal under subsection (1) or (1AA); or
  - (b) for leave to amend the grounds of an appeal under subsection (1) or (1AA); or
  - (c) to reinstate an appeal under subsection (1) or (1AA) that, because of the standard Rules of Court, was taken to have been abandoned; or
  - (d) to stay an order of a Full Court of the Family Court made in connection with an appeal under subsection (1) or (1AA); or
  - (e) for an extension of time within which to file an application for leave to appeal; or
  - (f) for security for costs in relation to an appeal; or
  - (g) to reinstate an appeal dismissed under a provision of the Rules of Court; or
  - (h) to adjourn the hearing of an appeal; or
  - (i) to vacate the hearing date of an appeal; or
  - (j) to expedite the hearing of an appeal;

may be heard and determined by a Judge of the Appeal Division or other Judge if there is no Judge of the Appeal Division available, or by a Full Court of the Family Court.

(2E) The standard Rules of Court may make provision enabling applications of a kind mentioned in subsection (2D) to be dealt with, subject to conditions prescribed by the standard Rules of Court, without an oral hearing.

(2F) No appeal lies under this section from an order or decision made under subsection (2B) or (2D).

(3) This section does not apply in relation to a proceeding that is transferred to the Court from the Federal Court of Australia.

**94AAA Appeals to Family Court from the Federal Magistrates Court and the Magistrates Court of Western Australia**

- (1) An appeal lies to the Family Court from:
- (a) a decree of the Federal Magistrates Court exercising
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original jurisdiction under this Act; or

(b)a decree or decision of a Federal Magistrate exercising original jurisdiction under this Act rejecting an application that he or she disqualify himself or herself from further hearing a matter.

(1A)An appeal lies to the Family Court from:

- (a)a decree of the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia exercising original jurisdiction under this Act; or
- (b)a decree or decision of a Family Law Magistrate of Western Australia exercising in the Magistrates Court of Western Australia original jurisdiction under this Act rejecting an application that he or she disqualify himself or herself from further hearing a matter.

(2)Subsections (1) and (1A) have effect subject to section 94AA.

(3)The jurisdiction of the Family Court in relation to an appeal under subsection (1) or (1A) is to be exercised by a Full Court unless the Chief Judge considers that it is appropriate for the jurisdiction of the Family Court in relation to the appeal to be exercised by a single Judge.

(4)Subsection (3) has effect subject to subsections (8) and (10).

(5)An appeal under subsection (1) or (1A) is to be instituted within:

- (a)the time prescribed by the standard Rules of Court; or
- (b)such further time as is allowed in accordance with the standard Rules of Court.

(6)On an appeal under subsection (1) or (1A), the Family Court may affirm, reverse or vary the decree or decision the subject of the appeal and may make such decree or decision as, in the opinion of the court, ought to have been made in the first instance, or may, if it considers appropriate, order a re-hearing on such terms and conditions, if any, as it considers appropriate.

(7)If, in dismissing an appeal under subsection (1) or (1A), the Family Court is of the opinion that the appeal does not raise any question of general principle, it may give reasons for its decision in short form.

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(8)A single Judge or a Full Court may:

- (a)join or remove a party to an appeal under subsection (1) or (1A); or
- (b)make an order by consent disposing of an appeal under subsection (1) or (1A) (including an order for costs); or
- (c)give directions about the conduct of an appeal under subsection (1) or (1A), including directions about:
  - (i) the use of written submissions; and
  - (ii) limiting the time for oral argument.

(9)The standard Rules of Court may make provision enabling matters of the kind mentioned in subsection (8) to be dealt with, subject to conditions prescribed by the standard Rules of Court, without an oral hearing.

(10)Applications of a procedural nature, including applications:

- (a)for an extension of time within which to institute an appeal under subsection (1) or (1A); or
- (b)for leave to amend the grounds of an appeal under subsection (1) or (1A); or
- (c)to reinstate an appeal under subsection (1) or (1A) that, because of the standard Rules of Court, was taken to have been abandoned; or
- (d)to stay an order of the Family Court made in connection with an appeal under subsection (1) or (1A); or
- (e)for an extension of time within which to file an application for leave to appeal; or
- (f)for security for costs in relation to an appeal; or
- (g)to reinstate an appeal dismissed under a provision of the Rules of Court; or
- (h)to adjourn the hearing of an appeal; or
- (i)to vacate the hearing date of an appeal; or
- (j)to expedite the hearing of an appeal;

may be heard and determined by a single Judge or by a Full Court.

(11)The standard Rules of Court may make provision enabling applications of a kind mentioned in subsection (10) to be dealt with, subject to conditions prescribed by the standard Rules of Court, without an oral hearing.

(12)An appeal does not lie to a Full Court from a decision of a

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single Judge exercising jurisdiction under this section.

(13)The single Judge referred to in subsection (3), (8) or (10) need not be a member of the Appeal Division.

#### **94AAB Appeals, and applications for leave, without oral hearing**

(1)Subject to subsection (2), an appeal under section 94 or 94AAA may be dealt with without an oral hearing if all the parties to the appeal consent to the appeal being dealt with in that way.

(2)Subsection (1) does not apply to an appeal if the court to which the appeal is made otherwise orders.

(3)A consent given under subsection (1) may only be withdrawn with the leave of the court.

#### **94AA Leave to appeal needed in some cases**

(1)The following table sets out the circumstances in which leave to appeal is required:

<b>Requirements for leave to appeal</b>			
<b>Item</b>	<b>Appeal from</b>	<b>Appeal to</b>	<b>Who determines the application for leave to appeal</b>
1	a prescribed decree of the Family Court (constituted otherwise than as a Full Court)	a Full Court of the Family Court	a Full Court of the Family Court
2	a prescribed decree of a Family Court of a State	a Full Court of the Family Court	a Full Court of the Family Court
3	a prescribed decree of a Supreme Court of a State or Territory constituted by a single Judge	a Full Court of the Family Court	a Full Court of the Family Court

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**Requirements for leave to appeal**

<b>Item</b>	<b>Appeal from</b>	<b>Appeal to</b>	<b>Who determines the application for leave to appeal</b>
1	a prescribed decree of the Family Court (constituted otherwise than as a Full Court)	a Full Court of the Family Court	a Full Court of the Family Court
4	a prescribed decree of the Federal Magistrates Court	the Family Court	(a) a single Judge of the Family Court (who need not be a member of the Appeal Division); or  (b) a Full Court of the Family Court
5	a prescribed decree of the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia	the Family Court	(a) a single Judge of the Family Court (who need not be a member of the Appeal Division); or  (b) a Full Court of the Family Court

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(2) Despite subsection (1), an order by consent disposing of an application under this section for leave to appeal under subsection 94(1) or (1AA) (including an order for costs) may be made by:

- (a) a Full Court of the Family Court; or
- (b) a Judge of the Appeal Division; or
- (c) another Judge if there is no Judge of the Appeal Division available.

(2A) Despite subsection (1), an order by consent disposing of an application under this section for leave to appeal under subsection 94AAA(1) or (1A) (including an order for costs) may be made by:

- (a) a Full Court of the Family Court; or
- (b) a single Judge of the Family Court (who need not be a member of the Appeal Division).

(3) The standard Rules of Court may make provision for enabling applications for leave to be dealt with, subject to conditions

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prescribed by the Rules, without an oral hearing.

#### **94A Case stated**

(1)If, in proceedings in a court, being proceedings in which a decree or decision to which subsection 94(1) or (1AA) applies could be made, a question of law arises which the Judge and at least one of the parties wish to have determined by a Full Court of the Family Court before the proceedings are further dealt with, the Judge shall state the facts and question in the form of a special case for the opinion of a Full Court, and a Full Court shall hear and determine the question.

(2)The Full Court may draw from the facts and the documents any inference, whether of fact or of law, which could have been drawn from them by the Judge.

(3)If, in proceedings in the Federal Magistrates Court, being proceedings in which a decree or decision to which subsection 94AAA(1) applies could be made, a question of law arises which:

(a)the Federal Magistrate; and

(b)at least one of the parties;

wish to have determined by a Full Court of the Family Court before the proceedings are further dealt with:

(c)the Federal Magistrate must state the facts and question in the form of a special case for the opinion of a Full Court of the Family Court; and

(d)a Full Court of the Family Court must hear and determine the question.

(4)The Full Court may draw from the facts and the documents any inference, whether of fact or of law, which could have been drawn from them by the Federal Magistrate.

(5)If, in proceedings in the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia, being proceedings in which a decree or decision to which subsection 94AAA(1A) applies could be made, a question of law arises which:

(a)the Magistrate; and

(b)at least one of the parties;

wish to have determined by a Full Court of the Family Court

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before the proceedings are further dealt with:

- (c)the Magistrate must state the facts and question in the form of a special case for the opinion of a Full Court of the Family Court; and
- (d)a Full Court of the Family Court must hear and determine the question.

(6)The Full Court may draw from the facts and the documents any inference, whether of fact or of law, which could have been drawn from them by the Magistrate.

**95 Appeals to High Court**

Despite anything contained in any other Act, an appeal does not lie to the High Court from a decree of a court exercising jurisdiction under this Act, whether original or appellate, except by special leave of the High Court.

**96 Appeals from courts of summary jurisdiction**

(1AA)This section does not apply to a decree of the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia.

Note: Appeals from these decrees are dealt with in section 94AAA.

(1)An appeal lies from a decree of a court of summary jurisdiction of a State or Territory exercising jurisdiction under this Act to the Family Court or to the Supreme Court of that State or Territory.

(1A)An appeal under subsection (1) shall be instituted within the time prescribed by the standard Rules of Court or within such further time as is allowed in accordance with the standard Rules of Court.

(2)The Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred on the Supreme Court of each Territory, with respect to matters arising under this Act in respect of which appeals are instituted under this section.

(3)The Governor-General may, by Proclamation, fix a date as the date on or after which appeals to the Supreme Court of a specified State or Territory under this section may not be instituted.

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(4)The court hearing an appeal under this section:

- (a)shall, subject to subsection (5), proceed by way of a hearing *de novo*, but may receive as evidence any record of evidence given, including any affidavit filed or exhibit received, in the court of summary jurisdiction; and
- (b)may make such decrees as it considers appropriate, including a decree affirming, reversing or varying the decree the subject of the appeal.

(5)The court hearing an appeal under this section may, on the application of a party or of its own motion, refer the appeal to a Full Court of the Family Court.

(6)Where an appeal is referred to a Full Court of the Family Court under subsection (5), the Full Court may:

- (a)proceed by way of a hearing *de novo*, but may receive as evidence any record of evidence given, including any affidavit filed or exhibit received in the court of summary jurisdiction;
- (b)order that questions of fact arising in the proceedings be tried by a Judge;
- (c)determine questions of law arising in the proceedings and remit the appeal to a Judge for hearing in accordance with directions given by it; and
- (d)make such other decrees as it considers appropriate, including a decree affirming, reversing or varying the decree the subject of the appeal.

#### **96AA Power to dismiss appeal**

If it appears to a court hearing an appeal under this Part that the notice of the appeal does not disclose proper grounds of appeal (whether generally, or in relation to a particular ground of appeal), the court may order that the proceedings on the appeal be stayed or dismissed (either generally or in relation to that ground).

#### **96A Part does not apply to section 111C jurisdiction**

This Part does not apply in relation to jurisdiction conferred on a federal court or a court of a Territory, or invested in a court of a State, by regulations made for the purposes of section 111C.

Note: Those regulations may provide for courts to have jurisdiction in

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respect of appeals arising from matters dealt with by those regulations:  
see subsection 111C(5).

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## **Part XI—Procedure and evidence**

Note: Division 12A of Part VII has provisions about procedure and evidence that apply to child-related proceedings (within the meaning of Part VII).

### **Division 1—General matters concerning procedure and evidence**

#### **97 Procedure**

(1) Subject to subsections (1A) and (2), to the regulations and to the applicable Rules of Court, all proceedings in the Family Court, in the Federal Magistrates Court, or in a court of a Territory (other than the Northern Territory) when exercising jurisdiction under this Act, shall be heard in open court.

(1A) The regulations and the applicable Rules of Court may authorise proceedings to be heard by a Judge, Judicial Registrar, Registrar, Federal Magistrate or magistrate sitting in Chambers.

(2) In any proceedings in the Family Court, or in another court when exercising jurisdiction under this Act, the court may, of its own motion or on the application of a party to the proceedings, make one or more of the following orders:

- (a) an order that a specified person is not, or specified persons are not, to be present in court during the proceedings or during a specified part of the proceedings;
- (b) an order that persons included in a specified class of persons are not to be present in court during the proceedings or during a specified part of the proceedings;
- (c) an order that only the parties to the proceedings, their legal representatives and such other persons (if any) as are specified by the court may be present in court during the proceedings or during a specified part of the proceedings.

(3) In proceedings under this Act, the court shall proceed without undue formality and shall endeavour to ensure that the proceedings are not protracted.

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**98 Evidence by affidavit**

- (1)The standard Rules of Court may provide for evidence of any material matter to be given on affidavit at the hearing of:
- (a)divorce or validity of marriage proceedings that are undefended at the time of hearing; and
  - (b)proceedings other than divorce or validity of marriage proceedings.

(2)This section does not apply to proceedings in the Federal Magistrates Court.

Note: For provisions relating to the Federal Magistrates Court, see the *Federal Magistrates Act 1999*.

**98A Proceedings in absence of parties**

(1)The applicable Rules of Court may provide that where, at the date fixed for the hearing of proceedings for a divorce order in relation to a marriage instituted by one party to the marriage:

- (a)the proceedings are undefended;
- (b)there are no children of the marriage who have not attained the age of 18 years;
- (c)the applicant has requested the court to determine the proceedings in the absence of the parties; and
- (d)the respondent has not requested the court not to determine the proceedings in the absence of the parties;

the court may, in its discretion, determine the proceedings notwithstanding that neither the parties to the proceedings nor their legal representatives are present in court.

(2)The applicable Rules of Court may provide that where, at the date fixed for the hearing of proceedings for a divorce order in relation to a marriage instituted jointly by the parties to the marriage:

- (a)one of the parties to the marriage has requested the court to determine the proceedings in the absence of the parties and the other party to the marriage has not requested the court not to determine the proceedings in the absence of the parties; or
- (b)both parties to the marriage have requested the court to determine the proceedings in the absence of the parties;

the court may, in its discretion, determine the proceedings

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notwithstanding that neither the parties to the proceedings nor their legal representatives are present in court.

(2A)The court must not determine proceedings for the divorce order in relation to the marriage under subsection (2) if:

- (a)there are any children of the marriage who are under 18; and
- (b)the court is not satisfied that proper arrangements in all the circumstances have been made for the care, welfare and development of those children.

(2B)The court may determine proceedings under subsection (1) or (2) in chambers.

(3)For the purposes of this section, a child (including an ex-nuptial child of either the husband or the wife, a child adopted by either of them or a child who is not a child of either of them) is a child of the marriage if the child was treated by the husband and wife as a child of their family at the relevant time.

(4)For the purposes of subsection (3), the relevant time is the time immediately before the time when the husband and wife separated or, if they have separated on more than one occasion, the time immediately before the time when they last separated before the institution of the proceedings for the divorce order in relation to the marriage.

## **100 Evidence of husbands and wives**

(1)The parties to proceedings under this Act are competent and compellable witnesses.

(2)In proceedings under this Act, the parties to a marriage are competent and compellable to disclose communications made between them during the marriage.

(3)Subsection (2) applies to communications made before, as well as to communications made after, the date of commencement of this Act.

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**100B Children swearing affidavits, being called as witnesses or being present in court**

(1)A child, other than a child who is or is seeking to become a party to proceedings, must not swear an affidavit for the purposes of proceedings, unless the court makes an order allowing the child to do so.

(2)A child must not be called as a witness in, or be present during, proceedings in the Family Court, or in another court when exercising jurisdiction under this Act, unless the court makes an order allowing the child to be called as a witness or to be present (as the case may be).

(3)In this section:

***child*** means a child under 18 years of age.

**100C Evidence in respect of which a child is a protected confider**

(1)In any proceedings in the Family Court, or in the Federal Magistrates Court when exercising jurisdiction under this Act, a person described in subsection (2) may, on a child's behalf, apply to the court for:

(a)a direction under subsection 126B(1) of the *Evidence Act 1995*; or

(b)an order under section 126E of that Act;

in relation to evidence in respect of which the child is a protected confider (within the meaning of section 126A of that Act).

(2)For the purposes of subsection (1), the following persons may apply to the court on a child's behalf:

(a)the independent children's lawyer; or

(b)a parent of the child who has responsibility for making decisions about major long-term issues in relation to the child; or

(c)a person other than a parent who has responsibility for making decisions about major long-term issues in relation to the child.

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## **101 Protection of witnesses**

- (1)The court shall forbid the asking of, or excuse a witness from answering, a question that it regards as offensive, scandalous, insulting, abusive or humiliating, unless the court is satisfied that it is essential in the interests of justice that the question be answered.
- (2)The court must forbid an examination of a witness that it regards as oppressive, repetitive or hectoring, or excuse a witness from answering questions asked during such an examination, unless the court is satisfied that it is essential in the interests of justice for the examination to continue or for the questions to be answered.

## **102 Proof of birth, parentage, death or marriage**

In proceedings under this Act, the court may receive as evidence of the facts stated in it a document purporting to be either the original or a certified copy of:

- (a)a certificate, entry or record of a birth, death or marriage alleged to have taken place, whether in Australia or elsewhere; or
- (b)an entry in a register of parentage information kept under the law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction.

## **102A Restrictions on examination of children**

- (1)Subject to this section, where a child is examined without the leave of the court, the evidence resulting from the examination which relates to the abuse of, or the risk of abuse of, the child is not admissible in proceedings under this Act.
- (2)Where a person causes a child to be examined for the purpose of deciding:
- (a)to bring proceedings under this Act involving an allegation that the child has been abused or is at risk of being abused; or
  - (b)to make an allegation in proceedings under this Act that the child has been abused or is at risk of being abused;
- subsection (1) does not apply in relation to evidence resulting from the first examination which the person caused the child to undergo.

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(3) In considering whether to give leave for a child to be examined, the court must have regard to the following matters:

- (a) whether the proposed examination is likely to provide relevant information that is unlikely to be obtained otherwise;
- (b) the qualifications of the person who proposes to conduct the examination to conduct that examination;
- (c) whether any distress likely to be caused to the child by the examination will be outweighed by the value of the information that might be obtained from the examination;
- (d) any distress already caused to the child by any previous examination associated with the proceedings or with related proceedings;
- (e) any other matter that the court thinks is relevant.

(4) In proceedings under this Act, a court may admit evidence which is otherwise inadmissible under this section where it is satisfied that:

- (a) the evidence relates to relevant matters on which the evidence already before the court is inadequate; and
- (b) the court will not be able to determine the proceedings properly unless the evidence is admitted; and
- (c) the welfare of the child concerned is likely to be served by the admission of the evidence.

(5) In this section:

**examined**, in relation to a child, means:

- (a) subjected to a medical procedure; or
- (b) examined or assessed by a psychiatrist or psychologist (other than by a family counsellor or family consultant).

Note: Section 69ZV is relevant to evidence of a representation by a child, if the admissibility of the evidence would otherwise be affected by the law against hearsay.

**102B Assessors**

In any proceedings under this Act (other than prescribed proceedings), the court may, in accordance with the applicable Rules of Court, get an assessor to help it in the hearing and determination of the proceedings, or any part of them or any matter arising under them.

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## **Division 2—Use of video link, audio link or other appropriate means to give testimony, make appearances and give submissions etc.**

### **102C Testimony**

(1)The court or a Judge may, for the purposes of any proceedings, direct or allow testimony to be given by video link, audio link or other appropriate means.

Note: See also section 102F.

(2)The testimony must be given on oath or affirmation unless:

- (a)the person giving the testimony is in a foreign country; and
- (b) either:
  - (i) the law in force in that country does not permit the person to give testimony on oath or affirmation for the purposes of the proceedings; or
  - (ii) the law in force in that country would make it inconvenient for the person to give testimony on oath or affirmation for the purposes of the proceedings; and
- (c)the court or a Judge is satisfied that it is appropriate for the testimony to be given otherwise than on oath or affirmation.

(3)If the testimony is given otherwise than on oath or affirmation, the court or a Judge must give the testimony such weight as the court or the Judge thinks fit in the circumstances.

(4)The power conferred on the court or a Judge by subsection (1) may be exercised:

- (a)on the application of a party to the proceedings concerned; or
- (b)on the court's own initiative or on the Judge's own initiative, as the case may be.

(5)This section applies whether the person giving testimony is in or outside Australia, but does not allow testimony to be given by a person who is in New Zealand.

Note: See the *Evidence and Procedure (New Zealand) Act 1994*.

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**102D Appearance of persons**

(1)The court or a Judge may, for the purposes of any proceedings, direct or allow a person to appear before the court or the Judge by way of video link, audio link or other appropriate means.

Note: See also section 102F.

(2)The power conferred on the court or a Judge by subsection (1) may be exercised:

- (a)on the application of a party to the proceedings concerned; or
- (b)on the court's own initiative or on the Judge's own initiative, as the case may be.

(3)This section applies whether the person appearing is in or outside Australia, but does not apply if the person appearing is in New Zealand.

Note: See the *Evidence and Procedure (New Zealand) Act 1994*.

**102E Making of submissions**

(1)The court or a Judge may, for the purposes of any proceedings, direct or allow a person to make a submission to the court or the Judge by way of video link, audio link or other appropriate means.

Note: See also section 102F.

(2)The power conferred on the court or a Judge by subsection (1) may be exercised:

- (a)on the application of a party to the proceedings concerned; or
- (b)on the court's own initiative or on the Judge's own initiative, as the case may be.

(3)This section applies whether the person making the submission is in or outside Australia, but does not apply if the person making the submission is in New Zealand.

Note: See the *Evidence and Procedure (New Zealand) Act 1994*.

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## **102F Conditions for use of links**

### *Video link*

(1)The court or a Judge must not exercise the power conferred by subsection 102C(1), 102D(1) or 102E(1) in relation to a video link unless the court or the Judge is satisfied that the following conditions are met in relation to the video link:

- (a)the courtroom is equipped with facilities (for example, television monitors) that enable all eligible persons present in that courtroom to see and hear the person (the *remote person*) who is:
  - (i) giving the testimony; or
  - (ii) appearing; or
  - (iii) making the submission;as the case may be, by way of the video link;
- (b)the place at which the remote person is located is equipped with facilities (for example, television monitors) that enable all eligible persons present in that place to see and hear each eligible person who is present in the courtroom;
- (c)such other conditions (if any) as are prescribed by the applicable Rules of Court in relation to the video link;
- (d)such other conditions (if any) as are imposed by the court or a Judge.

(2)The conditions that may be prescribed by the applicable Rules of Court in accordance with paragraph (1)(c) include conditions relating to:

- (a)the form of the video link; and
- (b)the equipment, or class of equipment, used to establish the link; and
- (c)the layout of cameras; and
- (d)the standard of transmission; and
- (e)the speed of transmission; and
- (f)the quality of communication.

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*Audio link*

(3)The court or a Judge must not exercise the power conferred by subsection 102C(1), 102D(1) or 102E(1) in relation to an audio link unless the court or a Judge is satisfied that the following conditions are met in relation to the audio link:

- (a)the courtroom is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that courtroom to hear the person (the *remote person*) who is:
  - (i) giving the testimony; or
  - (ii) appearing; or
  - (iii) making the submission;as the case may be, by way of the audio link;
- (b)the place at which the remote person is located is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that place to hear each eligible person who is present in the courtroom or other place where the court or the Judge is sitting;
- (c)such other conditions (if any) as are prescribed by the applicable Rules of Court in relation to the audio link;
- (d)such other conditions (if any) as are imposed by the court or a Judge.

(4)The conditions that may be prescribed by the applicable Rules of Court in accordance with paragraph (3)(c) include conditions relating to:

- (a)the form of the audio link; and
- (b)the equipment, or class of equipment, used to establish the audio link; and
- (c)the standard of transmission; and
- (d)the speed of transmission; and
- (e)the quality of communication.

*Other appropriate means*

(5)The court or a Judge must not exercise the power conferred by subsection 102C(1), 102D(1) or 102E(1) in relation to appropriate means other than video link or audio link unless the court or the Judge is satisfied that the following conditions are met in relation to that means:

- (a)the conditions (if any) as are prescribed by the applicable

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Rules of Court in relation to that other appropriate means;  
(b)such other conditions (if any) as are imposed by the court or the Judge.

*Eligible persons*

(6)For the purposes of the application of this section to particular proceedings, ***eligible persons*** are such persons as the court or the Judge considers should be treated as eligible persons for the purposes of the proceedings.

*Meaning of courtroom*

(7)In this section:

***courtroom*** means:

- (a)in relation to a Judge or a court that is not a split court—the courtroom or other place where the Judge or court is sitting; or
- (b)in relation to a split court—each of the courtrooms or places where the Judges of the split court are sitting.

## **102G Putting documents to a person**

(1)This section applies if, in the course of an examination or appearance of a person by video link, audio link or other appropriate means in accordance with this Division, it is necessary to put a document to the person.

(2)A court (that is not a split court) or a Judge may direct or allow the document to be put to the person:

- (a)if the document is physically present in the courtroom or other place where the court or the Judge is sitting:
  - (i) by causing a copy of the document to be transmitted to the place where the person is located; and
  - (ii) by causing the transmitted copy to be put to the person; or
- (b)if the document is physically present in the place where the person is located:
  - (i) by causing the document to be put to the person; and
  - (ii) by causing a copy of the document to be transmitted to the courtroom or other place where the court or the

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Judge is sitting.

(3) A split court may direct or allow the document to be put to the person:

- (a) if the document is physically present in a courtroom or other place where a Judge of the split court is sitting:
  - (i) by causing a copy of the document to be transmitted to the place where the person is located; and
  - (ii) by causing the transmitted copy to be put to the person; or
- (b) if the document is physically present in the place where the person is located:
  - (i) by causing the document to be put to the person; and
  - (ii) by causing a copy of the document to be transmitted to each of the courtrooms or other places where the Judges of the split court are sitting.

**102H Putting documents to a split court**

(1) If proceedings are before a split court and it is necessary or appropriate to put a document to the court, the court may direct or allow the document to be put to the court:

- (a) if the document is physically present in a courtroom or other place where a Judge of the split court is sitting:
  - (i) by causing the document to be put to the Judge; and
  - (ii) by causing a copy of the document to be transmitted to each courtroom or other place where the other Judge or Judges of the split court are sitting; and
  - (iii) by causing a copy of the document to be transmitted to such other place where an eligible person is located as the court directs; or
- (b) if the document is not physically present in a courtroom or other place where a Judge of the split court is sitting:
  - (i) by causing a copy of the document to be transmitted to each of the courtrooms or other places where the Judges of the split court are sitting; and
  - (ii) by causing a copy of the document to be transmitted to such other place where an eligible person is located as the court directs.

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*Eligible persons*

(2)For the purposes of the application of this section to particular proceedings, ***eligible persons*** are such persons as the court considers should be treated as eligible persons for the purposes of the proceedings.

## **102J Administration of oaths and affirmations**

(1)An oath to be sworn, or an affirmation to be made, by a person (the ***remote person***) who is to give testimony by video link, audio link or other appropriate means in accordance with this Division may be administered:

- (a)by means of the video link or audio link, as the case may be, in a way that, as nearly as practicable, corresponds to the way in which the oath or affirmation would be administered if the remote person were to give testimony in the courtroom or other place where the court or the Judge is sitting; or
- (b)if the court or the Judge allows another person who is present at the place where the remote person is located to administer the oath or affirmation—by that other person.

(2)In this section:

***courtroom or other place where the court or the Judge is sitting***, in relation to a split court, means the courtroom or other place where the presiding Judge of the split court is sitting.

## **102K Expenses**

(1)The court or a Judge may make such orders as the court or the Judge thinks just for the payment of expenses, including the court's expenses, incurred in connection with:

- (a)the giving of testimony by video link, audio link or other appropriate means in accordance with this Division; or
- (b)the appearance of a person by video link, audio link or other appropriate means in accordance with this Division; or
- (c)the making of submissions by video link, audio link or other appropriate means in accordance with this Division; or
- (d)the court sitting as a split court in accordance with this Division and Division 3.

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(2) Subsection (1) has effect subject to the regulations.

**102L New Zealand proceedings**

This Division does not affect the operation of the *Evidence and Procedure (New Zealand) Act 1994*.

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## **Division 3—Split court**

### **102M Determination that there is to be a split court**

- (1) If proceedings are to be heard and determined by 2 or more Judges, then a directing Judge may determine:
- (a) that the Family Court is to be a split court; and
  - (b) which form of electronic communication is to be used to facilitate the proceedings.

(2) In subsection (1):

*directing Judge* means:

- (a) the Chief Justice; or
- (b) the Presiding Judge in respect of the proceedings.

*electronic communication* means:

- (a) video link; or
- (b) audio link; or
- (c) other appropriate means of communication.

### **102N Conditions for split court**

*Conditions to be satisfied before direction under section 102M may be given*

- (1) A direction must not be made under subsection 102M(1) in respect of facilitating the sitting of a split court by a form of electronic communication unless the directing Judge is satisfied:
- (a) that each courtroom is equipped with facilities that enable eligible persons present in the courtroom to communicate with eligible persons present in the other courtrooms:
    - (i) using the particular form of electronic communication; and
    - (ii) as required by the proceedings before the court; and
  - (b) that such conditions of a kind referred to in section 102F (if any) as are prescribed by the Rules of Court in relation to the particular form of electronic communication are met.

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*Judges may impose own conditions*

(2)Each Judge of the split court may, in relation to the Judge's courtroom, impose such other conditions in respect of the form of electronic communication to be used to facilitate the split court as the Judge considers appropriate.

*Eligible persons*

(3)For the purposes of the application of this section to particular proceedings, **eligible persons** are such persons as a Judge of the split court considers should be treated as eligible persons for the purposes of the proceedings as facilitated in the Judge's courtroom.

(4)In this section:

**communicate with**, in relation to eligible persons, means:

- (a)in the case of video link—seeing and hearing the eligible persons; and
- (b)in the case of audio link—hearing the eligible persons; and
- (c)in the case of other appropriate means of communication—as provided for in the applicable Rules of Court.

**courtroom** means the courtroom or other place where a Judge of the split court is sitting.

**electronic communication** means:

- (a) video link; or
- (b) audio link; or
- (c)other appropriate means of communication.

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## **Part XII—Recognition of decrees**

### **103 Decrees under this Act**

A decree under this Act has effect throughout Australia and the external Territories.

### **104 Overseas decrees**

(1) In this section:

*applicant*, in relation to a divorce or the annulment of a marriage or the legal separation of the parties to a marriage, means:

- (a) the party at whose instance the divorce, annulment or legal separation was effected; or
- (b) where the divorce, annulment or legal separation was effected at the instance of both the parties—each of the parties.

*marriage* includes a purported marriage that is void.

*relevant date*, in relation to a divorce or the annulment of a marriage or the legal separation of the parties to a marriage, means the date of the institution of the proceedings that resulted in the divorce, annulment or legal separation.

*respondent*, in relation to a divorce or the annulment of a marriage or the legal separation of the parties to a marriage, means a party to the marriage, not being a party at whose instance the divorce, annulment or legal separation was effected.

(2) For the purposes of this section, a person who is a national of a country of which an overseas jurisdiction forms part shall be deemed to be a national of that overseas jurisdiction.

(3) A divorce or the annulment of a marriage, or the legal separation of the parties to a marriage, effected in accordance with the law of an overseas jurisdiction shall be recognized as valid in Australia where:

- (a) the respondent was ordinarily resident in the overseas jurisdiction at the relevant date;

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(b)the applicant or, in a case referred to in paragraph (b) of the definition of **applicant** in subsection (1), one of the applicants, was ordinarily resident in the overseas jurisdiction at the relevant date and either:

- (i) the ordinary residence of the applicant or of that applicant, as the case may be, had continued for not less than 1 year immediately before the relevant date; or
- (ii) the last place of cohabitation of the parties to the marriage was in that jurisdiction;

(c)the applicant or the respondent or, in a case referred to in paragraph (b) of the definition of **applicant** in subsection (1), one of the applicants, was domiciled in the overseas jurisdiction at the relevant date;

(d)the respondent was a national of the overseas jurisdiction at the relevant date;

(e)the applicant or, in a case referred to in paragraph (b) of the definition of **applicant** in subsection (1), one of the applicants, was a national of the overseas jurisdiction at the relevant date and either:

- (i) the applicant or that applicant, as the case may be, was ordinarily resident in that jurisdiction at that date; or
- (ii) the applicant or that applicant, as the case may be, had been ordinarily resident in that jurisdiction for a continuous period of 1 year falling, at least in part, within the period of 2 years immediately before the relevant date; or

(f)the applicant or, in a case referred to in paragraph (b) of the definition of **applicant** in subsection (1), one of the applicants, was a national of, and present in, the overseas jurisdiction at the relevant date and the last place of cohabitation of the parties to the marriage was an overseas jurisdiction the law of which, at the relevant date, did not provide for divorce, the annulment of marriage or the legal separation of the parties to a marriage, as the case may be.

(4)A divorce or the annulment of a marriage, or the legal separation of the parties to a marriage, shall not be recognized as valid by virtue of subsection (3) where:

(a)under the common law rules of private international law, recognition of its validity would be refused on the ground that a party to the marriage had been denied natural justice;

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or

(b)recognition would manifestly be contrary to public policy.

(5)Any divorce or any annulment of a marriage, or any legal separation of the parties to a marriage, that would be recognized as valid under the common law rules of private international law but to which none of the preceding provisions of this section applies shall be recognized as valid in Australia, and the operation of this subsection shall not be limited by any implication from those provisions.

(6)Notwithstanding anything contained in this section, the annulment in accordance with the law of an overseas jurisdiction of a marriage solemnized under Part V of the *Marriage Act 1961*, being an annulment on the ground only of non-compliance with the formalities prescribed by the law of the jurisdiction in which the marriage was solemnized, shall not be recognized as valid in Australia.

(7)For the purposes of this section, a court in Australia, in considering the validity of a divorce or an annulment of a marriage, or a legal separation of the parties to a marriage, effected under a law of an overseas jurisdiction:

(a)where the respondent appeared in the proceedings for the divorce, annulment or separation:

- (i) is bound by the findings of fact on the basis of which a court of the overseas jurisdiction assumed jurisdiction to grant the divorce, annulment or separation; and
- (ii) may treat as proved any other facts found by a court of the overseas jurisdiction or otherwise established for the purposes of the law of the overseas jurisdiction; or

(b)where the respondent did not appear in the proceedings for the divorce, annulment or separation—may treat as proved any facts found by a court of the overseas jurisdiction or otherwise established for the purposes of the law of the overseas jurisdiction.

(8)For the purposes of the preceding provisions of this section but without limiting the operation of those provisions, a divorce or the annulment of a marriage, or the legal separation of the parties to a marriage, shall be deemed to have been effected in accordance with the law of an overseas jurisdiction if it was effected in another

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overseas jurisdiction in circumstances in which, at the relevant date, it would have been recognized as valid by the law of the first-mentioned overseas jurisdiction.

(9)Where a divorce or the annulment of a marriage is to be recognized as valid in accordance with this section, the capacity of a party to that marriage to re-marry in accordance with the law of Australia is not affected by the fact that the validity of the divorce or annulment is not recognized under the law of some other jurisdiction.

(10)The preceding provisions of this section apply in relation to divorces, annulments and legal separations effected whether by decree, legislation or otherwise, whether before or after the commencement of this Act, and, for the purposes of this section, any decree, legislation or other process by which it is established that a purported marriage was or is to become void shall be deemed to be an annulment of the marriage.

**104A Recognition in external Territories**

(1)In this section:

*external Territory* does not include Norfolk Island.

*overseas jurisdiction* does not include an external Territory.

(2)A divorce or the annulment of a marriage, or the legal separation of the parties to a marriage, effected in accordance with the law of an overseas jurisdiction that is recognised as valid in Australia shall be recognised as valid in every external Territory.

(3)A divorce or the annulment of a marriage, or the legal separation of the parties to a marriage, effected in accordance with the law of an external Territory that is recognised as valid in Australia shall be recognised as valid in every other external Territory.

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## **Part XIII—Enforcement of decrees**

### **105 Enforcement generally**

(1) Subject to this Part, to the regulations and to the applicable Rules of Court, all decrees made under this Act may be enforced by any court having jurisdiction under this Act.

Note: For example, the Federal Magistrates Court can enforce decrees made by the Family Court of Australia.

(2) Except as prescribed, a court shall not entertain a proceeding under this Act for the enforcement of a decree made by another court unless the decree is registered in the first-mentioned court in accordance with the regulations.

(2A) Subsection (2) does not prevent a court from making an order under paragraph 90KA(c) or 90UN(c).

(3) Where a person bound by a decree made under this Act has died, the decree may, by leave of:

(a) the court by which it was made; or

(b) any court in which the decree has been registered in accordance with the regulations (whether the decree was registered before or after the death of the person);

and on such terms and conditions as the court considers appropriate, be enforced, in respect of liabilities that arose under the decree before the death of that person, against the estate of that person.

### **106 Maintenance orders—more than 12 months in arrears**

In determining whether to make an order enforcing a maintenance order, a court must not require that there be special circumstances that justify enforcing the maintenance order merely because the maintenance payable under it is more than 12 months in arrears.

### **106A Execution of instruments by order of court**

(1) If:

(a) an order under this Act has directed a person to execute a

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deed or instrument; and

(b)that person has refused or neglected to comply with the direction or, for any other reason, the court considers it necessary to exercise the powers of the court under this subsection;

the court may appoint an officer of the court or other person to execute the deed or instrument in the name of the person to whom the direction was given and to do all acts and things necessary to give validity and operation to the deed or instrument.

(2) If:

(a)a provision of a maintenance agreement that has been registered under section 86 or approved by a court under section 87 requires a person to execute a deed or instrument; and

(b)that person has refused or neglected to comply with that provision of the maintenance agreement or, for any other reason, the court considers it necessary to exercise the powers of the court under this subsection;

the court may appoint an officer of the court or other person to execute the deed or instrument in the name of the person required by that provision of the maintenance agreement to execute the deed or instrument and to do all acts and things necessary to give validity and operation to the deed or instrument.

(3)The execution of a deed or instrument by a person appointed under this section to execute that deed or instrument has the same force and validity as if the deed or instrument had been executed by the person directed by an order referred to in paragraph (1)(a), or required by a provision of a maintenance agreement referred to in paragraph (2)(a), to execute it.

(4)The court may make such order as it considers just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

**106B Transactions to defeat claims**

(1)In proceedings under this Act, the court may set aside or restrain the making of an instrument or disposition by or on behalf of, or by direction or in the interest of, a party, which is made or proposed to be made to defeat an existing or anticipated order in those

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proceedings or which, irrespective of intention, is likely to defeat any such order.

(1A) If:

- (a)a party to a marriage, or a party to a de facto relationship, is a bankrupt; and
- (b)the bankruptcy trustee is a party to proceedings under this Act;

the court may set aside or restrain the making of an instrument or disposition:

- (c)which is made or proposed to be made by or on behalf of, or by direction or in the interest of, the bankrupt; and
- (d)which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.

(1B) If:

- (a)a party to a marriage, or a party to a de facto relationship, is a debtor subject to a personal insolvency agreement; and
- (b)the trustee of the agreement is a party to proceedings under this Act;

the court may set aside or restrain the making of an instrument or disposition:

- (c)which is made or proposed to be made by or on behalf of, or by direction or in the interest of, the debtor; and
- (d)which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.

(2)The court may order that any money or real or personal property dealt with by any instrument or disposition referred to in subsection (1), (1A) or (1B) may be taken in execution or charged with the payment of such sums for costs or maintenance as the court directs, or that the proceeds of a sale must be paid into court to abide its order.

(3)The court must have regard to the interests of, and shall make any order proper for the protection of, a bona fide purchaser or other person interested.

(4)A party or a person acting in collusion with a party may be ordered to pay the costs of any other party or of a bona fide

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purchaser or other person interested of and incidental to any such instrument or disposition and the setting aside or restraining of the instrument or disposition.

(4AA) An application may be made to the court for an order under this section by:

- (a) a party to the proceedings; or
- (b) a creditor of a party to the proceedings if the creditor may not be able to recover his or her debt if the instrument or disposition were made; or
- (c) any other person whose interests would be affected by the making of the instrument or disposition.

(4A) In addition to the powers the court has under this section, the court may also do any or all of the things listed in subsection 80(1) or 90SS(1).

(5) In this section:

***disposition*** includes:

- (a) a sale or gift; and
- (b) the issue, grant, creation, transfer or cancellation of, or a variation of the rights attaching to, an interest in a company or a trust.

***interest***:

- (a) in a company includes:
  - (i) a share in or debenture of the company; and
  - (ii) an option over a share in or debenture of the company (whether the share or debenture is issued or not); and
- (b) in a trust includes:
  - (i) a beneficial interest in the trust; and
  - (ii) the interest of a settlor in property subject to the trust; and
  - (iii) a power of appointment under the trust; and
  - (iv) a power to rescind or vary a provision of, or to rescind or vary the effect of the exercise of a power under, the trust; and
  - (v) an interest that is conditional, contingent or deferred.

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**107 People not to be imprisoned for failure to comply with certain orders**

(1)A person must not be imprisoned or otherwise placed in custody because of a contravention of an order for the payment of money made in a matrimonial cause or de facto financial cause.

(2)This section does not affect the operation of:

- (a)Division 13A of Part VII; or
- (b)Part XIIIIA; or
- (c) Part XIIIIB.

**109 Inter-State enforcement of child bearing expenses order**

(1)This section applies to the following orders made under the law of a State or Territory:

- (a)orders of a kind that may be made under section 67D;
- (b)orders for the payment of an amount in relation to the maintenance of a child.

(2)The regulations may make provision for and in relation to the enforcement in a State or Territory by a court having jurisdiction under this Act of orders to which this section applies made by a court in another State or Territory.

**109A Rules of Court relating to enforcement**

(1)The power of the Judges, or a majority of them, under section 123 to make Rules of Court extends to making Rules of Court for or in relation to, or for or in relation to anything incidental to, the enforcement by the court of:

- (a)an order under this Act affecting children; or
- (b)an order under this Act (within the meaning of Part XIIIIA); or
- (c)the *Child Support (Registration and Collection) Act 1988*; or
- (d)the *Child Support (Assessment) Act 1989*;

and, in particular, for or in relation to any of the specific matters mentioned in subsection (2).

(2)The specific matters are as follows:

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- (a)requiring a person to do any one or more of the following:
  - (i) to attend before a court or Registrar and answer questions or produce documents;
  - (ii) to deliver a document or article to, or to a person specified by, a court or Registrar;
  - (iii) to transfer the ownership of specified property to another person;
  - (iv) to give another person possession (including exclusive possession) of specified property;
  - (v) to deliver a specified chattel to another person;
  - (vi) to do, or abstain from doing, any other act;
- (b)prescribing the practice and procedure to be followed for a hearing before a court or Registrar for the purpose of giving effect to a requirement made as mentioned in subparagraph (a)(i);
- (c)taking any one or more of the actions mentioned in subsection (3) in respect of a person who:
  - (i) fails to pay the amount of a fine imposed under Division 13A of Part VII or under Part XIII; or
  - (ii) fails to pay an amount payable under a bond entered into under Division 13A of Part VII or under Part XIII; or
  - (iii) fails to pay under section 66L an amount of maintenance for a person over the age of 18 years; or
  - (iv) fails to pay an amount payable under a registered maintenance liability under the *Child Support (Registration and Collection) Act 1988* or the *Child Support (Assessment) Act 1989*; or
  - (v) fails to comply with a requirement made as mentioned in paragraph (a);
- (d)delegating to a Registrar all or any of the powers conferred on a court under Rules of Court made under this section.

(3)Subject to subsection (4), the actions in respect of a person the taking of which may be provided for by Rules of Court as mentioned in paragraph (2)(c) are as follows:

- (a)the issue of a warrant for the arrest of the person;
  - (b)the issue of a warrant of execution against property of the person;
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- (c)the making of an order authorising the taking of possession of property of the person;
  - (d)the making of an order for the sequestration, and if necessary the sale, of property of the person;
  - (e)the making of an order for the attachment, by garnishment or attachment of earnings, of debts owed to the person;
  - (f)the appointment of a receiver of property of the person.

(4)A reference in paragraph (2)(c) to a failure to pay an amount is a reference to any such failure irrespective of the length of the period during which the failure has continued, and includes a reference to a failure to pay part of an amount.

(5)In this section:

*property* means real or personal property.

Note: Powers to make Rules of Court are also contained in sections 26B and 37A.

## **109B Rules of Court relating to enforcement—Federal Magistrates Court**

(1)Section 109A applies to the making of Rules of Court under section 81 of the *Federal Magistrates Act 1999* in a corresponding way to the way in which it applies to the making of Rules of Court under section 123 of this Act.

(2)For the purposes of the application of section 109A in accordance with subsection (1):

- (a)the reference in subsection 109A(1) to the court is to be read as a reference to the Federal Magistrates Court; and
- (b)each reference in subsection 109A(2) to a court is to be read as a reference to the Federal Magistrates Court; and
- (c)each reference in subsection 109A(2) to a Registrar is to be read as a reference to a Registrar of the Federal Magistrates Court.

(3)Section 109A has no effect in relation to the Federal Magistrates Court except as provided by subsections (1) and (2) of this section.

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## **Part XIIIAA—International conventions, international agreements and international enforcement**

### **Division 1—International maintenance orders and agreements etc.**

#### **110 Overseas enforcement of maintenance orders etc.**

(1) In this section:

***jurisdiction with restricted reciprocity*** means a country, or part of a country, outside Australia declared by the regulations to be a jurisdiction with restricted reciprocity for the purposes of this section.

***maintenance order*** means:

- (a) an order or determination (however described) with respect to the maintenance of a party to a marriage;
- (b) an order or determination (however described) with respect to the maintenance of a child who has not attained the age of 18 years, other than an order or determination of the kind referred to in paragraph (c);
- (c) an order or determination (however described) with respect to the maintenance of a child who has not attained the age of 18 years, being an order or determination that is expressed to continue in force until a day that is later than, or for a period that extends beyond, the day on which the child will attain that age, where the provision of maintenance for the child is necessary to enable the child to complete a course of study, vocational training or an apprenticeship or to continue his or her education in any other way, or because the child is mentally or physically handicapped;
- (d) an order or determination (however described) with respect to the maintenance of a child who has attained the age of 18 years, being an order or determination that is expressed to continue in force until a day, or for a period, specified in the order or determination, where the provision of maintenance for the child is necessary to enable the child

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to complete a course of study, vocational training or an apprenticeship or to continue his or her education in any other way, or because the child is mentally or physically handicapped; and

(e) to the extent provided by the regulations, an order made under section 67D, or an order or determination (however described) that deals with matters of a kind in relation to which orders may be made under that section.

***reciprocating jurisdiction*** means a country, or part of a country, outside Australia declared by the regulations to be a reciprocating jurisdiction for the purposes of this section.

(2) The regulations may make provision for and in relation to:

(a) the registration in, and enforcement by, courts having jurisdiction under this Act of maintenance orders made by courts or authorities of reciprocating jurisdictions or of jurisdictions with restricted reciprocity;

(aa) the institution and prosecution, by an officer of a court having jurisdiction under this Act, a prescribed authority of the Commonwealth, of a State or Territory, or of another country or a part of another country, or a person for the time being holding a prescribed office under a law of the Commonwealth, of a State or Territory, or of another country or a part of another country, in his, her or its discretion, of proceedings:

- (i) on behalf of the person entitled to moneys payable under a maintenance order made by a court or authority of a reciprocating jurisdiction or of a jurisdiction with restricted reciprocity, for the enforcement by a court having jurisdiction under this Act of that maintenance order; or
- (ii) for the making of orders for the confirmation of provisional orders made by courts of reciprocating jurisdictions or of jurisdictions with restricted reciprocity, being provisional orders referred to in paragraph (d);

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(ab)the institution and prosecution, by an authority entitled to moneys payable under a maintenance order, in the authority's discretion, of proceedings for the enforcement of that maintenance order by a court having jurisdiction under this Act;

(b)the transmission to appropriate courts or authorities of reciprocating jurisdictions or of jurisdictions with restricted reciprocity of maintenance orders made by courts having jurisdiction under this Act for the purpose of securing the enforcement of those orders in those jurisdictions;

(ba)the making of provisional maintenance orders, and the transmission of such orders to appropriate courts of reciprocating jurisdictions or jurisdictions with restricted reciprocity, for the purposes of obtaining the confirmation, and securing the enforcement, of those orders in those jurisdictions, and the effect in Australia of those orders;

(c)the making of orders (including provisional orders) for the variation, discharge, suspension or revival of maintenance orders registered in accordance with regulations under this section or of maintenance orders or provisional maintenance orders transmitted to other jurisdictions in accordance with regulations under this section, and the effect in Australia of orders under this paragraph;

(d)the making of orders for the confirmation of provisional orders made by courts in reciprocating jurisdictions or in jurisdictions with restricted reciprocity, being provisional maintenance orders or provisional orders varying, discharging, suspending or reviving maintenance orders, and the effect in Australia of orders under this paragraph; and

(e)the making of orders for giving effect to process certified or approved by a court in the United States of America, being process relating to the provision of maintenance, and the effect in Australia of orders under this paragraph.

(3)The regulations may make different provision under this section in relation to reciprocating jurisdictions from the provision made in relation to jurisdictions with restricted reciprocity.

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**110A Registration and enforcement in Australia of overseas maintenance agreements etc.**

The regulations may make provision for and in relation to the registration and enforcement in Australia of:

- (a)overseas maintenance agreements; or
- (b)overseas administrative assessments of maintenance liabilities.

**110B Transmission of agreements etc. to overseas jurisdictions**

The regulations may make provision for and in relation to the transmission, to appropriate courts or authorities of prescribed overseas jurisdictions, of:

- (a)agreements registered under section 86; or
- (b)agreements approved by courts under section 87; or
- (c)financial agreements made as mentioned in subsection 90B(1) that contain matters referred to in paragraph 90B(2) (b); or
- (d)financial agreements made as mentioned in subsection 90C(1) that contain matters referred to in paragraph 90C(2) (b); or
- (e)financial agreements made as mentioned in subsection 90D(1) that contain matters referred to in paragraph 90D(2) (b); or
- (f)administrative assessments of maintenance liabilities;

for the purpose of securing the enforcement of those agreements or assessments in those jurisdictions.

**111 Convention on Recovery Abroad of Maintenance**

The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Recovery Abroad of Maintenance signed at New York on 20 June 1956 but any such regulations shall not come into operation until the day on which that Convention enters into force for Australia.

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**111A Convention on Recognition and Enforcement of Decisions  
Relating to Maintenance Obligations**

The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations signed at The Hague on 2 October 1973 but any such regulations shall not come into operation until the day on which that Convention enters into force for Australia.

**111AA Maintenance obligations with New Zealand**

- (1) This section has effect despite anything in Part VII.
- (2) A court must not determine an application for payment of child or spousal maintenance (whether under this Act or the regulations) if:
- (a) the person seeking payment is habitually resident in New Zealand; and
  - (b) determining the application would require the court to make a decision mentioned in Article 1.2 of the Australia-New Zealand Agreement.

Note: Article 1.2 of the Agreement is as follows:

For the purposes of this Agreement a decision shall include:

- (a) a child support assessment issued by an administrative authority;
- (b) an agreement to make payments for the maintenance of a child or spouse which has been registered with an administrative authority;
- (c) an assessment, order or agreement suspending, modifying or revoking a decision of the kind referred to in (a) or (b);
- (d) an order for child maintenance made by a judicial authority;
- (e) an order for spousal maintenance made by a judicial authority;
- (f) an agreement to make payments for the maintenance of a child or spouse which has been registered with a judicial authority;
- (g) an order or agreement suspending, modifying or revoking a decision of the kind referred to in (d), (e) or (f);
- (h) a liability to pay an amount to an administrative authority for the maintenance of a child or as contribution to the cost of government benefits paid to a payee for the maintenance of a

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child.

(3)In this section:

***Australia-New Zealand Agreement*** means the Agreement between the Government of Australia and the Government of New Zealand on Child and Spousal Maintenance signed at Canberra on 12 April 2000.

#### **111AB Agreement between the Government of the United States of America and the Government of Australia for the enforcement of Maintenance (Support) Obligations**

The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Agreement between the Government of the United States of America and the Government of Australia for the enforcement of Maintenance (Support) Obligations, which was concluded and entered into force on 12 December 2002.

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## Division 2—International child abduction

### **111B Convention on the Civil Aspects of International Child Abduction**

(1)The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980 (the **Convention**) but any such regulations shall not come into operation until the day on which that Convention enters into force for Australia.

(1A)In relation to proceedings under regulations made for the purposes of subsection (1), the regulations may make provision:

- (a)relating to the onus of establishing that a child should not be returned under the Convention; and
- (b)establishing rebuttable presumptions in favour of returning a child under the Convention; and
- (c)relating to a Central Authority within the meaning of the regulations applying on behalf of another person for a parenting order that deals with the person or persons with whom a child is to spend time or communicate if the outcome of the proceedings is that the child is not to be returned under the Convention.

(1B)The regulations made for the purposes of this section must not allow an objection by a child to return under the Convention to be taken into account in proceedings unless the objection imports a strength of feeling beyond the mere expression of a preference or of ordinary wishes.

(1C)A Central Authority within the meaning of the regulations may arrange to place a child, who has been returned to Australia under the Convention, with an appropriate person, institution or other body to secure the child's welfare until a court exercising jurisdiction under this Act makes an order (including an interim order) for the child's care, welfare or development.

(1D)A Central Authority may do so despite any orders made by a

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court before the child's return to Australia.

(1E) Any regulations made for the purposes of this section to give effect to Article 21 (rights of access) of the Convention may have effect regardless of:

- (a) whether an order or determination (however described) has been made under a law in force in another Convention country (within the meaning of the regulations made for the purposes of this section), with respect to rights of access to the child concerned; or
- (b) if the child was removed to Australia—when that happened; or
- (c) whether the child has been wrongfully removed to, or retained in, Australia.

(2) Because of amendments of this Act made by the *Family Law Reform Act 1995*:

- (a) a parent or guardian of a child is no longer expressly stated to have custody of the child; and
- (b) a court can no longer make an order under this Act expressed in terms of granting a person custody of, or access to, a child.

(3) The purpose of subsection (4) is to resolve doubts about the implications of these changes for the Convention. That is the only purpose of the subsection.

(4) For the purposes of the Convention:

- (a) each of the parents of a child should be regarded as having rights of custody in respect of the child unless the parent has no parental responsibility for the child because of any order of a court for the time being in force; and
- (b) subject to any order of a court for the time being in force, a person:
  - (i) with whom a child is to live under a parenting order; or
  - (ii) who has parental responsibility for a child under a parenting order;should be regarded as having rights of custody in respect of the child; and

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(c) subject to any order of a court for the time being in force, a person who has parental responsibility for a child because of the operation of this Act or another Australian law and is responsible for the day-to-day or long-term care, welfare and development of the child should be regarded as having rights of custody in respect of the child; and  
(d) subject to any order of a court for the time being in force, a person:  
(i) with whom a child is to spend time under a parenting order; or  
(ii) with whom a child is to communicate under a parenting order;  
should be regarded as having a right of access to the child.

Note: The references in paragraphs (b) and (d) to parenting orders also cover provisions of parenting agreements registered under section 63E (see section 63F, in particular subsection (3)).

(5) Subsection (4) is not intended to be a complete statement of the circumstances in which, under the laws of the Commonwealth, the States and the Territories, a person has, for the purposes of the Convention, custody of, or access to, a child, or a right or rights of custody or access in relation to a child.

(5A) Subsections (1A) and (2) to (5) do not, by implication, limit subsection (1).

(6) Expressions used in this section have the same meaning as they have in Part VII.

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## **Division 3—International agreements about adoption etc.**

### **111C International agreements about adoption etc.**

(1)The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption signed at The Hague on 29 May 1993.

(2)The regulations do not come into force until the day on which the Convention enters into force for Australia.

(3)The regulations may make such provision as is necessary or convenient to give effect to any bilateral agreement or arrangement on the adoption of children made between:

- (a)Australia, or a State or Territory of Australia; and
- (b)a prescribed overseas jurisdiction.

(4)Regulations made for the purposes of subsection (3) may, in particular:

- (a)provide for the recognition of adoptions made under a law of the prescribed overseas jurisdiction; and
- (b)provide that the regulations do not affect the operation of laws of a State or Territory that relate to adoptions; and
- (c)if a State or Territory has made such a bilateral agreement or arrangement on behalf of other States or Territories—give effect to the agreement or arrangement so far as it relates to all of those States or Territories, or to such of them as the regulations specify.

(5)Regulations made for the purposes of this section may:

- (a)confer jurisdiction on a federal court (other than the High Court) or a court of a Territory; or
- (b)invest a court of a State with federal jurisdiction.

Such jurisdiction is in addition to any other jurisdiction provided for under this Act.

(6)Regulations made for the purposes of subsection (5) may make different provision in respect of matters arising in relation to

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different States or Territories. (This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.)

(7) Subsections (4), (5) and (6) of this section do not, by implication, limit subsections (1) and (3) of this section.

(7A) The power of the Judges, or a majority of them, under section 123 to make Rules of Court extends to making Rules of Court for or in relation to the making of adoption orders.

(8) In this section, despite subsection 4(1), **Territory** includes each external Territory.

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## **Division 4—International protection of children**

### **Subdivision A—Preliminary**

#### **111CA Definitions**

(1) In this Division:

***another country*** means a Convention country or a non-Convention country.

***Australia*** includes the external Territories.

***central authority*** of a Convention country means:

- (a) if there is one central authority of the Convention country under Article 29 of the Child Protection Convention—the Convention country’s central authority; or
- (b) otherwise—the central authority designated, under Article 29 of the Child Protection Convention, as the Convention country’s central authority to which any communication may be addressed for transmission to the appropriate central authority of the Convention country.

***Child Protection Convention*** means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children signed at The Hague on 19 October 1996, a copy of the English text of which is set out in Schedule 1.

***Commonwealth central authority*** means the Secretary of the Attorney-General’s Department.

***Commonwealth personal protection measure*** relating to a child means a measure (within the meaning of the Child Protection Convention) under this Act that is directed to the protection of the person of the child.

***Commonwealth property protection measure*** relating to a child means a measure (within the meaning of the Child Protection Convention) under this Act for appointing, or deciding the powers of, a guardian of the child’s property.

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***competent authority:***

- (a) ***competent authority*** of Australia means an entity that has responsibility or authority under the law in force in Australia, or part of Australia, to take measures or make decisions about:
- (i) protecting the person of a child; or
  - (ii) appointing or deciding the powers of a guardian of a child's property; and
- (b) ***competent authority*** of a Convention country means an entity that has responsibility or authority under the law in force in the Convention country to take, or make decisions about, a foreign measure relating to a child; and
- (c) ***competent authority*** of a non-Convention country means an entity that has responsibility or authority under the law in force in the country to take measures or make decisions about:
- (i) protecting the person of a child; or
  - (ii) appointing or deciding the powers of a guardian of a child's property.

***Convention country*** means a country, other than Australia, for which the Child Protection Convention has entered into force.

***country of refuge*** of a child means a country in which the child is present as a refugee child.

***entity*** includes the following:

- (a) an individual;
- (b) a corporation;
- (c) an unincorporated body;
- (d) a government authority or body;
- (e) a court or tribunal.

***foreign measure*** means:

- (a) a foreign personal protection measure; or
- (b) a foreign property protection measure.

***foreign personal protection measure*** relating to a child means a measure (within the meaning of the Child Protection Convention) taken by a competent authority of a Convention country for protecting the person of the child.

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***foreign property protection measure*** relating to a child means a measure (within the meaning of the Child Protection Convention) taken by a competent authority of a Convention country for appointing, or deciding the powers of, a guardian of the child's property.

***non-Convention country*** means a country for which the Child Protection Convention has not entered into force.

***parental responsibility*** has the same meaning as in the Child Protection Convention.

***refugee child*** means a child:

- (a) who is a refugee; or
- (b) who is internationally displaced due to disturbances occurring in his or her country of habitual residence; or
- (c) whose country of habitual residence cannot be determined.

***Territory*** includes each external Territory.

(2) Unless the contrary intention appears, expressions used:

- (a) in this Division; or
  - (b) in regulations made for the purposes of this Division;
- have the same meaning as they have in the Child Protection Convention.

## **111CB Relationship between this Division and other provisions**

(1) This Division has effect despite the rest of this Act, except sections 69ZK and 111B and the regulations made for the purposes of section 111B.

(2) This Division, except section 111CZ, has effect subject to sections 69ZK and 111B and the regulations made for the purposes of section 111B.

(3) Section 111CZ, and regulations made for the purposes of that section, have effect despite section 69ZK.

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**Subdivision B—Jurisdiction for the person of a child**

**111CC Application of this Subdivision**

This Subdivision applies only if an issue under this Act is whether a court, as opposed to any of the following authorities, has jurisdiction to take measures directed to the protection of the person of a child:

- (a) a central authority or competent authority of a Convention country;
- (b) a competent authority of a non-Convention country.

**111CD Jurisdiction relating to the person of a child**

- (1) A court may exercise jurisdiction for a Commonwealth personal protection measure only in relation to:
  - (a) a child who is present and habitually resident in Australia; or
  - (b) a child who is present in Australia and habitually resident in a Convention country, if:
    - (i) the child's protection requires taking the measure as a matter of urgency; or
    - (ii) the measure is provisional and limited in its territorial effect to Australia; or
    - (iii) the child is a refugee child; or
    - (iv) a request to assume jurisdiction is made to the court by, or at the invitation of, a competent authority of the country of the child's habitual residence; or
    - (v) a competent authority of the country of the child's habitual residence agrees to the court assuming jurisdiction; or
    - (vi) the court is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3)); or
  - (c) a child who is present in a Convention country, if:
    - (i) the child is habitually resident in Australia; or
    - (ii) the child has been wrongfully removed from or retained outside Australia and the court keeps jurisdiction under Article 7 of the Child Protection Convention; or

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- (iii) a request to assume jurisdiction is made to the court by, or at the invitation of, a competent authority of the country of the child's habitual residence or country of refuge; or
  - (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the court assuming jurisdiction; or
  - (v) the child is habitually resident in a Convention country and the court is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3)); or
- (d) a child who is present in Australia and is a refugee child; or
  - (e) a child who is present in a non-Convention country, if:
    - (i) the child is habitually resident in Australia; and
    - (ii) any of paragraphs 69E(1)(b) to (e) applies to the child; or
  - (f) a child who is present in Australia, if:
    - (i) the child is habitually resident in a non-Convention country; and
    - (ii) any of paragraphs 69E(1)(b) to (e) applies to the child.
- (2) A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(ii) if the measure is not incompatible with a foreign measure already taken by a competent authority of a Convention country under Articles 5 to 10 of the Child Protection Convention.
- (3) A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(vi) or (c)(v) for a Commonwealth personal protection measure relating to a child if:
- (a) one or both of the child's parents are habitually resident in Australia when the proceedings referred to in that subparagraph begin; and
  - (b) one or both of the parents have parental responsibility for the child; and
  - (c) the jurisdiction of the court to take the measure is accepted by the parents and each other person with parental responsibility for the child; and

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(d)the exercise of jurisdiction to take the measure is in the best interests of the child; and

(e)the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(4)Paragraphs 111CD(1)(a) to (d) are subject to the limitations in sections 111CE, 111CF and 111CH.

**111CE Limitation when a child is wrongfully removed from or retained outside a Convention country**

A court must not, other than in a case of urgency, exercise jurisdiction in accordance with paragraph 111CD(1)(a), (b), (c) or (d) to take a Commonwealth personal protection measure relating to a child if:

- (a)the child has been wrongfully removed from or retained outside a Convention country; and
- (b)an authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

**111CF Limitations when prior proceedings pending in a Convention country**

(1)This section applies to the exercise of jurisdiction by a court in accordance with paragraph 111CD(1)(a), subparagraph 111CD(1)(b)(iii), (iv), (v) or (vi) or paragraph 111CD(1)(c) or (d).

(2)The court must not exercise that jurisdiction to take a Commonwealth personal protection measure relating to a child if:

- (a)a corresponding measure has been sought from a competent authority of a Convention country at the time of commencement of the proceedings before the court; and
- (b)any of the following applies:
  - (i) the child is habitually resident in the Convention country;
  - (ii) the child is present in the Convention country and is a refugee child;
  - (iii) a request to assume jurisdiction is made to the competent authority of the Convention country by, or at the invitation of, a competent authority of the country of

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- the child's habitual residence or country of refuge;
- (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the competent authority of the Convention country assuming jurisdiction;
  - (v) the competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3));
  - (vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

(3) Subparagraph (2)(b)(v) only applies (subject to subsection (4)) if:

- (a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph commence; and
- (b) one or both of the parents has parental responsibility for the child; and
- (c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and
- (d) the exercise of jurisdiction to take the measure is in the best interests of the child; and
- (e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(4) Subsection (2) does not apply if the competent authority of the Convention country has declined jurisdiction or is no longer considering taking the measure sought.

### **111CG If a court is asked to assume jurisdiction**

(1) A court may, if it considers that it is in the child's best interests, accept or reject a request made under Article 8 of the Child Protection Convention by, or at the invitation of, a competent authority of a Convention country for the court to assume

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jurisdiction to take a Commonwealth personal protection measure relating to the child.

(2)A court may order, or invite the parties to proceedings before the court to ask, the Commonwealth central authority to do both of the following in a way that the Commonwealth central authority considers appropriate:

- (a)to request, under Article 9 of the Child Protection Convention, that a competent authority of a Convention country agree to the court assuming jurisdiction to take a Commonwealth personal protection measure relating to the child;
- (b)to report to the court about the outcome of the request.

(3)The court may only make the order or issue the invitation under subsection (2) if it considers that it is better placed than the competent authority to assess the child's best interests.

**111CH Limitation if a competent authority of a Convention country is asked to assume jurisdiction**

(1)The court may order, or invite the parties to proceedings before the court to ask the Commonwealth central authority, in a way the Commonwealth central authority considers appropriate, to request a competent authority described in Article 8, paragraph 2, of the Child Protection Convention:

- (a)to assume jurisdiction under Article 8 of the Convention for protecting the person of the child; and
- (b)as the competent authority considers necessary, to take measures to protect the person of the child; and
- (c)to report to the court about the outcome of the request.

(2)In addition, the court may make any other order it considers necessary for an order under subsection (1).

(3)The court may only make the order or issue the invitation under subsection (1) if the court considers that the competent authority is better placed to assess the child's best interests.

(4)The court may accept or reject a request under Article 9 of the Child Protection Convention made by, or at the invitation of, a competent authority of a Convention country described in Article 8, paragraph 2 of the Convention, for the competent authority to

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assume jurisdiction to take a measure for protecting the person of the child.

(5) If the competent authority assumes jurisdiction under the request, a court must not exercise jurisdiction in accordance with paragraph 111CD(1)(a), subparagraphs 111CD(1)(b)(iii) to (vi), or paragraph 111CD(1)(c) or (d), while the competent authority continues to exercise its jurisdiction.

### **111CI When a certain Commonwealth personal protection measure lapses**

(1) A Commonwealth personal protection measure relating to a child that is taken by a court exercising jurisdiction in accordance with subparagraph 111CD(1)(b)(i) or (ii) lapses if:

- (a) a foreign personal protection measure relating to the child is taken by a competent authority of a Convention country; and
- (b) any of the following applies:
  - (i) the child is habitually resident in the Convention country;
  - (ii) the child is present in the Convention country and is a refugee child;
  - (iii) a request to assume jurisdiction is made to the competent authority of the Convention country by, or at the invitation of, a competent authority of the country of the child's habitual residence;
  - (iv) a competent authority of the country of the child's habitual residence agrees to the competent authority of the Convention country assuming jurisdiction;
  - (v) a competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (2));
  - (vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

(2) Subparagraph (1)(b)(v) only applies if:

- (a) one or both of the child's parents are habitually resident in

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the Convention country when the proceedings referred to in that subparagraph are started; and

(b) one or both of the parents has parental responsibility for the child; and

(c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and

(d) the exercise of jurisdiction to take the measure is in the best interests of the child; and

(e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(3) A Commonwealth personal protection measure relating to a child that is taken by a court exercising jurisdiction in a case of urgency, or in the taking of a measure of a provisional character, lapses if:

- (a) a measure required by the situation for protecting the person of the child is taken by a competent authority of a non-Convention country; and
- (b) the measure is registered:
- (i) in accordance with regulations made for the purposes of section 70G; or
  - (ii) under a law of a State or Territory.

**Subdivision C—Jurisdiction for decisions about a guardian of a child's property**

**111CJ Application of this Subdivision**

This Subdivision applies only if an issue under this Act is whether a court, as opposed to any of the following authorities, has jurisdiction to appoint, or determine the powers of, a guardian of a child's property:

- (a) a central authority or competent authority of a Convention country;
- (b) a competent authority of a non-Convention country.

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### **111CK Jurisdiction to appoint, or determine the powers of, a guardian for a child's property**

(1)A court may exercise jurisdiction for a Commonwealth property protection measure only in relation to:

- (a)a child who is habitually resident in Australia; or
- (b)a child who is habitually resident in a Convention country, if:
  - (i) the protection of the child's property in Australia requires taking the measure as a matter of urgency; or
  - (ii) the measure is provisional and limited in its territorial effect to property in Australia; or
  - (iii) a request to assume jurisdiction is made to the court by, or at the invitation of, a competent authority of the country of the child's habitual residence or country of refuge; or
  - (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the court assuming jurisdiction; or
  - (v) the child has been wrongfully removed from or retained outside Australia and the court keeps jurisdiction under Article 7 of the Child Protection Convention; or
  - (vi) the court is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3)); or
- (c)a child who is present in Australia and is a refugee child; or
- (d)a child who is present in a non-Convention country, if:
  - (i) the child is habitually resident in Australia; and
  - (ii) any of paragraphs 69E(1)(b) to (e) applies to the child; or
- (e)a child who is present in Australia, if:
  - (i) the child is habitually resident in a non-Convention country; and
  - (ii) any of paragraphs 69E(1)(b) to (e) applies to the child.

(2)A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(ii) if the measure is not incompatible with a foreign measure already taken by a competent authority of a

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Convention country under Articles 5 to 10 of the Child Protection Convention.

(3)A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(vi) for a Commonwealth property protection measure relating to a child if:

- (a)one or both of the child's parents are habitually resident in Australia when the proceedings referred to in that subparagraph begin; and
- (b)one or both of the parents have parental responsibility for the child; and
- (c)the jurisdiction of the court to take the measure is accepted by the parents and each other person with parental responsibility for the child; and
- (d)the exercise of jurisdiction to take the measure is in the best interests of the child; and
- (e)the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(4)Paragraphs (1)(a) to (c) are subject to the limitations in sections 111CL, 111CM and 111CO.

**111CL Limitation when a child is wrongfully removed from or retained outside a Convention country**

A court must not, other than in a case of urgency, exercise jurisdiction in accordance with paragraph 111CK(1)(a), (b) or (c) to take a Commonwealth property protection measure relating to a child if:

- (a)the child has been wrongfully removed from or retained outside a Convention country; and
- (b)an authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

**111CM Limitations when prior proceedings pending in a Convention country**

(1)This section applies to the exercise of jurisdiction by a court in accordance with paragraph 111CK(1)(a), subparagraph 111CK(1)(b)(iii), (iv), (v) or (vi) or paragraph 111CK(1)(c).

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(2)The court must not exercise that jurisdiction to take a Commonwealth property protection measure relating to a child if:

- (a)a corresponding measure has been sought from a competent authority of a Convention country at the time of commencement of proceedings before the court; and
- (b)any of the following applies:
  - (i) the child is habitually resident in the Convention country;
  - (ii) the child is present in the Convention country and is a refugee child;
  - (iii) a request to assume jurisdiction is made to a competent authority of the country of the child's habitual residence or country of refuge;
  - (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the competent authority assuming jurisdiction;
  - (v) the competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3));
  - (vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

(3)Subparagraph (2)(b)(v) only applies (subject to subsection (4)) if:

- (a)one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph are commenced; and
- (b)one or both of the parents have parental responsibility for the child; and
- (c)the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and
- (d)the exercise of jurisdiction to take the measure is in the best interests of the child; and
- (e)the proceedings on the application for divorce or separation of the child's parents or the annulment of their

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marriage have not been finalised.

(4) Subsection (2) does not apply if the competent authority of the Convention country has declined jurisdiction or is no longer considering taking the measure sought.

**111CN If a court is asked to assume jurisdiction**

(1) A court may, if it considers that it is in the child's best interests, accept or reject a request made under Article 8 of the Child Protection Convention by, or at the invitation of, a competent authority of a Convention country for the court to assume jurisdiction to take a Commonwealth property protection measure relating to the child.

(2) A court may order, or invite the parties to proceedings before the court to ask, the Commonwealth central authority to do both of the following in a way that the Commonwealth central authority considers appropriate:

- (a) to request, under Article 9 of the Child Protection Convention, that a competent authority of a Convention country agree to the court assuming jurisdiction to take a Commonwealth property protection measure relating to the child;
- (b) to report to the court about the outcome of the request.

(3) The court may only make the order or issue the invitation under subsection (2) if it considers that it is better placed than the competent authority to assess the child's best interests.

**111CO Limitation if a competent authority of a Convention country is asked to assume jurisdiction**

(1) The court may order, or invite the parties to proceedings before the court to ask the Commonwealth central authority, in a way the Commonwealth central authority considers appropriate, to request a competent authority described in Article 8, paragraph 2, of the Child Protection Convention:

- (a) to assume jurisdiction under Article 8 of the Convention for appointing, or deciding the powers of, a guardian of the child's property; and
- (b) as the competent authority considers necessary, to take a

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measure appointing, or deciding the powers of, a guardian of the child's property; and

(c)to report to the court about the outcome of the request.

(2)In addition, the court may make any other order it considers necessary for an order under subsection (1).

(3)The court may only make the order or issue the invitation under subsection (1) if the court considers that the competent authority is better placed to assess the child's best interests.

(4)The court may accept or reject a request under Article 9 of the Child Protection Convention made by, or at the invitation of, a competent authority of a Convention country described in Article 8, paragraph 2 of the Convention, for the competent authority to assume jurisdiction to take a measure for the protection of the child's property.

(5)If the competent authority assumes jurisdiction under the request, a court must not exercise jurisdiction in accordance with paragraph 111CK(a) or subparagraphs 111CK(1)(b)(iii) to (vi) or paragraph 111CK(1)(c), while the competent authority continues to exercise its jurisdiction.

#### **111CP When a certain Commonwealth property protection measure lapses**

(1)A Commonwealth property protection measure relating to a child that is taken by a court exercising jurisdiction in accordance with subparagraph 111CK(1)(b)(i) or (ii) lapses if:

(a)a foreign property protection measure relating to the child is taken by a competent authority of a Convention country; and

(b)any of the following applies:

(i) the child is habitually resident in the Convention country;

(ii) the child is present in the Convention country and is a refugee child;

(iii) a request to assume jurisdiction is made to the competent authority of the Convention country by, or at the invitation of, a competent authority of the country of the child's habitual residence;

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- (iv) a competent authority of the country of the child's habitual residence agrees to the competent authority of the Convention country assuming jurisdiction;
- (v) a competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (2));
- (vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

(2) Subparagraph (1)(b)(v) only applies if:

- (a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph are started; and
- (b) one or both of the parents have parental responsibility for the child; and
- (c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and
- (d) the exercise of jurisdiction to take the measure is in the best interests of the child; and
- (e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(3) A Commonwealth property protection measure relating to a child that is taken by a court exercising jurisdiction in a case of urgency, or in the taking of a measure of a provisional character, lapses if:

- (a) a measure required by the situation for the appointment, or the determination of the powers, of a guardian for a child's property is taken by a competent authority of a non-Convention country; and
- (b) the measure is registered:
  - (i) in accordance with regulations made for the purposes of section 70G; or
  - (ii) under a law of a State or Territory.

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## **Subdivision D—Applicable law**

### **111CQ Meaning of *law***

In this Subdivision:

*law* does not include choice of law rules.

### **111CR Applicable law generally**

(1) This section applies to a court exercising jurisdiction in accordance with Subdivision B or C.

(2) The court must apply the law of Australia in exercising that jurisdiction.

(3) However, the court may in exceptional circumstances apply or take into account the law of another country with which:

(a) a child has a substantial connection; or

(b) a child's property is substantially connected;

if the court considers the protection of the person of the child, or the child's property, requires the court to do so.

(4) In subsection (2):

*law of Australia* means:

(a) law in force throughout Australia; or

(b) law in force in a part of Australia;

and includes the principles and rules of the common law and of equity as so in force.

### **111CS Applicable law concerning parental responsibility**

(1) The principles set out in this section apply despite anything in this Act.

(2) The circumstances in which parental responsibility for a child is attributed to a person, or extinguished, by operation of law (without the intervention of a court or appropriate authority) are governed by the law that applies in the country of the child's habitual residence.

(3) The circumstances in which parental responsibility for a child is

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attributed to a person, or extinguished, by an agreement or a unilateral act (without the intervention of a court or appropriate authority) are governed by the law that applies in the country of the child's habitual residence when the agreement or act takes effect.

(4)The exercise of parental responsibility for a child is governed by the law applying in the country of the child's habitual residence.

(5)If a child's country of habitual residence changes to another country:

- (a)parental responsibility for the child that exists under the law applying in the country in which the child was habitually resident continues to exist; and
- (b)the circumstances in which parental responsibility for the child is attributed by operation of law to a person who does not already have such responsibility are governed by the law applying in the country of the new habitual residence; and
- (c)the exercise of parental responsibility for the child is governed by the law applying in the country of the new habitual residence.

(6)Despite subsections (2) to (5), if:

- (a)the law that applies because of this section is the law of a non-Convention country; and
- (b)the choice of law rules of that non-Convention country designate that the law of another non-Convention country applies; and
- (c)the other non-Convention country would apply its own law;

the law of that other non-Convention country applies instead.

(7)The parental responsibility referred to in subsection (2), (3), (4) or (5) may be ended, or the conditions of its exercise changed, by a measure taken in accordance with section 111CD or 111CK.

(8)A court need not apply a principle set out in subsection (2), (3), (4) or (5) if, on the application of an interested person, the court considers that doing so would be manifestly contrary to public policy having regard to the best interests of the child concerned.

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## **Subdivision E—Recognition of foreign measures**

### **111CT Effect of registered foreign measures**

(1) This section applies to a foreign measure that is registered in a court in accordance with regulations made for the purposes of section 111CZ.

(2) The foreign measure:

- (a) has the same force and effect as a Commonwealth personal protection measure or a Commonwealth property protection measure (as appropriate); and
- (b) prevails over any earlier inconsistent measure in force in Australia, including:
  - (i) an order registered under section 70D or 70G; or
  - (ii) any other order made, or agreement registered, under this Act.

## **Subdivision F—Co-operation**

### **111CU Obligation to obtain consent to place child**

(1) A court must obtain the consent of a competent authority of a Convention country before placing a child in a foster family, or in institutional care, in the Convention country.

(2) Before placing a child, the court may order, or invite the parties to proceedings before the court to ask, the Commonwealth central authority to consult a competent authority of the Convention country concerned.

(3) If the court orders the Commonwealth central authority to consult, then the court must provide the Commonwealth central authority with a report on the child and the reasons for the proposed placement.

### **111CV Obligation to inform competent authority about serious danger to a child**

(1A) This section covers:

- (a) a court; and
- (b) the Registrar or a Deputy Registrar of a Registry of the

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Family Court of Australia; and  
(c)the Registrar or a Deputy Registrar of a Registry of the Family Court of a State; and  
(d)a Registrar of the Federal Magistrates Court; and  
(e)a family consultant; and  
(f)a family counsellor; and  
(g)a family dispute resolution practitioner; and  
(h)an arbitrator; and  
(i)the provider of a course, program or service which a person is ordered to participate in under this Act.

(1)A court or person covered by this section must inform a competent authority of another country about any information the court or person may have about any serious danger to a child:

(a)whose residence has moved from Australia to the other country; or  
(b)who is present in the other country.

(2)Subsection (1) has effect despite any obligation of confidentiality imposed on the court or a person by this Act, any other law or anything else (including a contract or professional ethics).

(3)A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of the provision of information under subsection (1).

(4)Evidence of the provision of information under subsection (1) is not admissible in any:

(a)court (whether or not exercising jurisdiction under this Act); or  
(b)tribunal or other body concerned with professional ethics; except where that evidence is given by the person who provided the information.

**111CW Court proceedings dealing with whom a child spends time with**

(1)A court hearing proceedings under Part VII (Children) or regulations made for the purposes of section 111B dealing with:

(a)whom a child is to spend time with; or

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(b)whom a child is to communicate with; must admit into evidence and consider the findings (if any) of a competent authority of a Convention country on the suitability of a parent as a person for the child to spend time with or communicate with.

(2)The court may adjourn the proceedings pending the outcome of a request by a parent of the child to a competent authority of a Convention country for a finding on the suitability of the parent as a person for the child to spend time with or communicate with.

(3)On the application of a parent who is an Australian resident seeking to have, or to continue to have, a child spend time with or communicate with the parent, a court may:

- (a)admit evidence; and
- (b)make a finding on the suitability of that parent as a person for the child to spend time with or communicate with; and
- (c)specify conditions on which the child is to spend time with or communicate with the person.

#### **111CX Jurisdiction for a location order or a Commonwealth information order**

A court may make a location order under section 67M or a Commonwealth information order under section 67N for the purposes of the Child Protection Convention.

#### **111CY Giving information to central authorities and competent authorities in Convention countries**

- (1)This section applies to:
- (a) a court; and
  - (b)the Commonwealth central authority; and
  - (c)central authorities of Australia appointed as mentioned in Article 29, paragraph 2, of the Child Protection Convention; and
  - (d)other competent authorities of Australia.

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(2)If it would be consistent with this Division or the Child Protection Convention to do so, the court or authority may give information to:

- (a)a court or an authority of Australia to which this section applies; or
- (b)a central authority or other competent authority of a Convention country.

**Subdivision G—Regulations**

**111CZ Regulations to implement the Convention**

(1)The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Child Protection Convention.

(2)Regulations made for the purposes of this section may, in particular:

- (a)provide that the regulations do not affect the operation of laws of a State or Territory that relate to the implementation of the Child Protection Convention; and
- (b)provide that specified provisions of the Child Protection Convention have the force of law in Australia; and
- (c)include a list of Convention countries or territorial units of Convention countries.

(3)Regulations made for the purposes of this section may:

- (a)confer jurisdiction on a federal court (other than the High Court) or a court of a Territory; or
- (b)invest a court of a State with federal jurisdiction.

Such jurisdiction is in addition to any other jurisdiction provided for under this Act.

(4)Regulations made for the purposes of subsection (3) may make different provision in respect of matters arising in relation to different States or Territories. This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

(5)Subsections (2), (3) and (4) do not, by implication, limit subsection (1).

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## **Division 5—Other matters**

### **111D Regulations may provide for rules of evidence**

(1)Regulations made for the purposes of Part XIIIAA may make provision in relation to the rules of evidence that are to apply in proceedings under those regulations.

(2)Such provisions have effect despite any inconsistency with the *Evidence Act 1995* or with any other law about evidence.

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## **Part XIII A—Sanctions for failure to comply with orders, and other obligations, that do not affect children**

### **Division 1—Interpretation**

#### **112AA Interpretation**

In this Part:

***applicable Rules of Court*** means:

- (a)in the case of the Federal Magistrates Court—Rules of Court made under the *Federal Magistrates Act 1999* to the extent to which those Rules of Court relate to this Act; or
- (b)in any other case—Rules of Court made under this Act.

***applied provisions***, in relation to a sentence passed or an order made pursuant to paragraph 112AD(2)(b), means the provisions of the laws of a State or Territory, as modified by regulations under subsection 112AG(5), that, because of regulations under that subsection, apply in relation to the sentence or order.

***court enforceable agreement*** means:

- (b)so much of a maintenance agreement as a court has, pursuant to paragraph 87(11)(c), ordered may be enforced as if it were an order of the court; or
- (c)a maintenance agreement registered in a court under subsection 86(1), or deemed, by subsection 87(6), to be registered in a court.

***maintenance order***, in relation to a court, means an order made by the court under this Act that deals with the maintenance of a person other than a child.

***order under this Act***, in relation to a court, means:

- (a)an order (however described) made by the court under this Act (other than a parenting order); or
- (b)an injunction granted by the court under section 90SS or 114 except in so far as the injunction is for the protection of a

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child; or

(c) an undertaking given to, and accepted by, the court in proceedings under this Act other than proceedings that relate wholly or partly to, or to the making of, a parenting order; or

(d) a subpoena issued under the applicable Rules of Court in proceedings under this Act other than a subpoena issued in, and so issued to a party to, proceedings that relate wholly or partly to, or to the making of, a parenting order; or

(e) a court enforceable agreement; or

(f) a bond:

(i) entered into under an order of a court under this Act other than an order under Division 13A of Part VII; or

(ii) entered into for the purposes of subsection 112AE(5);

and includes an order, injunction, agreement or bond that:

(g) is an order under this Act made by another court because of paragraph (a), (b), (e) or (f); and

(h) has been registered in the first-mentioned court.

### **112AB Meaning of *contravene an order***

(1) A person shall be taken for the purposes of this Part to have contravened an order under this Act if, and only if:

(a) where the person is bound by the order—he or she has:

(i) intentionally failed to comply with the order; or

(ii) made no reasonable attempt to comply with the order; or

(b) in any other case—he or she has:

(i) intentionally prevented compliance with the order by a person who is bound by it; or

(ii) aided or abetted a contravention of the order by a person who is bound by it.

### **112AC Meaning of *reasonable excuse for contravening an order***

(1) The circumstances in which a person may be taken to have had, for the purposes of this Part, a reasonable excuse for contravening an order under this Act include, but are not limited to, the circumstances set out in subsection (2).

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(2)A person (in this subsection called the **respondent**) shall be taken to have had a reasonable excuse for contravening an order under this Act if:

- (a)the respondent contravened the order because, or substantially because, he or she did not, at the time of the contravention, understand the obligations imposed by the order on the person who was bound by it; and
- (b)the court is satisfied that the respondent ought to be excused in respect of the contravention.

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## **Division 2—Sanctions for failure to comply with orders**

### **112AD Sanctions for failure to comply with orders**

(1)If a court having jurisdiction under this Act is satisfied that a person has, without reasonable excuse, contravened an order under this Act, the court may make an order for the imposing, in respect of the person, of one or more of the sanctions available to be imposed under subsection (2), being a sanction or sanctions that the court considers to be the most appropriate in the circumstances.

(1A)The power given to the court under subsection (1) in respect of a contravention of a maintenance order applies even if the order has been complied with before the matter of the contravention comes before the court.

(2)The sanctions that are available to be imposed by the court are:

- (a)to require the person to enter into a bond in accordance with section 112AF; or
- (b)to impose a sentence by order on the person, or make an order directed to the person, in accordance with section 112AG; or
- (c)to fine the person not more than 60 penalty units; or
- (d)subject to subsection (2A), to impose a sentence of imprisonment on the person in accordance with section 112AE.

(2A)The court must not impose a sentence of imprisonment on the person under paragraph (2)(d) in respect of a contravention of a maintenance order unless the court is satisfied that the contravention was intentional or fraudulent.

(3)An order under subsection (1) may be expressed to take effect immediately, or at the end of a specified period or on the occurrence of a specified event.

(4)Where a court makes an order under subsection (1), the court may make such other orders as the court considers necessary to ensure compliance with the order that was contravened.

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**112AE Sentences of imprisonment**

- (1)A sentence of imprisonment imposed on a person pursuant to paragraph 112AD(2)(d) shall be expressed to be:
- (a)for a specified period of 12 months or less; or
  - (b)for a period ending when the person:
    - (i) complies with the order concerned; or
    - (ii) has been imprisoned pursuant to the sentence for 12 months or such lesser period as is specified by the court; whichever happens first.
- (2)A court shall not sentence a person to imprisonment pursuant to paragraph 112AD(2)(d) unless the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention pursuant to any of the other paragraphs of subsection 112AD(2).
- (3)If a court sentences a person to imprisonment pursuant to paragraph 112AD(2)(d), the court shall:
- (a)state the reasons why it is satisfied as mentioned in subsection (2); and
  - (b)cause those reasons to be entered in the records of the court.
- (4)The failure of a court to comply with subsection (3) does not invalidate a sentence.
- (4A)A court that sentences a person to imprisonment under paragraph 112AD(2)(d) may:
- (a)suspend the sentence upon the terms and conditions determined by the court; and
  - (b)terminate a suspension made under paragraph (a).
- (5)A court, when sentencing a person to imprisonment under paragraph 112AD(2)(d) may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a bond described in subsection (6) after he or she has served a specified part of the term of imprisonment.
- (6)A bond for the purposes of subsection (5) is a bond (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.

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(7)Without limiting the circumstances in which a court may discharge an order under section 112AK, a court that has sentenced a person to imprisonment for a period expressed as provided by paragraph (1)(b) may order the release of the person if it is satisfied that the person will, if he or she is released, comply with the order concerned.

(8)To avoid doubt, the serving by a person of a period of imprisonment under a sentence imposed on the person under paragraph 112AD(2)(d) for a failure to make a payment under a maintenance order does not affect the person's liability to make the payment.

## **112AF Bonds**

(1)This section provides for bonds that a court may require a person to enter into under paragraph 112AD(2)(a).

(2)A bond is to be for a specified period of up to 2 years.

(3)A bond may be:

- (a)with or without surety; and
- (b)with or without security.

(4)The conditions that may be imposed on a person by a bond include a condition requiring the person to be of good behaviour.

(5)If a court proposes to require a person to enter into a bond, it must, before making the requirement, explain to the person, in language likely to be readily understood by the person:

- (a)the purpose and effect of the proposed requirement; and
- (b)the consequences that may follow if the person fails:
  - (i) to enter into the bond; or
  - (ii) having entered into the bond—to act in accordance with the bond.

## **112AG Additional sentencing alternatives**

(1)Subject to this section, where:

- (a)under the law of a participating State or a participating Territory, a court is empowered (whether generally or in particular cases) to impose a sentence by order or make an

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order of a kind to which subsection (3) applies in respect of a person convicted of an offence against the law of the State or Territory; and

(b)an arrangement under section 112AN in respect of the State or Territory makes provision for and in relation to the carrying out of sentences imposed, or orders made, of that kind under this Division;

a court exercising jurisdiction in the State or Territory may, pursuant to paragraph 112AD(2)(b), impose a sentence or make an order of that kind.

(2)A sentence imposed on a person, or an order directed to a person, pursuant to paragraph 112AD(2)(b):

(a)shall be such that the total number of hours during which the sentence or order regulates the conduct of the person does not exceed the maximum period in relation to the State or Territory in which the sentence is imposed or the order is made; and

(b)ceases to have effect 2 years after it was made, or after such lesser period as is specified in the order.

(3)This subsection applies to sentences or orders of the following kinds:

(a)a sentence or order known as:

- (i) a community service order;
- (ii) a work order;
- (iii) a sentence of periodic detention;
- (iv) an attendance centre order;
- (v) a sentence of weekend detention;
- (vi) an attendance order; or
- (vii) a community based order;

(b)a sentence or order that is similar to a sentence or order referred to in paragraph (a);

(c)a sentence or order prescribed for the purposes of this subsection.

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(4)Where a court proposes to impose a sentence on a person, or make an order directed to a person, pursuant to paragraph 112AD(2)(b), it shall, before doing so, explain or cause to be explained to the person, in language likely to be readily understood by the person:

- (a)the purpose and effect of the proposed sentence or order;
- (b)the consequences that may follow if the person fails to comply with the proposed sentence or order or with any requirements made in relation to the proposed sentence or order by or under the applied provisions; and
- (c)if the proposed sentence or order may be revoked or varied under the applied provisions—that the proposed sentence or order may be so revoked or varied.

(5)Where a court exercising jurisdiction under section 112AD in a particular State or Territory imposes a sentence or makes an order pursuant to paragraph 112AD(2)(b), the provisions of the laws of the State or Territory with respect to a sentence or order of that kind that is imposed or made under those laws shall, to the extent provided by the regulations and subject to such modifications as are specified in the regulations, apply in relation to the sentence or order.

(6)In this section:

***maximum period***, in relation to a State or Territory, means 500 hours or such lesser period as is prescribed in relation to the State or Territory.

***participating State*** means a State in relation to which an agreement under section 112AN is in force.

***participating Territory*** means a Territory in relation to which an agreement under section 112AN is in force.

#### **112AH Failure to comply with sentence passed, or order made, pursuant to paragraph 112AD(2)(b)**

(1)This section applies where a court has, pursuant to paragraph 112AD(2)(b):

- (a)imposed a sentence on a person; or
- (b)made an order directed to a person.

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(2)If the court (whether or not constituted by the judge or magistrate who imposed the sentence or made the order) is satisfied that the person has, without reasonable excuse, failed to comply with:

- (a)the sentence or order; or
- (b)any requirements made in relation to the sentence or order by or under the applied provisions;

the court may take action under subsection (8).

(8)The court may:

- (a)without prejudice to the continuance of the sentence or order, impose a fine not exceeding 10 penalty units on the person; or
- (b)revoke the sentence or order and, subject to subsection (9), deal with the person, for the contravention in respect of which the sentence was passed or the order was made, in any manner in which he or she could have been dealt with for that contravention if:
  - (i) the sentence had not been imposed, or the order had not been made; and
  - (ii) the person was before the court under section 112AD in respect of the contravention.

Note: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

(9)In dealing with the person as mentioned in paragraph (8)(b), the court shall, in addition to any other matters that it considers should be taken into account, take into account:

- (a)the fact that the sentence was imposed or the order was made;
- (b)anything done under the sentence or order; and
- (c)any fine imposed, and any other order made, for or in respect of the contravention.

**112AK Variation and discharge of orders**

(1)Subject to this section, an order made under section 112AD may be varied or discharged:

- (a)if the court that made the order is the Family Court—by the Family Court; or
- (b)in any other case—by the court that made the order or the

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Family Court.

(2)A variation of an order under section 112AD shall be such that the order, as varied, is an order that could have been made under that section in respect of the contravention in respect of which the first-mentioned order was made.

(3)If a court discharges an order under section 112AD it may, subject to this Division, make another order under that section in respect of the contravention in respect of which the first-mentioned order was made.

(4)Where a court varies or discharges an order made under section 112AD, the court may give such directions as to the effect of the variation or discharge as the court considers appropriate.

#### **112AM Relationship between Division and other laws**

(1)This section applies where an act or omission by a person:

- (a)constitutes a contravention of an order under this Act; and
- (b)is also an offence against any law.

(2)If the person is prosecuted in respect of the offence, a court in which proceedings have been brought under section 112AD in respect of the contravention of the order shall either:

- (a)adjourn those proceedings until the prosecution has been completed; or
- (b)dismiss those proceedings.

(3)The person may be prosecuted for, and convicted of, the offence.

(4)Nothing in this section renders the person liable to be punished twice in respect of the same act or omission.

#### **112AN Arrangements with States and Territories for carrying out of sentences and orders**

(1)The Governor-General may make arrangements with the relevant authority of a State or a Territory for:

- (a)the exercise of powers, and the performance of functions, by officers of the State or Territory; and
- (b)the making available of facilities of the State or Territory;

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for and in relation to the carrying out of sentences imposed, and orders made, under this Division.

(2)In this section:

***relevant authority*** means:

- (a)in relation to a State—the Governor of the State;
- (b)in relation to the Australian Capital Territory—the Chief Minister of the Australian Capital Territory;
- (c)in relation to the Northern Territory—the Administrator of the Northern Territory; and
- (d)in relation to Norfolk Island—the Administrator of Norfolk Island.

**112AO Division does not limit operation of section 105**

Nothing in this Division is intended to limit the operation of section 105.

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## **Part XIIIIB—Contempt of court**

### **112AP Contempt**

(1) Subject to subsection (1A), this section applies to a contempt of a court that:

- (a) does not constitute a contravention of an order under this Act; or
- (b) constitutes a contravention of an order under this Act and involves a flagrant challenge to the authority of the court.

(1A) This section does not apply to a contempt that constitutes a contravention of a maintenance order if the order has been complied with before the matter of the contravention comes before the court.

(2) In spite of any other law, a court having jurisdiction under this Act may punish a person for contempt of that court.

(3) The applicable Rules of Court may provide for practice and procedure as to charging with contempt and the hearing of the charge.

(4) Where a natural person is in contempt, the court may punish the contempt by committal to prison or fine or both.

(5) Where a corporation is in contempt, the court may punish the contempt by sequestration or fine or both.

(6) The court may make an order for:

- (a) punishment on terms;
- (b) suspension of punishment; or
- (c) the giving of security for good behaviour.

(7) Where a person is committed to prison for a term for contempt, the court may order the person's discharge before the expiry of that term.

(8) To avoid doubt, the serving by a person of a period of imprisonment as a result of a contempt of a court arising out of a failure by the person to make a payment in respect of the

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maintenance of another person does not affect the first-mentioned person's liability to make the payment.

(9)In this section:

***order under this Act*** means an order under this Act affecting children or an order under this Act within the meaning of Part XIII A.

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## **Part XIV—Declarations and injunctions**

### **112A Interpretation**

In this Part, ***marriage*** includes a void marriage.

### **113 Proceedings for declarations**

In proceedings of the kind referred to in paragraph (b) of the definition of ***matrimonial cause*** in subsection 4(1), the court may make such declaration as is justified.

### **114 Injunctions**

(1)In proceedings of the kind referred to in paragraph (e) of the definition of ***matrimonial cause*** in subsection 4(1), the court may make such order or grant such injunction as it considers proper with respect to the matter to which the proceedings relate, including:

- (a)an injunction for the personal protection of a party to the marriage;
- (b)an injunction restraining a party to the marriage from entering or remaining in the matrimonial home or the premises in which the other party to the marriage resides, or restraining a party to the marriage from entering or remaining in a specified area, being an area in which the matrimonial home is, or the premises in which the other party to the marriage resides are, situated;
- (c)an injunction restraining a party to the marriage from entering the place of work of the other party to the marriage;
- (d)an injunction for the protection of the marital relationship;
- (e)an injunction in relation to the property of a party to the marriage; or
- (f)an injunction relating to the use or occupancy of the matrimonial home.

(2)In exercising its powers under subsection (1), the court may make an order relieving a party to a marriage from any obligation to perform marital services or render conjugal rights.

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(2A) In a de facto financial cause (other than proceedings referred to in, or relating to, paragraph (e) or (f) of the definition of *de facto financial cause* in subsection 4(1)) the court may:

- (a) make such order or grant such injunction as it considers proper with respect to the use or occupancy of a specified residence of the parties to the de facto relationship or either of them; and
- (b) if it makes an order or grants an injunction under paragraph (a)—make such order or grant such injunction as it considers proper with respect to restraining a party to the de facto relationship from entering or remaining in:
  - (i) that residence; or
  - (ii) a specified area in which that residence is situated; and
- (c) make such order or grant such injunction as it considers proper with respect to the property of the parties to the de facto relationship or either of them.

Sections 90SB and 90SK apply in relation to an order or injunction under this subsection in a corresponding way to the way in which those sections apply in relation to an order under section 90SM.

Note 1: This subsection does not apply to proceedings referred to in paragraph (g) of the definition of *de facto financial cause* that relate to proceedings referred to in paragraph (e) or (f) of that definition.

Note 2: The same requirements in sections 90SB (length of relationship etc.) and 90SK (geographical requirements) for section 90SM orders must be satisfied for orders and injunctions under this subsection.

(3) A court exercising jurisdiction under this Act in proceedings other than proceedings to which subsection (1) applies may grant an injunction, by interlocutory order or otherwise (including an injunction in aid of the enforcement of a decree), in any case in which it appears to the court to be just or convenient to do so and either unconditionally or upon such terms and conditions as the court considers appropriate.

(4) If a party to a marriage is a bankrupt, a court may, on the application of the other party to the marriage, by interlocutory order, grant an injunction under subsection (3) restraining the bankruptcy trustee from declaring and distributing dividends amongst the bankrupt's creditors.

(5) Subsection (4) does not limit subsection (3).

(6) If a party to a marriage is a debtor subject to a personal

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insolvency agreement, a court may, on the application of the other party to the marriage, by interlocutory order, grant an injunction under subsection (3) restraining the trustee of the agreement from disposing of (whether by sale, gift or otherwise) property subject to the agreement.

(7) Subsection (6) does not limit subsection (3).

## **114AA Powers of arrest**

(1) Where:

- (a) an injunction is in force under section 114 for the personal protection of a person; and
- (b) a police officer believes, on reasonable grounds, that the person against whom the injunction is directed (in this section called the **respondent**) has, since the injunction was granted, breached the injunction by:
  - (i) causing, or threatening to cause, bodily harm to the person referred to in paragraph (a); or
  - (ii) harassing, molesting or stalking that person;

the police officer may arrest the respondent without warrant.

Note: Section 122AA authorises the use of reasonable force in making an arrest.

(3) Where a police officer arrests a person pursuant to subsection (1):

(a) the police officer shall:

- (i) ensure that the person is brought before the court that granted the injunction, or another court having jurisdiction under this Act, before the expiration of the relevant period; and
  - (ii) take all reasonable steps to ensure that, before the person is so brought before a court, the person on whose application the injunction under section 114 was granted is aware that the first-mentioned person has been arrested and of the court before which the person is to be brought; and
- (b) the person shall not be released before the expiration of the relevant period except pursuant to an order of the court that granted the injunction or another court having jurisdiction under this Act;

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but nothing in this subsection authorizes the keeping of the person in custody after the expiration of the relevant period.

(4)Where a person is brought before a court in accordance with subsection (3), the court shall:

- (a)if there is an application before the court for the person to be dealt with for breach of the injunction—forthwith proceed to hear and determine that application; or
- (b)if there is no application before the court as mentioned in paragraph (a)—order that the person be released forthwith.

(5) Where:

- (a)a person is brought before a court in accordance with subsection (3);
- (b)the court proceeds to hear and determine an application for the person to be dealt with for breach of an injunction as mentioned in paragraph (4)(a); and
- (c)at the expiration of the relevant period the proceedings have not been determined;

the person may be kept in custody after the expiration of the relevant period until:

- (d)the court gives its decision on the proceedings;
- (e)the court orders that the person be released; or
- (f)the court adjourns the hearing for a period of more than 24 hours;

whichever happens first.

(7)In this section:

***relevant period***, in relation to a person's arrest, means the period starting when the person is arrested and ending at the close of business on the next day that is not a Saturday, Sunday or public holiday.

**114AB Operation of State and Territory laws**

(1)Sections 68B, 68C, 114 and 114AA are not intended to exclude or limit the operation of a prescribed law of a State or Territory that is capable of operating concurrently with those sections.

(2)Where a person has instituted a proceeding or taken any other action under a prescribed law of a State or Territory in respect of a

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matter in respect of which the person would, but for this subsection, have been entitled to institute a proceeding under section 68B or 114, the person is not entitled to institute a proceeding under section 68B or 114 in respect of that matter, unless:

- (a) where the person instituted a proceeding:
  - (i) the proceeding has lapsed, been discontinued, or been dismissed; or
  - (ii) the orders (if any) made as a result of the institution of the proceeding have been set aside or are no longer in force; and
- (b) where the person took other action—neither that person nor any other person is required, at the time that the person institutes a proceeding under section 68B or 114, to do an act, or to refrain from doing an act.

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## **Part XIVA—The Australian Institute of Family Studies**

### **114A Interpretation**

In this Part, unless the contrary intention appears:

**Director** means the Director of the Institute.

**Institute** means the Australian Institute of Family Studies established by this Part.

### **114B Establishment of Institute**

(1) There is established by this Part an Institute by the name of the Australian Institute of Family Studies.

(1A) There is to be a Director of the Institute.

(1B) The Institute consists of:

- (a) the Director; and
- (b) the staff referred to in section 114M.

Note: The Institute does not have a legal identity separate from the Commonwealth.

(2) The functions of the Director are:

- (a) to promote, by the conduct, encouragement and co-ordination of research and other appropriate means, the identification of, and development of understanding of, the factors affecting marital and family stability in Australia, with the object of promoting the protection of the family as the natural and fundamental group unit in society; and
- (b) to advise and assist the Minister in relation to the making of grants, and with the approval of the Minister to make grants, out of moneys available under appropriations made by the Parliament, for purposes related to the functions of the Institute and the supervising of the employment of grants so made.

(2A) The function of the Institute (other than the Director) is to

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assist the Director in the performance of his or her functions.

(3)The Minister may:

- (a)request the Director to arrange for the Institute to engage in a particular activity (whether research or otherwise) in relation to a particular matter that is within the functions of the Institute; and
- (b)after consultation with the Director, specify the priority that is to be given to the activity.

#### **114C Minister may give directions to Director**

(1)Subject to subsection (2), the Minister may, by legislative instrument, give directions to the Director as to the performance of his or her functions.

(2)Directions given by the Minister under subsection (1) must be of a general nature only.

(3)The Director must comply with any direction given by the Minister under subsection (1).

#### **114D Appointment of Director**

(1)The Director is to be appointed by the Minister by written instrument.

Note:      The Director is eligible for reappointment: see subsection 33(4A) of the *Acts Interpretation Act 1901*.

(2)The Director is to be appointed on a full-time basis.

#### **114E Term of appointment**

The Director holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

#### **114F Acting appointments**

(1)The Minister may appoint a person to act as the Director:

- (a)during a vacancy in the office of Director, whether or not an appointment has previously been made to the office; or
- (b)during any period, or during all periods, when the Director is absent from duty or from Australia, or is, for any reason,

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unable to perform the duties of the office.

- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

**114G Director's remuneration**

- (1) The Director is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Director is to be paid the remuneration that is prescribed.
- (2) The Director is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**114H Outside employment**

The Director must not engage in paid employment outside the duties of the Director's office without the Minister's approval.

**114J Leave of absence**

- (1) The Director has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Director leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

**114K Disclosure of interests**

The Director must give written notice to the Minister of all interests, pecuniary or otherwise, that the Director has or acquires and that could conflict with the proper performance of the Director's functions.

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## **114L Other terms and conditions**

The Director holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

### **114LA Resignation**

- (1)The Director may resign his or her appointment by giving the Minister a written resignation.
- (2)The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

### **114LB Termination of appointment**

- (1)The Minister may terminate the appointment of the Director for misbehaviour or physical or mental incapacity.
- (2)The Minister may terminate the appointment of the Director if:
  - (a) the Director:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b)the Director is absent, except on leave of absence, without reasonable excuse; or
  - (c)the Director fails, without reasonable excuse, to comply with section 114H (outside employment); or
  - (d)the Director fails, without reasonable excuse, to comply with section 114K (disclosure of interests).

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**114LC Annual reports**

The Director must, as soon as practicable after 30 June in each year, prepare and give to the Minister, for presentation to the Parliament, a report on the Institute's operations during the year ending on that 30 June.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

**114LD Delegation**

(1)The Director may delegate all or any of his or her functions or powers under this Part to an SES employee, or an acting SES employee, of the Institute. The delegation must be in writing.

Note: For other powers of delegation, see section 53 of the *Financial Management and Accountability Act 1997* and section 78 of the *Public Service Act 1999*.

(2)In performing a delegated function or exercising a delegated power, a delegate must comply with any written directions of the Director.

**114M Staff**

(1)The staff of the Institute are to be persons engaged under the *Public Service Act 1999*.

(2)For the purposes of the *Public Service Act 1999*:

- (a)the Director and the APS employees assisting the Director together constitute a Statutory Agency; and
- (b)the Director is the Head of that Statutory Agency.

(3)The Director may, with the approval of the Minister, engage persons to assist the Institute as consultants or otherwise.

(4)The terms and conditions of engagement of persons under subsection (3) are as determined by the Director from time to time.

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## **Part XV—Miscellaneous**

### **115 Family Law Council**

(1)The Attorney-General may establish a Family Law Council consisting of persons appointed by the Attorney-General in accordance with subsection (2).

(2)The Council shall consist of a Judge of the Family Court and such other judges, persons appointed or engaged under the *Public Service Act 1999*, officers of the Public Service of a State, family counsellors, family dispute resolution practitioners and other persons as the Attorney-General thinks fit.

(3)It is the function of the Council to advise and make recommendations to the Attorney-General, either of its own motion or upon request made to it by the Attorney-General, concerning:

- (a)the working of this Act and other legislation relating to family law;
- (b)the working of legal aid in relation to family law; and
- (c)any other matters relating to family law.

(4)The Attorney-General shall appoint one of its members to be Chairperson of the Council.

(5)A member of the Council shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, the member shall be paid such remuneration as is prescribed.

(5A)A member of the Council shall be paid such allowances as are prescribed.

(5B)Subsections (5) and (5A) have effect subject to the *Remuneration Tribunal Act 1973*.

(5C)Subject to this section, a member of the Council holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(6)A member (including the Chairperson) may resign by writing

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signed and delivered to the Attorney-General.

(6A)The Attorney-General may terminate the appointment of a member by reason of the misbehaviour, or physical or mental incapacity, of the member.

(6B)If a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Attorney-General shall terminate the appointment of that member.

(7)Meetings of the Council shall be convened by the Chairperson or the Attorney-General.

(8)The Council shall cause records to be kept of its meetings.

(9)The Council shall, as soon as practicable after 30 June in each year, prepare and furnish to the Attorney-General a report of the operations of the Council during the year that ended on that 30 June.

(10)The Attorney-General shall cause a copy of a report furnished under subsection (9) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.

(11)For the purposes of this section, a Federal Magistrate is taken to be a judge.

**116C Payments to legal practitioners by legal aid bodies**

(1)The regulations may, in relation to matters included in a class of matters arising under this Act, under the regulations or under the applicable Rules of Court, fix or limit, or provide for the fixing or limiting of, the amounts that may be paid by relevant authorities to legal practitioners acting in such matters.

(2)A relevant authority that pays, to a legal practitioner acting in a matter arising under this Act, an amount that exceeds the amount that the relevant authority is permitted, by regulations made under subsection (1), to pay to that legal practitioner in respect of that matter is, if the Minister so determines by instrument in writing, liable to pay to the Commonwealth such amount as the Minister

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specifies in the instrument, not being an amount greater than the amount of the excess.

(3)An amount payable by a relevant authority to the Commonwealth in accordance with a determination of the Minister under subsection (2) is a debt due by the relevant authority to the Commonwealth.

(4)This section, and regulations made under subsection (1), bind the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

(5)In this section:

**relevant authority** means a person, authority or body (including an authority or body established by or under a law of a State or Territory) that, from time to time, receives relevant funding.

**relevant funding**, in relation to a person, authority or body, means funding received, whether directly or indirectly, by the person, authority or body from the Commonwealth for the purposes of, or in connection with, the provision of legal assistance by the person, authority or body in connection with matters arising under this Act.

## 117 Costs

(1)Subject to subsection (2), subsection 70NFB(1) and sections 117AA, 117AB, 117AC and 118, each party to proceedings under this Act shall bear his or her own costs.

(2)If, in proceedings under this Act, the court is of opinion that there are circumstances that justify it in doing so, the court may, subject to subsections (2A), (4) and (5) and the applicable Rules of Court, make such order as to costs and security for costs, whether by way of interlocutory order or otherwise, as the court considers just.

(2A)In considering what order (if any) should be made under subsection (2), the court shall have regard to:

- (a)the financial circumstances of each of the parties to the proceedings;
  - (b)whether any party to the proceedings is in receipt of assistance by way of legal aid and, if so, the terms of the grant of that assistance to that party;
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(c)the conduct of the parties to the proceedings in relation to the proceedings including, without limiting the generality of the foregoing, the conduct of the parties in relation to pleadings, particulars, discovery, inspection, directions to answer questions, admissions of facts, production of documents and similar matters;

(d)whether the proceedings were necessitated by the failure of a party to the proceedings to comply with previous orders of the court;

(e)whether any party to the proceedings has been wholly unsuccessful in the proceedings;

(f)whether either party to the proceedings has made an offer in writing to the other party to the proceedings to settle the proceedings and the terms of any such offer; and

(g)such other matters as the court considers relevant.

(3)To avoid doubt, in proceedings in which an independent children's lawyer for a child has been appointed, the court may make an order under subsection (2) as to costs or security for costs, whether by way of interlocutory order or otherwise, to the effect that each party to the proceedings bears, in such proportion as the court considers just, the costs of the independent children's lawyer in respect of the proceedings.

(4)However, in proceedings in which an independent children's lawyer for a child has been appointed, if:

(a)a party to the proceedings has received legal aid in respect of the proceedings; or

(b)the court considers that a party to the proceedings would suffer financial hardship if the party had to bear a proportion of the costs of the independent children's lawyer;

the court must not make an order under subsection (2) against that party in relation to the costs of the independent children's lawyer.

(5)In considering what order (if any) should be made under subsection (2) in proceedings in which an independent children's lawyer has been appointed, the court must disregard the fact that the independent children's lawyer is funded under a legal aid scheme or service established under a Commonwealth, State or Territory law or approved by the Attorney-General.

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## **117AA Costs in proceedings relating to overseas enforcement and international Conventions**

(1) In proceedings under regulations made for the purposes of Part XIIIAA, the court can only make an order as to costs (other than orders as to security for costs):

- (a) in favour of a party who has been substantially successful in the proceedings; and
- (b) against a person or body who holds or held an office or appointment under those regulations and is a party to the proceedings in that capacity.

Note: For another case where the court can also make an order as to costs, see subsection (3).

(2) However, the order can only be made in respect of a part of the proceedings if, during that part, the party against whom the order is to be made asserted a meaning or operation of this Act or those regulations that the court considers:

- (a) is not reasonable given the terms of the Act or regulations; or
- (b) is not convenient to give effect to Australia's obligations under the Convention concerned, or to obtain for Australia the benefits of that Convention.

(3) In proceedings under regulations made for the purposes of section 111B, the court can also make an order as to costs that is:

- (a) against a party who has wrongfully removed or retained a child, or wrongfully prevented the exercise of rights of access (within the meaning of the Convention referred to in that section) to a child; and
- (b) in respect of the necessary expenses incurred by the person who made the application, under that Convention, concerning the child.

## **117AB Costs where false allegation or statement made**

(1) This section applies if:

- (a) proceedings under this Act are brought before a court; and
- (b) the court is satisfied that a party to the proceedings knowingly made a false allegation or statement in the proceedings.

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(2)The court must order that party to pay some or all of the costs of another party, or other parties, to the proceedings.

**117AC Security for costs**

Despite section 117, a court must not make an order for security for costs in a proceeding involving a Convention country that is listed in Schedule 4A to the regulations.

**117A Reparation for certain losses and expenses relating to children**

(1) Where:

- (a)a court has found, for the purposes of Division 13A of Part VII, that a person has, by taking a child away from another person or by refusing or failing to deliver a child to another person, contravened a parenting order to the extent to which the order provides that:
  - (i) a child is to live with a person; or
  - (ii) a child is to spend time with a person; or
  - (iii) a child is to communicate with a person;
- (b)a person has been convicted of an offence against section 65Y or 65Z in respect of a child;
- (c)a court has found, for the purposes of Division 13A of Part VII, that a person has, by taking a child away from another person or by refusing or failing to deliver a child to another person, contravened an injunction granted, or an order made, under section 114; or
- (d)a person has been found to be in contempt of a court exercising jurisdiction under this Act by reason of having taken a child away from another person or having refused or failed to deliver a child to another person;

a court having jurisdiction under this Act may, subject to subsection (2):

- (e)on the application of the Commonwealth—order the person to make reparation to the Commonwealth or to a Commonwealth instrumentality, by way of money payment or otherwise, in respect of any loss suffered, or any expense incurred, by the Commonwealth or the Commonwealth instrumentality, as the case may be, in recovering the child and returning the child to a person; or
- (f)on the application of any other person—order the

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first-mentioned person to make reparation to that other person, by way of money payment or otherwise, in respect of any loss suffered, or expense incurred, by that other person in recovering the child and, if applicable, returning the child to a person.

(2)Nothing in subsection (1) empowers a court to order a person to make reparation to the Commonwealth, to a Commonwealth instrumentality or to another person in respect of any loss suffered, or any expense incurred, where a court has, under section 21B of the *Crimes Act 1914*, ordered the first-mentioned person to make reparation to the Commonwealth, to the Commonwealth instrumentality or to that other person, as the case may be, in respect of the same loss suffered or expense incurred.

### **117B Interest on moneys ordered to be paid**

(1)Subject to any order made by the court under subsection (2), where, in proceedings under this Act, a court makes an order for the payment of money (other than an order for the payment by way of maintenance of a periodic sum), interest is payable, at the rate prescribed by the applicable Rules of Court, from:

- (a)the date on which the order is made; or
- (b)the date on which the order takes effect;

whichever is later, on so much of the money as is from time to time unpaid.

(2)A court that makes an order for the payment of money as mentioned in subsection (1) may order that interest is not payable on the money payable under the first-mentioned order or may order:

- (a)that interest is payable at a rate specified in the order, being a rate other than the rate prescribed by the applicable Rules of Court; or
- (b)that interest is payable from a date specified in the order, being a date other than the date from which the interest would be payable under subsection (1).

### **117C Offers of settlement**

(1)This section applies to proceedings under this Act other than the following proceedings:

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- (a) proceedings under Part VI;
- (b) proceedings under Division 6, 9 or 13 of Part VII;
- (c) proceedings to enforce a decree or injunction made under Division 6, 9 or 13 of Part VII.

(2) If:

- (a) a party to proceedings to which this section applies makes an offer to the other party to the proceedings to settle the proceedings; and
- (b) the offer is made in accordance with any applicable Rules of Court;

the fact that the offer has been made, or the terms of the offer, must not be disclosed to the court in which the proceedings are being heard except for the purposes of the consideration by the court of whether it should make an order as to costs under subsection 117(2) and the terms of any such order.

(3) A judge of the court is not disqualified from sitting in the proceedings only because the fact that an offer has been made is, contrary to subsection (2), disclosed to the court.

**118 Frivolous or vexatious proceedings**

(1) The court may, at any stage of proceedings under this Act, if it is satisfied that the proceedings are frivolous or vexatious:

- (a) dismiss the proceedings;
- (b) make such order as to costs as the court considers just; and
- (c) if the court considers appropriate, on the application of a party to the proceedings—order that the person who instituted the proceedings shall not, without leave of a court having jurisdiction under this Act, institute proceedings under this Act of the kind or kinds specified in the order;

and an order made by a court under paragraph (c) has effect notwithstanding any other provision of this Act.

(2) A court may discharge or vary an order made by that court under paragraph (1)(c).

**119 Married persons may sue each other**

Either party to a marriage may bring proceedings in contract or in tort against the other party.

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## **120 Criminal conversation, adultery and enticement**

After the commencement of this Act, no action lies for criminal conversation, damages for adultery, or for enticement of a party to a marriage.

## **121 Restriction on publication of court proceedings**

(1)A person who publishes in a newspaper or periodical publication, by radio broadcast or television or by other electronic means, or otherwise disseminates to the public or to a section of the public by any means, any account of any proceedings, or of any part of any proceedings, under this Act that identifies:

- (a)a party to the proceedings;
- (b)a person who is related to, or associated with, a party to the proceedings or is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate; or
- (c)a witness in the proceedings;

is guilty of an offence punishable, upon conviction by imprisonment for a period not exceeding one year.

(2)A person who, except as permitted by the applicable Rules of Court, publishes in a newspaper or periodical publication, by radio broadcast or television or by other electronic means, or otherwise disseminates to the public or to a section of the public by any means (otherwise than by the display of a notice in the premises of the court), a list of proceedings under this Act, identified by reference to the names of the parties to the proceedings, that are to be dealt with by a court is guilty of an offence punishable, upon conviction by imprisonment for a period not exceeding one year.

(3)Without limiting the generality of subsection (1), an account of proceedings, or of any part of proceedings, referred to in that subsection shall be taken to identify a person if:

- (a)it contains any particulars of:
  - (i) the name, title, pseudonym or alias of the person;
  - (ii) the address of any premises at which the person resides or works, or the locality in which any such premises are situated;
  - (iii) the physical description or the style of dress of the person;

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- (iv) any employment or occupation engaged in, profession practised or calling pursued, by the person or any official or honorary position held by the person;
  - (v) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;
  - (vi) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person; or
  - (vii) any real or personal property in which the person has an interest or with which the person is otherwise associated;
- being particulars that are sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires;
- (b) in the case of a written or televised account or an account by other electronic means—it is accompanied by a picture of the person; or
  - (c) in the case of a broadcast or televised account or an account by other electronic means—it is spoken in whole or in part by the person and the person's voice is sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires.

(4) A reference in subsection (1) or (2) to proceedings shall be construed as including a reference to proceedings commenced before the commencement of section 72 of the *Family Law Amendment Act 1983*.

(5) An offence against this section is an indictable offence.

(8) Proceedings for an offence against this section shall not be commenced except by, or with the written consent of, the Director of Public Prosecutions.

(9) The preceding provisions of this section do not apply to or in relation to:

- (a) the communication, to persons concerned in proceedings in any court, of any pleading, transcript of evidence or other document for use in connection with those proceedings; or

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- (b)the communication of any pleading, transcript of evidence or other document to:
- (i) a body that is responsible for disciplining members of the legal profession in a State or Territory; or
  - (ii) persons concerned in disciplinary proceedings against a member of the legal profession of a State or Territory, being proceedings before a body that is responsible for disciplining members of the legal profession in that State or Territory; or
- (c)the communication, to a body that grants assistance by way of legal aid, of any pleading, transcript of evidence or other document for the purpose of facilitating the making of a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case; or
- (d)the publishing of a notice or report in pursuance of the direction of a court; or
- (da)the publication by the court of lists of proceedings under this Act, identified by reference to the names of the parties, that are to be dealt with by the court; or
- (e)the publishing of any publication *bona fide* intended primarily for use by the members of any profession, being:
- (i) a separate volume or part of a series of law reports; or
  - (ii) any other publication of a technical character; or
- (f)the publication or other dissemination of an account of proceedings or of any part of proceedings:
- (i) to a person who is a member of a profession, in connection with the practice by that person of that profession or in the course of any form of professional training in which that person is involved; or
  - (ia) to an individual who is a party to any proceedings under this Act, in connection with the conduct of those proceedings; or
  - (ii) to a person who is a student, in connection with the studies of that person; or
- (g)publication of accounts of proceedings, where those accounts have been approved by the court.
- (10)Applicable Rules of Court made for the purposes of subsection (2) may be of general or specially limited application or may differ according to differences in time, locality, place or
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circumstance.

Note: Powers to make Rules of Court are also contained in sections 26B, 37A, 109A and 123.

(11) In this section:

**court** includes:

- (a) an officer of a court investigating or dealing with a matter in accordance with this Act, the regulations or the Rules of Court; and
- (b) a tribunal established by or under a law of the Commonwealth, of a State or of a Territory.

**electronic means** includes:

- (a) in the form of data, text or images by means of guided and/or unguided electromagnetic energy; or
- (b) in the form of speech by means of guided and/or unguided electromagnetic energy, where the speech is processed at its destination by an automated voice recognition system.

**122 Rights of legal practitioners**

A person who is, under Part VIIIA of the *Judiciary Act 1903*, entitled to practise in any federal court as a barrister or solicitor, or as both, has the like right to practise in any State court exercising jurisdiction under this Act.

**122AA Use of reasonable force in arresting persons**

A person who is authorised or directed by a provision of this Act, or by a warrant issued under a provision of this Act, to arrest another person may use such reasonable force as is necessary to make the arrest or to prevent the escape of that person after the arrest.

**122A Powers of entry and search for purposes of arresting persons**

(1) Where:

- (a) a person (in this subsection called the **authorised person**) is, by a provision of this Act, or by a warrant issued under a provision of this Act, authorised to arrest another person; and

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- (b)the authorised person reasonably believes that the other person is in or on a particular searchable place;  
the authorised person may, without warrant, enter and search the searchable place.
- (2)Where a person may enter and search a vehicle, vessel or aircraft under subsection (1), the person may, for the purposes of effecting the entry and search, stop and detain the vehicle, vessel or aircraft.
- (3)In exercising powers under this section, a person may use such force and assistance as is necessary and reasonable to enable the exercise of the powers.
- (4)In this section:

***searchable place*** means:

- (a)premises or a place; or
- (b)a vehicle, vessel or aircraft.

## **122B Arrangements with States and Territories**

- (1)The Governor-General may make an arrangement with the relevant authority of a State or internal Territory for the performance by an officer of the State or Territory of a function under this Act.

- (2)In this section:

***officer*** includes the holder of a judicial office.

***relevant authority*** means:

- (a)in relation to a State—the Governor of the State; or
- (b)in relation to the Australian Capital Territory—the Chief Minister for the Australian Capital Territory; or
- (c)in relation to the Northern Territory—the Administrator of the Northern Territory.

## **123 Rules of Court**

- (1)The Judges, or a majority of them, may make Rules of Court not inconsistent with this Act, providing for or in relation to the practice and procedure to be followed in the Family Court and any

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other courts exercising jurisdiction under this Act, and for and in relation to all matters and things incidental to any such practice and procedure, or necessary or convenient to be prescribed for the conduct of any business in those courts and, in particular:

- (a)providing for and in relation to the attendance of witnesses; and
- (b)providing for and in relation to the manner of service of process of the Family Court or another court exercising jurisdiction under this Act, and for and in relation to dispensing with such service; and
- (ba)providing for and in relation to trial management; and
- (c)providing for and in relation to the time and manner of institution of appeals in and to the Family Court; and
- (d)prescribing the duties of officers of the Family Court; and
- (f)prescribing the seals and stamps to be used in the Family Court and in any other court exercising jurisdiction under this Act; and
- (g)prescribing matters relating to the costs of proceedings (including solicitor and client costs and party and party costs) and the assessment or taxation of those costs; and
- (h)authorizing a court to refer to an officer of the court for investigation, report and recommendation claims or applications for or relating to any matters before the court; and
- (j)authorising an officer making an investigation mentioned in paragraph (h) to:
  - (i) take evidence on oath or affirmation; and
  - (ii) receive in evidence a report from a family consultant under section 55A or 62G; and
  - (iii) receive in evidence a report from a person who has had dealings with a party to the matter under investigation under section 65F, 65L, 65LA, 70NEB or 70NEG; and
- (ja)enabling the summoning of witnesses before an officer making an investigation mentioned in paragraph (h) for the purposes of giving evidence or producing books or documents; and
- (k)regulating the procedure of a court upon receiving a report of an officer who has made an investigation referred to in paragraph (h); and
- (m)providing for and in relation to the procedure of a court

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- exercising its powers under section 112AP to deal with a person for contempt of the court; and
- (ma)for the purposes of Divisions 2 and 3 of Part XI, providing for the conditions relating to the use of video links, audio links and other appropriate means of communication; and
- (n)providing for and in relation to the making of an application for a divorce order in relation to a marriage jointly by both parties to the marriage; and
- (o)providing for and in relation to the appointment, by the Attorney-General, of a guardian *ad litem* for a party to proceedings under this Act; and
- (q)providing for and in relation to:
- (i) the forfeiture of bonds and recognizances entered into in pursuance of requirements made under this Act; and
  - (ii) the recovery of any money that may be due to the Commonwealth under such bonds and recognizances or from any person who has become a surety under this Act; and
- (r)providing for and in relation to the attachment of moneys payable by the Commonwealth, a State, a Territory or the Administration of a Territory, or by an authority of the Commonwealth, of a State or of a Territory (other than moneys as to which it is provided by any law of the Commonwealth, of a State or of a Territory that they are not liable to attachment); and
- (s)providing for and in relation to:
- (i) the attendance at family counselling by parties to proceedings under this Act; and
  - (ii) the attendance at family dispute resolution by parties to proceedings under this Act; and
  - (iii) the giving of advice and assistance by family consultants to people involved in proceedings under this Act; and
  - (iv) the participation by parties to proceedings under this Act in courses, programs and other services (other than those mentioned in subparagraph (i), (ii) or (iii)) that the parties are ordered by the court to participate in; and
  - (v) the use, for the purposes of proceedings under this Act, by courts exercising jurisdiction under this Act and
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- officers of such courts, of reports about the future conduct of the proceedings that have been prepared by persons who dealt with the parties in accordance with Rules of Court made under subparagraphs (i), (ii), (iii) or (iv); and
- (sa) prescribing the functions and duties of assessors and of family consultants and arbitrators; and
- (sb) providing for and in relation to the making of applications under this Act for arbitration and for orders under sections 13E and 13F; and
- (sc) prescribing the disputes, proceedings or matters that may or may not be arbitrated under this Act; and
- (sca) prescribing the disputes, proceedings or matters in relation to which family consultants may, or must not, perform their functions; and
- (sd) providing for and in relation to:
- (i) the functions to be performed by family consultants; and
  - (ii) the procedures to be followed in performing those functions; and
  - (iii) the procedures to be followed by persons involved in proceedings in relation to which a family consultant is performing functions; and
  - (iv) the procedures to be followed when a family consultant ceases performing functions in relation to a dispute, proceeding or matter; and
- (sda) providing for and in relation to:
- (i) the procedures to be followed by a family counsellor authorised under subsection 38BD(1) or engaged under subsection 38R(1A); and
  - (ii) the procedures to be followed by persons attending family counselling with such a counsellor; and
  - (iii) the procedures to be followed when family counselling with such a counsellor ends; and
- (sdb) providing for and in relation to:
- (i) the procedures to be followed by a family dispute resolution practitioner authorised under subsection 38BD(2) or engaged under subsection 38R(1A); and
  - (ii) the procedures to be followed by persons attending family dispute resolution with such a practitioner; and

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- (iii) the procedures to be followed when family dispute resolution with such a practitioner ends; and
  - (sdc)providing for and in relation to:
    - (i) the procedures to be followed by an arbitrator in relation to a dispute, proceeding or matter under this Act; and
    - (ii) the attendance by persons at conferences conducted by arbitrators for the purpose of arbitrating a dispute, proceeding or matter under this Act; and
    - (iii) the procedure to be followed when arbitration ends, both where it has resulted in an agreement or award and where it has not; and
  - (se)prescribing matters relating to the costs of arbitration by arbitrators, and the assessment or taxation of those costs; and
  - (sea)prescribing matters relating to the costs of family counselling by family counsellors authorised under subsection 38BD(1) or engaged under subsection 38R(1A); and
  - (seb)prescribing matters relating to the costs of family dispute resolution by family dispute resolution practitioners authorised under subsection 38BD(2) or engaged under subsection 38R(1A); and
  - (sf)providing for and in relation to:
    - (i) the registration of awards under section 13H; and
    - (ii) the time and manner of making applications for review of registered awards under section 13J or for orders setting aside registered awards under section 13K; and
  - (sg)providing for and in relation to conciliation conferences; and
  - (t)prescribing matters incidental to the matters specified in the preceding paragraphs; and
  - (u)prescribing penalties not exceeding 50 penalty units for offences against the standard Rules of Court.

(1A)A reference in subsection (1) to a **court exercising jurisdiction under this Act** does not include a reference to the Federal Magistrates Court.

(2)The *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made under this section:

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- (a)as if a reference to a legislative instrument were a reference to a rule of court; and
- (b)as if a reference to a rule-maker were a reference to the Chief Judge acting on behalf of the Judges; and
- (c)subject to such further modifications or adaptations as are provided for in regulations made under paragraph 125(1) (baa) of this Act.

(2A)Despite the fact that section 16 of the *Legislative Instruments Act 2003* does not apply in relation to rules of court made under this Act, the Department may provide assistance in the drafting of any of those Rules if the Chief Judge so desires.

(3)In this section, **Judge** means:

- (a)a Judge of the Family Court of Australia; or
- (b)where the Governor-General has made an arrangement with the Governor of a State under section 112 in relation to the performance, by a Judge of the Family Court of that State, of functions under this section—that Judge.

Note: The power to make Rules of Court conferred by this section is extended by section 109A and subsection 111C(7A). Powers to make Rules of Court are also contained in sections 26B and 37A.

## 124 Rules Advisory Committee

(1)There shall be a Rules Advisory Committee consisting of such Judges of the Family Court of Australia, such Judges of Family Courts of States and such other persons as are appointed in accordance with this section.

(2)The function of the Rules Advisory Committee is to provide to the Judges referred to in section 123 such advice in relation to the making of standard Rules of Court as is requested from time to time by those Judges.

(3)Members of the Rules Advisory Committee shall be appointed by the Governor-General on the nomination of the Attorney-General made by the Attorney-General after consultation with the Chief Judge of the Family Court of Australia.

(4)A Judge of a Family Court of a State shall not be appointed as a member of the Rules Advisory Committee unless the Governor-General has made an arrangement with the Governor of

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the State under section 112 in relation to the performance, by that Judge, of functions as a member of the Rules Advisory Committee.

(5)The members of the Rules Advisory Committee shall be paid such allowances in respect of expenses in connection with their duties as are prescribed.

(6)A member of the Rules Advisory Committee may resign by writing signed and delivered to the Governor-General.

#### **124A Regulations in relation to overseas-related maintenance obligations etc.**

(1)The regulations may make provision for, and in relation to, the following matters:

- (a)giving effect to an international agreement that relates to maintenance obligations arising from family relationship, parentage or marriage;
- (b)maintenance obligations arising from family relationship, parentage or marriage, where:
  - (i) the maintenance is claimed by or on behalf of a person who is in a reciprocating jurisdiction; or
  - (ii) the person from whom the maintenance is claimed is in a reciprocating jurisdiction.

(2)Regulations made for the purposes of this section may:

- (a)confer jurisdiction on a federal court (other than the High Court) or a court of a Territory; or
- (b)invest a court of a State with federal jurisdiction.

(4)In this section:

***international agreement*** means an agreement whose parties are:

- (a)Australia and a foreign country; or
- (b)Australia and 2 or more foreign countries.

***reciprocating jurisdiction*** means:

- (a)a foreign country; or
- (b)a part of a foreign country;

that is prescribed by the regulations to be a reciprocating jurisdiction for the purposes of this section.

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**Section 4**

**125 Regulations**

- (1)The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular:
- (a)providing for and in relation to the service overseas, pursuant to any convention between Australia and another country, of any documents in proceedings under this Act; and
  - (b)providing for and in relation to the transcription of proceedings under this Act and the making available of copies of transcripts of those proceedings; and
  - (ba)providing for and in relation to the authorisation of:
    - (i) officers or staff members of the Family Court as family counsellors under subsection 38BD(1); and
    - (ii) officers or staff members of the Family Court as family dispute resolution practitioners under subsection 38BD(2); and
  - (baa)modifying or adapting the provisions of the *Legislative Instruments Act 2003* (other than the provisions of Part 5 of that Act or any other provisions whose modification or adaptation would affect the operation of that Part) in their application to the Family Court and any other court exercising jurisdiction under this Act; and
  - (bb)prescribing requirements for arbitrators; and
  - (bba)the registration of awards made in section 13E arbitration and relevant property or financial arbitration; and
  - (bc)prescribing, or providing for or in relation to, anything that may be dealt with in Rules of Court made under paragraph 123(1)(sa), (sb), (sc), (sca), (sd), (sda), (sdb), (sdc), (se), (sea) or (seb); and
  - (c)prescribing court fees to be payable in respect of proceedings under this Act; and
  - (ca)prescribing fees payable for services provided by the Family Court in circumstances other than where a court orders or directs the provision of the services; and
  - (d)exempting persons included in particular classes of persons from liability to pay court fees prescribed under paragraph (c) and fees prescribed under paragraph (ca); and

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(e)providing for the refund of court fees prescribed under paragraph (c) and fees prescribed under paragraph (ca) that have been paid in particular circumstances; and

(f)providing for an officer of a court exercising jurisdiction under this Act, a prescribed authority of the Commonwealth, of a State or of a Territory or the person for the time being holding a prescribed office under a law of the Commonwealth, of a State or of a Territory, in his, her or its discretion, to institute and prosecute proceedings, on behalf of the person entitled to moneys payable under a child maintenance order under Part VII or a maintenance order under Part VIII, for the purpose of enforcing payment of those moneys; and

(g)providing for and in relation to priority as between the execution of orders made under the regulations, or under the repealed Act, for the attachment of moneys payable by the Commonwealth, a State, a Territory or the Administration of a Territory, or by an authority of the Commonwealth, of a State or of a Territory (other than moneys as to which it is provided by any law of the Commonwealth, of a State or of a Territory that they are not liable to attachment) and the execution of orders made in accordance with the *Maintenance Orders (Commonwealth Officers) Act 1966.*

(2)Court fees payable in pursuance of regulations made under this section in respect of proceedings in a Family Court of a State are payable to the State.

(3)To the extent of any inconsistency between regulations and Rules of Court, the regulations prevail.

## **Schedule 1—Child Protection Convention**

Note: This is the copy of the Child Protection Convention referred to in the definition of ***Child Protection Convention*** in subsection 111CA(1).

The undersigned, Delegates of the Governments of Argentina, Australia, Austria, Belgium, Canada, China, Croatia, the Czech Republic, Egypt, Finland, The former Yugoslav Republic of Macedonia, France, Germany, Greece, Ireland, Israel, Italy, Japan, Luxembourg, Malta, Mexico, Monaco, Morocco, the Netherlands, Norway, Poland, Portugal, Romania, the Slovak Republic, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela, Member States, as well as the Representatives of the Governments of Burkina Faso, Colombia, Costa Rica, Ecuador, Georgia, the Holy See, the Republic of Korea, Mauritius, New Zealand, Paraguay, Peru, the Philippines, the Russian Federation, South Africa and Sri Lanka, participating as Observers, convened at The Hague on 30 September 1996, at the invitation of the Government of the Netherlands, in the Eighteenth Session of the Hague Conference on Private International Law.

Following the deliberations laid down in the records of the meetings, have decided to submit to their Governments—

### **CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN**

The States signatory to the present Convention,

Considering the need to improve the protection of children in international situations,

Wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of children,

Recalling the importance of international co-operation for the protection of children,

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Confirming that the best interests of the child are to be a primary consideration,

Noting that the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors* is in need of revision,

Desiring to establish common provisions to this effect, taking into account the *United Nations Convention on the Rights of the Child* of 20 November 1989,

Have agreed on the following provisions—

## CHAPTER I—SCOPE OF THE CONVENTION

### *Article 1*

1 The objects of the present Convention are—

- a* to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;
- b* to determine which law is to be applied by such authorities in exercising their jurisdiction;
- c* to determine the law applicable to parental responsibility;
- d* to provide for the recognition and enforcement of such measures of protection in all Contracting States;
- e* to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

2 For the purposes of this Convention, the term ‘parental responsibility’ includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child.

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*Article 2*

The Convention applies to children from the moment of their birth until they reach the age of 18 years.

*Article 3*

The measures referred to in Article 1 may deal in particular with—

- a* the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;
- b* rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence;
- c* guardianship, curatorship and analogous institutions;
- d* the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;
- e* the placement of the child in a foster family or in institutional care, or the provision of care by *kafala* or an analogous institution;
- f* the supervision by a public authority of the care of a child by any person having charge of the child;
- g* the administration, conservation or disposal of the child's property.

*Article 4*

The Convention does not apply to—

- a* the establishment or contesting of a parent-child relationship;
  - b* decisions on adoption, measures preparatory to adoption, or the
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- annulment or revocation of adoption;
- c* the name and forenames of the child;
  - d* emancipation;
  - e* maintenance obligations;
  - f* trusts or succession;
  - g* social security;
  - h* public measures of a general nature in matters of education or health;
  - i* measures taken as a result of penal offences committed by children;
  - j* decisions on the right of asylum and on immigration.

## CHAPTER II—JURISDICTION

### *Article 5*

1 The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

2 Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

### *Article 6*

1 For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5.

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2 The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.

*Article 7*

1 In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and

*a* each person, institution or other body having rights of custody has acquiesced in the removal or retention; or

*b* the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.

2 The removal or the retention of a child is to be considered wrongful where—

*a* it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

*b* at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

3 So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child.

*Article 8*

1 By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

- request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or
- suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.

2 The Contracting States whose authorities may be addressed as provided in the preceding paragraph are

- a* a State of which the child is a national,
- b* a State in which property of the child is located,
- c* a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,
- d* a State with which the child has a substantial connection.

3 The authorities concerned may proceed to an exchange of views.

4 The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.

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*Article 9*

1 If the authorities of a Contracting State referred to in Article 8, paragraph 2, consider that they are better placed in the particular case to assess the child's best interests, they may either

- request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary, or
- invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child.

2 The authorities concerned may proceed to an exchange of views.

3 The authority initiating the request may exercise jurisdiction in place of the authority of the Contracting State of the habitual residence of the child only if the latter authority has accepted the request.

*Article 10*

1 Without prejudice to Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child if

*a* at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and

*b* the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child.

2 The jurisdiction provided for by paragraph 1 to take measures for the

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protection of the child ceases as soon as the decision allowing or refusing the application for divorce, legal separation or annulment of the marriage has become final, or the proceedings have come to an end for another reason.

*Article 11*

1 In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.

2 The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.

3 The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

*Article 12*

1 Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5 to 10.

2 The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken a decision in respect of the measures of protection which may be required by the situation.

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3 The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in the Contracting State where the measures were taken as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

*Article 13*

1 The authorities of a Contracting State which have jurisdiction under Articles 5 to 10 to take measures for the protection of the person or property of the child must abstain from exercising this jurisdiction if, at the time of the commencement of the proceedings, corresponding measures have been requested from the authorities of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration.

2 The provisions of the preceding paragraph shall not apply if the authorities before whom the request for measures was initially introduced have declined jurisdiction.

*Article 14*

The measures taken in application of Articles 5 to 10 remain in force according to their terms, even if a change of circumstances has eliminated the basis upon which jurisdiction was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures.

### CHAPTER III—APPLICABLE LAW

*Article 15*

1 In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law.

2 However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection.

3 If the child's habitual residence changes to another Contracting State, the law of that other State governs, from the time of the change, the conditions of application of the measures taken in the State of the former habitual residence.

*Article 16*

1 The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.

2 The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.

3 Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.

4 If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence.

*Article 17*

The exercise of parental responsibility is governed by the law of the State of the child's habitual residence. If the child's habitual residence changes, it is governed by the law of the State of the new habitual residence.

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*Article 18*

The parental responsibility referred to in Article 16 may be terminated, or the conditions of its exercise modified, by measures taken under this Convention.

*Article 19*

1 The validity of a transaction entered into between a third party and another person who would be entitled to act as the child's legal representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the child's legal representative under the law designated by the provisions of this Chapter, unless the third party knew or should have known that the parental responsibility was governed by the latter law.

2 The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State.

*Article 20*

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

*Article 21*

1 In this Chapter the term "law" means the law in force in a State other than its choice of law rules.

2 However, if the law applicable according to Article 16 is that of a non-Contracting State and if the choice of law rules of that State designate the law of another non-Contracting State which would apply its own law, the law of the latter State applies. If that other non-Contracting State would not apply its own law, the applicable law is that designated by Article 16.

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*Article 22*

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

**CHAPTER IV—RECOGNITION AND ENFORCEMENT**

*Article 23*

1 The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.

2 Recognition may however be refused—

*a* if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;

*b* if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;

*c* on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;

*d* if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;

*e* if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;

*f* if the procedure provided in Article 33 has not been complied with.

*Article 24*

Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.

*Article 25*

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

*Article 26*

1 If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.

2 Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.

3 The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.

*Article 27*

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

*Article 28*

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

**CHAPTER V—CO-OPERATION**

*Article 29*

1 A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on such authorities.

2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

*Article 30*

1 Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

2 They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of children.

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*Article 31*

The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to—

- a* facilitate the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter;
- b* facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;
- c* provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State.

*Article 32*

On a request made with supporting reasons by the Central Authority or other competent authority of any Contracting State with which the child has a substantial connection, the Central Authority of the Contracting State in which the child is habitually resident and present may, directly or through public authorities or other bodies,

- a* provide a report on the situation of the child;
- b* request the competent authority of its State to consider the need to take measures for the protection of the person or property of the child.

*Article 33*

1 If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by *kafala* or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter

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State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.

2 The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.

*Article 34*

1 Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so requires, may request any authority of another Contracting State which has information relevant to the protection of the child to communicate such information.

2 A Contracting State may declare that requests under paragraph 1 shall be communicated to its authorities only through its Central Authority.

*Article 35*

1 The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.

2 The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised. An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision.

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3 An authority having jurisdiction under Articles 5 to 10 to decide on access may adjourn a proceeding pending the outcome of a request made under paragraph 2, in particular, when it is considering an application to restrict or terminate access rights granted in the State of the child's former habitual residence.

4 Nothing in this Article shall prevent an authority having jurisdiction under Articles 5 to 10 from taking provisional measures pending the outcome of the request made under paragraph 2.

*Article 36*

In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child's residence has changed to, or that the child is present in another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.

*Article 37*

An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family.

*Article 38*

1 Without prejudice to the possibility of imposing reasonable charges for the provision of services, Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter.

2 Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges.

*Article 39*

Any Contracting State may enter into agreements with one or more other Contracting States with a view to improving the application of this Chapter in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

**CHAPTER VI—GENERAL PROVISIONS**

*Article 40*

1 The authorities of the Contracting State of the child's habitual residence, or of the Contracting State where a measure of protection has been taken, may deliver to the person having parental responsibility or to the person entrusted with protection of the child's person or property, at his or her request, a certificate indicating the capacity in which that person is entitled to act and the powers conferred upon him or her.

2 The capacity and powers indicated in the certificate are presumed to be vested in that person, in the absence of proof to the contrary.

3 Each Contracting State shall designate the authorities competent to draw up the certificate.

*Article 41*

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

*Article 42*

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State.

*Article 43*

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality.

*Article 44*

Each Contracting State may designate the authorities to which requests under Articles 8, 9 and 33 are to be addressed.

*Article 45*

1 The designations referred to in Articles 29 and 44 shall be communicated to the Permanent Bureau of the Hague Conference on Private International Law.

2 The declaration referred to in Article 34, paragraph 2, shall be made to the depositary of the Convention.

*Article 46*

A Contracting State in which different systems of law or sets of rules of law apply to the protection of the child and his or her property shall not be bound to apply the rules of the Convention to conflicts solely between such different systems or sets of rules of law.

*Article 47*

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units—

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- 1 any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;
  - 2 any reference to the presence of the child in that State shall be construed as referring to presence in a territorial unit;
  - 3 any reference to the location of property of the child in that State shall be construed as referring to location of property of the child in a territorial unit;
  - 4 any reference to the State of which the child is a national shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the child has the closest connection;
  - 5 any reference to the State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage, shall be construed as referring to the territorial unit whose authorities are seised of such application;
  - 6 any reference to the State with which the child has a substantial connection shall be construed as referring to the territorial unit with which the child has such connection;
  - 7 any reference to the State to which the child has been removed or in which he or she has been retained shall be construed as referring to the relevant territorial unit to which the child has been removed or in which he or she has been retained;
  - 8 any reference to bodies or authorities of that State, other than Central Authorities, shall be construed as referring to those authorised to act in the relevant territorial unit;
  - 9 any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed as referring to the law or procedure or authority of the territorial unit in which such measure was taken;
  - 10 any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought.
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*Article 48*

For the purpose of identifying the applicable law under Chapter III, in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply—

- a* if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;
- b* in the absence of such rules, the law of the relevant territorial unit as defined in Article 47 applies.

*Article 49*

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Convention, the following rules apply—

- a* if there are rules in force in such a State identifying which among such laws applies, that law applies;
- b* in the absence of such rules, the law of the system or the set of rules of law with which the child has the closest connection applies.

*Article 50*

This Convention shall not affect the application of the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, as between Parties to both Conventions. Nothing, however, precludes provisions of this Convention from being invoked for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

*Article 51*

In relations between the Contracting States this Convention replaces the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, and the Convention governing the guardianship of minors*, signed at The Hague 12 June 1902, without prejudice to the recognition of measures taken under the Convention of 5 October 1961 mentioned above.

*Article 52*

1 This Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

2 This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of children habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.

3 Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.

4 The preceding paragraphs also apply to uniform laws based on specialties of a regional or other nature between the States concerned.

*Article 53*

1 The Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State.

2 The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State.

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*Article 54*

1 Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English.

2 However, a Contracting State may, by making a reservation in accordance with Article 60, object to the use of either French or English, but not both.

*Article 55*

1 A Contracting State may, in accordance with Article 60,

*a* reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory;

*b* reserve the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property.

2 The reservation may be restricted to certain categories of property.

*Article 56*

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convoke a Special Commission in order to review the practical operation of the Convention.

## CHAPTER VII—FINAL CLAUSES

### *Article 57*

1 The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Eighteenth Session.

2 It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

### *Article 58*

1 Any other State may accede to the Convention after it has entered into force in accordance with Article 61, paragraph 1.

2 The instrument of accession shall be deposited with the depositary.

3 Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b* of Article 63. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

### *Article 59*

1 If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2 Any such declaration shall be notified to the depositary and shall state

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expressly the territorial units to which the Convention applies.

3 If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

*Article 60*

1 Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 59, make one or both of the reservations provided for in Articles 54, paragraph 2, and 55. No other reservation shall be permitted.

2 Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.

3 The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

*Article 61*

1 The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 57.

2 Thereafter the Convention shall enter into force—

*a* for each State ratifying, accepting or approving it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

*b* for each State acceding, on the first day of the month following the expiration of three months after the expiration of the period of six months provided in Article 58, paragraph 3;

*c* for a territorial unit to which the Convention has been extended in conformity with Article 59, on the first day of the month following the expiration of three months after the notification referred to in that Article.

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*Article 62*

1 A State Party to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units to which the Convention applies.

2 The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period.

*Article 63*

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 58 of the following—

- a* the signatures, ratifications, acceptances and approvals referred to in Article 57;
  - b* the accessions and objections raised to accessions referred to in Article 58;
  - c* the date on which the Convention enters into force in accordance with Article 61;
  - d* the declarations referred to in Articles 34, paragraph 2, and 59;
  - e* the agreements referred to in Article 39;
  - f* the reservations referred to in Articles 54, paragraph 2, and 55 and the withdrawals referred to in Article 60, paragraph 2;
  - g* the denunciations referred to in Article 62.
-

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

[Signatures omitted]

Done at The Hague, on the 19th day of October 1996, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Eighteenth Session.

**Table of Acts**

**Notes to the *Family Law Act 1975***

**Note 1**

The *Family Law Act 1975* as shown in this compilation comprises Act No. 53, 1975 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Family Law Amendment (Shared Parental Responsibility) Act 2006*, see Act No. 46, 2006.

All other relevant information pertaining to application, saving or transitional provisions prior to 29 November 2000 is not included in this compilation. For subsequent information see Table A.

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<i>Family Law Amendment Act 1983</i>	72, 1983	28 Oct 1983	Part I (ss. 1, 2): Royal Assent Part II (ss. 3–72): 25 Nov 1983 Part III (ss. 73–76): 2 Jan 1985 (see <i>Gazette</i> 1984, No. S532)	Ss. 3(2), 18(2), (3), 19(2), 44(2), (3), 51(2) and 68(2)
<i>Public Service Reform Act 1984</i>	63, 1984	25 June 1984	S. 152(1): 20 July 1984 (see <i>Gazette</i> 1984, No. S276) (a)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1984</i>	72, 1984	25 June 1984	S. 3: (b)	Ss. 2(24) and 5(1)
<i>Statute Law (Miscellaneous</i>	165, 1984	25 Oct 1984	S. 3: (c)	S. 6(1)

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<i>Family Law Amendment Act 1976</i>	63, 1976	8 June 1976	Ss. 1, 2, 17, 18 and 39: Royal Assent Ss. 29 and 30: 5 Jan 1976 Remainder: 1 July 1976	S. 19(2)
<i>Family Law Amendment Act (No. 2) 1976</i>	95, 1976	28 Sept 1976	28 Sept 1976	—
<i>Marriage Amendment Act 1976</i>	209, 1976	20 Dec 1976	Ss. 1, 2 and 30: Royal Assent Ss. 14 and 31: 1 July 1976 Remainder: 20 June 1977 (see <i>Gazette</i> 1977, No. S93)	—
<i>Family Law Amendment Act 1977</i>	102, 1977	11 Oct 1977	11 Oct 1977	—
<i>Family Law Amendment Act 1979</i>	23, 1979	5 Apr 1979	Ss. 4, 10, 11, 12(a), 17 and 23: 1 Aug 1979 (see <i>Gazette</i> 1979, No. S154) Remainder: Royal Assent	Ss. 18(2), 19(2) and 22(2)
<i>Domicile (Consequential Amendments) Act 1982</i>	2, 1982	4 Mar 1982	1 July 1982 (see s. 2 and <i>Gazette</i> 1982, No. G26, p. 2)	—
<i>Family Law Amendment (Legal Aid Costs) Act 1983</i>	67, 1983	20 Oct 1983	20 Oct 1983	—
<i>Family Law Amendment Act 1983</i>	72, 1983	28 Oct 1983	Part I (ss. 1, 2): Royal Assent Part II (ss. 3–72): 25 Nov 1983 Part III (ss. 73–76): 2 Jan 1985 (see <i>Gazette</i> 1984, No. S532)	Ss. 3(2), 18(2), (3), 19(2), 44(2), (3), 51(2) and 68(2)
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<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1984</i>	72, 1984	25 June 1984	S. 3: (b)	Ss. 2(24) and 5(1)
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<i>Family Law Amendment Act 1977</i>	102, 1977	11 Oct 1977	11 Oct 1977	—
<i>Family Law Amendment Act 1979</i>	23, 1979	5 Apr 1979	Ss. 4, 10, 11, 12(a), 17 and 23: 1 Aug 1979 (see <i>Gazette</i> 1979, No. S154) Remainder: Royal Assent	Ss. 18(2), 19(2) and 22(2)
<i>Domicile (Consequential Amendments) Act 1982</i>	2, 1982	4 Mar 1982	1 July 1982 (see s. 2 and <i>Gazette</i> 1982, No. G26, p. 2)	—
<i>Family Law Amendment (Legal Aid Costs) Act 1983</i>	67, 1983	20 Oct 1983	20 Oct 1983	—
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<i>Domicile (Consequential Amendments) Act 1982</i>	2, 1982	4 Mar 1982	1 July 1982 (see s. 2 and <i>Gazette</i> 1982, No. G26, p. 2)	—
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## Act Notes

- (a) The *Family Law Act 1975* was amended by subsection 152(1) only of the *Public Service Reform Act 1984*, subsection 2(4) of which provides as follows:
- (4) The remaining provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.
- (b) The *Family Law Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984*, subsection 2(12) of which provides as follows:
- (12) The amendments of the *Family Law Act 1975* made by this Act shall:
- (a) in the case of the amendment of section 37A of that Act—come into operation, or be deemed to have come into operation, as the case requires, on the commencement of Part III of the *Family Law Amendment Act 1983*; and
- (b) in the case of the amendments of sections 44 and 87 of that Act—be deemed to have come into operation on 25 November 1983; and
- (c) in the case of the other amendments of that Act—come into operation on a day to be fixed by Proclamation.
- Part III commenced on 2 January 1985 (see *Gazette* 1984, No. S532).
- The remainder of the amendments commenced on 2 January 1985 (see *Gazette* 1984, No. S532).
- (c) The *Family Law Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2(10) of which provides as follows:
- (10) The amendments of the *Family Law Act 1975* made by this Act shall come into operation, or be deemed to have come into operation, as the case requires, on the commencement of Part III of the *Family Law Amendment Act 1983*.
- Part III commenced on 2 January 1985 (see *Gazette* 1984, No. S532).
- (d) The *Family Law Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
- (e) The *Family Law Act 1975* was amended by section 45 only of the *Public Service and Statutory Authorities Amendment Act 1985*, subsection 2(7) of which provides as follows:
- (7) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (f) The *Family Law Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (g) The *Family Law Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1986*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (h) The *Family Law Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1986*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (i) The *Family Law Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (j) The *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988* was amended by Part XI (sections 34 and 35) only of the *Law and Justice Legislation Amendment Act 1988*, subsection 2(6) of which provides as follows:
- (6) Part XI shall be taken to have commenced on 5 April 1988.

## Act Notes

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- (k) The *Family Law Act 1975* was amended by Part XII (sections 36–39) only of the *Law and Justice Legislation Amendment Act 1988*, subsection 2(1) of which provides as follows:
    - (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (l) The *Family Law Act 1975* was amended by the Schedule only of the *Law and Justice Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:
    - (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.
  - (m) The *Family Law Act 1975* was amended by section 3 only of the *Law and Justice Legislation Amendment Act 1992*, subsection 2(1) of which provides as follows:
    - (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (n) The *Family Law Act 1975* was amended by section 3 only of the *Law and Justice Legislation Amendment Act (No. 4) 1992*, subsections 2(1) and (3) of which provide as follows:
    - (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
    - (3) The amendments of the *Family Law Act 1975* (other than the amendment inserting a new section 37C of that Act), and the amendments of the *Judges (Long Leave Payments) Act 1979* and the *Judges' Pensions Act 1968*, made by this Act are taken to have commenced on 1 November 1991.
  - (o) The *Family Law Act 1975* was amended by Schedule 4 (items 1–3) only of the *Social Security Legislation Amendment Act (No. 2) 1992*, subsection 2(1)(g) of which provides as follows:
    - (1) The following provisions commence on the day on which this Act receives the Royal Assent:
      - (g) Part 1 of Schedule 4;
  - (p) The *Family Law Act 1975* was amended by Part 5 (section 35) only of the *Law and Justice Legislation Amendment Act 1994*, subsection 2(5) of which provides as follows:
    - (5) The amendment made by Part 5 is taken to have commenced on 1 November 1991.
  - (q) The *Family Law Act 1975* was amended by Schedule 4 (items 72–74) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
    - (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
  - (r) The *Family Law Act 1975* was amended by Schedule 7 only of the *Law and Justice Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:
    - (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (s) The *Family Law Act 1975* was amended by Schedule 1 (items 40 and 41) only of the *Child Support Legislation Amendment Act (No. 1) 1997*, subsection 2(1) of which provides as follows:
    - (1) Subject to subsection (2), this Act commences on the 28th day after the day on which it receives the Royal Assent.
  - (t) The *Family Law Act 1975* was amended by Schedule 2 (items 751–759) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
    - (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
  - (u) The *Family Law Act 1975* was amended by Schedule 1 (items 439–454) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
    - (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
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**Act Notes**

- (2) Subject to this section, this Act commences at the commencing time.
- (v) The *Family Law Act 1975* was amended by Schedule 10 (item 83) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
    - (a) section 3;
    - (b) the items in Schedules 1 to 7 (other than item 18 of Schedule 7);
    - (c) the items in Schedules 10, 11 and 12.
- (w) The *Family Law Act 1975* was amended by Schedule 11 only of the *Federal Magistrates (Consequential Amendments) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the commencement of the *Federal Magistrates Act 1999*.
- (x) Subsection 2(2) of the *Family Law Amendment Act 2000* provides as follows:
- (2) Item 41 of Schedule 3 is taken to have commenced immediately after the commencement of section 26 of the *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988*.
- Section 26 commenced on 1 July 1988 (see *Gazette* 1988, No. S191).
- (y) The *Family Law Act 1975* was amended by Schedule 27 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
    - (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- Item 15 commenced on 24 May 2001.
- (z) Section 2 of the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001* provides as follows:
- 2 This Act commences immediately after the commencement of the *Family Law Legislation Amendment (Superannuation) Act 2001*.
- The *Family Law Legislation Amendment (Superannuation) Act 2001* came into operation on 28 December 2002.
- (za) Subsection 2(1) (item 2) of the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2002* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedules 1 to 4	Immediately after the commencement of the <i>Family Law Legislation Amendment (Superannuation) Act 2001</i>	28 December 2002

- (zb) Subsection 2(1) (items 6, 8, 10, 12, 14, 15, 17, 20, 22 and 24) of the *Family Law Amendment Act 2003* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

## Act Notes

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
6. Schedule 4, item 2	Immediately after the commencement of Schedule 2 to the <i>Family Law Amendment Act 2000</i>	27 December 2000
8. Schedule 4, items 4 and 5	Immediately after the commencement of Schedule 2 to the <i>Family Law Amendment Act 2000</i>	27 December 2000
10. Schedule 4, items 9 to 13	Immediately after the commencement of Schedule 2 to the <i>Family Law Amendment Act 2000</i>	27 December 2000
12. Schedule 4, items 20 to 22	Immediately after the commencement of Schedule 2 to the <i>Family Law Amendment Act 2000</i>	27 December 2000
14. Schedule 4, items 25 to 27	Immediately after the commencement of Schedule 2 to the <i>Family Law Amendment Act 2000</i>	27 December 2000
15. Schedule 5, items 1A and 1	Immediately after the commencement of Schedule 2 to the <i>Family Law Amendment Act 2000</i>	27 December 2000
17. Schedule 5, item 4	Immediately after the commencement of Schedule 2 to the <i>Family Law Amendment Act 2000</i>	27 December 2000
20. Schedule 7, item 20	Immediately after the commencement of Schedule 2 to the <i>Family Law Amendment Act 2000</i>	27 December 2000
22. Schedule 7, items 25 and 26	Immediately after the commencement of Schedule 2 to the <i>Family Law Amendment Act 2000</i>	27 December 2000
24. Schedule 7, items 30 and 31	Immediately after the commencement of Schedule 2 to the <i>Family Law Amendment Act 2000</i>	27 December 2000

(zc) Subsection 2(1) (item 3) of the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 1	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i>	1 January 2005

**Act Notes**

(zd) Subsection 2(1) (item 2) of the *Family Law Amendment (Annuities) Act 2004* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedule 1	Immediately after the commencement of Schedule 6 to the <i>Family Law Amendment Act 2003</i> .	17 December 2004

(ze) Subsection 2(1) (item 4) of the *Family Law Amendment Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
4. Schedule 1, Part 17	Immediately after the commencement of Schedule 1 to the <i>Bankruptcy and Family Law Legislation Amendment Act 2005</i> .	18 September 2005

(zf) Subsection 2(1) (items 3–5) of the *Jurisdiction of Courts (Family Law) Act 2006* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 1, item 28	Immediately after the commencement of item 83 of Schedule 1 to the <i>Family Law Amendment Act 2005</i> .	3 August 2005
4. Schedule 1, item 29	Immediately after the commencement of item 126 of Schedule 1 to the <i>Family Law Amendment Act 2005</i> .	3 August 2005
5. Schedule 1, item 30	Immediately after the commencement of item 127 of Schedule 1 to the <i>Family Law Amendment Act 2005</i> .	3 August 2005

(zg) Subsection 2(1) (item 2) of the *Superannuation Legislation Amendment (Simplification) Act 2007* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedule 1	Immediately after the commencement of Schedule 1 to the <i>Tax Laws Amendment (Simplified Superannuation) Act 2007</i> .	15 March 2007

## Act Notes

- (zh) Subsection 2(1) (item 5) of the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
5. Schedule 1, items 99 and 100	Immediately before the commencement of items 92 to 96 of Schedule 2 to the <i>Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Act 2006</i> .	1 January 2008

**Table of Amendments**

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**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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### **Table of Amendments**

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Provision affected	How affected
Title	am. No. 181, 1987; No. 167, 1995; No. 115, 2008
<b>Part I</b>	
S. 3	am. No. 23, 1979; No. 118, 1999
S. 4	am. No. 63, 1976; No. 23, 1979; No. 2, 1982; No. 72, 1983; Nos. 63 and 72, 1984; No. 181, 1987; Nos. 157 and 182, 1989; No. 113, 1991; No. 104, 1992; No. 167, 1995; Nos. 146 and 194, 1999; No. 143, 2000; No. 86, 2002; No. 138, 2003; Nos. 20 and 98, 2005; Nos. 22 and 46, 2006; Nos. 115 and 144, 2008
S. 4AA	ad. No. 115, 2008
S. 4A	ad. No. 138, 2003
	am. No. 115, 2008
S. 4B	ad. No. 115, 2008
S. 5	rs. No. 63, 1976; No. 72, 1983 rep. No. 181, 1987 ad. No. 20, 2005
S. 5A	ad. No. 72, 1983 rep. No. 181, 1987
S. 7	rs. No. 104, 1992
S. 7A	ad. No. 24, 2001
S. 9	am. No. 63, 1976; No. 23, 1979; No. 181, 1987
<b>Part IA</b>	
Part IA	ad. No. 46, 2006
S. 9A	ad. No. 46, 2006
S. 10	am. Nos. 63 and 95, 1976; No. 72, 1983 rep. No. 181, 1987
<b>Part II</b>	
Part II	rs. No. 167, 1995; No. 46, 2006
<b>Division 1</b>	
S. 10A	ad. No. 46, 2006
<b>Division 2</b>	
Ss. 10B–10E	ad. No. 46, 2006
<b>Division 3</b>	
S. 10F	ad. No. 46, 2006
S. 10G	ad. No. 46, 2006 am. No. 8, 2007
S. 10H	ad. No. 46, 2006
Ss. 10J, 10K	ad. No. 46, 2006
<b>Division 4</b>	
S. 10L	ad. No. 46, 2006 am. No. 115, 2008
Ss. 10M, 10N	ad. No. 46, 2006
S. 10P	ad. No. 46, 2006
<b>Part III</b>	
Heading to Part III	rs. No. 167, 1995; No. 46, 2006
Part III	rs. No. 46, 2006

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Provision affected	How affected
<b>Division 1</b>	
Heading to Div. 1 of Part III	ad. No. 167, 1995 rs. No. 46, 2006
S. 11	am. No. 181, 1987; No. 37, 1991 rs. No. 167, 1995 rep. No. 46, 2006
Ss. 11A–11D	ad. No. 46, 2006
<b>Division 2</b>	
Div. 2 of Part III	ad. No. 167, 1995 rs. No. 46, 2006
Ss. 11E–11G	ad. No. 46, 2006
Div. 3 of Part III	ad. No. 167, 1995 rep. No. 46, 2006
Heading to Div. 4 of Part III	ad. No. 167, 1995 rep. No. 46, 2006
Heading to Div. 5 of Part III	ad. No. 167, 1995 rep. No. 46, 2006
Heading to Subdiv. A of	ad. No. 167, 1995 rep. No. 46, 2006
Div. 5 of Part III	
Heading to Subdiv. B of	ad. No. 167, 1995 rep. No. 46, 2006
Div. 5 of Part III	
Heading to Subdiv. C of	ad. No. 167, 1995 rep. No. 46, 2006
Div. 5 of Part III	
Div. 6 of Part III	ad. No. 167, 1995 rep. No. 46, 2006
<b>Part IIIA</b>	
Heading to Part IIIA	rep. No. 167, 1995 ad. No. 46, 2006
Part IIIA	ad. No. 113, 1991 rep. No. 167, 1995 ad. No. 46, 2006
<b>Division 1</b>	
Heading to Div. 1 of Part IIIA	rep. No. 167, 1995 ad. No. 46, 2006
S. 12	am. No. 181, 1987; No. 37, 1991 rs. No. 167, 1995 rep. No. 46, 2006
S. 12A	ad. No. 46, 2006 am. No. 8, 2007
<b>Division 2</b>	
Heading to Div. 2 of Part IIIA	rep. No. 167, 1995 ad. No. 46, 2006
Ss. 12B–12D	ad. No. 46, 2006
<b>Division 3</b>	
Heading to Div. 3 of Part IIIA	rep. No. 167, 1995 ad. No. 46, 2006

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Provision affected	How affected
Ss. 12E–12G	ad. No. 46, 2006
<b>Part IIIB</b>	
Part IIIB	ad. No. 46, 2006
<b>Division 1</b>	
S. 13	am. No. 181, 1987; No. 37, 1991 rs. No. 167, 1995 rep. No. 46, 2006
S. 13A	ad. No. 167, 1995 am. No. 46, 2006 rs. No. 46, 2006
<b>Division 2</b>	
S. 13B	ad. No. 167, 1995 am. No. 46, 2006 rs. No. 46, 2006
<b>Division 3</b>	
S. 13C	ad. No. 167, 1995 rs. No. 46, 2006
S. 13D	ad. No. 167, 1995 am. No. 194, 1999 rs. No. 46, 2006
<b>Division 4</b>	
Heading to s. 13E	am. No. 115, 2008
S. 13E	ad. No. 167, 1995 rs. No. 46, 2006 am. No. 115, 2008
Ss. 13F–13H	ad. No. 167, 1995 rs. No. 46, 2006
Ss. 13J, 13K	ad. No. 46, 2006
S. 14	am. No. 63, 1976; No. 72, 1983; No. 181, 1987; No. 182, 1989 rs. No. 167, 1995 rep. No. 46, 2006
S. 14A	ad. No. 167, 1995 rep. No. 46, 2006
S. 14B	ad. No. 167, 1995 am. No. 194, 1999; No. 98, 2005 rep. No. 46, 2006
S. 14C	ad. No. 167, 1995 am. No. 138, 2003 rep. No. 46, 2006
S. 14D	ad. No. 167, 1995 rep. No. 46, 2006
S. 14E	ad. No. 167, 1995 am. No. 143, 2000 rep. No. 46, 2006
Ss. 14F, 14G	ad. No. 167, 1995 rep. No. 46, 2006
S. 14H	ad. No. 167, 1995 rep. No. 46, 2006

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Provision affected	How affected
S. 15	am. No. 63, 1976; No. 72, 1983; No. 181, 1987; No. 167, 1995; No. 138, 2003 rep. No. 46, 2006
S. 15A	ad. No. 194, 1999 rep. No. 46, 2006
S. 16	rs. No. 63, 1976 am. No. 72, 1983; No. 181, 1987; No. 138, 2003 rep. No. 46, 2006
S. 16A	ad. No. 72, 1983 am. No. 181, 1987 rs. No. 167, 1995 rep. No. 46, 2006
Ss. 16B, 16C	ad. No. 167, 1995 rep. No. 46, 2006
S. 17	am. No. 72, 1983; No. 181, 1987; No. 167, 1995; No. 194, 1999; No. 138, 2003 rep. No. 46, 2006
S. 18	am. No. 63, 1976; No. 72, 1983 rep. No. 167, 1995
S. 19	am. No. 63, 1976; No. 181, 1987; No. 167, 1995 rep. No. 46, 2006
Heading to s. 19A	am. No. 194, 1999 rep. No. 46, 2006
S. 19A	ad. No. 113, 1991 am. No. 167, 1995; No. 194, 1999; No. 138, 2003 rep. No. 46, 2006
S. 19AAA	ad. No. 194, 1999 rep. No. 46, 2006
S. 19AA	ad. No. 167, 1995 rep. No. 46, 2006
Heading to s. 19B	am. No. 194, 1999 rep. No. 46, 2006
S. 19B	ad. No. 113, 1991 am. No. 167, 1995; No. 194, 1999; No. 138, 2003 rep. No. 46, 2006
S. 19BAA	ad. No. 194, 1999 rep. No. 46, 2006
S. 19BA	ad. No. 167, 1995 rep. No. 46, 2006
S. 19C	ad. No. 113, 1991 rep. No. 167, 1995
S. 19D	ad. No. 113, 1991 am. No. 194, 1999; No. 143, 2000 rep. No. 46, 2006
S. 19E	ad. No. 113, 1991 am. No. 194, 1999; No. 143, 2000; No. 98, 2005 rep. No. 46, 2006
Ss. 19EA, 19EB	ad. No. 143, 2000 rep. No. 46, 2006
Heading to s. 19F	am. No. 143, 2000 rep. No. 46, 2006

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Provision affected	How affected
S. 19F	ad. No. 113, 1991 am. No. 143, 2000 rep. No. 46, 2006
Note to s. 19F(1)	ad. No. 143, 2000 rep. No. 46, 2006
S. 19FA	ad. No. 143, 2000 rep. No. 46, 2006
S. 19G	ad. No. 113, 1991 rs. No. 143, 2000 rep. No. 46, 2006
S. 19GA	ad. No. 143, 2000 rep. No. 46, 2006
S. 19H	ad. No. 113, 1991 rep. No. 167, 1995 ad. No. 143, 2000 rep. No. 46, 2006
S. 19J	ad. No. 113, 1991 am. No. 167, 1995; No. 194, 1999; No. 138, 2003 rep. No. 46, 2006
S. 19K	ad. No. 113, 1991 am. No. 167, 1995 rep. No. 46, 2006
Heading to s. 19L	am. No. 143, 2000 rep. No. 46, 2006
S. 19L	ad. No. 113, 1991 am. No. 143, 2000 rep. No. 46, 2006
S. 19M	ad. No. 113, 1991 am. No. 167, 1995; No. 143, 2000 rep. No. 46, 2006
S. 19N	ad. No. 167, 1995 am. No. 138, 2003 rep. No. 46, 2006
Heading to s. 19P	am. No. 143, 2000 rep. No. 46, 2006
Ss. 19P, 19Q	ad. No. 167, 1995 am. No. 143, 2000 rep. No. 46, 2006
<b>Part IV</b>	
<b>Division 1</b>	
Heading to Div. 1 of Part IV	ad. No. 8, 1988
S. 20	am. No. 72, 1983; No. 8, 1988; No. 138, 2003
<b>Division 2</b>	
Heading to Div. 2 of Part IV	ad. No. 8, 1988
S. 21	am. No. 8, 1988
S. 21A	ad. No. 72, 1983
S. 21B	ad. No. 72, 1983 am. No. 8, 1988

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Provision affected	How affected
<b>Division 3</b>	
Heading to Div. 3 of Part IV	ad. No. 8, 1988
S. 22	am. No. 63, 1976; No. 102, 1977; No. 72, 1983; No. 181, 1987; No. 8, 1988; No. 143, 1992; No. 84, 1994; No. 143, 2000; No. 73, 2008
S. 23	am. No. 8, 1988; No. 143, 1992
S. 23A	ad. No. 102, 1977 rep. No. 159, 1991
S. 24	am. No. 8, 1988
S. 25	rs. No. 63, 1976 am. No. 8, 1988
S. 26	am. No. 181, 1987; No. 8, 1988
<b>Division 4</b>	
Div. 4 of Part IV	ad. No. 8, 1988
S. 26A	ad. No. 8, 1988
S. 26B	ad. No. 8, 1988 am. No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 98, 2005; No. 46, 2006
Note to s. 26B	ad. No. 143, 2000
Ss. 26C, 26D	ad. No. 8, 1988
S. 26E	ad. No. 8, 1988 am. No. 99, 1988 rs. No. 140, 2003
Ss. 26F, 26G	ad. No. 8, 1988
Ss. 26H, 26I	ad. No. 8, 1988 am. No. 159, 2001
S. 26J	ad. No. 8, 1988 am. No. 43, 1996
S. 26JA	ad. No. 122, 1991 am. No. 146, 1999
S. 26K	ad. No. 8, 1988 rs. No. 143, 1992
Ss. 26L–26N	ad. No. 8, 1988
<b>Division 5</b>	
Heading to Div. 5 of Part IV	ad. No. 8, 1988
S. 27	rs. No. 138, 2003
S. 27A	ad. No. 98, 2005
S. 28	am. No. 63, 1976; No. 102, 1977; No. 72, 1983; No. 181, 1987
S. 29	am. No. 63, 1976 rep. No. 72, 1983
S. 30	am. No. 63, 1976; No. 73, 2008
S. 31	am. No. 72, 1983; No. 181, 1987; No. 120, 1988; No. 194, 1999; No. 82, 2007; Nos. 73 and 115, 2008
Note to s. 31(2)	ad. No. 69, 2002
S. 32	rep. No. 209, 1976

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Provision affected	How affected
S. 33A	ad. No. 194, 1999 am. No. 143, 2000; No. 98, 2005
Ss. 33B, 33C	ad. No. 194, 1999 am. No. 23, 2006
S. 34	am. No. 72, 1983; No. 181, 1987; No. 194, 1999; No. 138, 2003
<b>Division 6</b>	
Heading to Div. 6 of Part IV	ad. No. 8, 1988
S. 36	am. No. 181, 1987
S. 37	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 181, 1987 rs. No. 157, 1989
S. 37A	am. No. 194, 1999; No. 46, 2006 ad. No. 72, 1983 am. No. 72, 1984 rs. No. 193, 1985 am. No. 181, 1987; Nos. 8 and 99, 1988; No. 167, 1995; Nos. 146 and 194, 1999; No. 143, 2000; Nos. 138 and 140, 2003; No. 98, 2005; No. 46, 2006; No. 115, 2008
Note to s. 37A	ad. No. 143, 2000
S. 37B	ad. No. 72, 1983
S. 37C	am. No. 193, 1985; No. 181, 1987; Nos. 146 and 194, 1999
<b>Division 7</b>	
Heading to Div. 7 of Part IV	ad. No. 8, 1988
S. 38	am. No. 72, 1983; No. 8, 1988; No. 194, 1999
<b>Part IVA</b>	
Part IVA	ad. No. 157, 1989
<b>Division 1</b>	
Ss. 38A, 38B	ad. No. 157, 1989
<b>Division 1A</b>	
Div. 1A of Part IVA	ad. No. 46, 2006
Ss. 38BA–38BD	ad. No. 46, 2006
<b>Division 2</b>	
Ss. 38C–38E	ad. No. 157, 1989
S. 38F	ad. No. 157, 1989 am. No. 159, 2001
S. 38G	ad. No. 157, 1989 rs. No. 122, 1991 am. No. 146, 1999
Ss. 38H, 38J	ad. No. 157, 1989
S. 38K	ad. No. 157, 1989 am. No. 122, 1991; No. 94, 1992; No. 26, 2008
Ss. 38L, 38M	ad. No. 157, 1989
<b>Division 3</b>	
S. 38N	ad. No. 157, 1989 am. No. 113, 1991; Nos. 146 and 194, 1999; No. 143, 2000; No. 138, 2003; No. 46, 2006

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Provision affected	How affected
S. 38P	ad. No. 157, 1989
S. 38Q	ad. No. 157, 1989 rs. No. 146, 1999
S. 38R	ad. No. 157, 1989 am. No. 46, 2006
<b>Division 4</b>	
S. 38S	ad. No. 157, 1989 rs. No. 152, 1997
Ss. 38T, 38U	ad. No. 157, 1989 rep. No. 152, 1997
S. 38V	ad. No. 157, 1989 rep. No. 136, 1991
Ss. 38W, 38X	ad. No. 157, 1989
<b>Part V</b>	
Heading to Part V	rs. No. 115, 2008
<b>Division 1</b>	
Heading to Div. 1 of Part V	ad. No. 115, 2008
S. 39	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 181, 1987; No. 8, 1988; No. 34, 1997; No. 89, 1998; No. 194, 1999; No. 161, 2000; No. 69, 2002; No. 98, 2005; No. 22, 2006; No. 82, 2007
Note to s. 39(6)	ad. No. 46, 2006
<b>Division 2</b>	
Div. 2 of Part V	ad. No. 115, 2008
Ss. 39A–39G	ad. No. 115, 2008
<b>Division 3</b>	
Heading to Div. 3 of Part V	ad. No. 115, 2008
S. 40	am. No. 72, 1983; No. 181, 1987; No. 89, 1998; No. 194, 1999
S. 40A	ad. No. 194, 1999
S. 41	am. No. 63, 1976; No. 181, 1987; No. 159, 1991; No. 194, 1999; No. 46, 2006
S. 42	am. No. 72, 1983; No. 194, 1999
Note to s. 42(2)	ad. No. 69, 2002
S. 43	am. No. 181, 1987; No. 167, 1995; No. 115, 2008
S. 44	am. No. 63, 1976; No. 72, 1983; No. 72, 1984; No. 181, 1987; No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 138, 2003; Nos. 20 and 98, 2005; No. 46, 2006; No. 115, 2008
Heading to s. 44A	am. No. 98, 2005
S. 44A	ad. No. 8, 1988 am. No. 98, 2005
S. 45	am. No. 63, 1976 rs. No. 23, 1979 am. No. 72, 1983; No. 181, 1987; No. 8, 1988; No. 194, 1999; No. 143, 2000; No. 20, 2005; No. 115, 2008
S. 45A	ad. No. 194, 1999 am. No. 143, 2000

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Provision affected	How affected
S. 46	rep. No. 46, 2006 am. No. 72, 1983; No. 181, 1987 (as am. by No. 8, 1988); No. 8, 1988; No. 194, 1999; No. 143, 2000; No. 98, 2005; No. 22, 2006
<b>Part VI</b>	
Heading to Part VI	rs. No. 98, 2005
Heading to s. 48	rs. No. 98, 2005
S. 48	am. No. 72, 1983; No. 98, 2005
S. 50	am. No. 98, 2005
S. 51	rs. No. 209, 1976
Heading to s. 52	am. No. 98, 2005
S. 52	am. No. 98, 2005
S. 54	rep. No. 98, 2005
Heading to s. 55	am. No. 98, 2005
S. 55	am. No. 181, 1987; No. 98, 2005
Heading to s. 55A	am. No. 98, 2005
S. 55A	ad. No. 181, 1987 am. No. 167, 1995; No. 98, 2005; No. 46, 2006
Heading to s. 56	am. No. 98, 2005
S. 56	am. No. 138, 2003; No. 98, 2005
Ss. 57–59	rs. No. 98, 2005
<b>Part VII</b>	
Heading to Part VII	rs. No. 181, 1987; No. 167, 1995
Part VII	rs. No. 167, 1995
<b>Division 1</b>	
Div. 1 of Part VII	ad. No. 181, 1987 rs. No. 167, 1995
<b>Subdivision A</b>	
S. 60	am. No. 72, 1983; No. 72, 1984 rs. No. 181, 1987 am. No. 182, 1989; Nos. 37 and 113, 1991; No. 22, 1992 rep. No. 167, 1995
S. 60A	ad. No. 72, 1983 rs. No. 181, 1987 am. No. 37, 1991 rs. No. 167, 1995
S. 60AA	ad. No. 37, 1991 rep. No. 167, 1995
<b>Subdivision B</b>	
S. 60B	ad. No. 181, 1987 rs. No. 167, 1995; No. 46, 2006
S. 60C	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 143, 2000; No. 138, 2003; No. 46, 2006

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Provision affected	How affected
<b>Subdivision BA</b>	
Subdiv. BA of Div. 1 of Part VII	ad. No. 46, 2006
Ss. 60CA–60CG	ad. No. 46, 2006
<b>Subdivision C</b>	
S. 60D	ad. No. 181, 1987 rep. No. 37, 1991 ad. No. 167, 1995 am. No. 194, 1999; No. 143, 2000 rep. No. 46, 2006
S. 60E	ad. No. 181, 1987 am. No. 22, 1992 rs. No. 167, 1995
<b>Subdivision D</b>	
S. 60EA	ad. No. 115, 2008
S. 60F	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 194, 1999; No. 98, 2005; No. 115, 2008
S. 60G	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 115, 2008
Note to s. 60G(2)	am. No. 46, 2006
S. 60H	ad. No. 181, 1987 am. No. 22, 1992 rs. No. 167, 1995 am. No. 194, 1999; No. 115, 2008
Ss. 60HA, 60HB	ad. No. 115, 2008
<b>Subdivision E</b>	
Subdiv. E of Div. 1 of Part VII	ad. No. 46, 2006
Subheads. to s. 60I(5), (6)	am. No. 115, 2008
S. 60I	ad. No. 46, 2006 am. No. 115, 2008
Ss. 60J, 60K	ad. No. 46, 2006
<b>Division 2</b>	
Div. 2 of Part VII	ad. No. 181, 1987 rs. No. 167, 1995
S. 61	am. No. 63, 1976; No. 23, 1979 rs. No. 181, 1987 rep. No. 167, 1995
Ss. 61A–61C	ad. No. 181, 1987 rs. No. 167, 1995
Notes 1–3 to s. 61C(1)	ad. No. 46, 2006
Note to s. 61C	ad. No. 69, 2002
S. 61D	ad. No. 167, 1995
Ss. 61DA, 61DB	ad. No. 46, 2006

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Provision affected	How affected
S. 61E	ad. No. 167, 1995
S. 61F	ad. No. 46, 2006
<b>Division 3</b>	
Heading to Div. 3 of Part VII	ad. No. 181, 1987 rs. No. 167, 1995; No. 46, 2006
Div. 3 of Part VII	rs. No. 167, 1995
S. 62	am. No. 63, 1976; No. 23, 1979; No. 72, 1983 rep. No. 167, 1995
S. 62A	ad. No. 72, 1983 rs. No. 167, 1995; No. 46, 2006
S. 62B	ad. No. 167, 1995 rs. No. 46, 2006
Heading to s. 62C	am. No. 194, 1999 rep. No. 46, 2006
S. 62C	ad. No. 167, 1995 am. No. 138, 2003 rep. No. 46, 2006
S. 62CA	ad. No. 194, 1999 rep. No. 46, 2006
S. 62D	ad. No. 167, 1995 rep. No. 46, 2006
Ss. 62E, 62F	ad. No. 167, 1995 am. No. 138, 2003 rep. No. 46, 2006
Heading to s. 62G	am. No. 46, 2006
S. 62G	ad. No. 167, 1995 am. No. 46, 2006
S. 62H	ad. No. 167, 1995 am. No. 194, 1999; No. 138, 2003 rep. No. 46, 2006
<b>Division 4</b>	
Div. 4 of Part VII	ad. No. 181, 1987 rs. No. 167, 1995
S. 63	am. No. 23, 1979 rs. No. 181, 1987 am. No. 37, 1991 rep. No. 167, 1995
S. 63A	ad. No. 181, 1987 am. No. 124, 1989 rs. No. 167, 1995 am. No. 138, 2003
S. 63B	ad. No. 181, 1987 rs. No. 167, 1995; No. 138, 2003
S. 63C	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 138, 2003; No. 46, 2006
Notes to s. 63C(2), (3)	am. No. 34, 1997
S. 63CAA	ad. No. 34, 1997

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**Table of Amendments**

Provision affected	How affected
S. 63D	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 194, 1999 rs. No. 138, 2003
S. 63DA	ad. No. 143, 2000 rs. No. 138, 2003; No. 46, 2006
S. 63DB	ad. No. 138, 2003
S. 63E	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 194, 1999; No. 143, 2000 rs. No. 138, 2003 am. No. 46, 2006
Note to s. 63E	ad. No. 69, 2002 rep. No. 138, 2003
S. 63F	ad. No. 181, 1987 am. No. 37, 1991 rs. No. 167, 1995 am. No. 138, 2003; No. 46, 2006
Note to s. 63F(1)	ad. No. 69, 2002 rep. No. 138, 2003
Note to s. 63F(3)	am. No. 143, 2000 rs. No. 46, 2006
Note to s. 63F(6)	am. No. 46, 2006
S. 63G	ad. No. 167, 1995 am. No. 138, 2003; No. 146, 2006
Note to s. 63G(5)	am. No. 34, 1997
S. 63H	ad. No. 167, 1995 am. No. 138, 2003
Note to s. 63H(2)	am. No. 46, 2006
<b>Division 5</b>	
Heading to Div. 5 of Part VII	ad. No. 181, 1983 rs. No. 167, 1995
S. 64	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 72, 1984; No. 181, 1987; No. 8, 1988; No. 182, 1989; No. 37, 1991 rep. No. 167, 1995
S. 64A	ad. No. 182, 1989 am. No. 37, 1991 rs. No. 167, 1995
S. 64B	ad. No. 167, 1995 am. No. 194, 1999; No. 46, 2006
S. 64C	ad. No. 167, 1995
S. 64D	ad. No. 46, 2006
S. 65	am. No. 72, 1983; No. 181, 1987 rep. No. 167, 1995

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Provision affected	How affected
<b>Division 6</b>	
Div. 6 of Part VII	ad. No. 181, 1983 rs. No. 167, 1995
<b>Subdivision A</b>	
S. 65A	ad. No. 120, 1988 rs. No. 167, 1995 am. No. 46, 2006
S. 65AA	ad. No. 143, 2000 rs. No. 46, 2006
S. 65B	ad. No. 167, 1995
<b>Subdivision B</b>	
S. 65C	ad. No. 167, 1995 am. No. 143, 2000
S. 65D	ad. No. 167, 1995 am. No. 143, 2000; No. 46, 2006
Note to s. 65D(1)	ad. No. 69, 2002
Note to s. 65D(3)	am. No. 46, 2006
Ss. 65DAA–65DAC	ad. No. 46, 2006
S. 65DAE	ad. No. 46, 2006
Heading to s. 65DA	am. No. 46, 2006
S. 65DA	ad. No. 143, 2000
S. 65E	ad. No. 167, 1995 rep. No. 46, 2006
S. 65F	ad. No. 167, 1995 am. No. 98, 2005; No. 46, 2006
Heading to s. 65G	am. No. 46, 2006
S. 65G	ad. No. 167, 1995 am. No. 46, 2006
S. 65H	ad. No. 167, 1995
S. 65J	ad. No. 167, 1995
Heading to s. 65K	am. No. 46, 2006
S. 65K	ad. No. 167, 1995 am. No. 46, 2006
Heading to s. 65L	am. No. 46, 2006
S. 65L	ad. No. 167, 1995 am. No. 46, 2006
Note to s. 65L(2)	am. No. 46, 2006
S. 65LA	ad. No. 138, 2003 am. No. 98, 2005; No. 46, 2006
Note to s. 65LA(2)	am. No. 46, 2006
S. 65LB	ad. No. 46, 2006
<b>Subdivision C</b>	
Heading to Subdiv. C of	rs. No. 46, 2006
Div. 6 of Part VII	
Heading to s. 65M	am. No. 46, 2006
S. 65M	ad. No. 167, 1995

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Provision affected	How affected
S. 65N	am. No. 46, 2006 ad. No. 167, 1995 rs. No. 46, 2006
S. 65NA	ad. No. 46, 2006
S. 65P	ad. No. 167, 1995 rs. No. 46, 2006
S. 65Q	ad. No. 167, 1995 am. No. 143, 2000; No. 46, 2006
<b>Subdivision D</b>	
S. 65R	ad. No. 167, 1995 am. No. 46, 2006
S. 65S	ad. No. 167, 1995
S. 65T	ad. No. 167, 1995 am. No. 138, 2003
Ss. 65U, 65V	ad. No. 167, 1995 am. No. 143, 2000
S. 65W	ad. No. 167, 1995
<b>Subdivision E</b>	
S. 65X	ad. No. 167, 1995 am. No. 46, 2006
Heading to s. 65Y	am. No. 46, 2006
S. 65Y	ad. No. 167, 1995 am. No. 24, 2001; No. 46, 2006
Note to s. 65Y(1), (2)	ad. No. 24, 2001
Heading to s. 65Z	am. No. 46, 2006
S. 65Z	ad. No. 167, 1995 am. No. 24, 2001; No. 46, 2006
Note to s. 65Z(1), (2)	ad. No. 24, 2001
Heading to s. 65ZA	am. No. 46, 2006
S. 65ZA	ad. No. 167, 1995 am. No. 24, 2001; No. 46, 2006
Note to s. 65ZA(3)	ad. No. 24, 2001
Heading to s. 65ZB	am. No. 46, 2006
S. 65ZB	ad. No. 167, 1995 am. No. 24, 2001; No. 46, 2006
Note to s. 65ZB(3)	ad. No. 24, 2001
Ss. 65ZC, 65ZD	ad. No. 167, 1995
S. 66	rep. No. 167, 1995
<b>Division 7</b>	
Div. 7 of Part VII	ad. No. 181, 1987 rs. No. 167, 1995
<b>Subdivision A</b>	
S. 66A	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 143, 2000
<b>Subdivision B</b>	

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Provision affected	How affected
S. 66B	ad. No. 181, 1987 rs. No. 167, 1995
S. 66BA	ad. No. 124, 1989 rs. No. 138, 1990 rep. No. 167, 1995
S. 66C	ad. No. 181, 1987 rs. No. 167, 1995
S. 66D	ad. No. 181, 1987 am. No. 37, 1991 rs. No. 167, 1995
<b>Subdivision C</b>	
S. 66E	ad. No. 181, 1987 am. No. 37, 1991 rs. No. 167, 1995 am. No. 143, 2000; No. 146, 2006
<b>Subdivision D</b>	
S. 66F	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 143, 2000
S. 66FA	ad. No. 22, 1992 rep. No. 167, 1995
S. 66G	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 82, 2007
S. 66H	ad. No. 181, 1987 rs. No. 167, 1995
Ss. 66J, 66K	ad. No. 181, 1987 rs. No. 167, 1995
S. 66L	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 143, 2000
S. 66M	ad. No. 181, 1987 am. No. 138, 1990 rs. No. 167, 1995 am. No. 34, 1997; No. 144, 2008
S. 66N	ad. No. 181, 1987 am. No. 37, 1991 rs. No. 167, 1995
<b>Subdivision E</b>	
S. 66P	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 194, 1999
Ss. 66Q, 66R	ad. No. 181, 1987 rs. No. 167, 1995
S. 66S	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 194, 1999; No. 143, 2000; No. 138, 2003; No. 82, 2007
<b>Subdivision EA</b>	
Subdiv. EA of Div. 7 of	ad. No. 143, 2000
Part VII	

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Provision affected	How affected
S. 66SA	ad. No. 143, 2000 am. No. 146, 2006
<b>Subdivision F</b>	
Ss. 66T–66V	ad. No. 181, 1987 rs. No. 167, 1995
S. 66VA	ad. No. 143, 2000
S. 66W	ad. No. 181, 1987 rs. No. 167, 1995; No. 143, 2000
<b>Subdivision G</b>	
Subdiv. G of Div. 7 of	ad. No. 98, 2005
Part VII	
S. 66X	ad. No. 181, 1987 rep. No. 167, 1995 ad. No. 98, 2005
Ss. 66Y, 66Z	ad. No. 181, 1987 rep. No. 167, 1995
Ss. 66ZA–66ZC	ad. No. 181, 1987 rep. No. 167, 1995
S. 66ZD	ad. No. 181, 1987 am. No. 182, 1989; No. 37, 1991 rep. No. 167, 1995
S. 66ZDA	ad. No. 182, 1989 am. No. 37, 1991 rep. No. 167, 1995
S. 66ZE	ad. No. 181, 1987 am. No. 37, 1991 rep. No. 167, 1995
S. 67	am. No. 63, 1976; No. 72, 1983; No. 181, 1987 rep. No. 167, 1995
<b>Division 8</b>	
Div. 8 of Part VII	ad. No. 181, 1987 rs. No. 167, 1995
<b>Subdivision A</b>	
S. 67A	ad. No. 167, 1995
<b>Subdivision B</b>	
Ss. 67B, 67C	ad. No. 167, 1995
S. 67D	ad. No. 167, 1995 am. No. 194, 1999
Ss. 67E–67G	ad. No. 167, 1995
<b>Subdivision C</b>	
S. 67H	ad. No. 167, 1995 am. No. 146, 1999; No. 138, 2003 rep. No. 46, 2006
S. 67J	ad. No. 167, 1995 am. No. 138, 2003
S. 67K	ad. No. 167, 1995 am. No. 143, 2000; No. 69, 2002; No. 46, 2006
S. 67L	ad. No. 167, 1995

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Provision affected	How affected
Note to s. 67L	am. No. 46, 2006
S. 67M	ad. No. 167, 1995 am. No. 143, 2000; No. 69, 2002
S. 67N	ad. No. 167, 1995 am. No. 194, 1999; No. 143, 2000; No. 69, 2002
S. 67P	ad. No. 167, 1995 am. No. 24, 2001; No. 69, 2002; No. 138, 2003
S. 67Q	ad. No. 167, 1995 am. No. 143, 2000; No. 46, 2006
Note to s. 67Q	rep. No. 143, 2000
Notes 1, 2 to s. 67Q	ad. No. 143, 2000
Ss. 67R, 67S	ad. No. 167, 1995
S. 67T	ad. No. 167, 1995 am. No. 143, 2000; No. 46, 2006
Ss. 67U, 67V	ad. No. 167, 1995
Note to s. 67V	am. No. 46, 2006
S. 67W	ad. No. 167, 1995 am. No. 194, 1999; No. 143, 2000; No. 138, 2003
S. 67X	ad. No. 167, 1995 am. No. 143, 2000
Note to s. 67X(3)	ad. No. 143, 2000
S. 67Y	ad. No. 167, 1995 am. No. 138, 2003
<b>Subdivision D</b>	
S. 67Z	ad. No. 167, 1995 am. No. 194, 1999; No. 138, 2003
Heading to s. 67ZA	am. No. 143, 2000; No. 46, 2006
S. 67ZA	ad. No. 167, 1995 am. No. 143, 2000; No. 46, 2006
S. 67ZB	ad. No. 167, 1995
<b>Subdivision E</b>	
S. 67ZC	ad. No. 167, 1995
Note to s. 67ZC(1)	ad. No. 69, 2002
Note to s. 67ZC(2)	am. No. 46, 2006
S. 67ZD	ad. No. 167, 1995
S. 68	am. No. 72, 1983; No. 181, 1987 rep. No. 167, 1995
<b>Division 9</b>	
Div. 9 of Part VII	ad. No. 181, 1987 rs. No. 167, 1995
S. 68A	ad. No. 167, 1995
S. 68B	ad. No. 167, 1995 am. No. 46, 2006
S. 68C	ad. No. 167, 1995 am. No. 143, 2000
Note to s. 68C(1)	ad. No. 143, 2000

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Provision affected	How affected
<b>Division 10</b>	
Div. 10 of Part VII	ad. No. 181, 1987 rs. No. 167, 1995; No. 46, 2006
S. 68D	ad. No. 167, 1995 rep. No. 46, 2006
Ss. 68E, 68F	ad. No. 167, 1995 rep. No. 46, 2006
S. 68G	ad. No. 167, 1995 am. No. 194, 1999 rep. No. 46, 2006
S. 68H	ad. No. 167, 1995 rep. No. 46, 2006
S. 68J	ad. No. 167, 1995 am. No. 194, 1999; No. 138, 2003 rep. No. 46, 2006
S. 68K	ad. No. 167, 1995 rep. No. 46, 2006
S. 68L	ad. No. 167, 1995 am. No. 143, 2000 rs. No. 46, 2006
S. 68LA	ad. No. 46, 2006
S. 68M	ad. No. 167, 1995 rs. No. 46, 2006
<b>Division 11</b>	
Heading to Div. 11 of Part VII	ad. No. 181, 1987 rs. No. 167, 1995; No. 46, 2006
Div. 11 of Part VII	rs. No. 46, 2006
S. 68N	ad. No. 167, 1995 rs. No. 46, 2006
S. 68P	ad. No. 167, 1995 am. No. 138, 2003 rs. No. 46, 2006
S. 68Q	ad. No. 167, 1995 rs. No. 46, 2006
S. 68R	ad. No. 167, 1995 am. No. 138, 2003 rs. No. 46, 2006
S. 68S	ad. No. 167, 1995 rs. No. 46, 2006
S. 68T	ad. No. 167, 1995 am. No. 194, 1999 rs. No. 46, 2006
S. 69	am. No. 72, 1984 rep. No. 167, 1995
<b>Division 12</b>	

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Provision affected	How affected
Heading to Div. 12 of Part VII	ad. No. 181, 1987 rs. No. 182, 1989; No. 167, 1995
Div. 12 of Part VII	rs. No. 167, 1995
<b>Subdivision A</b>	
S. 69A	ad. No. 167, 1995
<b>Subdivision B</b>	
S. 69B	ad. No. 167, 1995 am. No. 146, 2006
Ss. 69C–69E	ad. No. 167, 1995
Note to s. 69E	ad. No. 69, 2002
S. 69F	ad. No. 167, 1995
<b>Subdivision C</b>	
S. 69G	ad. No. 167, 1995
Heading to s. 69H	am. No. 194, 1999
S. 69H	ad. No. 167, 1995 am. No. 194, 1999
S. 69J	ad. No. 167, 1995 am. No. 22, 2006
Note to s. 69J(1)	ad. No. 46, 2006
Ss. 69K–69M	ad. No. 167, 1995
S. 69MA	ad. No. 194, 1999 rep. No. 143, 2000
S. 69N	ad. No. 167, 1995 am. No. 34, 1997; No. 98, 2005; No. 22, 2006
<b>Subdivision D</b>	
S. 69P	ad. No. 167, 1995 am. No. 98, 2005
Ss. 69Q, 69R	ad. No. 167, 1995
S. 69S	ad. No. 167, 1995 am. No. 82, 2007
Ss. 69T, 69U	ad. No. 167, 1995
<b>Subdivision E</b>	
S. 69V	ad. No. 167, 1995
S. 69VA	ad. No. 143, 2000
S. 69W	ad. No. 167, 1995 am. No. 46, 2006
S. 69X	ad. No. 167, 1995
S. 69XA	ad. No. 82, 2007
S. 69Y	ad. No. 167, 1995
S. 69Z	ad. No. 167, 1995 am. No. 46, 2006
S. 69ZA	ad. No. 167, 1995 am. No. 46, 2006
S. 69ZB	ad. No. 167, 1995
S. 69ZC	ad. No. 167, 1995 am. No. 46, 2006

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Provision affected	How affected
S. 69ZD	ad. No. 167, 1995 am. No. 82, 2007
<b>Subdivision F</b>	
Ss. 69ZE–69ZG	ad. No. 167, 1995
S. 69ZH	ad. No. 167, 1995 am. No. 98, 2005; No. 46, 2006
Ss. 69ZJ, 69ZK	ad. No. 167, 1995
<b>Division 12A</b>	
Div. 12A of Part VII	ad. No. 37, 1991 rep. No. 167, 1995 ad. No. 46, 2006
<b>Subdivision A</b>	
S. 69ZM	ad. No. 46, 2006 am. No. 115, 2008
<b>Subdivision B</b>	
Ss. 69ZN–69ZP	ad. No. 46, 2006
<b>Subdivision C</b>	
Ss. 69ZQ–69ZS	ad. No. 46, 2006
<b>Subdivision D</b>	
Ss. 69ZT–69ZW	ad. No. 46, 2006
S. 69ZX	ad. No. 46, 2006 am. No. 116, 2007
S. 70	am. No. 72, 1983; No. 181, 1987; No. 182, 1989 rep. No. 167, 1995
S. 70AA	ad. No. 182, 1989 am. No. 37, 1991 rep. No. 167, 1995
<b>Division 13</b>	
Div. 13 of Part VII	ad. No. 181, 1987 rs. No. 167, 1995
<b>Subdivision A</b>	
S. 70A	ad. No. 72, 1983 am. No. 181, 1987; No. 37, 1991 rs. No. 167, 1995
<b>Subdivision B</b>	
S. 70B	ad. No. 72, 1983 am. No. 181, 1987; No. 37, 1991 rs. No. 167, 1995 rep. No. 46, 2006
Ss. 70BA–70BC	ad. No. 37, 1991 rep. No. 167, 1995
S. 70C	ad. No. 181, 1987 am. No. 182, 1989 rs. No. 167, 1995 am. No. 194, 1999
S. 70D	ad. No. 181, 1987 rs. No. 182, 1989; No. 167, 1995 am. No. 194, 1999

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Provision affected	How affected
S. 70E	ad. No. 181, 1987 rs. No. 167, 1995
<b>Subdivision C</b>	
S. 70F	ad. No. 37, 1991 rs. No. 167, 1995 am. No. 143, 2000 rep. No. 46, 2006
Ss. 70G, 70H	ad. No. 167, 1995
Note to s. 70H	ad. No. 69, 2002
S. 70J	ad. No. 167, 1995 am. No. 46, 2006
Heading to s. 70K	am. No. 46, 2006
Ss. 70K, 70L	ad. No. 167, 1995 am. No. 46, 2006
<b>Subdivision D</b>	
S. 70M	ad. No. 167, 1995 am. No. 143, 2000; No. 138, 2003; No. 46, 2006
S. 70N	ad. No. 167, 1995 am. No. 143, 2000; No. 46, 2006
<b>Division 13A</b>	
Div. 13A of Part VII	ad. No. 143, 2000 rs. No. 46, 2006
<b>Subdivision A</b>	
Ss. 70NAA–70NAF	ad. No. 46, 2006
Subdiv. AA of Div. 13A of Part VII	ad. No. 98, 2005 rep. No. 46, 2006
<b>Subdivision B</b>	
S. 70NB	ad. No. 143, 2000 am. No. 138, 2003 rep. No. 46, 2006
S. 70NBA	ad. No. 143, 2000 rs. No. 46, 2006
S. 70NBB	ad. No. 46, 2006
<b>Subdivision C</b>	
S. 70NC	ad. No. 143, 2000 rep. No. 46, 2006
Ss. 70NCA, 70NCB	ad. No. 46, 2006
<b>Subdivision D</b>	
S. 70ND	ad. No. 143, 2000 rep. No. 46, 2006
Ss. 70NDA–70NDC	ad. No. 46, 2006
<b>Subdivision E</b>	
S. 70NE	ad. No. 143, 2000 rep. No. 46, 2006
S. 70NEA	ad. No. 143, 2000 rs. No. 46, 2006
S. 70NEB	ad. No. 98, 2005

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Provision affected	How affected
Ss. 70NEC, 70NED	rs. No. 46, 2006
Ss. 70NEF, 70NEG	ad. No. 46, 2006
<b>Subdivision F</b>	ad. No. 46, 2006
S. 70NF	ad. No. 143, 2000 am. No. 138, 2003 rep. No. 46, 2006
Ss. 70NFA–70NFJ	ad. No. 46, 2006
S. 70NG	ad. No. 143, 2000 am. No. 138, 2003 rep. No. 46, 2006
S. 70NH	ad. No. 143, 2000 rep. No. 46, 2006
S. 70NI	ad. No. 143, 2000 am. No. 138, 2003 rep. No. 46, 2006
S. 70NIA	ad. No. 143, 2000 rs. No. 138, 2003 rep. No. 46, 2006
Heading to s. 70NIB	am. No. 138, 2003 rep. No. 46, 2006
S. 70NIB	ad. No. 143, 2000 am. No. 138, 2003 rep. No. 46, 2006
Ss. 70NJ, 70NK	ad. No. 143, 2000 am. No. 138, 2003 rep. No. 46, 2006
Ss. 70NL, 70NM	ad. No. 143, 2000 rep. No. 46, 2006
S. 70NN	ad. No. 143, 2000 am. No. 98, 2005 rep. No. 46, 2006
S. 70NO	ad. No. 143, 2000 am. No. 138, 2003; No. 98, 2005 rep. No. 46, 2006
S. 70NP	ad. No. 143, 2000 rep. No. 46, 2006
S. 70NQ	ad. No. 143, 2000 rs. No. 138, 2003 rep. No. 46, 2006
S. 70NR	ad. No. 143, 2000 rep. No. 46, 2006
<b>Division 14</b>	
Div. 14 of Part VII	ad. No. 181, 1987 rs. No. 167, 1995
S. 70P	ad. No. 167, 1995
S. 70Q	ad. No. 167, 1995 am. No. 138, 2003
<b>Part VIII</b>	
Heading to Part VIII	rs. No. 181, 1987

### **Table of Amendments**

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Provision affected	How affected
S. 71A	ad. No. 143, 2000 am. No. 20, 2005
S. 72	rs. No. 72, 1983 am. No. 20, 2005
S. 73	rep. No. 181, 1987
S. 74	am. No. 181, 1987; No. 20, 2005
S. 75	am. No. 63, 1976; No. 72, 1983; No. 181, 1987; No. 124, 1989; No. 84, 1997; No. 143, 2000; Nos. 20 and 98, 2005; No. 22, 2006; No. 115, 2008
S. 76	rep. No. 181, 1987
S. 77	am. No. 181, 1987
S. 77A	ad. No. 181, 1987
S. 78	am. No. 120, 1988
S. 79	am. No. 63, 1976; No. 72, 1983; No. 181, 1987; No. 124, 1989; No. 84, 1997; No. 194, 1999; Nos. 20 and 98, 2005; No. 115, 2008
S. 79A	ad. No. 63, 1976 am. No. 23, 1979; No. 72, 1983; No. 181, 1987; No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 86, 2002; No. 20, 2005; No. 46, 2006
Ss. 79B–79E	ad. No. 86, 2002
S. 79F	ad. No. 20, 2005
Note to s. 79F	ad. No. 115, 2008
Ss. 79G, 79H	ad. No. 20, 2005
S. 79J	ad. No. 20, 2005
S. 80	am. No. 181, 1987; No. 194, 1999; No. 20, 2005
S. 82	am. No. 72, 1983; No. 181, 1987
S. 83	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 181, 1987; No. 194, 1999; No. 20, 2005; No. 82, 2007; No. 115, 2008
S. 84	am. No. 72, 1983; No. 181, 1987 rep. No. 143, 2000
S. 85	am. No. 72, 1983 rep. No. 143, 2000
S. 85A	ad. No. 72, 1983 am. No. 143, 2000
S. 86A	ad. No. 143, 2000
S. 86	am. No. 72, 1983; No. 181, 1987; No. 124, 1989; No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 146, 2006
S. 87	am. No. 23, 1979 rs. No. 72, 1983 am. No. 72, 1983; No. 72, 1984; No. 181, 1987; No. 124, 1989; No. 167, 1995; No. 194, 1999; No. 143, 2000
S. 87A	ad. No. 181, 1987
S. 88	am. No. 72, 1983
S. 89	am. No. 72, 1984
S. 89A	ad. No. 63, 1976 am. No. 181, 1987

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**Table of Amendments**

Provision affected	How affected
S. 90	am. No. 63, 1976 rs. No. 72, 1983 am. No. 181, 1987; No. 37, 1991; No. 98, 2005
<b>Part VIIA</b>	
Part VIIAA	ad. No. 138, 2003
<b>Division 1</b>	
<b>Subdivision A</b>	
Ss. 90AA–90AC	ad. No. 138, 2003
S. 90ACA	ad. No. 153, 2004 rs. No. 15, 2007
S. 90AD	ad. No. 138, 2003
S. 90ADA	ad. No. 138, 2003
<b>Division 2</b>	
S. 90AE	ad. No. 138, 2003
<b>Division 3</b>	
S. 90AF	ad. No. 138, 2003
<b>Division 4</b>	
Ss. 90AG–90AK	ad. No. 138, 2003
<b>Part VIIA</b>	
Part VIIIA	ad. No. 143, 2000
S. 90A	ad. No. 143, 2000
S. 90B	ad. No. 143, 2000 am. No. 98, 2005; No. 115, 2008
S. 90C	ad. No. 143, 2000 am. No. 138, 2003; No. 98, 2005; No. 115, 2008
Heading to s. 90D	am. No. 98, 2005
S. 90D	ad. No. 143, 2000 am. No. 98, 2005; No. 115, 2008
S. 90DA	ad. No. 20, 2005 am. No. 115, 2008
S. 90DB	ad. No. 115, 2008
S. 90E	ad. No. 143, 2000 am. No. 115, 2008
Ss. 90F, 90G	ad. No. 143, 2000 am. No. 138, 2003; No. 115, 2008
S. 90H	ad. No. 143, 2000
S. 90J	ad. No. 143, 2000 am. No. 138, 2003; No. 115, 2008
S. 90K	ad. No. 143, 2000 am. No. 61, 2001; No. 138, 2003; No. 46, 2006; No. 115, 2008
S. 90KA	ad. No. 143, 2000
S. 90L	ad. No. 143, 2000 rs. No. 138, 2003
Ss. 90M, 90N	ad. No. 86, 2002
Ss. 90P, 90Q	ad. No. 86, 2002
<b>Part VIIAB</b>	

### **Table of Amendments**

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Provision affected	How affected
Part VIIIAB	ad. No. 115, 2008
<b>Division 1</b>	
<b>Subdivision A</b>	
Ss. 90RA, 90RB	ad. No. 115, 2008
<b>Subdivision B</b>	
S. 90RC	ad. No. 115, 2008
<b>Subdivision C</b>	
Ss. 90RD–90RH	ad. No. 115, 2008
<b>Division 2</b>	
<b>Subdivision A</b>	
Ss. 90SA–90SC	ad. No. 115, 2008
<b>Subdivision B</b>	
Ss. 90SD–90SJ	ad. No. 115, 2008
<b>Subdivision C</b>	
Ss. 90SK–90SN	ad. No. 115, 2008
<b>Subdivision D</b>	
Ss. 90SO–90SR	ad. No. 115, 2008
<b>Subdivision E</b>	
Ss. 90SS, 90ST	ad. No. 115, 2008
<b>Division 3</b>	
S. 90TA	ad. No. 115, 2008
<b>Division 4</b>	
Ss. 90UA–90UN	ad. No. 115, 2008
<b>Division 5</b>	
Ss. 90VA–90VD	ad. No. 115, 2008
<b>Division 6</b>	
S. 90WA	ad. No. 115, 2008
<b>Part VIIIB</b>	
Part VIIIB	ad. No. 61, 2001
<b>Division 1</b>	
<b>Subdivision A</b>	
S. 90MA	ad. No. 61, 2001 am. No. 115, 2008
S. 90MB	ad. No. 61, 2001 am. No. 114, 2001
Heading to s. 90MC	am. No. 115, 2008
S. 90MC	ad. No. 61, 2001 am. No. 115, 2008
<b>Subdivision B</b>	
S. 90MD	ad. No. 61, 2001 am. No. 121, 2002; No. 153, 2004; No. 15, 2007; No. 115, 2008
S. 90MDA	ad. No. 61, 2001
S. 90ME	ad. No. 61, 2001 am. No. 114, 2001

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**Table of Amendments**

Provision affected	How affected
S. 90MF	ad. No. 61, 2001
S. 90MG	ad. No. 61, 2001 am. No. 115, 2008
<b>Division 2</b>	
<b>Subdivision A</b>	
Heading to s. 90MH	am. No. 115, 2008
S. 90MH	ad. No. 61, 2001 am. No. 115, 2008
S. 90MHA	ad. No. 115, 2008
<b>Subdivision B</b>	
S. 90MI	ad. No. 61, 2001 am. No. 98, 2005; No. 115, 2008
S. 90MJ	ad. No. 61, 2001 am. No. 115, 2008
<b>Subdivision C</b>	
S. 90MK	ad. No. 61, 2001 am. No. 98, 2005; No. 115, 2008
S. 90ML	ad. No. 61, 2001 am. No. 121, 2002
S. 90MLA	ad. No. 121, 2002
Ss. 90MM, 90MN	ad. No. 61, 2001 am. No. 115, 2008
<b>Subdivision D</b>	
Heading to s. 90MO	am. No. 115, 2008
S. 90MO	ad. No. 61, 2001 am. No. 115, 2008
S. 90MP	ad. No. 61, 2001 am. No. 115, 2008
Heading to s. 90MQ	am. No. 15, 2007
S. 90MQ	ad. No. 61, 2001 am. No. 15, 2007; No. 115, 2008
S. 90MR	ad. No. 61, 2001
<b>Division 3</b>	
Heading to s. 90MS	am. No. 115, 2008
S. 90MS	ad. No. 61, 2001 am. No. 115, 2008
Note 1 to s. 90MS	rs. No. 115, 2008
Note 3 to s. 90MS	ad. No. 115, 2008
S. 90MT	ad. No. 61, 2001 am. No. 121, 2002
S. 90MU	ad. No. 61, 2001 am. No. 115, 2008
S. 90MUA	ad. No. 121, 2002
<b>Division 4</b>	
S. 90MV	ad. No. 61, 2001 am. No. 115, 2008
S. 90MW	ad. No. 61, 2001

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Provision affected	How affected
S. 90MX	ad. No. 61, 2001 am. No. 121, 2002; No. 115, 2008
S. 90MY	ad. No. 61, 2001
S. 90MZ	ad. No. 61, 2001 am. No. 121, 2002; No. 15, 2007
S. 90MZA	ad. No. 61, 2001
S. 90MZB	ad. No. 61, 2001 am. No. 115, 2008
S. 90MZC	ad. No. 61, 2001 am. No. 121, 2002
<b>Division 5</b>	
S. 90MZD	ad. No. 61, 2001 am. No. 121, 2002
Ss. 90MZE, 90MZF	ad. No. 61, 2001
S. 90MZG	ad. No. 61, 2001 am. No. 115, 2008
S. 90MZH	ad. No. 61, 2001
<b>Part IX</b>	
S. 91	am. No. 95, 1976; No. 181, 1987; No. 167, 1995; No. 98, 2005; No. 46, 2006
S. 91A	ad. No. 95, 1976 am. No. 181, 1987
S. 91B	ad. No. 72, 1983
S. 92	am. No. 72, 1983; No. 181, 1987; No. 167, 1995; No. 98, 2005; No. 46, 2006
S. 92A	ad. No. 37, 1991 am. No. 167, 1995; No. 46, 2006
<b>Part X</b>	
Heading to s. 93	am. No. 98, 2005
S. 93	am. No. 98, 2005
S. 93A	ad. No. 72, 1983 am. No. 194, 1999; No. 138, 2003; No. 22, 2006
Heading to s. 94	am. No. 194, 1999; No. 22, 2006
S. 94	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; Nos. 141 and 181, 1987; No. 8, 1988; No. 115, 1990; No. 194, 1999; No. 143, 2000; No. 138, 2003; No. 98, 2005
Note to s. 94(2A)	rep. No. 138, 2003
Heading to s. 94AAA	am. No. 22, 2006
S. 94AAA	ad. No. 194, 1999 am. No. 138, 2003; No. 98, 2005; No. 22, 2006
S. 94AAB	ad. No. 98, 2005
S. 94AA	ad. No. 115, 1990 am. No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 98, 2005; No. 22, 2006
S. 94A	ad. No. 63, 1976 am. No. 23, 1979; No. 141, 1987; No. 194, 1999; No. 22, 2006
S. 95	am. No. 63, 1976 rs. No. 98, 2005

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**Table of Amendments**

Provision affected	How affected
S. 96	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 181, 1987; No. 8, 1988; No. 194, 1999; No. 22, 2006
S. 96AA	ad. No. 98, 2005
S. 96A	ad. No. 89, 1998
<b>Part XI</b>	
Heading to Part XI	rs. No. 46, 2006
Note to heading to Part XI	ad. No. 46, 2006
<b>Division 1</b>	
Heading to Div. 1 of Part XI	ad. No. 138, 2003
S. 97	am. No. 72, 1983; No. 8, 1988; No. 194, 1999; No. 138, 2003
S. 98	am. No. 72, 1983; No. 194, 1999; No. 98, 2005
S. 98A	ad. No. 72, 1983 am. No. 72, 1983; No. 181, 1987; No. 194, 1999; No. 143, 2000; No. 98, 2005
S. 99	rep. No. 181, 1987
S. 99A	ad. No. 72, 1983 rep. No. 181, 1987
S. 100A	ad. No. 37, 1991 rep. No. 46, 2006
S. 100B	ad. No. 143, 2000
S. 100C	ad. No. 116, 2007
S. 101	am. No. 37, 1991
S. 102	rs. No. 181, 1987
S. 102A	ad. No. 37, 1991 am. No. 167, 1995; No. 46, 2006
Note to s. 102A	ad. No. 46, 2006
S. 102B	ad. No. 167, 1995 am. No. 194, 1999
<b>Division 2</b>	
Div. 2 of Part XI	ad. No. 138, 2003
Ss. 102C–102H	ad. No. 138, 2003
Ss. 102J–102L	ad. No. 138, 2003
<b>Division 3</b>	
Div. 3 of Part XI	ad. No. 138, 2003
Ss. 102M, 102N	ad. No. 138, 2003
<b>Part XII</b>	
S. 103	am. No. 63, 1976
S. 104	am. No. 72, 1983; No. 72, 1984; No. 181, 1987; No. 98, 2005
S. 104A	ad. No. 76, 1986 am. No. 98, 2005; No. 22, 2006
<b>Part XIII</b>	
S. 105	am. No. 95, 1976; No. 72, 1983; No. 181, 1987; No. 194, 1999; No. 143, 2000; No. 115, 2008
Note to s. 105(1)	ad. No. 194, 1999

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Provision affected	How affected
S. 106	am. No. 63, 1976; No. 23, 1979 rep. No. 72, 1983 ad. No. 143, 2000
S. 106A	ad. No. 143, 2000
S. 106B	ad. No. 143, 2000 am. No. 138, 2003; Nos. 20 and 98, 2005; No. 115, 2008
S. 107	am. No. 72, 1983; No. 181, 1987; No. 182, 1989 rs. No. 143, 2000 am. No. 138, 2003; No. 115, 2008
S. 108	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 181, 1987 rep. No. 182, 1989
S. 109	am. No. 181, 1987; No. 167, 1995
S. 109A	ad. No. 143, 2000 am. No. 46, 2006
S. 109B	ad. No. 194, 1999
<b>Part XIIIAA</b>	
Heading to Part XIIIAA	ad. No. 143, 2000
<b>Division 1</b>	
Heading to Div. 1 of Part XIIIAA	ad. No. 69, 2002
S. 110	am. No. 63, 1976; No. 72, 1983; No. 72, 1984; No. 168, 1986; No. 181, 1987; No. 182, 1989; No. 34, 1997; No. 73, 2008
Ss. 110A, 110B	ad. No. 143, 2000
S. 111	am. No. 72, 1983; No. 143, 2000
S. 111A	ad. No. 72, 1983 am. No. 143, 2000
Ss. 111AA, 111AB	ad. No. 82, 2007
<b>Division 2</b>	
Heading to Div. 2 of Part XIIIAA	ad. No. 69, 2002
S. 111B	ad. No. 72, 1983 am. No. 167, 1995; No. 143, 2000; No. 46, 2006 rs. No. 46, 2006
Note to s. 111B(4)	
<b>Division 3</b>	
Heading to Div. 3 of Part XIIIAA	ad. No. 69, 2002
Heading to s. 111C	rs. No. 89, 1998
S. 111C	ad. No. 167, 1995 am. No. 89, 1998; No. 143, 2000
<b>Division 4</b>	
Div. 4 of Part XIIIAA	ad. No. 69, 2002
<b>Subdivision A</b>	
Ss. 111CA, 111CB	ad. No. 69, 2002
<b>Subdivision B</b>	
Ss. 111CC–111CI	ad. No. 69, 2002
<b>Subdivision C</b>	
Ss. 111CJ–111CP	ad. No. 69, 2002

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**Table of Amendments**

Provision affected	How affected
<b>Subdivision D</b>	
Ss. 111CQ–111CS	ad. No. 69, 2002
<b>Subdivision E</b>	
S. 111CT	ad. No. 69, 2002
<b>Subdivision F</b>	
S. 111CU	ad. No. 69, 2002
S. 111CV	ad. No. 69, 2002 am. No. 46, 2006
S. 111CW	ad. No. 69, 2002 rs. No. 46, 2006
Ss. 111CX, 111CY	ad. No. 69, 2002
<b>Subdivision G</b>	
S. 111CZ	ad. No. 69, 2002
<b>Division 5</b>	
Heading to Div. 5 of Part XIIIAA	ad. No. 69, 2002
S. 111D	ad. No. 143, 2000
S. 112	am. No. 63, 1976 rs. No. 72, 1983 am. No. 72, 1983; No. 181, 1987 rep. No. 143, 2000
<b>Part XIII</b>	
Heading to Part XIII	rs. No. 143, 2000
Part XIII	ad. No. 182, 1989
<b>Division 1</b>	
S. 112AA	ad. No. 182, 1989 am. No. 23, 1992; No. 167, 1995; No. 143, 2000; No. 115, 2008
Ss. 112AB, 112AC	ad. No. 182, 1989 am. No. 167, 1995; No. 143, 2000
<b>Division 2</b>	
S. 112AD	ad. No. 182, 1989 am. No. 37, 1991; No. 167, 1995; No. 34, 1997; No. 143, 2000; No. 138, 2003
S. 112AE	ad. No. 182, 1989 am. No. 143, 2000; No. 98, 2005
S. 112AF	ad. No. 182, 1989 am. No. 167, 1995 rs. No. 143, 2000
S. 112AG	ad. No. 182, 1989 am. No. 143, 2000; No. 138, 2003
Heading to s. 112AH	am. No. 143, 2000
S. 112AH	ad. No. 182, 1989 am. No. 143, 2000; No. 98, 2005
Note to s. 112AH(8)	ad. No. 143, 2000
S. 112AJ	ad. No. 182, 1989 rep. No. 167, 1995
S. 112AK	ad. No. 182, 1989

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Provision affected	How affected
S. 112AL	ad. No. 182, 1989 am. No. 37, 1991 rep. No. 167, 1995
S. 112AM	ad. No. 182, 1989 am. No. 143, 2000
Ss. 112AN, 112AO	ad. No. 182, 1989
Heading to Div. 3 of Part XIIIIA	rep. No. 143, 2000
<b>Part XIIIB</b>	
Heading to Part XIIIB	ad. No. 143, 2000
S. 112AP	ad. No. 182, 1989 am. No. 194, 1999; No. 143, 2000; No. 46, 2006
<b>Part XIV</b>	
S. 112A	ad. No. 72, 1983
S. 114	am. No. 72, 1983; No. 72, 1984; No. 181, 1987; No. 182, 1989; No. 20, 2005; No. 115, 2008
S. 114AA	ad. No. 72, 1983 am. No. 181, 1987; No. 182, 1989; No. 143, 2000
Note to s. 114AA(1)	ad. No. 143, 2000
S. 114AB	ad. No. 72, 1983 am. No. 181, 1987; No. 37, 1991; No. 167, 1995
<b>Part XIVA</b>	
Heading to Part XIVA	am. No. 76, 1986
Part XIVA	ad. No. 23, 1979
S. 114A	ad. No. 23, 1979 am. No. 76, 1986; No. 82, 2006
S. 114B	ad. No. 23, 1979 am. No. 72, 1983; No. 76, 1986; No. 182, 1989; No. 152, 1997; No. 82, 2006
S. 114BA	ad. No. 76, 1986 rep. No. 82, 2006
Note to s. 114BA(1)	ad. No. 152, 1997 rep. No. 82, 2006
S. 114BB	ad. No. 76, 1986 rep. No. 82, 2006
Ss. 114C, 114D	ad. No. 23, 1979 rs. No. 82, 2006
S. 114E	ad. No. 23, 1979 am. No. 181, 1987; No. 159, 2001 rs. No. 82, 2006
S. 114F	ad. No. 23, 1979 am. No. 181, 1987; No. 43, 1996 rs. No. 82, 2006
S. 114G	ad. No. 23, 1979 am. No. 182, 1989 rs. No. 229, 1992 am. No. 146, 1999 rs. No. 82, 2006
S. 114H	ad. No. 23, 1979

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**Table of Amendments**

Provision affected	How affected
S. 114J	am. No. 181, 1987 rs. No. 82, 2006 ad. No. 23, 1979 am. No. 229, 1992; No. 152, 1997; No. 156, 1999 rs. No. 82, 2006
S. 114K	ad. No. 23, 1979 am. No. 181, 1987; No. 182, 1989 rs. No. 82, 2006
S. 114L	ad. No. 23, 1979 rs. No. 82, 2006
Ss. 114LA–114LD	ad. No. 82, 2006
S. 114M	ad. No. 23, 1979 am. Nos. 65 and 166, 1985; No. 182, 1989; No. 199, 1991 rs. No. 167, 1995 am. No. 146, 1999; No. 82, 2006
S. 114MA	ad. No. 76, 1986 rep. No. 82, 2006
S. 114MB	ad. No. 76, 1986 am. No. 182, 1989 rep. No. 152, 1997
S. 114MC	ad. No. 76, 1986 am. No. 182, 1989 rep. No. 82, 2006
S. 114MD	ad. No. 76, 1986 am. No. 152, 1997 rep. No. 82, 2006
S. 114ME	ad. No. 76, 1986 rep. No. 152, 1997
S. 114MF	ad. No. 76, 1986 rep. No. 82, 2006
Part XIVB	ad. No. 46, 2006 rep. No. 151, 2006
Ss. 114MG–114MP	ad. No. 46, 2006 rep. No. 151, 2006
S. 114N	ad. No. 72, 1983 rs. No. 76, 1986 rep. No. 152, 1997
<b>Part XV</b>	
S. 115	am. No. 63, 1976; No. 72, 1983; No. 181, 1987; No. 182, 1989; No. 167, 1995; No. 43, 1996; Nos. 146 and 194, 1999; No. 46, 2006
S. 116	am. No. 63, 1976 rep. No. 23, 1979
Ss. 116A, 116B	ad. No. 67, 1973 rep. No. 23, 1992
S. 116C	ad. No. 67, 1983 am. No. 165, 1984; No. 181, 1987; No. 194, 1999
S. 117	am. No. 72, 1983; No. 181, 1987; No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 138, 2003; No. 98, 2005; No. 46, 2006; No. 82, 2007
S. 117AA	ad. No. 143, 2000

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Provision affected	How affected
S. 117AB	ad. No. 46, 2006
S. 117AC	ad. No. 82, 2007
S. 117A	ad. No. 72, 1983 am. No. 182, 1989; No. 167, 1995; No. 138, 2003; No. 46, 2006
S. 117B	ad. No. 72, 1983 am. No. 72, 1983; No. 194, 1999
S. 117C	ad. No. 72, 1983 am. No. 72, 1983; No. 181, 1987; No. 22, 1992; No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 138, 2003 rs. No. 98, 2005
S. 118	rs. No. 72, 1983 am. No. 181, 1987
S. 121	rs. No. 72, 1983 am. No. 72, 1983; No. 37, 1991; No. 194, 1999; No. 143, 2000; No. 138, 2003
Note to s. 121(10)	ad. No. 143, 2000
S. 122	am. No. 181, 1987
S. 122AA	ad. No. 143, 2000
S. 122A	ad. No. 37, 1991
S. 122B	ad. No. 143, 2000
S. 123	am. Nos. 63 and 95, 1976; No. 23, 1979 rs. No. 72, 1983 am. No. 193, 1985; No. 99, 1988; No. 182, 1989; No. 113, 1991; No. 23, 1992; No. 167, 1995; No. 34, 1997; No. 194, 1999; No. 143, 2000; Nos. 138 and 140, 2003; No. 98, 2005; No. 46, 2006
Note to s. 123	ad. No. 143, 2000
S. 124	ad. No. 72, 1983 am. No. 181, 1987; No. 194, 1999
S. 124A	ad. No. 49, 2000 am. No. 82, 2007
S. 125	ad. No. 72, 1983 am. No. 181, 1987; No. 113, 1991; No. 167, 1995; No. 25, 1997; No. 143, 2000; No. 140, 2003; No. 46, 2006

**Schedule 1**

Schedule 1..... ad. No. 69, 2002

**Note 2**

**Note 2**

Paragraph 87(4D)(c)—Schedule 2 (item 114) of the *Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Act 2006* (No. 146, 2006) provides as follows:

**Schedule 2**

**114 Paragraphs 86(3B)(c) and 87(4D)(c)**

Omit “for administrative assessment of child support (within the meaning of that Act) for the child, seeking payment of the child support by the other party to the agreement”, substitute “for the other party to the agreement to be assessed in respect of the costs of the child”.

The proposed amendment was misdescribed and is not incorporated in this compilation.

**Table A**

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**Table A**

**Application, saving or transitional provisions**

*Family Law Amendment Act 2000* (No. 143, 2000)

**Schedule 1**

**31 Saving**

The amendments made by the previous items in this Schedule do not affect any act or thing done by a court under Division 2 of Part XIII A of the *Family Law Act 1975* before the commencement of this Schedule, and any such act or thing continues to have effect according to its terms after that commencement as if those amendments had not been made.

**Schedule 3**

**20 Application of amendments**

The amendments of section 19F of the *Family Law Act 1975* made by this Schedule apply in relation to applications for review that are made after the commencement of this item (even if the award concerned was registered before that time).

**24 Application of amendment**

The amendment made by item 23 applies to arbitration that begins after the commencement of that item.

**40 Validation of past transfers**

To avoid doubt, a purported transfer of proceedings under subsection 45(2) of the *Family Law Act 1975* before the commencement of item 39 is taken not to have been invalid or ineffective merely because it was done on the court's own initiative.

**56 Application of amendment**

The amendment made by item 55 applies to child maintenance orders made after the commencement of that item.

**Table A**

**56B Application of amendment**

Section 66W of the *Family Law Act 1975*, as amended by item 56A, applies to arrears that are outstanding on or after the commencement of that item.

**75 Transitional**

After the commencement of this item:

- (a) anything done before that commencement under section 84 or 85 of the *Family Law Act 1975* is taken to have been done under section 106A or 106B respectively of that Act; and
- (b) a reference in an order made under that Act to section 84 or 85 of that Act is taken to be a reference to section 106A or 106B respectively of that Act.

**83 Saving**

Any regulations made for the purposes of paragraph 89(b) of the *Family Law Act 1975* and in force immediately before the commencement of item 82 have effect as if they were made for the purposes of section 110B inserted in that Act by that item.

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*Jurisdiction of Courts (Miscellaneous Amendments) Act 2000* (No. 161, 2000)

**Schedule 1**

**16 Pre-commencement jurisdiction of the Federal Magistrates Court**

The enactment of this Schedule does not imply that the Parliament did not intend that the Federal Magistrates Court was to have jurisdiction, at a time before the commencement of this item, to hear and determine:

- (a) a proceeding arising under the *Administrative Decisions (Judicial Review) Act 1977* that was transferred to the Federal Magistrates Court under section 32AB of the *Federal Court of Australia Act 1976*; or
  - (b) a proceeding arising under the *Family Law Act 1975* that was transferred to the Federal Magistrates Court under section 33B of the *Family Law Act 1975*.
-

**Table A**

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*Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001* (No. 24, 2001)

**4 Application of amendments**

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
  - (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.
- 

*Family Law Legislation Amendment (Superannuation) Act 2001*  
(No. 61, 2001)

**4 Definitions**

In this Act, unless the contrary intention appears:

***Family Law Act*** means the *Family Law Act 1975*.

***marriage*** includes a void marriage.

***section 79 order*** means an order (other than an interim order) made under section 79 of the Family Law Act.

***section 87 agreement*** means an agreement approved under section 87 of the Family Law Act.

***startup time*** means the time when Schedule 1 commences.

***superannuation amendments*** means the amendments made by Schedule 1.

**Table A**

**5 Application of superannuation amendments**

- (1) Subject to this section, the superannuation amendments apply to all marriages, including those that were dissolved before the startup time.
- (2) Subject to subsections (3) and (4), the superannuation amendments do not apply to a marriage if a section 79 order, or a section 87 agreement, is in force in relation to the marriage at the startup time.
- (3) If a section 79 order that is in force at the startup time is later set aside under paragraph 79A(1)(a), (b), (c), (d) or (e) of the Family Law Act, then the superannuation amendments apply to the marriage from the time the order is set aside.
- (4) If an approval of a section 87 agreement that is in force at the startup time is later revoked on a ground specified in paragraph 87(8)(a), (c) or (d) of the Family Law Act, then the superannuation amendments apply to the marriage from the time the approval is revoked.
- (5) Part VIIIB of the Family Law Act does not apply in relation to a financial agreement that was made before the startup time.

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*Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001*  
(No. 159, 2001)

**Schedule 1**

**97 Application of amendments**

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

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**Table A**

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*Family Law Amendment Act 2003* (No. 138, 2003)

**Schedule 2**

**9 Application of amendments**

- (1) The amendments made by Part 1 of this Schedule, other than the split court amendments, apply in relation to proceedings instituted in the court before, on or after the commencement of this item.
- (2) The split court amendments made by Part 1 of this Schedule apply in relation to proceedings instituted in the Family Court after the commencement of this item.
- (3) In this item:

***electronic communication*** means:

- (a) video link; or
- (b) audio link; or
- (c) other appropriate means of communication.

***split court amendments*** means the amendments that relate to the use of electronic communication to facilitate:

- (a) proceedings being heard by a split court; and
- (b) a split court:
  - (i) hearing testimony; or
  - (ii) taking submissions; or
  - (iii) have persons appear before it; or
  - (iv) having a submission put to a person or to the court.

**Schedule 3**

**29 Regulations**

- (1) The Governor-General may make regulations dealing with matters of a transitional or saving nature arising out of the enactment of this Schedule.
- (2) Despite subsection 48(2) of the *Acts Interpretation Act 1901*, regulations made for the purposes of this item may be expressed to take effect from a date before the regulations are notified in the *Gazette*.

**Table A**

**Schedule 4A**

**6 Application of amendments**

The amendments made by this Schedule apply to financial agreements made at any time, whether before or after the commencement of this Schedule. However, the amendments do not apply to proceedings that were instituted before the commencement of this Schedule.

**Schedule 6**

**2 Application of amendments**

- (1) Subject to this item, the amendments made by Part 1 of this Schedule apply to all marriages, including those that were dissolved before the commencement time.
- (2) Subject to subitems (3) and (4), the amendments made by this Schedule do not apply to a marriage if a section 79 order, or a section 87 agreement, is in force in relation to the marriage at the commencement time.
- (3) If a section 79 order that is in force at the commencement time is later set aside under paragraph 79A(1)(a), (b), (c) or (d) of the Family Law Act, then the amendments made by this Schedule apply to the marriage from the time the order is set aside.
- (4) If an approval of a section 87 agreement that is in force at the commencement time is later revoked on a ground specified in paragraph 87(8)(a), (c) or (d) of the Family Law Act, then the amendments made by this Schedule apply to the marriage from the time the approval is revoked.
- (5) In this item, unless the contrary intention appears:  
*commencement time* means the time when this Schedule commences.  
*Family Law Act* means the *Family Law Act 1975*.  
*marriage* includes a void marriage.  
*section 79 order* means an order (other than an interim order or a partial order) made under section 79 of the Family Law Act.  
*section 87 agreement* means an agreement approved under section 87 of the Family Law Act.

**Table A**

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**Schedule 7**

**35 Application of amendments**

- (1) The amendments made by items 7, 13 and 19 of Part 1 of this Schedule apply to admissions or disclosures made after the commencement of this item.
  - (2) Items 29 and 29A apply to proceedings instituted in the court after the commencement of this item.
- 

*Family Law Amendment (Annuities) Act 2004* (No. 153, 2004)

**4 Application of annuity amendments**

- (1) Subject to this section, the annuity amendments apply to all marriages, including those that were dissolved before the startup time.
- (2) Subject to subsections (3) and (4), the annuity amendments do not apply to a marriage if a section 79 order, or a section 87 agreement, is in force in relation to the marriage at the startup time.
- (3) If a section 79 order that is in force at the startup time is later set aside under paragraph 79A(1)(a), (b), (c) or (d) of the Family Law Act, then the annuity amendments apply to the marriage from the time the order is set aside.
- (4) If an approval of a section 87 agreement that is in force at the startup time is later revoked on a ground specified in paragraph 87(8)(a), (c) or (d) of the Family Law Act, then the annuity amendments apply to the marriage from the time the approval is revoked.
- (5) The annuity amendments do not apply in relation to a financial agreement that was made before the startup time.
- (6) In this section, unless the contrary intention appears:  
*annuity amendments* means the amendments made by Schedule 2.  
*Family Law Act* means the *Family Law Act 1975*.  
*marriage* includes a void marriage.

**Table A**

**section 79 order** means an order (other than an interim order) made under section 79 of the Family Law Act.

**section 87 agreement** means an agreement approved under section 87 of the Family Law Act.

**startup time** means the time when Schedule 2 commences.

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*Bankruptcy and Family Law Legislation Amendment Act 2005* (No. 20, 2005)

**Schedule 1**

**60 Application of amendments**

- (1) Subject to subitems (2) and (3), the amendments of the *Family Law Act 1975* made by this Schedule, to the extent to which they relate to bankruptcies or personal insolvency agreements, apply in relation to:
  - (a)bankruptcies for which the date of the bankruptcy is after the commencement of this item; and
  - (b)personal insolvency agreements executed before, at or after the commencement of this item.
- (2) The following provisions:
  - (a)subsections 74(2), (3) and (4) of the *Family Law Act 1975* as amended by this Schedule;
  - (b)subsection 74(8) of the *Family Law Act 1975* as amended by this Schedule, to the extent to which that subsection relates to subsection 74(2) of the *Family Law Act 1975* as amended by this Schedule;
  - (c)the definitions inserted in subsection 4(1) of the *Family Law Act 1975* by this Schedule, to the extent to which those definitions relate to subsections 74(2), (3) and (4) of the *Family Law Act 1975* as amended by this Schedule;apply to proceedings instituted after the commencement of this item, whether the date of the bankruptcy is before, on or after the date of commencement of this item.
- (3) The following provisions:
  - (a)subsections 79(11), (12) and (13) of the *Family Law Act 1975* as amended by this Schedule;
  - (b)subsection 79(17) of the *Family Law Act 1975* as amended

**Table A**

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by this Schedule, to the extent to which that subsection relates to subsection 79(11) of the *Family Law Act 1975* as amended by this Schedule;

(c)the definitions inserted in subsection 4(1) of the *Family Law Act 1975* by this Schedule, to the extent to which those definitions relate to subsections 79(11), (12) and (13) of the *Family Law Act 1975* as amended by this Schedule;

apply to proceedings instituted after the commencement of this item, whether the date of the bankruptcy is before, on or after the date of commencement of this item.

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*Family Law Amendment Act 2005* (No. 98, 2005)

**Schedule 1**

**4 Application**

The amendments made by this Part apply to:

(a)contraventions, and alleged contraventions, of parenting orders (whether occurring before, at or after the commencement of this Part); and

(b)proceedings in which it is alleged that a person committed a contravention of a parenting order (whether those proceedings are commenced before, at or after the commencement of this Part).

**7 Application**

The amendments made by this Part apply to offers to settle proceedings that are made on or after the commencement of this Part.

**14 Application**

The amendments made by this Part apply to failures to comply with orders, bonds or sentences that occur on or after the commencement of this Part.

**22 Application**

The amendments made by this Part apply to dispositions that occur on or after the commencement of this Part.

**Table A**

**35 Application**

The amendments made by this Part apply to proceedings initiated before or after the commencement of this Part.

**129 Transitional arrangements in relation to decrees nisi made before the commencement of this Part**

- (1) A decree nisi of the dissolution of a marriage under this Act that:
- (a) was made before the commencement of this Part; and
  - (b) had become final before the commencement of this Part;
- has effect on and after the commencement of this Part as if it were a divorce order that had taken effect on the day on which the decree nisi became absolute.
- (2) A decree nisi of the dissolution of a marriage under this Act that:
- (a) was made before the commencement of this Part; and
  - (b) had not become final before the commencement of this Part;
- has effect on and after the commencement of this Part as if it were a divorce order that had been made on the day on which the decree nisi was made.

**131 Application**

The amendment made by this Part applies to applications for leave to appeal made on or after the commencement of this Part.

**133 Application**

The amendment made by this Part applies to appeals that are initiated before or after this Part commences.

**135 Application**

The amendment made by this Part applies to appeals in relation to proceedings whether initiated before or after this Part commences.

**Table A**

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*Jurisdiction of Courts (Family Law) Act 2006* (No. 22, 2006)

**Schedule 1**

**27 Application**

- (1) The amendments made by items 3, 5, 8, 10 to 18 and 25 apply to proceedings instituted before or after the commencement of this Part in the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia.
- (2) The amendments made by items 1, 2, 4, 6, 7, 9, 19, 20 to 24 and 26 apply to proceedings instituted after the commencement of this Part in the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia.

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*Families, Community Services and Indigenous Affairs and Other Legislation (2006 Budget and Other Measures) Act 2006* (No. 82, 2006)

**Schedule 8**

**12 Definitions**

- (1) In this Part:

**acquisition of property** has the same meaning as in paragraph 51(xxi) of the Constitution.

**amend** includes repeal and remake.

**asset** means:

(a)any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and

(b)any right, power, privilege or immunity, whether actual, contingent or prospective.

**assets official**, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

**Board** means the Board of Management of the old Institute.

**commencement time** means the time when this Part commences.

**instrument**:

**Table A**

- (a) includes:
- (i) a contract, deed, undertaking or agreement; and
  - (ii) a notice, authority, order or instruction; and
  - (iii) an instrument made under an Act or regulations; and
  - (iv) regulations; but
- (b) does not include an Act.

*just terms* has the same meaning as in paragraph 51(xxi) of the Constitution.

*land* means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

*land registration official*, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

*liability* means any liability, duty or obligation, whether actual, contingent or prospective.

*new Institute* means the Australian Institute of Family Studies established by the new law.

*new law* means the *Family Law Act 1975* as in force immediately after the commencement time.

*old Institute* means the Australian Institute of Family Studies established by the old law.

*old law* means the *Family Law Act 1975* as in force immediately before the commencement time.

- (2) Subject to subitem (1), an expression used in this Part that is also used in the new law has the same meaning in this Part as it has in the new law.

**13 Vesting of assets of old Institute**

- (1) This item applies to the assets of the old Institute immediately before the commencement time.
- (2) At the commencement time, the assets to which this item applies cease to be assets of the old Institute and become assets of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these assets.

**14 Vesting of liabilities of old Institute**

**Table A**

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- (1) This item applies to the liabilities of the old Institute immediately before the commencement time.
- (2) At the commencement time, the liabilities to which this item applies cease to be liabilities of the old Institute and become liabilities of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these liabilities.

**15 Certificates relating to vesting of land**

- (1) This item applies if:
  - (a)any land vests in the Commonwealth under this Division; and
  - (b)there is lodged with a land registration official a certificate that:
    - (i) is signed by the Minister; and
    - (ii) identifies the land, whether by reference to a map or otherwise; and
    - (iii) states that the land has become vested in the Commonwealth under this Division.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 27.

- (2) The land registration official may:
  - (a)register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
  - (b)deal with, and give effect to, the certificate.

**16 Certificates relating to vesting of assets other than land**

- (1) This item applies if:
  - (a)any asset other than land vests in the Commonwealth under this Division; and
  - (b)there is lodged with an assets official a certificate that:
    - (i) is signed by the Minister; and
    - (ii) identifies the asset; and
    - (iii) states that the asset has become vested in the Commonwealth under this Division.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 27.

**Table A**

- (2) The assets official may:
- (a)deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
  - (b)make such entries in the register as are necessary having regard to the effect of this Part.

**17 Substitution of Commonwealth as a party to pending proceedings**

If any proceedings to which the old Institute was a party were pending in any court or tribunal immediately before the commencement time, the Commonwealth is substituted for the old Institute, from the commencement time, as a party to the proceedings.

**18 Transfer of custody of old Institute records**

- (1) This item applies to any records or documents that, immediately before the commencement time, were in the custody of the old Institute.
- (2) The records and documents are to be transferred into the custody of the Director at or after the commencement time.

**19 Access by Board members to records**

For the purposes of the operation of subsection 27L(4) of the *Commonwealth Authorities and Companies Act 1997* in relation to the books of the old Institute, the reference in that subsection to a Commonwealth authority is to be read, after the commencement time, as a reference to the Director.

**20 References in instruments**

*References to old Institute taken to be references to Director or Commonwealth*

- (1) If:
    - (a)an instrument is in force immediately before the commencement time; and
    - (b)the instrument contains a reference to the old Institute (including a reference to the Board);
- the instrument has effect from the commencement time as if the reference were a reference to the Director.

**Table A**

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- (2) However, if:
- (a)an instrument is in force immediately before the commencement time; and
  - (b)the instrument relates to assets or liabilities covered by item 13 or 14; and
  - (c)the instrument refers to the old Institute (including a reference to the Board);
- the reference is to be read as a reference to the Commonwealth as necessary to give effect to item 13 or 14, as the case requires.

*References to staff of old Institute taken to be references to staff of new Institute*

- (3) If:
- (a)an instrument is in force immediately before the commencement time; and
  - (b)the instrument contains a reference to a member of the staff of the old Institute;
- the instrument has effect from the commencement time as if the reference to the member of the staff of the old Institute were a reference to a member of the staff of the new Institute.

*Minister and regulations may provide otherwise*

- (4) The Minister may, by legislative instrument, determine that subitem (1), (2) or (3):
- (a)does not apply in relation to a specified reference; or
  - (b) applies as if:
    - (i) in the case of subitem (1)—the reference in that subitem to the Director were a reference to the Commonwealth; or
    - (ii) in the case of subitem (2)—the reference in that subitem to the Commonwealth were a reference to the Director; or
    - (iii) in the case of subitem (3)—the reference in that subitem to a member of the staff of the new Institute were a reference to the Director.

A determination under this subitem has effect accordingly.

- (5) The regulations may provide that an instrument containing a reference specified in a determination under paragraph (4)(a) has effect from the

**Table A**

commencement time as if:

- (a) in the case of an instrument covered by subitem (1) or (2)—the reference were a reference to a specified person or body other than the Commonwealth or the Director; or
- (b) in the case of an instrument covered by subitem (3)—the reference were a reference to a specified person or body other than the Director or a member of the staff of the new Institute.

## **21 Operation of laws**

### *Things done by old Institute taken to be done by Director*

- (1) If, before the commencement time, a thing was done by, or in relation to, the old Institute (including the Board), then, for the purposes of the operation of any law of the Commonwealth after the commencement time, the thing is taken to have been done by, or in relation to, the Director.
- (2) For the purposes of subitem (1), a thing done before the commencement time under a provision that is amended by this Schedule has effect from that time as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.

### *Minister and regulations may provide otherwise*

- (3) The Minister may, by legislative instrument, determine that subitem (1):
  - (a) does not apply in relation to a specified thing done by, or in relation to, the old Institute; or
  - (b) applies as if the reference in that subitem to the Director were a reference to the Commonwealth.A determination under this subitem has effect accordingly.
- (4) The regulations may provide for a thing specified in a determination under paragraph (3)(a) to be taken to have been done by, or in relation to, a specified person or body other than the Commonwealth or the Director.

### *Meaning of doing*

- (5) To avoid doubt, for the purposes of this item, **doing** a thing includes making an instrument.

**Table A**

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**22 Financial statements and other reporting requirements**

*Reporting requirements*

- (1) If:
- (a)immediately before the commencement time, a law required the old Institute (including the Director) to provide a report (whether financial statements or otherwise) for a period; and
  - (b)the period ends after the commencement time;
- the Director must provide the report, as required, for so much of the period as occurs before the commencement time.
- (2) If:
- (a)under subitem (1), the Director is required to provide a report for a part of a period; and
  - (b)the Director is also required to provide a similar report for the remainder of the period;
- the Director may meet the requirements in a single report for the period.

*Outstanding reporting requirements*

- (3) If:
- (a)a law required the old Institute (including the Director) to provide a report (whether financial statements or otherwise) for a period that ended before the commencement time; and
  - (b)the report has not been provided by the commencement time;
- the Director must provide the report as required.

**23 Director**

- (1) The person holding office as Director under subsection 114C(4) of the old law immediately before the commencement time continues, on and after that time, by force of this item, to hold office as the Director.
- (2) The person referred to in subitem (1):
- (a)is taken to have been duly appointed by the Minister under subsection 114D(1) of the new law for the balance of the term of appointment under section 114E of the old law; and
  - (b)is taken to have been so appointed on the same terms and

**Table A**

conditions as applied to the person immediately before the commencement time.

**24 Appropriation of money**

- (1) For the purposes of the operation of an Appropriation Act after the commencement time, references to the old Institute are to be read as references to the new Institute.
- (2) If an amount of money (the *original amount*) becomes an asset of the Commonwealth under item 13 of this Schedule, an amount equal to the original amount may be paid out of the Consolidated Revenue Fund, which is appropriated accordingly, for the purposes of the new Institute.
- (3) In this item:

*Appropriation Act* means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

**25 Exemption from stamp duty and other State or Territory taxes**

No stamp duty or other tax is payable under a law of a State or Territory in respect of, or in respect of anything connected with:

- (a)the transfer of an asset or liability under this Part; or
- (b)the operation of this Part in any other respect.

**26 Constitutional safety net—acquisition of property**

- (1) If the operation of this Part would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

**27 Certificates taken to be authentic**

A document that appears to be a certificate made or issued under a particular provision of this Part:

- (a)is taken to be such a certificate; and
  - (b)is taken to have been properly given;
- unless the contrary is established.

**Table A**

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**28 Delegation by Minister**

- (1) The Minister may delegate all or any of his or her powers and functions under this Part to the Secretary of the Department or to the Director. The delegation must be in writing.
- (2) In exercising or performing powers or functions under a delegation, the delegate must comply with any directions of the Minister.
- (3) A power or function delegated to the Director under subitem (1) must not be sub-delegated under subsection 114LD(1) of the new law.

**29 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Part to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.

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*Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Act 2006* (No. 146, 2006)

**Schedule 2**

**115 Application**

- (1) The amendments made by Schedule 1 to this Act, and this Schedule (other than items 1 and 2 and 92 to 96 of this Schedule), apply in relation to a day in a child support period, being a day that is, or is after, the day on which this item commences.
  - (2) The amounts referred to in subsections 65A(2) and 66(5) of the Assessment Act (as inserted by Schedule 1 to this Act) are to be indexed in accordance with section 153A of that Act on and after 1 January 2007 as if item 1 of Schedule 1 had commenced on that day.
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**Table A**

*Superannuation Legislation Amendment (Simplification) Act 2007*  
(No. 15, 2007)

**Schedule 1**

**406 Application**

- (1) The amendments made by this Schedule apply to the 2007-2008 income year and later years.
- (2) Despite subitem (1), those amendments apply to the 2007-2008 financial year and later years, to the extent that they relate to Division 292 of the *Income Tax Assessment Act 1997*.
- (3) Despite subitem (1), those amendments apply on and after 1 July 2007, to the extent that they relate to any of the following:
  - (a)Divisions 82 and 83 of the *Income Tax Assessment Act 1997*;
  - (b)Divisions 301 to 307 of that Act.

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*Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* (No. 115, 2008)

**Schedule 1**

**85 Interpretation**

In this Part:

**commencement** means the commencement of this Schedule.

**designated agreed matters**, in relation to 2 persons, means the following:

- (a)how all or any of the:
  - (i) property; or
  - (ii) financial resources;of either person, or both persons, at the time when the agreement is made, or at a later time and during a de facto relationship between them, is to be distributed;
- (b)the maintenance of either of the persons;

**Table A**

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in the event of the breakdown of a de facto relationship between them, or in relation to a de facto relationship between them that has broken down, as the case requires.

***designated State/Territory financial agreement***, in relation to 2 persons, means a written agreement:

- (a) signed by both of them with respect to matters that include any designated agreed matters; and
- (b) made under a preserved law of a State or Territory; and
- (c) in relation to which, either:
  - (i) a court could not, because of that preserved law, make an order under that law that is inconsistent with the agreement with respect to any of the designated agreed matters; or
  - (ii) a court could not, because of that preserved law, make an order under that law that is with respect to any of the designated agreed matters.

***earlier participating jurisdiction*** means a State or Territory that is a participating jurisdiction at commencement.

***later participating jurisdiction*** means a State that becomes a participating jurisdiction after commencement.

***new Act*** means the *Family Law Act 1975* as in force after commencement.

***Part VIIIB*** means Part VIIIB of the new Act to the extent to which that Part relates to a superannuation interest to be allocated between the parties to a de facto relationship.

***preserved law***, of a State or Territory, means a law of the State or Territory relating to financial matters relating to the parties to de facto relationships arising out of the breakdown of those de facto relationships.

***transition time***, for a later participating jurisdiction, means the time the State becomes a participating jurisdiction.

## **86 De facto relationships that broke down before commencement**

- (1) Subject to item 86A, Parts VIIIAB and VIIIB, and subsection 114(2A), of the new Act do not apply in relation to a de facto relationship that broke down before commencement.

Note 1: After commencement, State/Territory law will apply to any proceedings etc. to enforce,

**Table A**

discharge, suspend, revive or vary an order or injunction in force at commencement in relation to the maintenance, or the distribution of property, of the parties to the de facto relationship arising out of the breakdown of the de facto relationship.

Note 2: After commencement, State/Territory law will continue to apply to any proceedings pending at commencement for an order or injunction in relation to the maintenance, or the distribution of property, of the parties to the de facto relationship arising out of the breakdown of the de facto relationship.

Note 3: After commencement, State/Territory law will continue to apply if the parties to the de facto relationship have made, or make, an agreement about financial matters arising out of the breakdown of the de facto relationship.

Note 4: Section 90UE of the new Act will not apply in relation to an agreement made, by the parties to the de facto relationship under a non-referring State de facto financial law, about financial matters arising out of the breakdown of the de facto relationship. Such an agreement will not be affected by the new Act.

(2) To avoid doubt, section 90RC of the new Act does not exclude the operation of any State or Territory law in relation to the de facto relationship.

Note: Subsection 39A(5) of the new Act will not apply in relation to the de facto relationship because the effect of this item is that a de facto financial cause relating to that relationship cannot be instituted under the new Act.

**86A Opting into the new regime**

*Choosing the new regime*

(1) The parties to a de facto relationship that broke down before commencement may choose for Parts VIIIAB and VIIIB, and subsection 114(2A), of the new Act to apply in relation to the de facto relationship.

Note 1: Whether the parties will be able to obtain an order under those provisions of the new Act, or make a Part VIIIAB financial agreement, will depend on whether the tests found in those provisions are satisfied for the de facto relationship.

Note 2: Divisions 3 and 4 of this Part, and section 90UE of the new Act, are not affected by a choice under this item. Those Divisions, and that section, relate to de facto relationships that (if they are to break down) will break down after commencement.

*When a choice can be made*

(2) A choice under subitem (1) can be made if:

- (a) the choice is unconditional; and
- (b) subitems (3), (4) and (5) are satisfied for the choice.

A choice is irrevocable.

(3) This subitem is satisfied for the choice if no order (other than an interim

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order) under a preserved law of a State or Territory has been made by a court in relation to either of the following:

(a) how all or any of the:

(i) property; or

(ii) financial resources;

that either or both of the parties to the de facto relationship had or acquired during the de facto relationship is to be distributed;

(b) the maintenance of either of the parties to the de facto relationship.

(4) This subitem is satisfied for the choice if:

(a) the parties have not made a designated State/Territory financial agreement in relation to their de facto relationship; or

(b) if the parties have made such an agreement, that agreement has ceased to have effect without:

(i) any property being distributed; or

(ii) any maintenance being paid;

under the agreement.

(5) This subitem is satisfied for the choice if:

(a) the choice is in writing and signed by both of the parties to the de facto relationship; and

(b) each of the parties was provided, before the choice was signed by him or her, with:

(i) independent legal advice from a legal practitioner about the advantages and disadvantages, at the time that the advice was provided, to the party of making the choice; and

(ii) a signed statement by the legal practitioner stating that this advice was given to the party.

(6) For the purposes of Part VIIIAB of the new Act, a choice can be included in a Part VIIIAB financial agreement for which the parties are the spouse parties.

***Setting aside a choice***

(7) A court may make an order setting aside a choice if the court is satisfied that, having regard to the circumstances in which the choice was made,

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it would be unjust and inequitable if the court does not set the choice aside.

- (8) A court setting aside a choice under subitem (7) may make such order or orders (including an order for the transfer of property) as it considers just and equitable to, so far as is practicable, return the rights of:
- (a)the parties to the de facto relationship; and
  - (b)any other interested persons affected by the choice; to their position immediately before the choice was made.
- (9) Subsections 90UM(8) and (9) of the new Act apply in relation to setting aside a choice as if:
- (a)a reference in those subsections to subsection 90UM(1) or (6) of the new Act were a reference to subitem (7) or (8); and
  - (b)the reference in those subsections to section 90UM of the new Act were a reference to this item.

**87 Pre-commencement agreements—made in contemplation of de facto relationships**

- (1) This item applies if:
- (a)before commencement, 2 people (the *couple*) who were contemplating entering into a de facto relationship with each other made a written agreement, signed by both of them, with respect to any of the matters (the *eligible agreed matters*) mentioned in subitem (3); and
  - (b)the agreement was made under a preserved law of an earlier participating jurisdiction; and
  - (c)a court could not, because of the preserved law, make an order under that law that is inconsistent with the agreement with respect to any of the eligible agreed matters; and
  - (d)immediately before commencement:
    - (i) the agreement was in force under the preserved law; and
    - (ii) if the couple had entered into the de facto relationship—the de facto relationship had not broken down; and
    - (iii) the couple were not married to each other.

Paragraph (a) extends to an agreement made with one or more other people.

Note: Agreements made in non-referring States are not covered by this item. Those agreements continue to be governed by State law unless they are transformed into Part VIIIAB financial agreements (see section 90UE of the new Act and Division 4 of

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this Part).

- (2) For the purposes of the new Act, the agreement is taken, on and after commencement, to be a Part VIIIAB financial agreement made as mentioned in subsection 90UB(1) of the new Act to the extent that the agreement deals with the eligible agreed matters.

Note: After commencement, the agreement can only be enforced, varied, terminated or otherwise set aside under the new Act.

- (3) The matters referred to in paragraph (a) of subitem (1) are the following:
- (a) how all or any of the:
    - (i) property; or
    - (ii) financial resources;of either member, or members, of the couple at the time when the agreement is made, or at a later time and during the de facto relationship, is to be distributed in the event of the breakdown of the de facto relationship;
  - (b) the maintenance of either member of the couple in the event of the breakdown of the de facto relationship;
  - (c) matters incidental or ancillary to those mentioned in paragraph (a) or (b).
- (4) For the purposes of paragraph (c) of subitem (1), disregard whether the preserved law permits the court to make such an order if the court varies or sets aside the agreement.

**88 Pre-commencement agreements—made during de facto relationships**

- (1) This item applies if:
- (a) before commencement and while in a de facto relationship, the parties to the de facto relationship (the *couple*) made a written agreement, signed by both of them, with respect to any of the matters (the *eligible agreed matters*) mentioned in subitem (3); and
  - (b) the agreement was made under a preserved law of an earlier participating jurisdiction; and
  - (c) a court could not, because of the preserved law, make an order under that law that is inconsistent with the agreement with respect to any of the eligible agreed matters; and
  - (d) immediately before commencement:

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- (i) the agreement was in force under the preserved law; and
- (ii) the de facto relationship had not broken down; and
- (iii) the couple were not married to each other.

Paragraph (a) extends to an agreement made with one or more other people.

Note: Agreements made in non-referring States are not covered by this item. Those agreements continue to be governed by State law unless they are transformed into Part VIIIAB financial agreements (see section 90UE of the new Act).

- (2) For the purposes of the new Act, the agreement is taken, on and after commencement, to be a Part VIIIAB financial agreement made as mentioned in subsection 90UC(1) of the new Act to the extent that the agreement deals with the eligible agreed matters.

Note: After commencement, the agreement can only be enforced, varied, terminated or otherwise set aside under the new Act.

- (3) The matters referred to in paragraph (a) of subitem (1) are the following:

(a) how all or any of the:

(i) property; or

(ii) financial resources;

of either member, or members, of the couple at the time when the agreement is made, or at a later time and during the de facto relationship, is to be distributed in the event of the breakdown of the de facto relationship;

(b) the maintenance of either member of the couple in the event of the breakdown of the de facto relationship;

(c) matters incidental or ancillary to those mentioned in paragraph (a) or (b).

- (4) For the purposes of paragraph (c) of subitem (1), disregard whether the preserved law permits the court to make such an order if the court varies or sets aside the agreement.

## **89 When this Division applies**

This Division applies if Parts VIIIAB and VIIIB, and subsection 114(2A), of the new Act:

(a) apply in relation to a de facto relationship; or

(b) would, but for item 90, apply in relation to a de facto relationship;

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only because a State has become a later participating jurisdiction.

Note 1: This Division will not apply to a de facto relationship that breaks down during the period starting at commencement and ending at the transition time for the State if, during that period, section 90UE of the new Act has applied in relation to the de facto relationship. This is because it is section 90UE, and not the State becoming a participating jurisdiction, that has caused Part VIIIB of the new Act to apply in relation to the de facto relationship.

Note 2: The cases covered by paragraph (a) include a case where a de facto relationship has broken down before the transition time for the State and the parties to the relationship make a choice under item 90A.

Example 1: Amy and Ben made an agreement in a non-referring State and then moved to, and spent most of their relationship in, an earlier participating jurisdiction. Their relationship broke down after commencement, but before the non-referring State became a later participating jurisdiction. Their residence in the earlier participating jurisdiction means section 90UE of the new Act will cause Amy and Ben's agreement to become a Part VIIIB financial agreement.

Example 2: Cathy and Don made an agreement in a non-referring State and did not move from that State. Their relationship broke down after commencement but before the non-referring State became a later participating jurisdiction. That State becoming a later participating jurisdiction is the only way that Part VIIIB could only apply to Cathy and Don's relationship. This means this Division, and item 90, will apply. The effect of item 90 is that State law will continue to govern Cathy and Don's agreement.

Example 3: During their de facto relationship, Emily and Fred made an agreement in a non-referring State and did not move from that State. Their relationship broke down after the non-referring State became a later participating jurisdiction. That State becoming a later participating jurisdiction is the only way that Part VIIIB could only apply to Emily and Fred's relationship. This means this Division, and item 92, will apply. The effect of item 92 is that Emily and Fred's agreement will become a Part VIIIB financial agreement.

**90 De facto relationships that break down before transition time for a later participating jurisdiction**

(1) Subject to item 90A, Parts VIIIB and VIIIB, and subsection 114(2A), of the new Act do not apply in relation to the de facto relationship if it broke down before the transition time for the State.

Note 1: After the transition time, the law of the State will apply to any proceedings etc. to enforce, discharge, suspend, revive or vary an order or injunction in force at the transition time in relation to the maintenance, or the distribution of property, of the parties to the de facto relationship arising out of the breakdown of the de facto relationship.

Note 2: After the transition time, the law of the State will continue to apply to any proceedings pending at the transition time for an order or injunction in relation to the maintenance, or the distribution of property, of the parties to the de facto relationship arising out of the breakdown of the de facto relationship.

Note 3: After the transition time, the law of the State will continue to apply if the parties to the de facto relationship have, before the transition time, made an agreement (to which

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section 90UE of the new Act had not applied) about financial matters arising from that breakdown.

Note 4: After the transition time, the law of the State will continue to apply if the parties to the de facto relationship, after the transition time, make an agreement about financial matters arising from that breakdown.

(2) To avoid doubt, section 90RC of the new Act does not exclude the operation of any State or Territory law in relation to the de facto relationship.

Note: Subsection 39A(5) of the new Act will not apply in relation to the de facto relationship because the effect of this item is that a de facto financial cause relating to that relationship cannot be instituted under the new Act.

## **90A Opting into the new regime**

### *Choosing the new regime*

(1) The parties to a de facto relationship that broke down before the transition time for the State may choose for Parts VIIIAB and VIIIB, and subsection 114(2A), of the new Act to apply in relation to the de facto relationship.

Note 1: Whether the parties will be able to obtain an order under those provisions of the new Act, or make a Part VIIIAB financial agreement, will depend on whether the tests found in those provisions are satisfied for the de facto relationship.

Note 2: Items 91 and 92 are not affected by a choice under this item. Those items relate to de facto relationships that (if they are to break down) will break down after the transition time for the State.

### *When a choice can be made*

(2) A choice under subitem (1) can be made if:

- (a) the choice is unconditional; and
- (b) subitems (3), (4) and (5) are satisfied for the choice.

A choice is irrevocable.

(3) This subitem is satisfied for the choice if no order (other than an interim order) under a preserved law of a State or Territory has been made by a court in relation to either of the following:

- (a) how all or any of the:
  - (i) property; or
  - (ii) financial resources;

that either or both of the parties to the de facto relationship had or acquired during the de facto relationship is to be

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- distributed;
- (b)the maintenance of either of the parties to the de facto relationship.
- (4) This subitem is satisfied for the choice if:
- (a)the parties have not made a designated State/Territory financial agreement in relation to their de facto relationship; or
- (b)if the parties have made such an agreement, that agreement has ceased to have effect without:
- (i) any property being distributed; or
- (ii) any maintenance being paid; under the agreement.
- (5) This subitem is satisfied for the choice if:
- (a)the choice is in writing and signed by both of the parties to the de facto relationship; and
- (b)each of the parties was provided, before the choice was signed by him or her, with:
- (i) independent legal advice from a legal practitioner about the advantages and disadvantages, at the time that the advice was provided, to the party of making the choice; and
- (ii) a signed statement by the legal practitioner stating that this advice was given to the party.
- (6) For the purposes of Part VIIIAB of the new Act, a choice can be included in a Part VIIIAB financial agreement for which the parties are the spouse parties.
- Setting aside a choice*
- (7) A court may make an order setting aside a choice if the court is satisfied that, having regard to the circumstances in which the choice was made, it would be unjust and inequitable if the court does not set the choice aside.
- (8) A court setting aside a choice under subitem (7) may make such order or orders (including an order for the transfer of property) as it considers just and equitable to, so far as is practicable, return the rights of:
- (a)the parties to the de facto relationship; and
- (b)any other interested persons affected by the choice;

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to their position immediately before the choice was made.

- (9) Subsections 90UM(8) and (9) of the new Act apply in relation to setting aside a choice as if:
  - (a) a reference in those subsections to subsection 90UM(1) or (6) of the new Act were a reference to subitem (7) or (8); and
  - (b) the reference in those subsections to section 90UM of the new Act were a reference to this item.

## **91 Pre-transition time agreements—made in contemplation of de facto relationships**

- (1) This item applies if:
  - (a) before the transition time for the State, 2 people (the *couple*) who were contemplating entering into a de facto relationship with each other made a written agreement, signed by both of them, with respect to any of the matters (the *eligible agreed matters*) mentioned in subitem (3); and
  - (b) the agreement was made under a preserved law of the State; and
  - (c) either:
    - (i) a court could not, because of the preserved law, make an order under that law that is inconsistent with the agreement with respect to any of the eligible agreed matters; or
    - (ii) a court could not, because of the preserved law, make an order under that law that is with respect to any of the eligible agreed matters to which the agreement applies; and
  - (d) at the transition time for the State, the members of the couple were not the spouse parties to any Part VIIIB financial agreement that is binding on them with respect to any of the eligible agreed matters; and
  - (e) immediately before the transition time for the State:
    - (i) the agreement was in force under the preserved law; and
    - (ii) if the couple had entered into the de facto relationship—the de facto relationship had not broken down; and
    - (iii) the couple were not married to each other.

Paragraph (a) extends to an agreement made with one or more other people.

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- (2) For the purposes of the new Act, the agreement is taken, on and after the transition time, to be a Part VIIIAB financial agreement made as mentioned in subsection 90UB(1) of the new Act to the extent that the agreement deals with the eligible agreed matters.

Note: After the transition time, the agreement can only be enforced, varied, terminated or otherwise set aside under the new Act.

- (3) The matters referred to in paragraph (a) of subitem (1) are the following:
- (a) how all or any of the:
    - (i) property; or
    - (ii) financial resources;of either member, or members, of the couple at the time when the agreement is made, or at a later time and during the de facto relationship, is to be distributed in the event of the breakdown of the de facto relationship;
  - (b) the maintenance of either member of the couple in the event of the breakdown of the de facto relationship;
  - (c) matters incidental or ancillary to those mentioned in paragraph (a) or (b).
- (4) For the purposes of paragraph (c) of subitem (1), disregard whether the preserved law permits the court to make such an order if the court varies or sets aside the agreement.

**92 Pre-transition time agreements—made during de facto relationships**

- (1) This item applies if:
- (a) before the transition time for the State and while in a de facto relationship, the parties to the de facto relationship (the *couple*) made a written agreement, signed by both of them, with respect to any of the matters (the *eligible agreed matters*) mentioned in subitem (3); and
  - (b) the agreement was made under a preserved law of the State; and

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- (c) either:
- (i) a court could not, because of the preserved law, make an order under that law that is inconsistent with the agreement with respect to any of the eligible agreed matters; or
  - (ii) a court could not, because of the preserved law, make an order under that law that is with respect to any of the eligible agreed matters to which the agreement applies; and
- (d) at the transition time for the State, the members of the couple were not the spouse parties to any Part VIIIB financial agreement that is binding on them with respect to any of the eligible agreed matters; and
- (e) immediately before the transition time for the State:
- (i) the agreement was in force under the preserved law; and
  - (ii) the de facto relationship had not broken down; and
  - (iii) the parties were not married to each other.

Paragraph (a) extends to an agreement made with one or more other people.

- (2) For the purposes of the new Act, the agreement is taken, on and after the transition time, to be a Part VIIIB financial agreement made as mentioned in subsection 90UC(1) of the new Act to the extent that the agreement deals with the eligible agreed matters.

Note: After the transition time, the agreement can only be enforced, varied, terminated or otherwise set aside under the new Act.

- (3) The matters referred to in paragraph (a) of subitem (1) are the following:
- (a) how all or any of the:
    - (i) property; or
    - (ii) financial resources;of either member, or members, of the couple at the time when the agreement is made, or at a later time and during the de facto relationship, is to be distributed in the event of the breakdown of the de facto relationship;
  - (b) the maintenance of either member of the couple in the event of the breakdown of the de facto relationship;
  - (c) matters incidental or ancillary to those mentioned in paragraph (a) or (b).

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- (4) For the purposes of paragraph (c) of subitem (1), disregard whether the preserved law permits the court to make such an order if the court varies or sets aside the agreement.

**93 Application of new Act to agreements covered by this Part**

- (1) For the purposes of the application of the new Act to an agreement covered by item 87, 88, 91 or 92:
- (a) section 90UA of the new Act has effect subject to this Part; and
  - (b) section 90UG of the new Act has effect as if the reference in that section to paragraph 90UE(2)(b) of the new Act included a reference to paragraph (3)(c) of that item; and
  - (c) section 90UH of the new Act is taken not to have been enacted; and
  - (d) section 90UJ of the new Act has effect as if the references in that section to section 90UE of the new Act included references to that item; and
  - (e) subparagraph 90UM(1)(c)(ii) of the new Act has effect as if:
    - (i) the reference in that subparagraph to an order under section 90SM of the new Act included a reference to an order (however described) under a corresponding provision (if any) of the preserved law; and
    - (ii) the reference in that subparagraph to a declaration under section 90SL of the new Act included a reference to a declaration (however described) under a corresponding provision (if any) of the preserved law; and
  - (f) the reference in paragraph 90UM(1)(k) of the new Act to section 90UE of the new Act included a reference to that item; and
  - (g) the reference in subsection 90UM(5) of the new Act to section 90UE of the new Act included a reference to that item; and
  - (h) subsection 90WA(1) of the new Act does not apply to a liability to pay duty or charge (if any) in relation to the agreement if the liability arises before:
    - (i) if the item is item 87 or 88—commencement; or
    - (ii) if the item is item 91 or 92—the transition time.

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- (2) Despite any State or Territory law, a failure to discharge a liability covered by paragraph (h) of subitem (1) in relation to the agreement has no effect for the purposes of the new Act. In particular, the failure does not affect whether the agreement may be presented in evidence in a court for the purposes of the new Act.

**Schedule 3A**

**9 Application**

*Application to children*

- (1) Subject to subitems (2) to (8), the amendments made by this Schedule apply in relation to a child born before, on or after the commencement of this item.

*Application to the Aged Care Act 1997*

- (2) To the extent that the amendments of the *Family Law Act 1975* made by this Schedule affect subparagraph 44-11(2)(a)(i) of the *Aged Care Act 1997*, they apply in relation to that subparagraph on and after 1 July 2009.

*Application to the A New Tax System (Family Assistance) Act 1999*

- (3) To the extent that the amendments of the *Family Law Act 1975* made by this Schedule affect paragraph 22(2)(b) of the *A New Tax System (Family Assistance) Act 1999*, they apply in relation to that paragraph on and after 1 July 2009.

*Application to the Child Support (Assessment) Act 1989*

- (4) To the extent that the amendment of subsection 60H(1), and the repeal of subsection 60H(4), of the *Family Law Act 1975* made by this Schedule affect paragraph (b) of the definition of *parent* in subsection 5(1) of the *Child Support (Assessment) Act 1989*, they apply in relation to that paragraph on and after 1 July 2009.

*Application to the Child Support (Registration and Collection) Act 1988*

- (5) To the extent that the amendment of paragraph 60F(1)(c) of the *Family Law Act 1975* made by this Schedule affects the definition of *child of a*

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*marriage* in subsection 4(1) of the *Child Support (Registration and Collection) Act 1988*, it applies in relation to that definition on and after 1 July 2009.

*Application to the Health Insurance Act 1973*

- (6) To the extent that the amendments of the *Family Law Act 1975* made by this Schedule affect paragraph (a) of the definition of *dependent child* in subsection 10AA(7) of the *Health Insurance Act 1973*, they apply in relation to that paragraph on and after 1 January 2009.

*Application to the National Health Act 1953*

- (7) To the extent that the amendments of the *Family Law Act 1975* made by this Schedule affect paragraph 84(4)(b), and paragraph (a) of the definition of *dependent child* in subsection 84B(4) of the *National Health Act 1953*, they apply in relation to those paragraphs on and after 1 January 2009.

*Application to the Social Security Act 1991*

- (8) To the extent that the amendments of the *Family Law Act 1975* made by this Schedule affect paragraph 5(2)(a), subparagraph (b)(i) of point 1067G-B3AA, subparagraph (b)(i) of subpoint 1067G-G9(2) and subparagraph (a)(i) of point 1068-B1B of the *Social Security Act 1991*, they apply in relation to those provisions on and after 1 July 2009.

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*Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008* (No. 144, 2008)

**Schedule 2**

**52C Application to the *Child Support (Registration and Collection) Act 1988***

To the extent that the amendment of the *Family Law Act 1975* made by this Schedule affects the definition of *step-parent* in subsection 4(1) of the *Child Support (Registration and Collection) Act 1988*, it applies in relation to that definition on and after 1 July 2009.