



Family Law Act 1975

No. 53, 1975

Compilation No. 101

Compilation date: 10 June 2025

Includes amendments: Act No. 118, 2024

This compilation is in 2 volumes

Volume 1: sections 1–90
Volume 2: sections 90AA–125
Schedule
Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Family Law Act 1975* that shows the text of the law as amended and in force on 10 June 2025 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part I—Preliminary	1
1	Short title1
2	Commencement.....1
3	Repeal and saving.....1
4	Interpretation2
4AA	De facto relationships32
4AB	Definition of <i>family violence</i> etc.34
4A	Third party proceedings to set aside financial agreement36
4B	Third party proceedings to set aside Part VIIIAB financial agreement37
4C	Meaning of <i>proceeds of crime authority</i>39
5	Debtor subject to a personal insolvency agreement41
6	Polygamous marriages41
7	Extension of Act to certain Territories41
7A	Application of the <i>Criminal Code</i>41
8	Supersession of existing laws41
Part IA—Protection of names	43
9A	Use of protected names and symbols43
Part II—Non-court based family services	45
Division 1—Accreditation of family counsellors, family dispute resolution practitioners and other family service providers	45
10A	Accreditation Rules45
10AA	Immunity46
Division 2—Family counselling	47
10B	Definition of <i>family counselling</i>47
10C	Definition of <i>family counsellor</i>47
10D	Confidentiality of communications in family counselling.....48
10E	Admissibility of communications in family counselling and in referrals from family counselling.....49
Division 3—Family dispute resolution	51
10F	Definition of <i>family dispute resolution</i>51

10G	Definition of <i>family dispute resolution practitioner</i>	51
10H	Confidentiality of communications in family dispute resolution	52
10J	Admissibility of communications in family dispute resolution and in referrals from family dispute resolution	53
10K	Family dispute resolution practitioners must comply with regulations	54
Division 3A—Children’s contact services		55
10KA	Simplified outline of this Division	55
10KB	Definition of <i>children’s contact services</i>	55
10KC	Definition of <i>CCS practitioner</i>	56
10KD	Definition of <i>CCS business</i>	56
10KE	Confidentiality of certain safety-related information	56
10KF	Admissibility of certain safety-related information	59
10KG	Civil penalty provisions	59
10KH	Strict liability offences—unaccredited provision of children’s contact services	60
10KI	Compliance by entities that are not legal persons	64
Division 4—Arbitration		66
10L	Definition of <i>arbitration</i>	66
10M	Definition of <i>arbitrator</i>	66
10N	Arbitrators may charge fees for their services	66
10P	Immunity of arbitrators	66
Division 5—Post-separation parenting programs		68
10PA	Admissibility of communications in post-separation parenting programs	68
Part IIA—Family safety risk screening		69
Division 1—Preliminary		69
10Q	Simplified outline of this Part	69
10R	Definition of <i>family safety risk screening person</i>	69
10S	Definition of <i>family safety risk screening information</i>	69
10T	Definition of <i>family safety risk screening process</i>	70

Division 2—Protection of family safety risk screening information	72
10U Confidentiality of family safety risk screening information	72
10V Admissibility of family safety risk screening information etc.	74
10W Immunity of family safety risk screening persons	75
Part III—Family consultants	76
Division 1—About family consultants	76
11A Functions of family consultants	76
11B Definition of <i>family consultant</i>	76
11C Admissibility of communications with family consultants and referrals from family consultants.....	77
11D Immunity of family consultants	78
Division 2—Courts’ use of family consultants	79
11E Courts to consider seeking advice from family consultants	79
11F Court may order parties to attend, or arrange for child to attend, appointments with a family consultant.....	80
11G Consequences of failure to comply with order under section 11F	80
Part IIIA—Family report writers	82
11H Family report writers	82
11J Designated family reports	82
11K Regulations prescribing standards and requirements for family report writers	83
11L Disclosure by court to regulator	86
11M Immunity of regulator	86
Part IIIA—Obligations to inform people about non-court based family services and about court’s processes and services	87
Division 1—Introduction	87
12A Objects of this Part	87
Division 2—Kind of information to be provided	88
12B Prescribed information about non-court based family services and court’s processes and services.....	88

12C	Prescribed information about reconciliation	88
12D	Prescribed information about Part VII proceedings	88
Division 3—Who must provide information, and when		90
12E	Obligations on legal practitioners.....	90
12F	Obligations on principal executive officers of courts	91
12G	Obligations on family counsellors, family dispute resolution practitioners and arbitrators.....	91
Part IIIB—Court’s powers in relation to court and non-court based family services		93
Division 1—Introduction		93
13A	Objects of this Part	93
Division 2—Help with reconciliation		94
13B	Court to accommodate possible reconciliations	94
Division 3—Referrals to family counselling, family dispute resolution and other family services		95
13C	Court may refer parties to family counselling, family dispute resolution and other family services.....	95
13D	Consequences of failure to comply with order under section 13C	96
Division 4—Court’s role in relation to arbitration of disputes		97
13E	Court may refer certain proceedings to arbitration	97
13F	Court may make orders in relation to family law arbitration	97
13G	Federal Circuit and Family Court of Australia may determine questions of law referred by arbitrator	98
13H	Awards made in arbitration may be registered in court.....	98
13J	Federal Circuit and Family Court of Australia can review registered awards	99
13K	Federal Circuit and Family Court of Australia may set aside registered awards	99
Part V—Jurisdiction of courts		101
Division 1—Jurisdiction in matrimonial causes		101
39	Jurisdiction in matrimonial causes	101
Division 2—Jurisdiction in de facto financial causes		105
39A	Instituting proceedings	105

39B	Jurisdiction in de facto financial causes	106
39C	Ceasing jurisdiction of Supreme Court of the Northern Territory of Australia	106
39D	Ceasing jurisdiction of State or Territory courts of summary jurisdiction	107
39E	Revoking Proclamations ceasing jurisdiction of State or Territory courts	108
39F	Territory court does not have jurisdiction unless a party is ordinarily resident in the Territory	108
39G	Jurisdiction in relation to transferred matters under other Commonwealth laws	108
Division 2A—Jurisdiction in matters arising under Part VIIIC		109
39H	Instituting proceedings	109
39J	Jurisdiction in matters arising under Part VIIIC	109
Division 3—Other provisions		110
40	Limitations on jurisdiction of Federal Circuit and Family Court of Australia (Division 2) and of State and Territory Supreme Courts	110
41	Establishment of State Family Courts	111
42	Law to be applied	113
43	Principles to be applied by courts.....	114
44	Institution of proceedings.....	114
44A	Proceedings for divorce order	119
45	Stay and transfer of proceedings	119
46	Transfer of proceedings from court of summary jurisdiction in certain cases	121
46A	Prescribing value of property for the purposes of section 46.....	123
47	Courts to act in aid of each other.....	124
Division 4—Appeals		125
47A	Appeals from courts of summary jurisdiction	125
47B	Leave to appeal needed for child support matters.....	127
47BA	Appeals relating to matters arising under Part VIIIC	127
47C	Appeal may be dismissed if no reasonable prospect of success	128
47D	Appeals to High Court may not be brought	129
47E	Regulations to be sole source of certain appellate jurisdiction.....	129

Part VI—Divorce and nullity of marriage	130
48 Divorce	130
49 Meaning of separation	130
50 Effect of resumption of cohabitation.....	130
51 Nullity of marriage	131
52 Court not to make divorce order where application for decree of nullity before it.....	131
53 Circumstances occurring before commencement of Act or outside Australia.....	131
55 When divorce order takes effect.....	131
55A Divorce order where children.....	134
56 Certificate as to divorce order	135
57 Rescission of divorce order where parties reconciled	135
58 Rescission of divorce order on ground of miscarriage of justice.....	135
59 Remarriage	136
60 No appeal after divorce order takes effect.....	136
Part VII—Children	137
Division 1—Introductory	137
Subdivision A—What this Division does	137
60A What this Division does	137
Subdivision B—Object and outline	137
60B Objects of Part	137
60C Outline of Part	138
Subdivision BA—Best interests of the child: court proceedings	141
60CA Child’s best interests paramount consideration in making a parenting order.....	141
60CB Proceedings to which Subdivision applies	141
60CC How a court determines what is in a child’s best interests.....	141
60CD How the views of a child are expressed	143
60CE Children not required to express views	144
60CF Informing court of relevant family violence orders	144
60CG Court to consider risk of family violence.....	144
60CH Informing court of care arrangements under child welfare laws.....	144

60CI	Informing court of notifications to, and investigations by, information sharing agencies	145
Subdivision BB—Best interests of the child: adviser’s obligations		146
60D	Adviser’s obligations in relation to best interests of the child	146
Subdivision C—Interpretation and application of Part		146
60E	Application of Part to void marriages	146
Subdivision D—Interpretation—how this Act applies to certain children		147
60EA	Definition of <i>de facto partner</i>	147
60F	Certain children are children of marriage etc.	147
60G	Leave may be granted for adoption proceedings by prescribed adopting parent	148
60H	Children born as a result of artificial conception procedures	148
60HA	Children of de facto partners	150
60HB	Children born under surrogacy arrangements	150
Subdivision E—Family dispute resolution		151
60I	Attending family dispute resolution before applying for Part VII order	151
60J	Family dispute resolution not attended because of child abuse or family violence.....	155
Division 2—Parental responsibility		157
61A	What this Division does	157
61B	Meaning of <i>parental responsibility</i>	157
61C	Each parent has parental responsibility (subject to court orders)	157
61CA	Consultation between parents on major long-term issues	158
61D	Parenting orders and parental responsibility	158
61DAA	Effect of parenting order that provides for joint decision-making about major long-term issues.....	158
61DAB	No need to consult on issues that are not major long-term issues.....	159
61E	Effect of adoption on parental responsibility	159
61F	Application to Aboriginal or Torres Strait Islander children	160
Division 3—Reports relating to children under 18		161
62A	What this Division does	161

62B	Court's obligation to inform people to whom Part VII orders apply about family counselling, family dispute resolution and other family services.....	161
62G	Reports by family consultants	161
Division 4—Parenting plans		163
63A	What this Division does	163
63B	Parents encouraged to reach agreement	163
63C	Meaning of <i>parenting plan</i> and related terms	163
63CAA	Parenting plans may include child support provisions	165
63D	Parenting plan may be varied or revoked by further written agreement	166
63DA	Obligations of advisers	166
63DB	Registered parenting plans	167
63E	Registration of a revocation of a registered parenting plan	168
63F	Child welfare provisions of registered parenting plans.....	169
63G	Child maintenance provisions of registered parenting plans—where not enforceable as maintenance agreements.....	170
63H	Court's powers to set aside, discharge, vary, suspend or revive registered parenting plans	171
Division 5—Parenting orders—what they are		173
64A	What this Division does	173
64B	Meaning of <i>parenting order</i> and related terms	173
64C	Parenting orders may be made in favour of parents or other persons	175
64D	Parenting orders subject to later parenting plans.....	175
Division 6—Parenting orders other than child maintenance orders		177
Subdivision A—Introductory		177
65A	What this Division does	177
65AA	Child's best interests paramount consideration in making a parenting order.....	177
65B	Division does not apply to child maintenance orders	177
Subdivision B—Applying for and making parenting orders		178
65C	Who may apply for a parenting order	178

65D	Court's power to make parenting order.....	178
65DAAA	Reconsideration of final parenting orders	179
65DAB	Court to have regard to parenting plans	180
65DA	Parenting orders.....	180
65F	General requirements for counselling before parenting order made.....	181
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.....	181
65H	Children who are 18 or over or who have married or entered de facto relationships.....	182
65J	Effect of adoption on parenting order	183
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	183
65L	Family consultants may be required to supervise or assist compliance with parenting orders.....	184
65LA	Court may order attendance at a post-separation parenting program	184
65LB	Conditions for providers of post-separation parenting programs.....	185
Subdivision E—Obligations under parenting orders relating to taking or sending children from Australia		186
65X	Interpretation	186
65Y	Obligations if certain parenting orders have been made: taking or sending a child outside Australia	187
65YA	Obligations if certain parenting orders have been made: retaining a child outside Australia	188
65Z	Obligations if proceedings for the making of certain parenting orders are pending: taking or sending a child outside Australia.....	189
65ZAA	Obligations if proceedings for the making of certain parenting orders are pending: retaining a child outside Australia.....	190
65ZA	Obligations of owners etc. of aircraft and vessels if certain parenting orders made	191
65ZB	Obligations of owners etc. of aircraft and vessels if proceedings for the making of certain parenting orders are pending	192

65ZC	General provisions applicable to sections 65ZA and 65ZB	193
65ZD	State or Territory laws stopping children leaving Australia not affected	194
65ZE	Extended geographical jurisdiction—category D	194
Division 7—Child maintenance orders		195
Subdivision A—What this Division does		195
66A	What this Division does	195
Subdivision B—Objects and principles		195
66B	Objects.....	195
66C	Principles—parents have primary duty to maintain	196
66D	Principles—when step-parents have a duty to maintain	196
Subdivision C—Relationship with Child Support (Assessment) Act		197
66E	Child maintenance order not to be made etc. if application for administrative assessment of child support could be made.....	197
Subdivision D—Applying for and making child maintenance orders		197
66F	Who may apply for a child maintenance order	197
66G	Court’s power to make child maintenance order.....	198
66H	Approach to be taken in proceedings for child maintenance order	198
66J	Matters to be taken into account in considering financial support necessary for maintenance of child	198
66K	Matters to be taken into account in determining contribution that should be made by party etc.	199
66L	Children who are 18 or over.....	201
66M	When step-parents have a duty to maintain.....	202
66N	Determining financial contribution of step-parent	202
Subdivision E—Other aspects of courts’ powers		203
66P	General powers of court	203
66Q	Urgent child maintenance orders.....	204
66R	Specification in orders of payments etc. for child maintenance purposes.....	204
66S	Modification of child maintenance orders.....	205

Subdivision EA—Varying the maintenance of certain children	208
66SA Varying the maintenance of certain children	208
Subdivision F—When child maintenance orders stop being in force	209
66T Effect of child turning 18	209
66U Effect of death of child, person liable to pay or person entitled to receive.....	209
66V Effect of adoption, marriage or entering into a de facto relationship.....	210
66VA Children who are 18 or over: change of circumstances	211
66W Recovery of arrears	211
Subdivision G—Recovery of amounts paid under maintenance orders	212
66X Recovery of amounts paid, and property transferred or settled, under maintenance orders.....	212
Division 8—Other matters relating to children	215
Subdivision A—What this Division does	215
67A What this Division does	215
Subdivision B—Father’s liability to contribute towards child bearing expenses if not married to mother	215
67B Father liable to contribute towards maintenance and expenses of mother	215
67C Matters to be taken into account in proceedings under Subdivision.....	216
67D Powers of court in proceedings under Subdivision	217
67E Urgent orders.....	218
67F Who may institute proceedings	218
67G Time limit for institution of proceedings	218
Subdivision C—Location and recovery of children	219
67J Meaning of <i>location order</i> and <i>Commonwealth information order</i>	219
67K Who may apply for a location order.....	219
67L Child’s best interests paramount consideration in making a location order.....	220
67M Provisions about location orders, other than Commonwealth information orders.....	220
67N Provisions about Commonwealth information orders	221

67NA	Persons who are related to a child for the purposes of paragraph 67N(9)(b)	225
67P	Information provided under location order not to be disclosed except to limited persons	226
67Q	Meaning of <i>recovery order</i>	227
67R	How recovery orders authorise or direct people	228
67S	How recovery orders to stop and search etc. name or describe vehicles, places etc.....	229
67T	Who may apply for a recovery order.....	229
67U	Court's power to make recovery order.....	229
67V	Child's best interests paramount consideration in making a recovery order.....	230
67W	How long recovery order remains in force.....	230
67X	Persons not to prevent or hinder taking of action under recovery order	230
67Y	Obligation to notify persons of child's return	231
Subdivision D—Allegations of child abuse and family violence		231
67Z	Where interested person makes allegation of child abuse.....	231
67ZA	Where member of the Court personnel, family counsellor, family dispute resolution practitioner or arbitrator suspects child abuse etc.....	232
67ZB	No liability for notification under section 67Z or 67ZA.....	234
67ZBA	Where interested person makes allegation of family violence	234
67ZBB	Court to take prompt action in relation to allegations of child abuse or family violence	236
Subdivision DA—Orders for information etc. in child-related proceedings		237
67ZBC	Meaning of <i>information sharing agency</i>	237
67ZBD	Order to provide particulars of documents or information relating to certain matters	237
67ZBE	Order to provide documents or information relating to certain matters.....	239
67ZBF	Disclosure of protected material.....	241
67ZBG	Advice to court about risk of disclosure.....	242
67ZBH	Admission of particulars, documents or information into evidence.....	243
67ZBI	Information sharing agencies and court must have regard to information sharing safeguards.....	244

67ZBJ	When orders may be made	244
67ZBK	Subpoena in respect of certain documents or information	244
67ZBL	Review of provisions.....	245
Subdivision E—Other orders about children		245
67ZC	Orders relating to welfare of children	245
67ZD	Orders for delivery of travel documents.....	246
Division 9—Injunctions		247
68A	What this Division does	247
68B	Injunctions	247
68C	Powers of arrest	248
Division 10—Independent representation of child’s interests		249
68L	Court order for independent representation of child’s interests.....	249
68LA	Role of independent children’s lawyer.....	249
68M	Order that child be made available for examination	252
Division 11—Family violence		254
68N	Purposes of this Division.....	254
68P	Obligations of court making an order or granting an injunction under this Act that is inconsistent with an existing family violence order	254
68Q	Relationship of order or injunction made under this Act with existing inconsistent family violence order.....	256
68R	Power of court making a family violence order to revive, vary, discharge or suspend an existing order, injunction or arrangement under this Act	257
68S	Application of Act and Rules when exercising section 68R power	259
68T	Special provisions relating to proceedings to make an interim (or interim variation of) family violence order.....	260
Division 12—Proceedings and jurisdiction		261
Subdivision A—What this Division does		261
69A	What this Division does	261
Subdivision B—Institution of proceedings and procedure		261
69B	Certain proceedings to be instituted only under this Part.....	261
69C	Who may institute proceedings	262

69D	Institution of maintenance proceedings by authorised authority or person	262
69E	Child or parent to be present in Australia etc.	262
69F	Applicant may be in contempt.....	263
Subdivision C—Jurisdiction of courts		263
69G	Interpretation	263
69GA	Jurisdiction of prescribed courts etc.	264
69H	Jurisdiction of Federal Circuit and Family Court of Australia (Division 2), State Family Courts and Northern Territory Supreme Court.....	265
69J	Jurisdiction of courts of summary jurisdiction.....	266
69K	Territory court does not have jurisdiction unless a party is ordinarily resident in the Territory	267
69L	Jurisdiction in relation to transferred matters under other Commonwealth laws	267
69M	Jurisdiction is additional to other jurisdiction	267
69N	Transfer of proceedings from courts of summary jurisdiction in certain cases	267
Subdivision D—Presumptions of parentage		269
69P	Presumptions of parentage arising from marriage	269
69Q	Presumption of paternity arising from cohabitation.....	270
69R	Presumption of parentage arising from registration of birth	270
69S	Presumptions of parentage arising from findings of courts	270
69T	Presumption of paternity arising from acknowledgments	272
69U	Rebuttal of presumptions etc.	272
Subdivision E—Parentage evidence		272
69V	Evidence of parentage	272
69VA	Declarations of parentage.....	272
69W	Orders for carrying out of parentage testing procedures	273
69X	Orders associated with parentage testing orders	273
69XA	Matters related particularly to parentage testing for purposes of an international agreement or arrangement.....	274
69Y	Orders directed to persons 18 or over	275
69Z	Orders directed to children under 18.....	275
69ZA	No liability if parent etc. consents.....	276

69ZB	Regulations about carrying out, and reporting on, parentage testing procedures	276
69ZC	Reports of information obtained may be received in evidence.....	276
69ZD	Parentage testing for purposes of international maintenance agreements.....	277
Subdivision F—Extension, application and additional operation of Part		278
69ZE	Extension of Part to the States.....	278
69ZF	Unless declaration in force, Part's extension to a State has effect subject to modifications	279
69ZG	Application of Part in, and in relation to, Territories	280
69ZH	Additional application of Part	280
69ZJ	Additional jurisdiction of courts.....	281
69ZK	Child welfare laws not affected.....	281
Subdivision G—Short form reasons for decisions relating to interim parenting orders		282
69ZL	Short form reasons for decisions relating to interim parenting orders	282
Division 13—State, Territory and overseas orders		283
Subdivision A—What this Division does		283
70A	What this Division does	283
Subdivision B—Registration of State and Territory orders		283
70C	General registration of orders made under law of prescribed State	283
70D	Registration of orders in a particular State	283
70E	Effect of registration.....	283
Subdivision C—Registration of overseas orders		284
70G	Registration of orders	284
70H	Effect of registration—general.....	284
70J	Effect of registration on exercise of jurisdiction	284
70K	Cancellation of registration if Subdivision C parenting order made.....	285
70L	Relationship between Australian orders and registered overseas child orders	285

Subdivision D—Transmission of Australian orders to overseas jurisdictions	287
70M Registry Manager to send documents etc. to overseas jurisdiction	287
70N Regulations may deal with sending Australian orders etc. to overseas jurisdiction	288
Division 13A—Orders in proceedings relating to contraventions of child-related orders	289
Subdivision A—Preliminary	289
70NAA Simplified outline	289
70NAB Objects.....	290
70NAC Meaning of <i>contravene</i> a child-related order	290
70NAD Meaning of <i>reasonable excuse</i> for contravening a child-related order	292
70NADA Burden of proof in relation to reasonable excuse.....	293
70NAE Standard of proof.....	293
Subdivision B—Orders relating to contraventions of child-related orders	293
70NBA Court may make orders in proceedings relating to contravention of child-related orders	293
70NBB Make-up time parenting orders	294
70NBC Variation and suspension of child-related orders that are parenting orders	295
70NBD Post-separation parenting programs	295
70NBF Orders where contravention established without reasonable excuse	296
Subdivision C—Further provisions relating to bonds and imprisonment	298
70NCA Matters relating to bonds	298
70NCB Procedure for enforcing bonds	299
70NCC Matters relating to imprisonment	299
70NCD Powers of court in relation to imprisoned person.....	301
70NCE Rules relating to child maintenance orders and child support	301
Subdivision D—Miscellaneous	302
70NDA Court may issue warrant for arrest of alleged offender	302
70NDB Relationship between Division and prosecutions for offences under other laws	302

70NDC	Division does not limit operation of section 105	303
Division 14—Miscellaneous		304
Subdivision A—What this Division does		304
70P	What this Division does	304
Subdivision B—Dealing with people who have been arrested		304
70PA	Situation to which Subdivision applies	304
70PB	Arrested person to be brought before a court	304
70PC	Obligation of court—where application before it to deal with contravention	305
70PD	Obligation of court—where no application before it, but application before another court, to deal with contravention.....	305
70PE	Obligation of court—where no application before any court to deal with contravention	306
70PF	Applications heard as required by subsection 70PC(2) or paragraph 70PD(3)(b)	307
Subdivision C—Other matters		307
70Q	Certain instruments not liable to duty	307
Part VIII—Property, spousal maintenance and maintenance agreements		309
71	Interpretation	309
71A	This Part does not apply to certain matters covered by binding financial agreements.....	309
71B	Duty of disclosure	309
72	Right of spouse to maintenance.....	312
74	Power of court in spousal maintenance proceedings.....	313
75	Matters to be taken into consideration in relation to spousal maintenance.....	315
77	Urgent spousal maintenance cases	317
77A	Specification in orders of payments etc. for spouse maintenance purposes.....	317
78	Declaration of interests in property	318
79	Alteration of property interests.....	319
79AA	Other matters in relation to alteration of property interests.....	324
79A	Setting aside of orders altering property interests	332
79B	Notification of proceeds of crime orders etc.	335

79C	Court to stay property or spousal maintenance proceedings affected by proceeds of crime orders etc.	336
79D	Lifting a stay.....	337
79E	Intervention by proceeds of crime authority	337
79F	Notifying third parties about application.....	338
79G	Notifying bankruptcy trustee etc. about application under section 74, 78, 79 or 79A	338
79H	Notifying court about bankruptcy etc.....	338
79J	Notifying non-bankrupt spouse about application under section 139A of the <i>Bankruptcy Act 1966</i>	340
80	General powers of court	341
81	Duty of court to end financial relations.....	342
82	Cessation of spousal maintenance orders	342
83	Modification of spousal maintenance orders.....	343
85A	Ante-nuptial and post-nuptial settlements	346
86A	Certain maintenance agreements ineffective.....	346
86	Registered maintenance agreements	346
87	Operation of maintenance agreements entered into in substitution for rights under Act.....	348
87A	Specification in maintenance agreements of payments etc. for maintenance purposes	353
88	Enforcement of maintenance agreements.....	354
89	Overseas maintenance agreements	354
89A	Institution of spousal maintenance proceedings by authority or person.....	354
90	Certain instruments not liable to duty	355

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

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

2 Commencement

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 recognised 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

Section 4

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

- (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 and the applicable Rules of Court:

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

Section 4

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.

abuse, in relation to a child, means:

- (a) an assault, including a sexual assault, of the child; or
- (b) a person (the ***first person***) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person; or
- (c) causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or
- (d) serious neglect of the child.

accountable person has the meaning given by subsection 10KI(2).

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 B of Division 14 of Part VII, means the alleged contravention because of which the alleged offender is arrested.

alleged offender, in Subdivision B of Division 14 of Part VII, means the person who is arrested.

applicable Rules of Court:

- (a) in relation to the Federal Circuit and Family Court of Australia (Division 1)—means the Federal Circuit and Family Court of Australia (Division 1) Rules; and

Section 4

- (b) in relation to the Federal Circuit and Family Court of Australia (Division 2)—means the related Federal Circuit and Family Court of Australia (Division 2) Rules; and
- (ba) in relation to a Family Court of a State—means:
 - (i) if Rules of Court made under section 123A are in force for the purposes of that Court—those Rules of Court; or
 - (ii) if subparagraph (i) does not apply—the standard Rules of Court; and
- (c) 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.

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.

arbitration has the meaning given by subsection 10L(1).

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.

Section 4

Australia includes Norfolk Island.

Australian court means a federal court or a court of a State or Territory.

bankrupt: see subsection (6).

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 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.

CCS business (short for children's contact services business) has the meaning given by section 10KD.

CCS practitioner (short for children's contact services practitioner) has the meaning given by section 10KC.

Chief Executive Officer means the Chief Executive Officer and Principal Registrar of the Federal Circuit and Family Court of Australia (Division 1).

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.

Section 4

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 has a meaning affected by subsections 60F(1), (2), (3) and (4).

child-related order: see subsection 70NBA(2).

child-related proceedings has the meaning given by subsection 102ND(6).

children's contact services has the meaning given by section 10KB.

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.

Section 4

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).

civil penalty provision has the same meaning as in the Regulatory Powers Act.

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.

communicate: see subsection 114P(1).

companion animal means an animal kept by the parties to a marriage or either of them, or the parties to a de facto relationship or either of them, primarily for the purpose of companionship, but does not include:

- (a) an assistance animal within the meaning of the *Disability Discrimination Act 1992*; or
- (b) an animal kept as part of a business; or
- (c) an animal kept for agricultural purposes; or
- (d) an animal kept for use in laboratory tests or experiments.

confidant has the meaning given by section 102BA.

contravene a child-related order: see section 70NAC.

conveyance includes a vehicle, a vessel and an aircraft.

Section 4

court, in relation to any proceedings, means the court exercising jurisdiction in those proceedings by virtue of this Act, the *Federal Circuit and Family Court of Australia Act 2021*, the *Child Support (Assessment) Act 1989* or the *Child Support (Registration and Collection) Act 1988*.

CSC (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

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.

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;

Section 4

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
- (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.

designated family report: see section 11J.

disclosure requirement has the meaning given by subsection 102BD(2).

distribute:

- (a) in relation to:

Section 4

- (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.

dwelling house includes a conveyance, or a room in accommodation, in which people ordinarily retire for the night.

education includes apprenticeship or vocational training.

entrusted person has the meaning given by section 10KE(2).

excluded order means:

- (a) an interim order; or
- (b) an order made in favour of a person where:
 - (i) the order was made on the application of the person; and

Section 4

- (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.

exposed to family violence, in relation to a child, has the meaning given by subsection 4AB(3).

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 arbitration has the meaning given by subsection 10L(2).

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 law practice and procedure provisions has the meaning given by subsection 95(4).

family report writer: see section 11H.

family safety risk screening information has the meaning given by section 10S.

family safety risk screening person has the meaning given by section 10R.

Section 4

family safety risk screening process has the meaning given by section 10T.

family violence has the meaning given by subsection 4AB(1).

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.

Federal Circuit and Family Court of Australia means:

- (a) the Federal Circuit and Family Court of Australia (Division 1); or
- (b) the Federal Circuit and Family Court of Australia (Division 2).

Federal Circuit and Family Court of Australia (Division 1) Rules means the Rules of Court made under Chapter 3 of the *Federal Circuit and Family Court of Australia Act 2021*.

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.

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.

Section 4

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.

financial or property matters:

- (a) of a marriage—has the meaning given by subsection 71B(7); or
- or
- (b) of a de facto relationship—has the meaning given by subsection 90RI(7).

forfeiture application means an application for a forfeiture order.

forfeiture order means:

- (a) a forfeiture order under the *Proceeds of Crime Act 2002*; or
- (b) an order that is made under a State or Territory proceeds of crime law and that is of a kind declared by the regulations to be a forfeiture order for the purposes of this paragraph.

freezing order means:

- (a) a freezing order under the *Proceeds of Crime Act 2002*; or
- (b) an order that is made under a State or Territory proceeds of crime law and that is of a kind declared by the regulations to be a freezing order for the purposes of this paragraph.

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.

health service has the meaning given by subsections 102BB(3) and (4).

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.

Section 4

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.

information sharing agency has the meaning given by section 67ZBC.

information sharing safeguards has the meaning given by section 67ZBI.

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.

litigation guardian means a person appointed by the court under the applicable Rules of Court to manage and conduct a proceeding for a person who needs a litigation guardian (also known as a litigation supporter, litigation representative, next friend, guardian *ad litem*, case guardian or tutor).

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.

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.

manager of the affairs of a party includes a person who is authorised by or under a Commonwealth, State or Territory law to conduct legal proceedings in the name of, or for, a person who needs a litigation guardian.

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

Section 4

- (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 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

Section 4

- (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 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

Section 4

- (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.

member of the family has the meaning given by subsection (1AB).

Note: The definition in subsection (1AB) applies for the purposes of the provisions specified in that subsection.

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.

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 adopted, means an adoptive parent of the child.

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

Section 4

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
- (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:

Section 4

- (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 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.

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:

- (a) in Part XIVB—see subsection 114P(1); and
- (b) otherwise—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 connection with a proceeding.

Section 4

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 authority has the meaning given by section 4C.

Note: Section 4C provides for different proceeds of crime authorities in relation to orders under the *Proceeds of Crime Act 2002* and State or Territory proceeds of crime laws.

proceeds of crime order means:

- (aa) a freezing order; or
- (a) a restraining order; or
- (b) a forfeiture order.

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 or other non-child-related proceedings has the meaning given by subsection 102ND(7).

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

Section 4

(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.

protected confidence has the meaning given by section 102BA.

protected confider has the meaning given by section 102BA.

protected material has the meaning given by subsection 67ZBF(3).

public: see subsection 114P(2).

reasonable excuse for contravening a child-related order has a meaning affected by section 70NAD.

recovery order has the meaning given by section 67Q.

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

Registrar means:

- (a) in relation to the Federal Circuit and Family Court of Australia (Division 1)—a Senior Registrar or Registrar of the Court; or
- (b) in relation to the Federal Circuit and Family Court of Australia (Division 2)—a Senior Registrar or Registrar of the Court; or
- (c) in relation to any other court—the principal legal officer of the court or any other appropriate officer of the court.

Registry Manager:

- (a) in relation to the Federal Circuit and Family Court of Australia (Division 1), means a Registry Manager of the Court; and
- (b) in relation to the Federal Circuit and Family Court of Australia (Division 2), means a Registry Manager of the Court; and
- (c) in relation to any other court, means the principal officer of the court or any other appropriate officer or staff member of the court.

regulator: see paragraph 11K(2)(b).

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

related Federal Circuit and Family Court of Australia (Division 2) Rules means the Rules of Court made under Chapter 4 of the *Federal Circuit and Family Court of Australia Act 2021* 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; or
 - (vii) for an Aboriginal child or Torres Strait Islander child—a person who, in accordance with the child's Aboriginal or Torres Strait Islander culture (including but not limited to any kinship systems of that culture), is related to the child; and
- (b) in paragraph (1AB)(e)—has the meaning given by subsection (1AC); and

Section 4

- (c) in paragraph (1AB)(ea)—has the meaning given by subsection (1AD).

repealed Act means the *Matrimonial Causes Act 1959*.

restraining order means:

- (a) a restraining order under the *Proceeds of Crime Act 2002*; or
- (b) an order that is made under a State or Territory proceeds of crime law and that is of a kind declared by the regulations to be a restraining order for the purposes of this paragraph.

safety information has the meaning given by subsection 10KE(3).

section 69GA proceedings has the meaning given by subsection 69GA(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.

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
- (aa) in relation to a termination agreement referred to in paragraph 90J(1)(b)—a party covered by paragraph (a) of this definition in relation to the financial agreement concerned; 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; or

- (c) in relation to a Part VIIIAB termination agreement—a party covered by paragraph (b) of this definition in relation to the Part VIIIAB financial agreement concerned.

standard Rules of Court means Rules of Court made under section 123.

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 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.

State or Territory proceeds of crime law means a law in force in a State or Territory that is declared by the regulations to be a law that corresponds to the *Proceeds of Crime Act 2002*.

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

Section 4

- (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 VIIIAB 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 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.

- (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 definition of *step-parent* in subsection (1); and
- (aa) section 4AB; and
- (ab) Division 3A of Part II (children's contact services); and
- (b) paragraph 60CC(3)(a); and
- (c) sections 60CF, 60CH and 60CI;

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 within the meaning of subsection (1AC); or
- (ea) except for the purposes of sections 60CF, 60CH and 60CI—the first person is or has been a relative of the second person within the meaning of subsection (1AD); 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:
 - (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

Section 4

- (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 paragraph (1AB)(e), 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.
- (1AD) For the purposes of paragraph (1AB)(ea), if a person is related to an Aboriginal or Torres Strait Islander child in accordance with the child's Aboriginal or Torres Strait Islander culture (including but not limited to any kinship systems of that culture), the person is a **relative** of the child.

Note: This subsection adds to the persons who are **relatives** of a person within the meaning of subsection (1AC). The difference is that the addition in this subsection does not apply for the purposes of sections 60CF, 60CH or 60CI, which relate to informing courts of certain matters (see paragraph (1AB)(ea)).

Section 4

- (1A) In this Act and the applicable Rules of Court, a reference to a Family Court of a State is a reference to a court to which section 41 applies.
- (2) A reference in this Act or the applicable Rules of Court 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 or the applicable Rules of Court 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 a provision of the *Federal Circuit and Family Court of Australia Act 2021* referring to this Act is taken to be jurisdiction under this Act; and
 - (b) jurisdiction under paragraphs 25(1)(a) and (b) of the *Federal Circuit and Family Court of Australia Act 2021* is taken to be jurisdiction under this Act; and
 - (c) jurisdiction under section 101 of the *Child Support (Assessment) Act 1989* and under section 106 of the *Child Support (Registration and Collection) Act 1988* is taken to be jurisdiction under this Act; and
 - (d) jurisdiction under the applicable Rules of Court is taken to be jurisdiction under this Act; and
 - (e) proceedings transferred under section 51 or 149 of the *Federal Circuit and Family Court of Australia Act 2021* referring to this Act are taken to be proceedings under this Act; and
 - (f) proceedings under the applicable Rules of Court are taken to be proceedings under this Act; and
 - (g) an order (however described) made by a court under the applicable Rules of Court is taken to be an order made by the court under this Act.

Section 4AA

- (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.
- (6) A reference in this Act to a person, being a party to a marriage or a party to a de facto relationship, who is bankrupt includes a reference to a person:
 - (a) who has been discharged from bankruptcy; and
 - (b) whose property remains vested in the bankruptcy trustee under the *Bankruptcy Act 1966*.

Note: This Act might refer to “bankrupt” or a “bankrupt party”.

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;

Section 4AA

- (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
 - (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).

Section 4AB

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

4AB Definition of *family violence* etc.

- (1) For the purposes of this Act, *family violence* means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the *family member*), or causes the family member to be fearful.
- (2) Examples of behaviour that may constitute family violence include (but are not limited to):
 - (a) an assault; or
 - (b) a sexual assault or other sexually abusive behaviour; or
 - (c) stalking; or
 - (d) repeated derogatory taunts; or
 - (e) intentionally damaging or destroying property; or
 - (f) intentionally causing death or injury to an animal; or
 - (g) economic or financial abuse; or
 - (i) preventing the family member from making or keeping connections with his or her family, friends or culture; or
 - (j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.
- (2A) For the purposes of paragraph (2)(g), examples of behaviour that might constitute economic or financial abuse of a family member include (but are not limited to) the following:
 - (a) unreasonably denying the family member the financial autonomy that the family member would otherwise have had, such as by:
 - (i) forcibly controlling the family member's money or assets, including superannuation; or
 - (ii) sabotaging the family member's employment or income or potential employment or income; or
 - (iii) forcing the family member to take on a financial or legal liability, or status; or

Section 4AB

- (iv) forcibly or without the family member's knowledge, accumulating debt in the family member's name;
 - (b) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or the family member's child (including at a time when the family member is entirely or predominantly dependent on the person for financial support);
 - (c) coercing a family member (including by use of threats, physical abuse or emotional or psychological abuse):
 - (i) to give or seek money, assets or other items as dowry; or
 - (ii) to do or agree to things in connection with a practice of dowry;
 - (d) hiding or falsely denying things done or agreed to by the family member, including hiding or falsely denying the receipt of money, assets or other items, in connection with a practice of dowry.
- (3) For the purposes of this Act, a child is ***exposed*** to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.
- (4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:
- (a) overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or
 - (b) seeing or hearing an assault of a member of the child's family by another member of the child's family; or
 - (c) comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or
 - (d) cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or

Section 4A

- (e) being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

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:
 - (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 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;

Section 4B

being proceedings for the setting aside of the Part VIIIAB 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 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 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 VIIIAB 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 VIIIAB 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 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 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 VIIIAB financial agreement; or
 - (ii) the legal personal representative of that other person if that person has died;

Section 4C

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.

4C Meaning of *proceeds of crime* authority

Scope

- (1) This section sets out the meaning of ***proceeds of crime authority*** in relation to:
 - (a) a restraining order or a forfeiture order, or an application for a forfeiture order, under the *Proceeds of Crime Act 2002* (or any proceedings, orders, powers, functions or duties under this Act related to, or arising out of, such an order or application); and
 - (b) a freezing order under the *Proceeds of Crime Act 2002* (or any proceedings, orders, powers, functions or duties under this Act related to, or arising out of, such a freezing order); and
 - (c) a proceeds of crime order, or an application for a forfeiture order, under a State or Territory proceeds of crime law (or any proceedings, orders, powers, functions or duties under this Act related to, or arising out of, such an order or application).

Section 4C

Note: Freezing orders, restraining orders and forfeiture orders made under the *Proceeds of Crime Act 2002* or a State or Territory proceeds of crime law are ***proceeds of crime orders*** (see subsection 4(1)).

Commonwealth proceeds of crime authorities

- (2) For the purposes of paragraph (1)(a), ***proceeds of crime authority*** means the responsible authority for the relevant restraining order, forfeiture order or forfeiture application under the *Proceeds of Crime Act 2002*.

Note: Under that Act, the responsible authority is the Commissioner of the Australian Federal Police or the Director of Public Prosecutions (see the definitions of ***responsible authority*** and ***proceeds of crime authority*** in section 338 of that Act). Responsibility can be transferred between these authorities (see section 315B of that Act).

- (3) For the purposes of paragraph (1)(b), ***proceeds of crime authority*** means:
- (a) the Commissioner of the Australian Federal Police; or
 - (b) the Director of Public Prosecutions.

State or Territory proceeds of crime authorities

- (4) For the purposes of paragraph (1)(c), in relation to a provision of this Act, ***proceeds of crime authority*** means a person or body prescribed by the regulations to be the proceeds of crime authority for that provision in relation to:
- (a) a class of proceeds of crime order, under the relevant State or Territory proceeds of crime law, prescribed by the regulations, that includes the relevant proceeds of crime order; or
 - (b) a class of forfeiture application, under the relevant State or Territory proceeds of crime law, prescribed by the regulations, that includes the relevant forfeiture application.

Note: The regulations may prescribe a proceeds of crime authority in relation to a proceeds of crime order under a State or Territory proceeds of crime law by reference to any matter, including (for example) by reference to who applied for the order.

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;
- (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, proceedings by way of a matrimonial cause shall not be instituted except under this Act.

Section 8

- (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.

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.

Section 9A

- (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 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.

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 individuals as family counsellors; and
 - (b) the accreditation of individuals as family dispute resolution practitioners; and
 - (ba) the accreditation of individuals as CCS practitioners; and
 - (bb) the accreditation of persons (whether or not individuals) and other entities as CCS businesses; 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 and entities seeking to be accredited; and
 - (b) who is responsible for determining whether or entity 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 conditions, standards and other obligations that accredited persons and entities 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 and entities failing to comply with the provisions of this Act and the Rules; and

Part II Non-court based family services

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

Section 10AA

- (g) the obligations of accredited persons and entities in relation to the monitoring of their compliance; and
- (h) how and by whom an accredited person or entity may have their 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
- (j) the process for handling complaints involving accredited persons and entities; and
- (k) who may deliver recognised training to accredited persons and entities, and
- (l) dealing with persons and entities who make false or misleading representations about a person's or entity's status as an accredited person.

Note: The Accreditation Rules may make different provision with respect to different matters or classes of matters (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

10AA Immunity

No action, suit or proceeding lies against the Commonwealth, or an officer of the Commonwealth, in relation to any act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of a function, power or authority conferred by the Accreditation Rules.

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; or
- (c) one or more persons who may apply for a parenting order under section 65C to deal with 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 281 of the *Federal Circuit and Family Court of Australia Act 2021* as a family counsellor; or
- (da) a person who is engaged under subsection 18ZI(2) of the *Federal Court of Australia Act 1976* 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 a list of organisations designated for the purposes of paragraph (b) of the definition of ***family counsellor***.

Section 10D

- (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 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

Section 10E

- (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.
- (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:
-

Section 10E

- (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.
- (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.

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:
 - (i) helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other; or
 - (ii) helps persons who may apply for a parenting order under section 65C to resolve some or all of their disputes with each other relating to the care of children; 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 281 of the *Federal Circuit and Family Court of Australia Act 2021* as a family dispute resolution practitioner; or
 - (da) a person who is engaged under subsection 18ZI(2) of the *Federal Court of Australia Act 1976* 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.

Section 10H

- (2) The Minister must publish 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 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

Section 10J

- (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.
- (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

Section 10K

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.
- (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).

Division 3A—Children's contact services

10KA Simplified outline of this Division

Accreditation Rules may provide for the accreditation of persons and entities as CCS practitioners and CCS businesses (see section 10A).

If they do, then it is an offence for children's contact services (as defined in this Division) to be provided by a person or entity that is not accredited.

Accredited providers of children's contact services must not use or disclose safety information that is obtained in their capacity as accredited providers (with some exceptions). Safety information is generally not admissible in court.

10KB Definition of *children's contact services*

- (1) ***Children's contact services*** are services, other than services mentioned in subsection (3), that:
- (a) facilitate contact between a child and a member of the child's family with whom the child is not living; and
 - (b) are provided in circumstances where members of the family may not be able to safely manage such contact; and
 - (c) are provided:
 - (i) on a professional basis; or
 - (ii) on a commercial basis; or
 - (iii) by an entity registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act; or
 - (iv) in the course of an undertaking that has a charitable purpose.

Section 10KC

- (2) Without limiting paragraph (1)(a), services that facilitate contact may include any of the following:
- (a) supervising the movement of the child between 2 or more members of the child's family;
 - (b) supervising time spent by the child with a member of the child's family (including contact over the phone or internet);
 - (c) providing a space for the child to spend time with a member of the child's family.
- (3) The following services are not children's contact services:
- (a) services provided as a result of intervention by a child welfare officer of a State or Territory;
 - (b) supervision of contact (including contact over the phone or internet) between a child and a member of the child's family who is in a correctional institution (however described);
 - (c) services prescribed by the regulations for the purposes of this paragraph.

10KC Definition of *CCS practitioner*

A *CCS practitioner* is an individual who is accredited as a CCS practitioner under the Accreditation Rules.

Note: The Accreditation Rules may have the effect that an individual who operates as a sole trader providing children's contact services will need to be accredited as both a CCS practitioner and a CCS business.

10KD Definition of *CCS business*

A *CCS business* is a person or other entity that is accredited as a CCS business under the Accreditation Rules.

10KE Confidentiality of certain safety-related information

- (1) A person who is or has been an entrusted person must not use or disclose safety information obtained by the person in their capacity as an entrusted person, unless the use or disclosure is required or authorised by this section.

- (2) The following are **entrusted persons**:
- (a) a CCS practitioner or a CCS business;
 - (b) a director or other officer of a CCS business;
 - (c) a person employed or engaged to perform work (whether paid or unpaid) for or on behalf of a CCS business.
- (3) **Safety information** is information that relates to the risks of harm to a child or a member of a child's family, or to the identification and management of such risks, if:
- (a) children's contact services have been, are being, or will be, provided to the child; and
 - (b) the risks are those that may arise in connection with the use, facilitation or provision of the service.
- (4) An entrusted person must disclose safety information if the entrusted person reasonably believes the disclosure is necessary for the purpose of complying with a law of the Commonwealth, a State or a Territory.
- (5) An entrusted person may use safety information for the purposes of performing the person's functions as an entrusted person.
- (6) An entrusted person may disclose safety information to one or more other entrusted persons if:
- (a) each of the entrusted persons is any of the following in relation to a particular CCS business:
 - (i) a director or officer of the CCS business;
 - (ii) employed or engaged to provide children's contact services for, or on behalf of, the CCS business;
 - (iii) employed or engaged to perform other work (whether paid or unpaid) for, or on behalf of, the CCS business; and
 - (b) it is reasonable to disclose the safety information to enable the CCS business to appropriately provide children's contact services in respect of the child.
- (7) An entrusted person may use or disclose safety information that is a communication (including an admission) made by an individual
-

Section 10KE

to an entrusted person, if consent to the use or 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 15, 16 or 17 and has the capacity to consent—that person; or
 - (c) if the person who made the communication is a child under 15 or a child to whom paragraph (b) does not apply:
 - (i) each person who has parental responsibility (within the meaning of Part VII) for the child; or
 - (ii) a court.
- (8) An entrusted person may use or disclose safety information if the entrusted person reasonably believes that the use or 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 and it is unreasonable or impractical to obtain consent as mentioned in subsection (7)—assisting the lawyer to properly represent the child's interests.
- (9) An entrusted person may disclose safety information in order to provide information (other than personal information within the meaning of subsection 6(1) of the *Privacy Act 1988*) for research relevant to families.
-

10KF Admissibility of certain safety-related information

- (1) Safety information is not admissible:
- (a) in any court (whether or not exercising federal jurisdiction);
or
 - (b) 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).

Note: For the definition of *safety information*, see subsection 10KE(3).

- (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.

10KG Civil penalty provisions

Civil penalties

- (1) In addition to the matters mentioned in section 10A, the Accreditation Rules may:
- (a) prescribe civil penalty provisions (the ***CCS civil penalty provisions***) in relation to requirements to be complied with by CCS practitioners and CCS businesses; and
 - (b) prescribe penalties for contraventions of the CCS civil penalty provisions that do not exceed:
 - (i) for a body corporate—250 penalty units; or
 - (ii) for any other person—50 penalty units.
- (2) Each CCS civil penalty provision is enforceable under Part 4 of the Regulatory Powers Act.

Section 10KH

Authorised applicant

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the CCS civil penalty provisions:
- (a) the Secretary of the Department;
 - (b) the person or persons prescribed by the Accreditation Rules as having responsibility for monitoring compliance with the Rules in relation to CCS practitioners and CCS businesses.
- (4) The Secretary of the Department may, in writing, delegate the Secretary's powers and functions under Part 4 of the Regulatory Powers Act in relation to the CCS civil penalty provisions to an SES employee, or an acting SES employee, in the Department.

Relevant court

- (5) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the CCS civil penalty provisions:
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit and Family Court of Australia;
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

10KH Strict liability offences—unaccredited provision of children's contact services

Individual providing services who is not a CCS practitioner

- (1) An individual commits an offence if:
- (a) the individual provides a children's contact service; and
 - (b) the Accreditation Rules provide for accreditation of CCS practitioners; and
 - (c) the individual is not a CCS practitioner.

Penalty: 50 penalty units.

Section 10KH

Body corporate providing services that is not a CCS business

- (2) A body corporate commits an offence if:
- (a) the body corporate provides a children's contact service; and
 - (b) the Accreditation Rules provide for accreditation of CCS businesses; and
 - (c) the body corporate is not a CCS business.

Penalty:

- (a) for an individual—50 penalty units; or
- (b) for a body corporate—250 penalty units.

Person providing services through an individual who is not a CCS practitioner

- (3) A person commits an offence if:
- (a) the person is a CCS business; and
 - (b) an individual provides a children's contact service for or on behalf of the person; and
 - (c) the Accreditation Rules provide for accreditation of CCS practitioners; and
 - (d) the individual is not a CCS practitioner.

Penalty:

- (a) for an individual—50 penalty units; or
- (b) for a body corporate—250 penalty units.

- (4) Subsection (3) does not apply to a person if, at or before the time the individual provides the children's contact service as mentioned in paragraph (3)(b), the person:
- (a) considered whether or not the individual was a CCS practitioner; and
 - (b) is under a mistaken but reasonable belief about that matter.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Section 10KH

Individual business operator who is not a CCS business

- (5) An individual commits an offence if:
- (a) the individual controls, directs or organises (whether alone or jointly with other persons) the provision of children's contact services in the individual's own name or under a business name; and
 - (b) the Accreditation Rules provide for accreditation of CCS businesses; and
 - (c) the individual is not a CCS business.

Penalty: 50 penalty units.

Person responsible for non-legal person that is not a CCS business providing services through an individual

- (6) A person commits an offence if:
- (a) an individual provides a children's contact service for or on behalf of an entity that is not a legal person; and
 - (b) the Accreditation Rules provide for accreditation of CCS businesses; and
 - (c) the entity is not a CCS business; and
 - (d) at the time the individual provides the children's contact service, the person is a person who controls, directs or organises (whether alone or jointly with other persons) the provision of children's contact services for or on behalf of the entity.

Penalty:

- (a) for an individual—50 penalty units; or
 - (b) for a body corporate—250 penalty units.
- (7) Subsection (6) does not apply to a person if, at or before the time that the children's contact service is provided as mentioned in paragraph (6)(a), the person:
- (a) considered whether or not the entity was a CCS business; and
 - (b) is under a mistaken but reasonable belief about that matter.

Section 10KH

Note: A defendant bears an evidential burden in relation to the matters in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

Person responsible for non-legal person providing services through an individual who is not a CCS practitioner

- (8) A person commits an offence if:
- (a) an individual provides a children's contact service for or on behalf of an entity that is not a legal person; and
 - (b) the entity is a CCS business; and
 - (c) the Accreditation Rules provide for accreditation of CCS practitioners; and
 - (d) the individual is not a CCS practitioner; and
 - (e) at the time the individual provides the children's contact service, the person is a person who controls, directs or organises (whether alone or jointly with other persons) the provision of children's contact services for or on behalf of the entity.

Penalty:

- (a) for an individual—50 penalty units; or
 - (b) for a body corporate—250 penalty units.
- (9) Subsection (8) does not apply to a person if, at or before the time that the individual provided the children's contact service as mentioned in paragraph (8)(a), the person:
- (a) considered whether or not the individual was a CCS practitioner; and
 - (b) is under a mistaken but reasonable belief about that matter.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Strict liability

- (10) Strict liability applies to subsections (1), (2), (3), (5), (6) and (8).

Section 10KI

Mistake of fact defences

- (11) For the purposes of subsections (4), (7) and (9), a person may be regarded as having considered whether or not the individual was a CCS practitioner, or the entity was a CCS business, (as applicable) if:
- (a) the person had considered on a previous occasion whether that was the case in the circumstances surrounding that occasion; and
 - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

10KI Compliance by entities that are not legal persons

- (1) This section applies if an entity that is not a legal person is accredited as a CCS business.
- (2) Each of the following persons is an ***accountable person*** for the entity, in relation to a requirement imposed on the entity at a time by the Accreditation Rules:
 - (a) if the entity is a partnership—each of the following:
 - (i) each partner in the partnership at the time;
 - (ii) if a partner is a body corporate—each director of the partner at the time;
 - (iii) a person prescribed by the Accreditation Rules;
 - (b) if the entity is a trust—each of the following:
 - (i) the trustee, or each trustee, of the trust, at the time;
 - (ii) if a trustee is a body corporate—each director of the trustee at the time;
 - (iii) a person prescribed by the Accreditation Rules;
 - (c) if the entity is any other kind of entity—each person prescribed by the Accreditation Rules for that kind of entity.
- (3) Any requirement that the Accreditation Rules impose on the entity to do a thing (including a requirement imposed by way of a civil

Section 10KI

penalty provision) is taken instead to be imposed on each accountable person for the entity, but may be discharged by any one of them.

- (4) Any requirement that the Accreditation Rules impose on the entity not to do a thing (including a requirement imposed by way of a civil penalty provision) is taken instead to be imposed on each accountable person for the entity.
- (5) However, an accountable person is not liable to a civil penalty for contravening a requirement taken to be imposed on the person because of subsection (3) or (4) unless at least one of the following applies:
 - (a) complying with the requirement is within the actual or apparent scope of the person's duties in relation to the entity;
 - (b) the person's duties involve controlling, directing or organising (whether alone or jointly with other persons) the provision of children's contact services in the entity's name;
 - (c) the person aided, abetted, counselled or procured the act or omission concerned;
 - (d) the person was in any way knowingly concerned in, or party to, the act or omission concerned (whether directly or indirectly and whether by any act or omission of the person).

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 of any of the following is *family law arbitration*, whether ordered by a court under subsection 13E(1) or not:
 - (a) proceedings that are referable to arbitration within the meaning of subsection 13E(1A);
 - (b) any part of such proceedings;
 - (c) any matter arising in such proceedings;
 - (d) 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), 123A(1)(z) and 125(1)(bc) and (bd)).

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

Section 10P

Federal Circuit and Family Court of Australia (Division 1) has in performing the functions of a Judge.

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

Division 5—Post-separation parenting programs

10PA Admissibility of communications in post-separation parenting programs

- (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.

Note: A court may make an order directing a person to attend a post-separation parenting program under subsection 65LA(1) or 70NBD(1).

Part IIA—Family safety risk screening

Division 1—Preliminary

10Q Simplified outline of this Part

This Part prevents the disclosure, and admission into evidence, of information that is in connection with a family safety risk screening process carried out by the Federal Circuit and Family Court of Australia (Division 1) or Federal Circuit and Family Court of Australia (Division 2) in relation to a party to proceedings under this Act.

The process is carried out for the purpose of identifying any persons at risk of family violence in order to determine the urgency and priority of the proceedings.

10R Definition of *family safety risk screening person*

A *family safety risk screening person* is:

- (a) an officer or staff member of:
 - (i) the Federal Circuit and Family Court of Australia (Division 1); or
 - (ii) the Federal Circuit and Family Court of Australia (Division 2); or
- (b) a family counsellor; or
- (c) a contractor engaged on behalf of a court referred to in paragraph (a); or
- (d) an officer, employee or subcontractor of a contractor referred to in paragraph (c).

10S Definition of *family safety risk screening information*

(1) *Family safety risk screening information* is:

Section 10T

- (a) information obtained (whether orally or in writing) or generated, or a document obtained or created, by a family safety risk screening person in connection with a family safety risk screening process; or
 - (b) information about whether or not a party to proceedings under this Act participated in a family safety risk screening process.
- (2) Without limiting subsection (1), ***family safety risk screening information*** includes reports prepared, recommendations made or referrals created by a family safety risk screening person as a result of the information referred to in subsection (1).

10T Definition of *family safety risk screening process*

- (1) A ***family safety risk screening process*** is a process carried out, or attempted to be carried out, by a family safety risk screening person:
 - (a) in connection with proceedings under this Act; and
 - (b) in relation to a party to those proceedings;for the purpose, or for purposes that include the purpose, of identifying one or more of the following:
 - (c) any persons who are at risk of being subjected to family violence;
 - (d) any children who are at risk of being subjected to, or exposed to, abuse, neglect or family violence;
 - (e) any risks to the safety of persons;in order to determine the urgency and priority of the proceedings and assist in case management.

Process must involve use of risk screening tool

- (2) The process carried out, or attempted to be carried out, must involve the use of a risk screening tool determined under subsection (3).
- (3) The Chief Executive Officer may, by notifiable instrument, determine a risk screening tool for the purposes of subsection (2).

Section 10T

Process may also involve risk assessment

- (4) Without limiting subsection (1), the process referred to in that subsection may also involve a risk assessment conducted by a family counsellor in connection with this Part.

Division 2—Protection of family safety risk screening information

10U Confidentiality of family safety risk screening information

- (1) A family safety risk screening person must not disclose family safety risk screening information, unless the disclosure is required or authorised by this section.
- (2) A family safety risk screening person must disclose family safety risk screening information if that person 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 safety risk screening person may disclose family safety risk screening information to a party to the proceedings concerned if that information:
 - (a) was provided by, or generated or created from information provided by, that party; and
 - (b) relates to that party.
- (4) A family safety risk screening person may disclose family safety risk screening information if consent to the disclosure is given by:
 - (a) if:
 - (i) the information was provided by, or generated or created from information provided by, a party to the proceedings concerned; and
 - (ii) the information relates to that party; and
 - (iii) that party is 18 or over;that party; or
 - (b) if:
 - (i) the information was provided by, or generated or created from information provided by, a party to the proceedings concerned; and
 - (ii) the information relates to that party; and
 - (iii) that party is a child under 18;

a court.

- (5) A family safety risk screening person may disclose family safety risk screening information to another family safety risk screening person for the purposes of that other person's responsibilities or duties in connection with this Part.
- (6) A family safety risk screening person may disclose family safety risk screening information if that person 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, or a threat of damage to property, of a person; or
 - (f) if a lawyer independently represents a child's interests under an order under section 68L—assisting the lawyer to do so properly.
- (7) A family safety risk screening person may disclose family safety risk screening information 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.
- (8) Evidence that would be inadmissible because of section 10V is not admissible merely because this section requires or authorises its disclosure.

Note: This means that a family safety risk screening person's evidence is inadmissible in court, even if subsection (2), (3), (4), (5), (6) or (7) requires or authorises the person to disclose it in other circumstances.

Section 10V

10V Admissibility of family safety risk screening information etc.

Family safety risk screening information

- (1) Family safety risk screening information is not admissible:
- (a) in any court (whether or not exercising federal jurisdiction);
or
 - (b) 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 family safety risk screening information that indicates that a child under 18 has been abused or is at risk of abuse, unless, in the opinion of the court, there is sufficient evidence of the information available to the court from other sources.

Evidence of things said or admissions made in company of professionals

- (3) Evidence of anything said, or any admission made, by or in the company of a person (the **professional**) to whom a family safety risk screening person refers a party to the proceedings concerned (the **referred party**) for medical or other professional services, while that professional is providing such services to the referred party, is not admissible:
- (a) in any court (whether or not exercising federal jurisdiction);
or
 - (b) 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).
- (4) Subsection (3) does not apply to a thing said or an admission made by the referred party (including a child under 18) indicating that a child under 18 has been abused or is at risk of abuse, unless, in the opinion of the court, there is sufficient evidence of the thing said, or the admission made, available to the court from other sources.

Professional to be informed of effect of section

- (5) A family safety risk screening person who refers a party to a professional (within the meaning of subsection (3)) must inform the professional of the effect of this section.

10W Immunity of family safety risk screening persons

A family safety risk screening person has, in performing that person's functions as a family safety risk screening person, the same protection and immunity as a Judge of the Federal Circuit and Family Court of Australia (Division 1) has in performing the functions of a Judge.

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 18ZH of the *Federal Court of Australia Act 1976*; 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 Officer has all of the functions and powers of family consultants, and may direct consultants in the performance of their functions. See Part 1 of Chapter 5 of the *Federal Circuit and Family Court of Australia Act 2021*.

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 281(3) of the *Federal Circuit and Family Court of Australia Act 2021* 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) the thing was said or the admission was made by a person (including a child under 18) indicating that a child under 18 has been abused or is at risk of abuse; and
 - (b) for a thing or admission that was obtained improperly or in contravention, or in consequence of an impropriety or of a contravention, of an Australian law—the evidence is admissible under section 138 of the *Evidence Act 1995*;
- unless, in the opinion of the court, sufficient evidence of the thing said or the admission made is available to the court from other sources.

Section 11D

Note: A thing that is said, or an admission that is made, by a child under 18 may relate to the child him or herself, or another child under 18.

11D Immunity of family consultants

- (1) A family consultant has, in performing his or her functions as a family consultant, the same protection and immunity as a Judge of the Federal Circuit and Family Court of Australia (Division 1) has in performing the functions of a Judge.
- (2) However, if a family consultant is also a family report writer, that protection and immunity:
 - (a) does not relieve the family consultant of their obligations under regulations made for the purposes of section 11K (regulations prescribing standards and requirements for family report writers); and
 - (b) does not extend to action taken to enforce such regulations.

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 Federal Circuit and Family Court of Australia—a family consultant nominated by the Chief Executive Officer; 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.

Section 11F

11F Court may order parties to attend, or arrange for child to attend, appointments with a family consultant

- (1) A court exercising jurisdiction in proceedings under this Act may make either or both of the following kinds of order:
- (a) an order directing one or more parties to the proceedings to attend an appointment (or a series of appointments) with a family consultant;
 - (b) an order directing one or more parties to the proceedings to arrange for a child to attend an appointment (or a series of appointments) with a family consultant.

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.
- (1A) If:
- (a) a person fails to comply with an order under section 11F that he or she arrange for a child to attend an appointment with a family consultant; or

Section 11G

- (b) a child fails to attend an appointment with a family consultant as arranged in compliance with an order under section 11F;
the consultant must report the failure to the court.
- (2) On receiving a report under subsection (1) or (1A), 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.

Part IIIAA—Family report writers

11H Family report writers

Any individual who prepares a designated family report (see section 11J) is a *family report writer*.

11J Designated family reports

- (1) A report that relates to a child is a *designated family report* if:
 - (a) the report is prepared following a family assessment (which usually includes the report's preparer meeting with the child and others significant to the child's care, welfare and development and, if appropriate, advising of the child's views); and
 - (b) the report sets out the expert views and advice of the report's preparer on parenting arrangements for the purposes of parenting orders being made by the court in relation to the child; and
 - (c) the report is both:
 - (i) covered by subsection (2); and
 - (ii) not excluded by regulations made for the purposes of this paragraph.
- (2) This subsection covers the following reports:
 - (a) a report prepared for the court by a family consultant in relation to an appointment (or a series of appointments) a party to proceedings has been directed to attend, or to arrange for a child to attend, with the family consultant under section 11F;
 - (b) a report prepared for the court by a family consultant for the purposes of subsection 55A(2) (report regarding arrangements for the care, welfare and development of a child of a marriage);

Section 11K

- (c) a report prepared by a family consultant at the direction of the court under subsection 62G(2) (direction to give report in relation to proceedings in which the care, welfare and development of a child under 18 is relevant);
- (d) a report about a child prepared for the use of an independent children's lawyer as mentioned in subsection 68M(2);
- (e) any other report prepared for parties to proceedings before the court, or for the court for the purposes of proceedings before the court.

11K Regulations prescribing standards and requirements for family report writers*Regulations prescribing standards and requirements for family report writers*

- (1) The regulations may make provision for, and in relation to:
 - (a) standards and requirements that family report writers, or a class or classes of family report writers, must comply with in connection with the role of preparing designated family reports; and
 - (b) consequences of non-compliance with prescribed standards and requirements.

Standards and requirements

- (2) Without limiting paragraph (1)(a), regulations made for the purposes of that paragraph may deal with any or all of the following matters:
 - (a) recognition, monitoring and enforcement of compliance with prescribed standards and requirements;
 - (b) the person or persons responsible for that recognition, monitoring and enforcement (each such person is a **regulator**);
 - (c) duties of family report writers, and persons intending to become family report writers, in relation to establishing and maintaining recognition of their compliance, including duties

Section 11K

- in relation to providing information and documents to a regulator;
- (d) circumstances in which a regulator may collect, use and share information and documents for the purposes of meeting the regulator's responsibilities;
 - (e) review of decisions that affect recognition of a family report writer's compliance;
 - (f) processes for dealing with persons who make false or misleading representations about a family report writer's compliance;
 - (g) processes for handling complaints involving family report writers;
 - (h) training for family report writers;
 - (i) the charging of fees, to family report writers, for services provided to them in connection with recognition, and maintenance of recognition, of their compliance;
 - (j) publication of the names of family report writers who are recognised as complying with prescribed standards and requirements;
 - (k) publication of information about the named family report writers for the purposes of informing the court, parties to proceedings and the public about any or all of the following:
 - (i) their qualifications, training and experience;
 - (ii) their availability;
 - (iii) the fees they charge;
 - (iv) their compliance status, including in relation to particular standards or requirements;
 - (v) any relevant memberships of professional associations, registration or employment;
 - (vi) any other matters relevant to their role of preparing designated family reports;
 - (l) standards and requirements in relation to the content of designated family reports.
- (3) Regulations dealing with the matter mentioned in paragraph (2)(k) must not require or allow the publication of personal information
-

(within the meaning of the *Privacy Act 1988*) about any child or other individual to whom a report relates.

Consequences of non-compliance

- (4) Without limiting paragraph (1)(b), regulations made for the purposes of that paragraph may do any or all of the following:
 - (a) prescribe offences, the penalties for which do not exceed 30 penalty units;
 - (b) prescribe civil penalty provisions, the penalties for which do not exceed 30 penalty units;
 - (c) provide for suspension or cancellation of recognition of compliance;
 - (d) provide that, if a family report writer is not recognised, or if recognition of a family report writer's compliance is suspended or cancelled, the court must not have regard to designated family reports prepared by the family report writer;
 - (e) prohibit the preparation of designated family reports by family report writers who are not recognised.
- (5) Each civil penalty provision prescribed by regulations made for the purposes of this section (a ***Part IIIAA civil penalty provision***) is enforceable under Part 4 of the Regulatory Powers Act.

Authorised applicant

- (6) For the purposes of Part 4 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the Part IIIAA civil penalty provisions:
 - (a) each regulator;
 - (b) the Secretary of the Department.
- (7) The Secretary of the Department may, in writing, delegate the Secretary's powers and functions under Part 4 of the Regulatory Powers Act in relation to the Part IIIAA civil penalty provisions to an SES employee, or an acting SES employee, in the Department.

Section 11L

Relevant court

- (8) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the Part IIIAA civil penalty provisions:
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit and Family Court of Australia;
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

11L Disclosure by court to regulator

The court may disclose any of the following to a regulator, for the purposes of the regulator performing the regulator's functions under the regulations:

- (a) a designated family report prepared for or at the direction of the court, or for a party to proceedings before the court;
- (b) a final order made by the court in proceedings for which a designated family report was prepared.

11M Immunity of regulator

A regulator is not liable in civil or criminal proceedings for or in relation to anything done or omitted to be done, in good faith, in the performance or exercise, or purported performance or exercise, of the regulator's functions or powers under regulations made for the purposes of section 11K.

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.

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.

Section 12D

- (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.

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: For other obligations of legal practitioners in relation to Part VII matters, see sections 60D and 63DA.
- (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 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); and
 - (c) section 12D (about Part VII proceedings).

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).

Part IIIA Obligations to inform people about non-court based family services and about court's processes and services

Division 3 Who must provide information, and when

Section 12G

Note: For other obligations of family counsellors and family dispute resolution practitioners in relation to Part VII matters, see sections 60D and 63DA. Those sections do not apply to arbitrators.

- (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.

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
 - (ba) to give the court the power to require parties to proceedings under this Act to make use of children's contact services provided by CCS businesses; 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.

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.

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;
 - (ba) that one or more of the parties to the proceedings make use of children's contact services provided by CCS businesses;
 - (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, or arrange for a child to attend, appointments with a family consultant (see section 11F).

- (1A) The court must not make an order under paragraph (1)(c) that parties make use of children's contact services at any time when CCS practitioners and CCS businesses may be accredited under the Accreditation Rules.
- (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.

Section 13D

- (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.

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, CCS business or provider of the course, program or other service must report the failure to the court.
- (1A) A party does not fail to comply with an order of a court to make use of a children's contact service provided by a CCS business if the CCS business refuses to provide the service to the party.
- (1B) If a CCS business refuses to provide a children's contact service to a party, the CCS business must notify the court that they have done so.
- (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.

Division 4—Court's role in relation to arbitration of disputes

13E Court may refer certain proceedings to arbitration

- (1) A court exercising jurisdiction in proceedings that are referable to arbitration within the meaning of subsection (1A) may, with the consent of all of the parties to the proceedings, make an order referring the proceedings, or any part of them or any matter arising in them, to an arbitrator for arbitration.
- (1A) The following proceedings are referable to arbitration:
 - (a) Part VIII proceedings;
 - (b) Part VIIIA proceedings;
 - (c) Part VIIIB proceedings;
 - (d) Part VIIIC proceedings;
 - (e) section 106A proceedings;
 - (f) proceedings under section 106B.
- (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 in relation to family law arbitration

- (1) A person who is a party to, or an arbitrator of, family law arbitration may apply to a court that has jurisdiction under this Act for orders under subsection (3) in relation to the arbitration.
- (2) An application under subsection (1) may be made:
 - (a) whether the arbitration was ordered under subsection 13E(1) or not; and
 - (b) at any time before an award is made in the arbitration.

Section 13G

- (3) The court may, on application under subsection (1), make any orders the court considers appropriate:
 - (a) to facilitate the effective conduct of family law arbitration; or
 - (b) if the court is satisfied that a change in circumstances means that it is no longer appropriate for the proceedings or matter to be dealt with by arbitration—to terminate the arbitration.

13G Federal Circuit and Family Court of Australia may determine questions of law referred by arbitrator

- (1) An arbitrator of family law 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) the Federal Circuit and Family Court of Australia; or
 - (b) a single judge of the Family Court of a State.
- (2) The arbitrator may do so:
 - (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 Circuit and Family Court of Australia has either:
 - (a) determined the question of law; or
 - (b) remitted the matter to the arbitrator having found that no question of law arises.

13H Awards made in arbitration may be registered in court

- (1) If a party to an award made in family law arbitration applies to:
 - (a) for family law arbitration ordered under subsection 13E(1)—the court that ordered the arbitration; or
 - (b) for other family law arbitration—a court that has jurisdiction under this Act;the court may register the award.

- (2) An award registered under subsection (1) has effect as if it were a decree made by that court.

13J Federal Circuit and Family Court of Australia can review registered awards

- (1) A party to a registered award made in family law arbitration may apply for review of the award, on questions of law, by:
- (a) the Federal Circuit and Family Court of Australia; or
 - (b) a single judge of the Family Court of a State.

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) and section 123A).

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

13K Federal Circuit and Family Court of Australia may set aside registered awards

- (1) If an award made in family law arbitration, or an agreement made as a result of such arbitration, is registered in:
- (a) the Federal Circuit and Family Court of Australia (Division 1); or
 - (b) the Federal Circuit and Family Court of Australia (Division 2); 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:

Section 13K

- (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.

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 Federal Circuit and Family Court of Australia (Division 2); or
 - (b) in the Supreme Court of a State or a Territory.
- (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

Section 39

- (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 Federal Circuit and Family Court of Australia (Division 2) 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
 - (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) provisions of the applicable Rules of Court dealing with the attachment of money payable by the Commonwealth, a State, a Territory or the Government of a Territory, or an authority of the Commonwealth, of a State or of a Territory; or
 - (da) proceedings are instituted under Division 4 of Part XIII AA or under regulations made for the purposes of section 111CZ; or
 - (e) proceedings are instituted under section 117A.
- (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
- (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) provisions of the applicable Rules of Court dealing with the attachment of money payable by the Commonwealth, a State, a Territory or the Government of a Territory, or an authority of the Commonwealth, of a State or of a Territory; or
 - (da) proceedings are instituted under Division 4 of Part XIII AA or under regulations made for the purposes of section 111CZ; or
 - (e) proceedings are instituted under section 117A.
- (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.
- (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).

Section 39

- (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.

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 Federal Circuit and Family Court of Australia (Division 2); 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.

Section 39B

(6) Subsection (5) has effect subject to subsection 90RC(5).

39B Jurisdiction in de facto financial causes

- (1) Jurisdiction is conferred on:
- (a) the Federal Circuit and Family Court of Australia (Division 2); 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 Federal Circuit and Family Court of Australia (Division 2) is subject to section 40.

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 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).

Section 39E

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 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 or the *Federal Circuit and Family Court of Australia Act 2021* 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.

Division 2A—Jurisdiction in matters arising under Part VIIC

39H Instituting proceedings

Instituting proceedings under this Act

- (1) Proceedings in relation to matters arising under Part VIIC may be instituted under this Act in:
 - (a) the Family Court of Western Australia; or
 - (b) the Magistrates Court of Western Australia sitting at a place outside the metropolitan region (within the meaning of the *Family Court Act 1997* (WA)).
- (2) Subsection (1) has effect subject to this Part.

Proceedings only to be instituted under this Act

- (3) Proceedings in relation to matters arising under Part VIIC that may be instituted under this Act must not be instituted otherwise than under this Act.

39J Jurisdiction in matters arising under Part VIIC

- (1) The following are each invested with federal jurisdiction with respect to matters arising under Part VIIC:
 - (a) the Family Court of Western Australia;
 - (b) the Magistrates Court of Western Australia constituted by a magistrate who is not a Family Law Magistrate of Western Australia, sitting at a place outside the metropolitan region (within the meaning of the *Family Court Act 1997* (WA));
 - (c) the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia, sitting at any place in Western Australia.
- (2) This section has effect subject to this Part.

Division 3—Other provisions

40 Limitations on jurisdiction of Federal Circuit and Family Court of Australia (Division 2) and of State and Territory Supreme Courts

- (1) The regulations may provide that, from a date specified in the regulations (not being a date before the regulations are registered under the *Legislation Act 2003*), the jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) under this Act or the *Federal Circuit and Family Court of Australia Act 2021* in relation to all proceedings, or a specified class of proceedings, must not be exercised in a specified State or Territory, or in 2 or more specified States and Territories.
- (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

Section 41

revoked Proclamation in respect of the jurisdiction of courts before the specified date.

- (5) Proclamations under subsection (3) may be made from time to time.
- (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 Federal Circuit and Family Court of Australia (Division 2), may apply to that Court for an order transferring the proceedings to the Court, and the Court may order accordingly.
- (7) The Federal Circuit and Family Court of Australia (Division 1) Rules and the related Federal Circuit and Family Court of Australia (Division 2) Rules 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.

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

Section 41

a date specified in the Proclamation, this section applies to that court.

- (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, 47A and 47B of this Act and subsection 26(1) of the *Federal Circuit and Family Court of Australia Act 2021* 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:

Section 42

- (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 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 applicable 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 XIII^{AAA} (Applicable law) may affect the law to be applied by a court.

Section 43

43 Principles to be applied by courts

- (1) A court exercising jurisdiction under this Act must, in the exercise of that jurisdiction, have regard to:
 - (a) the need to preserve and protect the institution of marriage as the union of 2 people 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 their welfare;
 - (ca) the need to ensure protection 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.

Proceedings in relation to marriages

- (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.

Limitation on applications relating to certain maintenance and property proceedings

- (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 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;

Section 44

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 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.

Proceedings in relation to de facto relationships

- (5) Subject to subsection (6), a party to a de facto relationship may apply for an order under section 90SE, 90SG or 90SM, or a declaration under section 90SL, only if:
 - (a) the application is made within the period (the ***standard application period***) of:
 - (i) 2 years after the end of the de facto relationship; or
 - (ii) 12 months after a financial agreement between the parties to the de facto relationship was set aside, or found to be invalid, as the case may be; or
 - (b) both parties to the de facto relationship consent to the application.
- (5A) However, if proceedings are instituted by an application made with the consent of both of the parties to the de facto relationship, 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.

Section 44

- (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.

Proceedings under Part VIIIC

- (7) Subject to subsection (9), a party to a de facto relationship may apply for an order under Part VIIIC only if:
 - (a) the application is made within the period (the ***standard application period***) of:
 - (i) 2 years after the end of the de facto relationship; or
 - (ii) 12 months after a Western Australian financial agreement (within the meaning of Part VIIIC) between the parties to the de facto relationship was set aside, or found to be invalid, as the case may be; or
 - (b) both parties to the de facto relationship consent to the application.
- (8) However, if proceedings are instituted by an application made with the consent of both of the parties to the de facto relationship, 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.
- (9) The court may grant the party leave to apply after the end of the standard application period if the court is satisfied that hardship would be caused to the party or a child if leave were not granted.

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 and it appears to that court that other proceedings that have been so instituted 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.

Section 45

Proceedings relating to the same matter		
Item	First proceedings	Second proceedings
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 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 Federal Circuit and Family Court of Australia (Division 1) and the other court is the Federal Circuit and Family Court of Australia (Division 2); or
- (b) the first-mentioned court is the Federal Circuit and Family Court of Australia (Division 2) and the other court is the Federal Circuit and Family Court of Australia (Division 1).

Note 1: For transfers from the Federal Circuit and Family Court of Australia (Division 1) to the Federal Circuit and Family Court of Australia (Division 2), see section 52 of the *Federal Circuit and Family Court of Australia Act 2021*.

Note 2: For transfers from the Federal Circuit and Family Court of Australia (Division 2) to the Federal Circuit and Family Court of Australia (Division 1), see sections 51 and 149 of the *Federal Circuit and Family Court of Australia Act 2021*.

- (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 or transferred to a court of summary jurisdiction in a State or Territory, in relation to property of a total value exceeding the amount referred to in section 46A, and the respondent, in answer to the application by which the proceedings were 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 Federal Circuit and Family Court of Australia (Division 2); or
 - (ii) a Family Court of a State; or
 - (iii) the Supreme Court of a State or Territory; and
 - (b) unless the parties consent to the court hearing and determining the proceedings—the court must transfer the proceedings to:
 - (i) the Federal Circuit and Family Court of Australia (Division 2); or
 - (ii) a Family Court of a State; or
 - (iii) the Supreme Court of a State or Territory.
- (1AA) Subsection (1) does not apply if the court of summary jurisdiction is the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia.

Section 46

- (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 or transferred to 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.
- (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 Federal Circuit and Family Court of Australia (Division 2); or
 - (b) a Family Court of a State; or
 - (c) the Supreme Court of a State or Territory.
- (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 Federal Circuit and Family Court of Australia (Division 2); or
 - (d) a Family Court of a State; or
 - (e) the Supreme Court of a State or Territory.
-

Section 46A

- (2B) Subsection (2A) does not apply if the court of summary jurisdiction 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 are pending in a court of summary jurisdiction, each of the following Courts:
- (a) the Federal Circuit and Family Court of Australia (Division 2);
 - (b) a Family Court of a State;
 - (c) the Supreme Court of a State or Territory;
- 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.
- (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.

46A Prescribing value of property for the purposes of section 46

- (1) For the purposes of subsection 46(1), the amount is:
- (a) \$20,000; or
 - (b) if a higher amount is prescribed by regulations for the State or Territory in which the court of summary jurisdiction referred to in that subsection is located—that higher amount.
- (2) Without limiting subsection (1), a higher amount may be prescribed by referring to the jurisdiction conferred on a court of summary jurisdiction under a law of the State or Territory, as in force from time to time.

Section 47

Consultation with State and Territories

- (3) Before the Governor-General makes regulations for the purposes of subsection (1) in relation to a particular State or Territory, the Minister must be satisfied that the Minister with responsibility for courts in that State or Territory has been consulted.
- (4) Subsection (3) does not limit section 17 of the *Legislation Act 2003* (rule-makers should consult before making legislative instrument).

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.

Division 4—Appeals

47A Appeals from courts of summary jurisdiction

- (1) Subject to section 47B, an appeal lies from a decree of a court of summary jurisdiction of a State or Territory exercising jurisdiction under:
 - (a) this Act; or
 - (b) the *Child Support (Assessment) Act 1989*; or
 - (c) the *Child Support (Registration and Collection) Act 1988*;to:
 - (d) the Federal Circuit and Family Court of Australia (Division 1); or
 - (e) the Supreme Court of that State or Territory.
- (2) Subsection (1) does not apply to:
 - (a) a decree of the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia; or
 - (b) a decree of the Magistrates Court of Western Australia constituted by a magistrate who is not a Family Law Magistrate of Western Australia made in proceedings in relation to matters arising under Part VIIC.
- (3) An appeal under subsection (1) must be instituted within:
 - (a) in the case of an appeal to the Federal Circuit and Family Court of Australia (Division 1):
 - (i) the time prescribed by the Federal Circuit and Family Court (Division 1) Rules; or
 - (ii) such further time as is allowed in accordance with those Rules; and
 - (b) in any other case:
 - (i) the time prescribed by the standard Rules of Court; or
 - (ii) such further time as is allowed in accordance with those Rules.

Section 47A

- (4) 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.

Note: For jurisdiction in relation to child support legislation, see section 101 of the *Child Support (Assessment) Act 1989* and section 106 of the *Child Support (Registration and Collection) Act 1988*.

- (5) 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, and such a Proclamation may be expressed to apply only to proceedings of a specified class or specified classes.
- (6) The court hearing an appeal under this section:
- (a) must 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) must 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 may be given:
 - (i) by affidavit; or
 - (ii) by oral examination before the court; or
 - (iii) as provided for in Division 2 of Part XI; and
 - (c) may make such decrees as the court considers appropriate, including a decree affirming, reversing or varying the decree the subject of the appeal.

Decrees made in section 69GA proceedings treated like decrees of courts of summary jurisdiction

- (7) If a court of a State or Territory is prescribed for the purposes of section 69GA, this section applies in relation to a decree of the court made in section 69GA proceedings as if it were a decree of a court of summary jurisdiction of the State or Territory.

47B Leave to appeal needed for child support matters

- (1) Leave of a single Judge of the Federal Circuit and Family Court of Australia (Division 1) is required to appeal to the Court from a decree of a court of summary jurisdiction of a State or Territory exercising jurisdiction under:
 - (a) the *Child Support (Assessment) Act 1989*; or
 - (b) the *Child Support (Registration and Collection) Act 1988*.
- (2) Leave of the Supreme Court of a State or Territory is required to appeal to the Court from a decree of a court of summary jurisdiction of that State or Territory exercising jurisdiction under:
 - (a) the *Child Support (Assessment) Act 1989*; or
 - (b) the *Child Support (Registration and Collection) Act 1988*.
- (3) An application for leave to appeal must be made within:
 - (a) in the case of leave of the Federal Circuit and Family Court of Australia (Division 1):
 - (i) the time prescribed by the Federal Circuit and Family Court (Division 1) Rules; or
 - (ii) such further time as is allowed in accordance with those Rules; and
 - (b) in any other case:
 - (i) the time prescribed by the standard Rules of Court; or
 - (ii) such further time as is allowed in accordance with those Rules.
- (4) The applicable Rules of Court may make provision for enabling applications for leave to be dealt with, subject to conditions prescribed by the Rules, without an oral hearing.

47BA Appeals relating to matters arising under Part VIIC

- (1) An appeal lies to the Family Court of Western Australia from:
 - (a) an interlocutory order of the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia; or

Section 47C

- (b) a decree of the Magistrates Court of Western Australia constituted by a magistrate who is not a Family Law Magistrate of Western Australia; exercising original jurisdiction invested by Division 2A of Part V.

Note: Division 2A of Part V invests jurisdiction with respect to matters arising under Part VIIIC (Superannuation interests relating to Western Australian de facto relationships).

- (2) An appeal lies to the Court of Appeal established under the *Supreme Court Act 1935* (WA) from:
 - (a) a decree of the Family Court of Western Australia exercising original jurisdiction invested by Division 2A of Part V of this Act or appellate jurisdiction under this Act; or
 - (b) a decree (other than an interlocutory order) of the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia exercising original jurisdiction invested by Division 2A of Part V of this Act.

Note: Division 2A of Part V invests jurisdiction with respect to matters arising under Part VIIIC (Superannuation interests relating to Western Australian de facto relationships).

- (3) The Court of Appeal established under the *Supreme Court Act 1935* (WA) and the Family Court of Western Australia are each invested with federal jurisdiction with respect to matters arising under Part VIIIC of this Act in respect of which appeals are instituted under this section.

47C Appeal may be dismissed if no reasonable prospect of success

- (1) If:
 - (a) an appeal has been instituted in a court under this Division; and
 - (b) it appears to the court that the appeal has no reasonable prospect of success;the court may, at any time, order that the proceedings on the appeal be dismissed.

- (2) This section does not limit any powers that the court has apart from this section.

47D Appeals to High Court may not be brought

- (1) An appeal must not be brought directly to the High Court from a decree of the following courts exercising jurisdiction under this Act:

- (a) a court of summary jurisdiction of a State or Territory;
- (b) a Family Court of a State;
- (c) a Supreme Court of a State or Territory constituted by a single Judge.

Note: In relation to the Federal Circuit and Family Court of Australia, see sections 55 and 155 of the *Federal Circuit and Family Court of Australia Act 2021*.

- (2) If, apart from this subsection, subsection (1) is to any extent inconsistent with section 73 of the Constitution, this Act has effect as if the words “, except by special leave of the High Court” were inserted after the words “this Act” in subsection (1).

47E Regulations to be sole source of certain appellate jurisdiction

Despite the provisions of this Division, a court has appellate jurisdiction in relation to a matter arising under regulations made for the purposes of section 111C only as provided by those regulations.

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

Section 51

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 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;

Section 55

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:
- (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 an application for leave to appeal, against:
 - (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 intervention, or an application for a re-hearing, relating to:
 - (i) the divorce order; or

Section 55

- (ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or
 - (c) 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; or
 - (d) a review by the Federal Circuit and Family Court of Australia (Division 1) of the making, by the Chief Executive Officer, or a Senior Registrar or Registrar of that Court, of:
 - (i) the divorce order; or
 - (ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or
 - (iii) an order determining an application under section 57 or 58 for rescission of the divorce order; or
 - (e) a review by the Federal Circuit and Family Court of Australia (Division 2) of the making, by the Chief Executive Officer, or a Senior Registrar or Registrar of that Court, of:
 - (i) the divorce order; or
 - (ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or
 - (iii) an order determining an application under section 57 or 58 for rescission of the divorce order; or
 - (f) a review by the Family Court of Western Australia of the making, by the Principal Registrar, a Registrar, or a Deputy Registrar, of that Court of:
 - (i) the divorce order; or
 - (ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or
 - (iii) an order determining an application under section 57 or 58 for rescission of the divorce order.
- (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.

Section 55A

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 party to the marriage, 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 both parties to the marriage 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 parties to the marriage 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.
- (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 that certifies that the divorce order has taken effect and is signed by:
 - (a) if the court is the Federal Circuit and Family Court of Australia (Division 1)—the Chief Executive Officer, or a Senior Registrar or Registrar of the Court; or
 - (b) if the court is the Federal Circuit and Family Court of Australia (Division 2)—the Chief Executive Officer, or a Senior Registrar or Registrar of the Court; or
 - (c) in relation to any other court—the Registrar of that court.
- (3) A certificate given under subsection (2) is, in all courts (whether exercising federal jurisdiction or not) and for all purposes, prima facie 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

Section 59

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 Remarriage

If a divorce order under this Act in relation to a marriage has taken effect, a party to the marriage may marry again.

60 No appeal after divorce order takes effect

An appeal does not lie from a divorce order after the order takes effect.

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 an outline of this Part (Subdivision B); and
- (aa) provisions dealing with the best interests of the child in court proceedings (Subdivision BA); and
- (ab) provisions dealing with an adviser's obligations in relation to the best interests of the child (Subdivision BB); 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); and
- (d) provisions about the use of family dispute resolution before applying for an order under this Part (Subdivision E).

Note: The extension and application of this Part is also dealt with in Subdivision F of Division 12.

Subdivision B—Object and outline

60B Objects of Part

The objects of this Part are:

- (a) to ensure that the best interests of children are met, including by ensuring their safety; and
- (b) to give effect to the Convention on the Rights of the Child done at New York on 20 November 1989.

Note 1: The text of the Convention is set out in Australian Treaty Series 1991 No. 4 ([1991] ATS 4). In 2023, the text of a Convention in the

Section 60C

Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

- Note 2: Division 4 of Part XI sets out principles for conducting child-related proceedings under this Part. The court must give effect to the principles in performing duties and exercising powers in relation to child-related proceedings or making other decisions about the conduct of child-related proceedings. Division 4 of Part XI also deals with matters relating to evidence in child-related proceedings.

60C Outline of Part

An outline of this Part is set out below.

OUTLINE OF PART	
Item	Divisions and coverage
1	Division 1—Introductory <ul style="list-style-type: none">object of Part and outline of Partbest interests of the child: court proceedingsbest interests of the child: adviser's obligationsinterpretation and application of this Parthow this Act applies to certain childrenfamily dispute resolution <p>Note: The extension and application of this Part is also dealt with in Subdivision F of Division 12.</p>
2	Division 2—Parental responsibility <ul style="list-style-type: none">the concept of parental responsibility
3	Division 3—Reports relating to children under 18 <p>preparation of reports for use in proceedings relating to children under 18</p>
4	Division 4—Parenting plans <ul style="list-style-type: none">what parenting plans are
5	Division 5—Parenting orders—what they are <ul style="list-style-type: none">what parenting orders are

OUTLINE OF PART	
Item	Divisions and coverage
6	Division 6—Parenting orders other than child maintenance orders <ul style="list-style-type: none">• applying for and making parenting orders (other than child maintenance orders) after attending, if necessary, family dispute resolution (see section 60I)• measures to promote the exercise of parental responsibility• obligations under parenting orders, other than child maintenance orders, relating to taking or sending children from Australia
7	Division 7—Child maintenance orders <ul style="list-style-type: none">• objects and principles relevant to the making of child maintenance orders• the relationship between Division 7 and the <i>Child Support (Assessment) Act 1989</i>• applying for and making child maintenance orders• other aspects of courts' powers in relation to child maintenance orders• varying the maintenance of certain children• when child maintenance orders stop being in force• recovery of amounts paid under maintenance orders
8	Division 8—Other matters relating to children <ul style="list-style-type: none">• liability of a father to contribute towards child bearing expenses if he is not married to the child's mother• orders for the location and recovery of children• reporting of allegations of child abuse and family violence• other orders about children
9	Division 9—Injunctions <ul style="list-style-type: none">• proceedings for injunctions in relation to children

Section 60C

OUTLINE OF PART	
Item	Divisions and coverage
10	Division 10—The representation of the child’s interests the representation of a child’s interests in proceedings by an independent children’s lawyer
11	Division 11—Family violence <ul style="list-style-type: none">the relationship between certain parenting orders and family violence orders
12	Division 12—Proceedings and jurisdiction <ul style="list-style-type: none">institution of proceedings and procedurejurisdiction of courtspresumptions of parentageparentage evidenceplaces and people to which this Part extends and applies
13	Division 13—State, Territory and overseas orders <ul style="list-style-type: none">registration of State and Territory orders dealing with childrenregistration of overseas orders dealing with childrentransmission of Australian orders to overseas jurisdictions
13A	Division 13A—Orders in proceedings relating to contraventions of child-related orders <ul style="list-style-type: none">orders that the court may make in proceedings where it is alleged that a person has contravened a child-related order (including parenting orders)
14	Division 14—Miscellaneous <ul style="list-style-type: none">dealing with people who have been arrested and miscellaneous matters relating to children

Subdivision BA—Best interests of the child: court proceedings

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.

60CC How a court determines what is in a child’s best interests

Determining child’s best interests

- (1) Subject to subsection (4), in determining what is in the child’s best interests, the court must:
- (a) consider the matters set out in subsection (2); and
 - (b) if the child is an Aboriginal or Torres Strait Islander child—also consider the matters set out in subsection (3).

General considerations

- (2) For the purposes of paragraph (1)(a), the court must consider the following matters:

Section 60CC

- (a) what arrangements would promote the safety (including safety from being subjected to, or exposed to, family violence, abuse, neglect, or other harm) of:
 - (i) the child; and
 - (ii) each person who has care of the child (whether or not a person has parental responsibility for the child);
 - (b) any views expressed by the child;
 - (c) the developmental, psychological, emotional and cultural needs of the child;
 - (d) the capacity of each person who has or is proposed to have parental responsibility for the child to provide for the child's developmental, psychological, emotional and cultural needs;
 - (e) the benefit to the child of being able to have a relationship with the child's parents, and other people who are significant to the child, where it is safe to do so;
 - (f) anything else that is relevant to the particular circumstances of the child.
- (2A) In considering the matters set out in paragraph (2)(a), the court must include consideration of:
- (a) any history of family violence, abuse or neglect involving the child or a person caring for the child (whether or not the person had parental responsibility for the child); and
 - (b) any family violence order that applies or has applied to the child or a member of the child's family.

Additional considerations—right to enjoy Aboriginal or Torres Strait Islander culture

- (3) For the purposes of paragraph (1)(b), the court must consider the following matters:
- (a) the child's right to enjoy the child's Aboriginal or Torres Strait Islander culture, by having the support, opportunity and encouragement necessary:
 - (i) to connect with, and maintain their connection with, members of their family and with their community, culture, country and language; and

- (ii) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
- (iii) to develop a positive appreciation of that culture; and
- (b) the likely impact any proposed parenting order under this Part will have on that right.

Consent orders

- (4) 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).

60CD How the views of a child are expressed

- (1) Paragraph 60CC(2)(b) requires the court to consider any views expressed by a child in deciding whether to make a particular 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.

Section 60CE

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
 - (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.

60CH Informing court of care arrangements under child welfare laws

- (1) If a party to the proceedings is aware that the child, or another child who is a member of the child's family, is under the care (however described) of a person under a child welfare law, that party must inform the court of the matter.

- (2) If a person who is not a party to the proceedings is aware that the child, or another child who is a member of the child's family, is under the care (however described) of a person under a child welfare law, that person may inform the court of the matter.
- (3) Failure to inform the court of the matter does not affect the validity of any order made by the court. However, this subsection does not limit the operation of section 69ZK (child welfare laws not affected).

60CI Informing court of notifications to, and investigations by, information sharing agencies

- (1) If:
 - (a) a party to the proceedings is aware that the child, or another child who is a member of the child's family, is or has been the subject of:
 - (i) a notification or report (however described) to an information sharing agency; or
 - (ii) an investigation, inquiry or assessment (however described) by an information sharing agency; and
 - (b) the notification, report, investigation, inquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse; that party must inform the court of the matter.
- (2) If:
 - (a) a person who is not a party to the proceedings is aware that the child, or another child who is a member of the child's family, is or has been the subject of:
 - (i) a notification or report (however described) to an information sharing agency; or
 - (ii) an investigation, inquiry or assessment (however described) by an information sharing agency; and
 - (b) the notification, report, investigation, inquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse; that person may inform the court of the matter.

Section 60D

- (3) Failure to inform the court of the matter does not affect the validity of any order made by the court.

Subdivision BB—Best interests of the child: adviser’s obligations

60D Adviser’s obligations in relation to best interests of the child

- (1) If an adviser gives advice or assistance to a person about matters concerning a child and this Part, the adviser must:
- (a) inform the person that the person should regard the best interests of the child as the paramount consideration; and
 - (b) encourage the person to act in the child’s best interests by applying the considerations set out in subsections 60CC(2) and (3).
- (2) In this section:
- adviser* means a person who is:
- (a) a legal practitioner; or
 - (b) a family counsellor; or
 - (c) a family dispute resolution practitioner; or
 - (d) a family consultant; or
 - (e) a CCS practitioner.

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 the purported marriage were a marriage.

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 2E 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) For the purposes of this Act, a child is (subject to subsections (2), (3) and (4)) a child of a marriage if:
 - (a) the child is the child of both parties to the marriage, whether born before or after the marriage; or
 - (b) the child is adopted after the marriage by both parties to the marriage, or by either of them with the consent of the other.
- (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:

Section 60G

- (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.
- (5) In this section:
- this Act* includes the applicable Rules of Court.

60G Leave may be granted for adoption proceedings by prescribed adopting parent

- (1) Subject to subsection (2), the Federal Circuit and Family Court of Australia (Division 2), 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 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.

- (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 the applicable Rules of Court.

Section 60HA

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 the applicable Rules of Court.

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 the applicable Rules of Court.

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.

Applications for a Part VII order

- (6) Subsections (7) to (14) 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 be met before application accepted for filing

- (7) An application for a Part VII order in relation to a child must not be accepted by the court for filing unless:
- (a) the applicant files in the court, together with the application, a certificate given to the applicant by a family dispute resolution practitioner under subsection (8); or
 - (b) after the making of the application, the court grants the applicant an exemption under subsection (8A) from having to file such a certificate.

Section 60I

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 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.

Section 60I

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 114UB).

Exemptions

- (8A) The court may grant the applicant for a Part VII order in relation to a child an exemption from having to file a certificate referred to in paragraph (7)(a).
- (8B) The court may do so only if the court is satisfied that one or more of the grounds in subsection (9) exist.
- (9) For the purposes of subsection (8B), the grounds for an exemption are:
- (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 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;

Section 60I

- (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.

Validity of proceedings not affected by failure to meet requirement in relation to application

- (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 that application.

Review of power exercised by delegate

- (12) If a delegate has exercised the power of the court under subsection (8A), a party to the proceedings, or a person who would have been a party to the proceedings if the exemption referred to in that subsection had been granted, may:
- (a) within the time prescribed by the applicable Rules of Court; or
 - (b) within any further time allowed in accordance with the applicable Rules of Court;
- apply to the court for review of the exercise of the power.
- (13) The court may, on application under subsection (12) or on its own initiative, review an exercise of power by a delegate under

subsection (8A), and may make any order or orders it thinks fit in relation to the exercise of that power.

- (14) Subsections 100(1) and (2) and 256(1) and (2) of the *Federal Circuit and Family Court of Australia Act 2021* do not apply in relation to the exercise of the power of the court by a delegate under subsection (8A) of this section.

60J Family dispute resolution not attended because of child abuse or family violence

- (1) If:
- (a) subsections 60I(7) to (14) apply to an application for a Part VII order (see subsection 60I(6)); and
 - (b) in relation to the application, the court has granted the applicant an exemption under subsection 60I(8A) 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.
- (3) The validity of:
- (a) proceedings on an application for a Part VII order; or

Section 60J

- (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.

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.

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 remarrying.
- (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).

Section 61CA

Note: Section 111CS may affect the attribution of parental responsibility for a child.

61CA Consultation between parents on major long-term issues

If it is safe to do so, and subject to any court orders, the parents of a child who is not yet 18 are encouraged:

- (a) to consult each other about major long-term issues in relation to the child; and
- (b) in doing so, to have regard to the best interests of the child as the paramount consideration.

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.
- (3) A parenting order that deals with the allocation of responsibility for making decisions about major long-term issues in relation to the child (see subsection 64B(3)) may provide for joint or sole decision-making in relation to all or specified major long-term issues.

61DAA Effect of parenting order that provides for joint decision-making about major long-term issues

- (1) If a parenting order provides for joint decision-making by persons in relation to all or specified major long-term issues in relation to a child, then, except to the extent the order otherwise specifies, the order is taken to require each of the persons:

Section 61DAB

- (a) to consult each other person in relation to each such decision;
and
 - (b) to make a genuine effort to come to a joint decision.
- (2) 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.

61DAB 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.

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.

Section 61F

- (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.

Note: The expression *Aboriginal or Torres Strait Islander culture* is defined in subsection 4(1).

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.

Part VII Children

Division 3 Reports relating to children under 18

Section 62G

Note: A person cannot require a child to express his or her views in relation to any matter (see section 60CE).

- (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 one or more parties to the proceedings attend, or arrange for the child to 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) a person fails to comply with an order or direction under subsection (5); or
 - (b) a child fails to attend an appointment with a family consultant as arranged in compliance 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.

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:

Section 63C

- (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 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.

Note: For the definition of *major long-term issues*, see subsection 4(1).

(2C) The communication referred to in paragraph (2)(e) includes (but is not limited to) communication by:

- (a) letter; and

Section 63CAA

- (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 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*.

Section 63D

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

- (1A) The obligations of an adviser under this section are in addition to the adviser's obligations under section 60D.

Note: Section 60D deals with an adviser's obligations in relation to the best interests of the child.

- (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:
- (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:
- (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
- (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.

(5) In this section:

adviser means a person who is:

- (a) a legal practitioner; or
- (b) a family counsellor; or
- (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.

Section 63E

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:
 - (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

Section 63F

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) Subdivision 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
- (d) other provisions of this Act (including subsection 64B(6)) that refer to parenting orders.

Section 63G

- (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 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

Section 63H

- (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.

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.

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).

However, a declaration or order under Subdivision E of Division 12 is not a *parenting order*.

(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;

Section 64B

- (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.

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.

Note 1: See also subsection 61D(3) and section 61DAA in relation to parenting orders dealing with allocation of responsibility for making decisions about major long-term issues.

Note 2: For the definition of *major long-term issues*, see subsection 4(1).

- (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.
- (9) In this section:
- this Act*** includes the applicable Rules of Court.

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:

Part VII Children

Division 5 Parenting orders—what they are

Section 64D

- (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.

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
 - (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 are dealt with in Division 7.

Section 65C

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 section 65DAB (parenting plans) and this Division, make such parenting order as it thinks proper.

Note: Division 4 of Part XIII AA (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 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.

Note 1: The applicant may apply to the Federal Circuit and Family Court of Australia (Division 1) for the application for the parenting order to be transferred to the Federal Circuit and Family Court of Australia (Division 2): see section 52 of the *Federal Circuit and Family Court of Australia Act 2021*.

Note 2: The applicant may apply to the Federal Circuit and Family Court of Australia (Division 2) for the application for the parenting order to be transferred to the Federal Circuit and Family Court of Australia (Division 1): see section 149 of the *Federal Circuit and Family Court of Australia Act 2021*.

Note 3: Proceedings may also be transferred from the Federal Circuit and Family Court of Australia (Division 2) to the Federal Circuit and Family Court of Australia (Division 1) by order of the Chief Justice: see section 51 of the *Federal Circuit and Family Court of Australia Act 2021*.

65DAAA Reconsideration of final parenting orders

- (1) If a final parenting order is in force in relation to a child, a court must not reconsider the final parenting order unless:
 - (a) the court has considered whether there has been a significant change of circumstances since the final parenting order was made; and
 - (b) the court is satisfied that, in all the circumstances (and taking into account whether there has been a significant change of circumstances since the final parenting order was made), it is in the best interests of the child for the final parenting order to be reconsidered.
- (2) For the purposes of determining whether the court is satisfied as mentioned in paragraph (1)(b), and without limiting section 60CC, the court may have regard to any matters that the court considers relevant, including the following:
 - (a) the reasons for the final parenting order and the material on which it was based;
 - (b) whether there is any material available that was not available to the court that made the final parenting order;
 - (c) the likelihood that, if the final parenting order is reconsidered, the court will make a new parenting order that affects the operation of the final parenting order in a significant way (whether by varying, discharging or suspending the final parenting order, in whole or in part, or in some other way);
 - (d) any potential benefit, or detriment, to the child that might result from reconsidering the final parenting order.
- (3) Despite subsection (1), the court may reconsider a final parenting order with the agreement or consent of all the parties to that order.
- (4) The failure of a court to comply with subsection (1) does not affect the validity of any order made by the court.

Section 65DAB

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.

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:
 - (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
 - (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.

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

Section 65H

- (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
 - (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 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

Section 65L

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 post-separation parenting program.
- (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
 - (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

Section 65X

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 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
 - (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, 65ZAA and 65ZB (rather than sections 65Y, 65YA and 65ZA) apply.

65Y Obligations if certain parenting orders have been made: taking or sending a child outside Australia

- (1) A person commits an offence if:
- (a) a parenting order to which this Subdivision applies is in force in relation to a child; and
 - (b) the person takes or sends the child from Australia to a place outside Australia; and
 - (c) the child is not taken or sent from Australia to a place outside Australia:
 - (i) with the consent in writing (authenticated as prescribed) of each person in whose favour the parenting order was made; or
 - (ii) 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 parenting order; and
 - (d) the person:
 - (i) is or was a party to the proceedings in which the parenting order was made; or
 - (ii) is acting on behalf of, or at the request of, a person who is or was a party to the proceedings in which the parenting order was made.

Note: The ancillary offence provisions of the *Criminal Code*, including section 11.1 (attempts), apply in relation to the offence created by this section.

Penalty: Imprisonment for 3 years.

Exception

- (2) Subsection (1) does not apply if:
- (a) the person (whether or not the person is or was the party to the proceedings) takes or sends the child from Australia to a place outside Australia because the person believes the conduct is necessary to prevent family violence; and
 - (b) the conduct is reasonable in the circumstances as the person perceives them.

Section 65YA

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

**65YA Obligations if certain parenting orders have been made:
retaining a child outside Australia**

- (1) A person commits an offence if:
- (a) a parenting order to which this Subdivision applies is in force in relation to a child; and
 - (b) the child has been taken or sent from Australia to a place outside Australia, by or on behalf of a party to the proceedings in which the parenting order was made:
 - (i) with the consent in writing (authenticated as prescribed) of each person in whose favour the parenting order was made; or
 - (ii) in accordance with an order of a court made, under this Part or under a law of a State or Territory, at the time, or after, the parenting order was made; and
 - (c) the person retains the child outside Australia otherwise than in accordance with a consent or order of a kind mentioned in paragraph (b) (whether or not the person took or sent the child as mentioned in that paragraph); and
 - (d) the person:
 - (i) was a party to the proceedings in which the parenting order was made; or
 - (ii) is retaining the child on behalf of, or at the request of, such a party.

Note: The ancillary offence provisions of the *Criminal Code*, including section 11.1 (attempt), apply in relation to the offence created by this section.

Penalty: Imprisonment for 3 years.

Exception

- (2) Subsection (1) does not apply if:
- (a) the person (whether or not the person was the party to the proceedings) retains the child as mentioned in

paragraph (1)(c) because the person believes the conduct is necessary to prevent family violence; and

- (b) the conduct is reasonable in the circumstances as the person perceives them.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

65Z Obligations if proceedings for the making of certain parenting orders are pending: taking or sending a child outside Australia

- (1) A person commits an offence if:
- (a) proceedings (the *Part VII proceedings*) are pending for the making of a parenting order to which this Subdivision applies in relation to a child; and
 - (b) the person takes or sends the child from Australia to a place outside Australia; and
 - (c) the child is not taken or sent from Australia to a place outside Australia:
 - (i) with the consent in writing (authenticated as prescribed) of each other party to the Part VII proceedings; or
 - (ii) 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; and
 - (d) the person is:
 - (i) a party to the Part VII proceedings; or
 - (ii) acting on behalf of, or at the request of, a person who is a party to the Part VII proceedings.

Note: The ancillary offence provisions of the *Criminal Code*, including section 11.1 (attempts), apply in relation to the offence created by this section.

Penalty: Imprisonment for 3 years.

Exception

- (2) Subsection (1) does not apply if:

Section 65ZAA

- (a) the person (whether or not the person is the party to the Part VII proceedings) takes or sends the child from Australia to a place outside Australia because the person believes the conduct is necessary to prevent family violence; and
- (b) the conduct is reasonable in the circumstances as the person perceives them.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

65ZAA Obligations if proceedings for the making of certain parenting orders are pending: retaining a child outside Australia

- (1) A person commits an offence if:
 - (a) proceedings (the *Part VII proceedings*) for the making, in relation to a child, of a parenting order to which this Subdivision applies are pending; and
 - (b) the child has been taken or sent from Australia to a place outside Australia by or on behalf of a party to the Part VII proceedings:
 - (i) with the consent in writing (authenticated as prescribed) of each other party to the Part VII proceedings; or
 - (ii) 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; and
 - (c) the person retains the child outside Australia otherwise than in accordance with a consent or order of a kind mentioned in paragraph (b) (whether or not the person took or sent the child as mentioned in that paragraph); and
 - (d) the person is a party to the Part VII proceedings, or is retaining the child on behalf of, or at the request of, such a party.

Note: The ancillary offence provisions of the *Criminal Code*, including section 11.1 (attempt), apply in relation to the offence created by this subsection.

Penalty: Imprisonment for 3 years.

Exception

- (2) Subsection (1) does not apply if:
- (a) the person (whether or not the person is the party to the Part VII proceedings) retains the child as mentioned in paragraph (1)(c) because the person believes the conduct is necessary to prevent family violence; and
 - (b) the conduct is reasonable in the circumstances as the person perceives them.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

65ZA Obligations of owners etc. of aircraft and vessels if certain parenting orders made

- (1) A person (the *first person*) commits an offence if:
- (a) a parenting order to which this Subdivision applies is in force in relation to a child; and
 - (b) the first person is a captain, owner or charterer of an aircraft or vessel; and
 - (c) another person (the *carer*) in whose favour the parenting order was made has served on the first person a statutory declaration that:
 - (i) relates to the parenting order; and
 - (ii) complies with subsection (4); and
 - (d) the statutory declaration was made by the carer not earlier than 7 days before the date of service; and
 - (e) the first person permits the child to leave a place in Australia in the aircraft or vessel; and
 - (f) the destination of the aircraft or vessel is outside Australia; and
 - (g) the child does not leave:
 - (i) in the company, or with the consent in writing (authenticated as prescribed), of the carer; or

Section 65ZB

- (ii) 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 parenting order.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if the first person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (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) A person (the *first person*) commits an offence if:
 - (a) proceedings (the *Part VII proceedings*) are pending for the making of a parenting order to which this Subdivision applies in relation to a child; and
 - (b) the first person is a captain, owner or charterer of an aircraft or vessel; and
 - (c) a party (the *carer*) to the Part VII proceedings has served on the captain, owner or charterer a statutory declaration that:
 - (i) relates to the Part VII proceedings; and
 - (ii) complies with subsection (4); and
 - (d) the statutory declaration was made by the carer not earlier than 7 days before the date of service; and

Section 65ZC

- (e) the first person permits the child to leave a place in Australia in the aircraft or vessel; and
- (f) the destination of the aircraft or vessel is outside Australia; and
- (g) the child does not leave:
 - (i) in the company, or with the consent in writing (authenticated as prescribed), of the carer; or
 - (ii) 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.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if the first person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (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

Section 65ZD

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(1) or 65ZB(1) 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, sent or retained outside Australia; or
- (b) a person may be punished in respect of the taking, sending or retaining of a child outside Australia.

65ZE Extended geographical jurisdiction—category D

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against any of sections 65Y to 65ZB (taking, sending or retaining a child outside Australia).

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); and
- (f) deals with the recovery of amounts paid under maintenance orders (Subdivision G).

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.

Section 66C

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.
- (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.
- (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:

Section 66G

- (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:

- (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:

Section 66K

- (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 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:

Section 66K

- (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 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

Section 66L

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 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 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 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.

Section 66M

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 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.

Section 66Q

- (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:

Section 66S

- (i) the child or children 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 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

Section 66S

- (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
 - (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

Section 66S

- (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
 - (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.
-

Section 66SA

- (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).
- (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.

Section 66T

- (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.

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.

Section 66V

- (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 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.

Section 66VA

- (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 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.
- (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

Section 66X

- (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 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

Section 66X

- (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

Section 66X

person to whom, apart from that section, the amount would have been payable.

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 and family violence (Subdivision D); and
- (ca) orders for information etc. in child-related proceedings (Subdivision DA); 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

Section 67C

- (d) if the child is stillborn, or dies and the death is related to the birth, the reasonable expenses of the child's funeral.

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;
 - (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.

Section 67E

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.

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).

Note: A Commonwealth information order may:

- (a) require a one-off or periodic searches (see subsection 67N(5)); and
- (b) require information about violence to children and others in addition to location information (see subsection 67N(9)).

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 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.

Section 67L

- (2) For the purposes of the Child Protection Convention, a person (including one appointed as the Central Authority for the Commonwealth, a State or a Territory for the purposes of Article 29 of the Convention) may apply to a court for a location order.
- (3) For the purposes of the Child Abduction Convention, a person (including one appointed as the Central Authority for the Commonwealth, a State or a Territory for the purposes of Article 6 of the Convention) may apply to a court for a location order.

- (4) In this section:

Child Abduction Convention means the Convention on the Civil Aspects of International Child Abduction done at The Hague on 25 October 1980.

Note: The Child Abduction Convention is in Australian Treaty Series 1987 No. 2 ([1987] ATS 2) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Child Protection Convention 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 XIII AA, 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.

- (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.

Requirements for making a Commonwealth information order

- (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 XIII AA, 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

Section 67N

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.
- (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.

Content of a Commonwealth information order

- (5) A Commonwealth information order may require either:
 - (a) a one-off search for information sought by the order; or
 - (b) periodic searches for the information sought by the order for the period during which the order is in force, which must not exceed 12 months.
- (6) A Commonwealth information order that requires periodic searches for information does not require the records of the Department or Commonwealth instrumentality concerned to be searched more often than once every 3 months unless specifically so ordered by the court.
- (7) Unless a Commonwealth information order specifies otherwise, the order does not require the searching of records that are more than 2 years old on the day the order is made.
- (8) A court may state that a Commonwealth information order only applies to records of a particular kind if the court considers that an unreasonable burden would be placed on the resources of the Department or Commonwealth instrumentality concerned if the order applied to all of its records.

- (9) In addition to requiring information about a child's location, a Commonwealth information order may also require the person to whom the order applies to provide any information, that is in the records of the relevant Department or Commonwealth instrumentality, about actual or threatened violence to any one or more of the following:
- (a) the child;
 - (b) a person who is related to the child within the meaning of subsection 67NA(1);
 - (c) a person who has a connection to the child that the court considers relevant.
- (10) A Commonwealth information order seeking information about actual or threatened violence to a person mentioned in paragraph (9)(c) must specify either the person or the nature of the connection between the person and the child.
- (11) If a Commonwealth information order seeks information about actual or threatened violence to a person mentioned in paragraph (9)(b) or (c), the person to whom the order applies is only required to provide information about the person if they can be identified using the records of the relevant Department or Commonwealth instrumentality.
- (12) A Commonwealth information order seeking information about actual or threatened violence under subsection (9) may specify that such information is to be sought within the following records:
- (a) a particular record, or particular kinds of records;
 - (b) records held in relation to particular individuals;
 - (c) records made within a particular period, or before or after a particular time.

Revocation of a Commonwealth information order

- (13) If a Commonwealth information order requires periodic searches for information, the court must:
- (a) revoke the order before the order ceases to be in force if satisfied that the purpose of the order has been achieved; or

Section 67N

- (b) if the court receives notice of a child's return under subsection 67Y(2)—consider revoking the order if satisfied that the purpose of the order has been achieved.

Disclosure requirements

- (14) If a person is required to conduct a search under a Commonwealth information order, the person to whom the order applies must provide the information sought by the order:
 - (a) if a time is specified by the Court—by that time; or
 - (b) if a time is not specified—as soon as practicable.
- (15) To avoid doubt, if a Commonwealth information order seeks information about actual or threatened violence under subsection (9), the person to whom the order applies must provide any information about actual or threatened violence to the persons specified in paragraphs (9)(a) to (c) that is found in the records of the relevant period, even if no information about the location of the child is found.
- (16) This section applies despite a provision of a law of the Commonwealth or of a State or Territory that prohibits:
 - (a) the communication, disclosure or publication of information; or
 - (b) the production of, or the publication of the contents of, a document;whether enacted before, at or after the commencement of this section.
- (17) A Commonwealth information order:
 - (a) does not override an order of the High Court or a court created by the Parliament under Chapter III of the Constitution; and
 - (b) does not apply in relation to information relevant to proceedings on foot in any such court.

67NA Persons who are related to a child for the purposes of paragraph 67N(9)(b)

- (1) For the purposes of paragraph 67N(9)(b), the following persons are related to a child:
 - (a) a parent, adoptive parent or step-parent of the child;
 - (b) a grandparent or step-grandparent of the child;
 - (c) a sibling, half-sibling or step-sibling of the child;
 - (d) an uncle or aunt of the child;
 - (e) a niece or nephew of the child;
 - (f) a cousin of the child;
 - (g) any other person biologically related to the child;
 - (h) if the child is in a foster arrangement—a person:
 - (i) who fosters the child; or
 - (ii) who is a spouse, or de facto partner within the meaning of section 60EA, of a person who fosters the child; or
 - (iii) who is an intimate partner (within the meaning of subsection (2)) of a person who fosters the child (whether or not residing with the person); or
 - (iv) who would be related to the child in accordance with paragraph (b), (c), (d), (e), (f) or (g) if a person who fosters the child were the child's parent.
- (2) For the purposes of subparagraph (1)(h)(iii), 2 persons, who are not each other's spouse or de facto partner within the meaning of section 60EA, are intimate partners of each other if they have an intimate relationship (whether or not they live together).
- (3) For the purposes of subsection (2), factors that indicate whether 2 persons have an intimate relationship include (but are not limited to) the following:
 - (a) the extent to which each is personally dependent on the other;
 - (b) the extent to which each is financially dependent on the other (including any arrangements for financial support);
 - (c) the length of the relationship;
 - (d) the frequency of contact between each other;

Section 67P

- (e) if there is, or has been, a sexual relationship;
- (f) the extent to which each is involved in, or knows about, the other's personal life;
- (g) the degree of mutual commitment to a shared life;
- (h) if they share care or support for children or other dependents.

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 (c) is in force—a person to whom the authorisation or direction is addressed; or
 - (f) 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.

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

Section 67R

- (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 122A deals with the use of reasonable force by certain persons in making an arrest, and Subdivision B of Part 14 deals with what is to happen to a person arrested without warrant under a recovery order.

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.

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.

Section 67V

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.

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 recognisance (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 recognisance (with or without surety or security) on

Section 67Y

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
 - (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 and family violence

67Z Where interested person makes allegation of child abuse

- (1) This section applies if an interested person in 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 interested person must file a notice in an approved 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.

Section 67ZA

- (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:

approved form means a form approved for the purposes of this section under the applicable Rules of Court.

interested person in proceedings under this Act, means:

- (a) a party to the proceedings; or
- (b) an independent children's lawyer who represents the interests of a child in the proceedings; or
- (c) any other person prescribed by the regulations for the purposes of this paragraph.

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 Chief Executive Officer; or
 - (aa) a Senior Registrar or Registrar of the Federal Circuit and Family Court of Australia (Division 1); or
 - (ab) a Senior Registrar or Registrar of the Federal Circuit and Family Court of Australia (Division 2); or
 - (b) the Registrar or a Deputy Registrar of the Family Court of Western Australia; or
 - (d) a family consultant; or
 - (e) a family counsellor; or
 - (ea) a CCS practitioner; or
 - (f) a family dispute resolution practitioner; or
 - (g) an arbitrator; or
 - (h) a lawyer independently representing a child's interests; or

Section 67ZA

- (i) a family report writer who is recognised, in accordance with regulations made for the purposes of section 11K, as complying with prescribed standards and requirements.
 - (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.
- Note: The obligation under subsection (2) to notify a prescribed child welfare authority of a suspicion that a child has been abused or is at risk of being abused must be complied with, regardless of whether this subsection also applies to the same situation.
- (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.

Section 67ZB

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.

67ZBA Where interested person makes allegation of family violence

- (1) This section applies if an interested person in proceedings for an order under this Part in relation to a child alleges, as a consideration that is relevant to whether the court should make or refuse to make the order, that:

- (a) there has been family violence by one of the parties to the proceedings; or
 - (b) there is a risk of family violence by one of the parties to the proceedings.
- (2) The interested person must file a notice in an approved form in the court hearing the proceedings, and serve a true copy of the notice upon the party referred to in paragraph (1)(a) or (b).
- (3) If the alleged family violence (or risk of family violence) is abuse of a child (or a risk of abuse of a child):
 - (a) the interested person making the allegation must either file and serve a notice under subsection (2) of this section or under subsection 67Z(2) (but does not have to file and serve a notice under both those subsections); and
 - (b) if the notice is filed under subsection (2) of this section, the Registry Manager must deal with the notice as if it had been filed under subsection 67Z(2).

Note: If an allegation of abuse of a child (or a risk of abuse of a child) relates to a person who is not a party to the proceedings, the notice must be filed in the court and served on the person in accordance with subsection 67Z(2).

- (4) In this section:

approved form means a form approved for the purposes of this section under the applicable Rules of Court.

interested person in proceedings for an order under this Part in relation to a child, means:

- (a) a party to the proceedings; or
- (b) an independent children's lawyer who represents the interests of the child in the proceedings; or
- (c) any other person prescribed by the regulations for the purposes of this paragraph.

67ZBB Court to take prompt action in relation to allegations of child abuse or family violence

- (1) This section applies if:
 - (a) a notice is filed under subsection 67Z(2) or 67ZBA(2) in proceedings for an order under this Part in relation to a child; and
 - (b) the notice alleges, as a consideration that is relevant to whether the court should make or refuse to make the order, 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 the proceedings; 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.
- (2) The court must:
 - (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.
- (3) The court must take the action required by paragraphs (2)(a) and (b):
 - (a) as soon as practicable after the notice is filed; and
 - (b) if it is appropriate having regard to the circumstances of the case—within 8 weeks after the notice is filed.

- (4) Without limiting subparagraph (2)(a)(i), the court must consider whether orders should be made under section 67ZBD or 67ZBE to obtain particulars, documents or information from information sharing agencies in relation to the allegation.
- (5) Without limiting subparagraph (2)(a)(ii), the court must consider whether orders should be made, or an injunction granted, under section 68B.
- (6) A failure to comply with a provision of this section does not affect the validity of any order made in the proceedings for the order.

Subdivision DA—Orders for information etc. in child-related proceedings

67ZBC Meaning of *information sharing agency*

If the regulations prescribe an agency of a State or Territory, a part of such an agency, or a part of a Commonwealth agency that provides services on behalf of a State or Territory, for the purposes of this section, the prescribed agency, or prescribed part, is an *information sharing agency*.

67ZBD Order to provide particulars of documents or information relating to certain matters

- (1) The court may make an order, in child-related proceedings, requiring an information sharing agency to:
 - (a) inform the court whether the agency has in its possession or control any documents or information relating to a matter mentioned in subsection (2); and
 - (b) if it has—give the court particulars of the documents or information.

Note: An information sharing agency is not required to give the court protected material: see section 67ZBF.

- (2) The matters are the following:

Section 67ZBD

- (a) abuse, neglect or family violence to which a child to whom the proceedings relate has been, or is suspected to have been, subjected or exposed;
 - (b) family violence to which a party to the proceedings has been exposed, or in which a party to the proceedings has engaged, to the extent it may affect a child to whom the proceedings relate;
 - (c) any risk or potential risk of a child to whom the proceedings relate being subjected or exposed to abuse, neglect or family violence;
 - (d) any risk or potential risk of a party to the proceedings being subjected to, or engaging in, family violence, to the extent any such family violence may affect a child to whom the proceedings relate.
 - (3) The order may (but is not required to) include descriptions of the kinds of documents or information that the court considers the agency may have in its possession or control relating to a matter mentioned in subsection (2). However, any such descriptions do not limit the scope of the order.
 - (4) The following are examples of descriptions of kinds of documents or information that may be included in an order:
 - (a) notifications to the agency of suspected abuse of a child to whom the proceedings relate;
 - (b) notifications to the agency of suspected abuse, by a party to the proceedings, of any other child.
- Note: Section 15AD of the *Acts Interpretation Act 1901* has the effect that examples of the operation of a provision are not exhaustive, and may extend the operation of a provision.
- (5) The agency may, on its own initiative:
 - (a) produce to the court any documents the particulars of which are required by the order; or
 - (b) give to the court any information the particulars of which are required by the order; or

- (c) give to the court any other particulars that the agency considers useful to characterise documents or information particulars of which are required by the order.
- (6) If the agency produces a document or gives information or particulars on its own initiative under subsection (5), the agency must consider:
 - (a) redacting the document if the document contains protected material; or
 - (b) not providing the information or particulars to the extent that the information is, or the particulars would reveal, protected material.
- (7) A law of a State or Territory has no effect to the extent that it would, apart from this subsection, hinder or prevent the agency:
 - (a) complying with the order; or
 - (b) providing documents, information or particulars on its own initiative under subsection (5).

67ZBE Order to provide documents or information relating to certain matters

- (1) The court may make an order, in child-related proceedings, requiring an information sharing agency to produce to the court any documents, and give the court any information, in the agency's possession or control relating to a matter mentioned in subsection (2).

Note: An information sharing agency is not required to give the court protected material: see section 67ZBF.

- (2) The matters are the following:
 - (a) abuse, neglect or family violence to which a child to whom the proceedings relate has been, or is suspected to have been, subjected or exposed;
 - (b) family violence to which a party to the proceedings has been exposed, or in which a party to the proceedings has engaged, to the extent it may affect a child to whom the proceedings relate;

Section 67ZBE

- (c) any risk or potential risk of a child to whom the proceedings relate being subjected or exposed to abuse, neglect or family violence;
 - (d) any risk or potential risk of a party to the proceedings being subjected to, or engaging in, family violence, to the extent any such family violence may affect a child to whom the proceedings relate.
- (3) The order may (but is not required to) include descriptions of the kinds of documents or information that the court considers the agency may have in its possession or control relating to a matter mentioned in subsection (2). However, any such descriptions do not limit the scope of the order.
- (4) The following are examples of descriptions of kinds of documents or information that may be included in an order:
 - (a) notifications to the agency of suspected abuse of a child to whom the proceedings relate;
 - (b) notifications to the agency of suspected abuse, by a party to the proceedings, of any other child.
- Note: Section 15AD of the *Acts Interpretation Act 1901* has the effect that examples of the operation of a provision are not exhaustive, and may extend the operation of a provision.
- (5) The agency may, on its own initiative:
 - (a) produce to the court other documents, or give the court other information, in the agency's possession or control that, in the agency's opinion, relates to a matter mentioned in subsection (2); or
 - (b) particulars of those other documents or information.
- (6) If the agency produces a document or gives information or particulars on its own initiative under subsection (5), the agency must consider:
 - (a) redacting the document if the document contains protected material; or

- (b) not providing the information or particulars to the extent that the information is, or the particulars would reveal, protected material.
- (7) A law of a State or Territory has no effect to the extent that it would, apart from this subsection, hinder or prevent the agency:
 - (a) complying with the order; or
 - (b) providing documents, information or particulars on its own initiative under subsection (5).

67ZBF Disclosure of protected material

- (1) An order made under section 67ZBD or 67ZBE does not require, but allows, an information sharing agency to:
 - (a) give the court particulars of a document or information, to the extent that the particulars would reveal protected material; or
 - (b) produce a document to the court, to the extent that the document contains protected material; or
 - (c) give the court information that is protected material.

Note: An information sharing agency's ability to give the court particulars, documents or information may also be affected by the information sharing safeguards: see subsection 67ZBI(1).
- (2) If the agency does not give the court particulars or information, or does not produce a document, on the grounds that the particulars would reveal, or the document contains or the information is, protected material, the agency must inform the court:
 - (a) that the agency has not provided, or, that in the agency's opinion it is not required to provide, certain particulars, documents or information; and
 - (b) in the agency's opinion, which of paragraphs (3)(a) to (c) apply to the particulars, document or information.
- (3) **Protected material** is information:
 - (a) that is the subject of legal professional privilege; or

Section 67ZBG

- (b) that discloses, or would enable a person to ascertain, the identity of a person who communicated information to the agency in confidence; or
- (c) the disclosure of which would:
 - (i) endanger a person's life or present an unreasonable risk of harm to a person; or
 - (ii) prejudice legal proceedings (including proceedings in a tribunal and a coronial inquiry, investigation and inquest); or
 - (iii) contravene a court order or law that, disregarding subsections 67ZBD(7) and 67ZBE(7), would restrict the publication or other disclosure of information in connection with legal proceedings; or
 - (iv) be contrary to the public interest.

67ZBG Advice to court about risk of disclosure

- (1) This section applies if, under an order made under section 67ZBD or 67ZBE, or under subsection 67ZBD(5) or 67ZBE(5), an information sharing agency:
 - (a) gives the court particulars of a document or information; or
 - (b) produces documents to the court; or
 - (c) gives the court information.
- (2) The agency must advise the court about any risks the court should consider when disclosing the particulars, documents or information, including any risk to:
 - (a) a party to the proceedings; or
 - (b) a child to whom the proceedings relate; or
 - (c) a person who communicated information to the agency in confidence; or
 - (d) any other person.

67ZBH Admission of particulars, documents or information into evidence

- (1) The court must admit into evidence any particulars, documents or information provided under an order made under section 67ZBD or 67ZBE, or under subsection 67ZBD(5) or 67ZBE(5), on which the court intends to rely.
- (2) However, if a particular, document or information is or relates to:
 - (a) a notification to the agency of suspected child abuse or family violence; or
 - (b) an assessment by the agency of investigations into a notification of that kind or the findings or outcomes of those investigations; or
 - (c) a report commissioned by the agency in the course of investigating a notification;the court must not disclose the identity of the person (the **notifier**) who made the notification, or information that could identify the notifier, unless subsection (3) applies.
- (3) This subsection applies if:
 - (a) the notifier consents to the disclosure; or
 - (b) the notifier is a party to the proceedings; or
 - (c) the court is satisfied that the notifier's identity, or information that could identify the notifier, is critically important to the proceedings and that failure to make the disclosure would prejudice the proper administration of justice.
- (4) Before making a disclosure for the reasons set out in paragraph (3)(b) or (c), the court must:
 - (a) ensure that the agency is notified about the intended disclosure and given an opportunity to respond; and
 - (b) have regard to any advice given to the court under section 67ZBG (advice to court about risk of disclosure).

Section 67ZBI

- (5) The court is not required to admit into evidence any particulars, documents or information that the court only intends to rely on to assist in case management.

67ZBI Information sharing agencies and court must have regard to information sharing safeguards

- (1) An information sharing agency must, when providing particulars, documents or information under an order made under section 67ZBD or 67ZBE, or under subsection 67ZBD(5) or 67ZBE(5), have regard to the matters prescribed by the regulations for the purposes of this subsection (the *information sharing safeguards*).
- (2) The court must have regard to the information sharing safeguards when using particulars, documents or information provided by an information sharing agency under an order made under section 67ZBD or 67ZBE, or under subsection 67ZBD(5) or 67ZBE(5).
- (3) For the purposes of subsection (2), *use* includes handle, store and access.

67ZBJ When orders may be made

- (1) The court may make an order under section 67ZBD or 67ZBE at any time after the commencement of child-related proceedings and before making final orders.
- (2) The court may make an order under section 67ZBE in relation to an information sharing agency without first making an order under section 67ZBD in relation to that agency.

67ZBK Subpoena in respect of certain documents or information

If an order has been made under section 67ZBE in the course of child-related proceedings requiring an information sharing agency to provide documents or information, a party to those proceedings must not, without the court's permission, request the issue of a

subpoena requiring that agency to provide documents or information in relation to those proceedings.

67ZBL Review of provisions

- (1) The Minister must arrange for the conduct of a review of the operation of this Subdivision, and regulations made for the purposes of this Subdivision, to start at both of the following times:
 - (a) no later than 12 months after the commencement of this section;
 - (b) as soon as practicable after the end of 3 years after that commencement.
- (2) The review mentioned in paragraph (1)(b) is to be completed within 12 months of the day the review starts.
- (3) Both reviews must consider the effectiveness of the Subdivision and regulations in meeting the objectives of the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems endorsed by the Meeting of Attorneys-General.

Note: The National Framework could in 2023 be viewed on the Attorney-General's Department's website (<https://www.ag.gov.au/>).
- (4) The Minister must arrange for reports of both reviews to be prepared.
- (5) Copies of a report must be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

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.

Part VII Children

Division 8 Other matters relating to children

Section 67ZD

Note: Division 4 of Part XIII^{AAA} (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 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 travel documents

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 that the following documents be ordered up to the court on such conditions as the court considers appropriate:

- (a) any Australian travel document (within the meaning of the *Australian Passports Act 2005*) that has been issued to the child or any other person concerned;
- (b) any passport or other travel document that has been issued to the child or any other person concerned by or on behalf of the government of a foreign country.

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).

Section 68C

- (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.

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. This includes any such proceedings arising under regulations made for the purposes of section 111B.

Note: Section 111B is about the Convention on the Civil Aspects of International Child Abduction.

- (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.
- (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.

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.

Section 68LA

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 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

Section 68LA

- (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.

Requirement to meet with the child and give the child the opportunity to express their views

- (5A) Subject to subsection (5B), the independent children's lawyer must perform the following duties (not necessarily at the same time):
 - (a) meet with the child;
 - (b) provide the child with an opportunity to express any views in relation to the matters to which the proceedings relate.

Note: A person cannot require a child to express the child's views in relation to any matter (see section 60CE).

- (5AA) The independent children's lawyer has discretion in relation to the following matters (subject to any order or direction of the court with respect to the matter, for example under paragraph 68L(2)(b) or paragraph (5D)(b) of this section):

- (a) when, how often and how meetings with the child take place;
 - (b) when, how often and how the child is provided with an opportunity to express views.

- (5B) The independent children's lawyer is not required to perform a duty if:

- (a) the child is under 5 years of age; or
 - (b) the child does not want to meet with the independent children's lawyer, or express their views (as the case requires); or
 - (c) there are exceptional circumstances that justify not performing the duty.

- (5C) Without limiting paragraph (5B)(c), exceptional circumstances for the purposes of that paragraph include that performing the duty, would:

- (a) expose the child to a risk of physical or psychological harm that cannot be safely managed; or

Section 68M

- (b) have a significant adverse effect on the wellbeing of the child.

(5D) If the independent children's lawyer proposes not to perform a duty because of paragraph (5B)(c), the court must do the following before making final orders:

- (a) determine whether it is satisfied that exceptional circumstances exist that justify not performing the duty;
- (b) if the court determines that those circumstances do not exist—make an order requiring the independent children's lawyer to meet with the child or provide the child with an opportunity to express their views (as the case requires).

Note: The court may also make such other orders it considers necessary to secure the independent representation of the child's interests (see paragraph 68L(2)(b)).

Disclosure of information

- (6) Subject to subsection (7), the independent children's lawyer:
 - (a) is not under an obligation to disclose to the court; and
 - (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.
- (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.

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 in section 60B.

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.

Section 68P

- (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.
- (2A) Subparagraph (2)(c)(iii) does not apply to a child if the court is satisfied that it is in the child's best interests not to receive an explanation of the order or injunction.
- (2B) Paragraph (2)(d) does not require inclusion of a matter in an explanation given to a child if the court is satisfied that it is in the
-

Section 68Q

child's best interests for the matter not to be included in the explanation.

- (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 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.
- (3A) Paragraph (3)(c) does not require the court to give a copy of the order or injunction to a child if the court is satisfied that it is in the child's best interests not to receive a copy of the order or injunction.
- (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

Section 68R

- (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.

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

Section 68R

- (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 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 spending time 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

Section 68S

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);
 - (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:

Section 68T

- (a) the court has a discretion about whether to apply paragraph 60CC(2)(b) (about taking into account a child's views); 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 earliest of:
 - (a) the time the interim order stops being in force; and
 - (b) the time specified in the interim order as the time at which the revival, variation or suspension ceases to have effect; and
 - (c) the time the order, injunction or arrangement is affected by an order (however described) made by a court, under section 68R or otherwise, after the revival, variation or suspension.
- (2) No appeal lies in relation to the revival, variation or suspension.

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).

Note: Division 4 of Part XI sets out principles for conducting child-related proceedings under this Part. The court must give effect to the principles in performing duties and exercising powers in relation to child-related proceedings or making other decisions about the conduct of child-related proceedings. Division 4 of Part XI also deals with matters relating to evidence in child-related proceedings.

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*.

Section 69C

69C Who may institute proceedings

- (1) Sections 65C, 66F, 67F, 67K and 67T 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.

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

Section 69F

- (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
- (b) in any other case—the day on which the application instituting the proceedings is made.

Note: Division 4 of Part XIII^{AAA} (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.

Section 69GA

69GA Jurisdiction of prescribed courts etc.

- (1) This section applies if, for the purposes of this section, the regulations prescribe one or more courts (whether in relation to proceedings generally or specified classes of proceedings).

Application of Subdivision

- (2) If a court of a State or Territory is prescribed for the purposes of this section, this Subdivision applies in relation to the following proceedings of the court (the **section 69GA proceedings**) as if they were proceedings of a court of summary jurisdiction of the State or Territory:
- (a) if the regulations specify classes of proceedings for the court for the purposes of this section—those classes of proceedings;
 - (b) otherwise—proceedings generally.

Jurisdiction of prescribed State courts

- (2A) Subject to subsection (2), a court of a State prescribed for the purposes of this section is invested with federal jurisdiction in relation to matters arising under this Part (other than section 60G) in respect of section 69GA proceedings.

Jurisdiction of prescribed Territory courts

- (2B) Subject to section 69K and subsection (2) of this section, jurisdiction is conferred on a court of a Territory prescribed for the purposes of this section in relation to matters arising under this Part (other than section 60G) in respect of section 69GA proceedings.

Applicable rules of court

- (3) The regulations may prescribe the Rules of Court, as in force from time to time, that are to apply in relation to section 69GA proceedings. Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, the rules of court prescribed may relate to a particular court or courts generally.

- (4) The Rules of Court made under section 123, as in force from time to time, apply in relation to section 69GA proceedings of a particular court if:
- (a) the regulations do not prescribe rules of court in relation to that court; or
 - (b) both of the following apply:
 - (i) the rules of court prescribed by the regulations in relation to that court do not deal with a matter arising in the proceedings;
 - (ii) the Rules of Court made under section 123 deal with that matter.

Consultation with State and Territories

- (5) Before the Governor-General makes regulations for the purposes of subsection (1) or (3) in relation to a particular court or courts in a State or Territory, the Minister must be satisfied that the Minister with responsibility for courts in that State or Territory has been consulted.
- (6) Subsection (5) does not limit section 17 of the *Legislation Act 2003* (rule-makers should consult before making legislative instrument).

69H Jurisdiction of Federal Circuit and Family Court of Australia (Division 2), State Family Courts and Northern Territory Supreme Court

- (1) Jurisdiction is conferred on the Federal Circuit and Family Court of Australia (Division 2) 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.

Section 69J

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 section 60G).
- (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).
- (5A) If a Proclamation in force under subsection (3) specifies a State or Territory in respect of which a court is prescribed for the purposes of section 69GA, subsection (5) applies in relation to any section 69GA proceedings in that court as if they were proceedings under this Part in a court of summary jurisdiction.

Section 69K

- (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.

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:

Section 69N

- (a) proceedings for a parenting order (other than a child maintenance order) are instituted in or transferred to 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 Federal Circuit and Family Court of Australia (Division 2); or
 - (b) the Family Court of a State; or
 - (c) the Supreme Court of the Northern Territory.
- (3) If the parties do not consent to the court hearing and determining the proceedings, the court must transfer the proceedings to:
 - (a) the Federal Circuit and Family Court of Australia (Division 2); or
 - (b) the Family Court of a State; or
 - (c) the Supreme Court of the Northern Territory.
- (4) Before transferring the proceedings, the court may make such orders (including an order under subsection 13C(1)) 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:

Section 69P

- (i) the Federal Circuit and Family Court of Australia (Division 2); or
 - (ii) the Family Court of a State; or
 - (iii) the Supreme Court of the Northern Territory.
- (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 Federal Circuit and Family Court of Australia (Division 2); or
 - (b) the Family Court of a State; or
 - (c) the Supreme Court of the Northern Territory.
- (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 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;

Section 69Q

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.

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

Section 69S

- (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; 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.

Section 69T

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.

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:

Section 69XA

- (a) to enable the parentage testing procedure to be carried out; 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

Section 69Y

contesting parentage in those proceedings was not a parent of the child, the court may order that the costs of the procedure are 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.

Section 69ZA

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:
 - (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.

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 of the Department, or a person authorised by the Secretary; or

Section 69ZE

- (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.

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.

Section 69ZF

- (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.

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

Section 69ZG

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, Subdivisions BA and BB of Division 1, Divisions 2 to 7 (inclusive) (other than Subdivision 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.

Note: The provisions mentioned in this subsection are generally expressed in terms of children, without distinguishing between children of marriages and ex-nuptial children. This section does not limit the operation of those provisions, but provides for an alternative constitutional basis (relying on paragraphs 51(xxi) and (xxii) of the Constitution), so those provisions can at least operate in relation to children of marriages even if they cannot also operate in relation to ex-nuptial children.

- (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

Section 69ZJ

- (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, Subdivision 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.

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:

Section 69ZL

- (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.

Subdivision G—Short form reasons for decisions relating to interim parenting orders

69ZL Short form reasons for decisions relating to interim parenting orders

- (1) A court may give reasons in short form for a decision it makes in relation to an interim parenting order.
- (2) Subsection (1) does not otherwise affect the obligation of a court to give reasons for a decision it makes in relation to any matter arising under this Act.

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.

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 XIII^{AAA} (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 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

Section 70L

- (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 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 Registry Manager 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 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

Section 70N

- (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.
- (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.

Division 13A—Orders in proceedings relating to contraventions of child-related orders

Subdivision A—Preliminary

70NAA Simplified outline

This Division sets out orders that a court may make if an issue arises in the proceedings about whether a person (the *respondent*) has contravened a child-related order.

The court may, at any stage of proceedings (and without having to make a finding about the contravention), make any of the following orders:

- (a) a make-up time parenting order;
- (b) an order varying or suspending a parenting order;
- (c) an order requiring the respondent and any other party to the proceedings to attend a post-separation parenting program.

If the court finds on the balance of probabilities that the respondent contravened the child-related order without having a reasonable excuse, the court may make any of the following orders (having regard to the seriousness of the contravention):

- (a) an order requiring the respondent to enter into a bond;
- (b) an order imposing a fine on the respondent for failing to enter into a bond.

If the court is satisfied beyond reasonable doubt that the respondent contravened the child-related order without having a reasonable excuse, the court may also make any of the following orders (having regard to the seriousness of the contravention):

- (a) an order imposing a fine on the respondent;
- (b) an order imposing a sentence of imprisonment on the respondent.

Section 70NAB

This Division also sets out ancillary matters relating to terms of imprisonment, the enforcement of bonds and other miscellaneous matters.

Note: A court may also award costs against a party under section 117 if satisfied there are circumstances that justify it doing so.

70NAB Objects

The principal objects of this Division are to meet the best interests of children to whom child-related orders relate by:

- (a) supporting compliance with child-related orders; and
- (b) resolving difficulties associated with child-related orders that are parenting orders which have contributed to non-compliance with such orders (including by varying or making further orders); and
- (c) deterring non-compliance with child-related orders; and
- (d) upholding the authority of the court by enforcing compliance with child-related orders where the court considers this necessary and appropriate; and
- (e) providing for sanctions for a person who contravenes a child-related order without reasonable excuse.

70NAC Meaning of *contravene* a child-related order

- (1) A person *contravenes* a child-related order only if:
 - (a) the person is a person (other than a child) to whom the order applies and:
 - (i) the person intentionally fails to comply with the order; or
 - (ii) the person makes no reasonable attempt to comply with the order; or
 - (b) the person is not a person to whom the order applies, and the person is not a child, but:
 - (i) the person intentionally prevents compliance with the order by a person to whom the order applies; or

Section 70NAC

- (ii) the person aids or abets a contravention of the order by a person to whom the order applies.

Note: A child-related order that is a parenting order may be subject to a later parenting plan: see section 64D. This means that conduct that would otherwise contravene such an order may not constitute a contravention because of the terms of a later parenting plan.

- (2) Without limiting subsection (1), the following table sets out circumstances in which a person **contravenes** a child-related order.

Circumstances in which a person <i>contravenes</i> a child-related order		
Item	The order provides for ...	and the person intentionally ...
1	with whom a child is to live	either: (a) contrary to the order, removes the child from the care of another person; or (b) contrary to the order, refuses or fails to deliver or return the child to another person.
2	with whom a child is to spend time	hinders or prevents another person from spending time with the child in accordance with the order.
3	with whom a child is to communicate	hinders or prevents another person from communicating with the child in accordance with the order.
4	the allocation of parental responsibility for a child to another person	hinders or prevents the other person from discharging that responsibility in accordance with the order.
5	the maintenance of a child	either: (a) contrary to the order, fails to pay maintenance; or (b) prevents another person paying maintenance in accordance with the order.

Section 70NAD

70NAD Meaning of *reasonable excuse* for contravening a child-related order

Where person did not understand obligations

- (1) A person has a ***reasonable excuse*** for contravening a child-related order if:
 - (a) the person contravened the order because at the time of the contravention the person did not understand the obligations imposed by the order; and
 - (b) the court considers that the person ought to be excused in respect of the contravention.
- (2) If the court decides that a person has a reasonable excuse under subsection (1) for contravening a child-related order, the court must explain to the person, in language likely to be readily understood by the person:
 - (a) the obligations imposed on the person by the order; and
 - (b) the consequences that may follow if the person contravenes the order again.

Protection of health or safety of a person

- (3) A person has a ***reasonable excuse*** for contravening a child-related order if:
 - (a) the person contravened the order because the person reasonably believed that the person's actions constituting the contravention were necessary to protect the health or safety of the person, a child or any other person; and
 - (b) the period of the contravention was not longer than necessary to protect the health or safety of the person, child or other person.

Section does not limit circumstances of a reasonable excuse

- (4) This section does not limit the circumstances in which a person may have a reasonable excuse for contravening a child-related order.

70NADA Burden of proof in relation to reasonable excuse

A person who claims to have a reasonable excuse for contravening a child-related order has the legal burden of proving the excuse.

70NAE Standard of proof

The standard of proof to be applied in determining matters in proceedings under this Division (other than paragraph 70NBF(1)(d)) is proof on the balance of probabilities.

Note: The court may make an order under paragraph 70NBF(1)(d) in relation to a person only if the court is satisfied beyond reasonable doubt that the person contravened the child-related order.

Subdivision B—Orders relating to contraventions of child-related orders

70NBA Court may make orders in proceedings relating to contravention of child-related orders

- (1) This Subdivision sets out orders that a court exercising jurisdiction in proceedings under this Act may make if:
- (a) an issue arises in the proceedings about whether a person (the *respondent*) has contravened a child-related order; and
 - (b) a party to the proceedings makes an application for an order under this Subdivision in relation to the issue.

Note: The court does not need to find that the respondent contravened a child-related order to make certain orders under this Subdivision. For example, the court may make the following orders at any stage of the proceedings:

- (a) a make-up time parenting order under section 70NBB;
- (b) an order varying or suspending a parenting order under section 70NBC;
- (c) an order requiring the respondent and any other party to the proceedings to attend a post-separation parenting program under section 70NBD.

- (2) Each of the following is a *child-related order*:
- (a) a parenting order;

Section 70NBB

- (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;
- (c) a bond entered into:
 - (i) under a parenting order; or
 - (ii) under paragraph 70NBF(1)(a); or
 - (iii) for the purposes of subsection 70NCC(3);
- (d) an undertaking given to, and accepted by, the court that relates to, or to the making of, an order, injunction or bond referred to in any of paragraphs (a) to (c);
- (e) a subpoena issued under the applicable Rules of Court that:
 - (i) relates to, or to the making of, an order, injunction or bond referred to in any of paragraphs (a) to (c); and
 - (ii) is issued to a party to the proceedings for the order, injunction or bond, as the case may be.

70NBB Make-up time parenting orders

- (1) If a child does not spend time with a person as required by a child-related order as a result of the alleged contravention mentioned in subsection 70NBA(1), then, in lieu of that time, the court may make a parenting order (a ***make-up time parenting order***) that the child spend time with the person.

Note 1: Parenting orders are made under Division 6.

Note 2: The court may also make an order requiring the respondent to compensate another person for reasonable expenses incurred as a result of a child not spending time with that other person: see paragraph 70NBF(1)(c).

- (2) The court may make a make-up time parenting order at any stage of the proceedings.
- (3) To avoid doubt, the amount of time specified in the make-up time parenting order may be different from the amount of time that the child missed with the person as a result of the alleged contravention.

70NBC Variation and suspension of child-related orders that are parenting orders

Variation of child-related orders that are parenting orders

- (1) The court may, at any stage of the proceedings, vary a child-related order that is a parenting order.

Note: The court must not reconsider a final parenting order (other than a child maintenance order) unless the court has considered certain matters and is satisfied of certain matters: see section 65DAAA.

- (2) Subsection (1) does not limit the circumstances in which a court having jurisdiction under this Act may vary a child-related order that is a parenting order.

Suspension of child-related orders that are parenting orders

- (3) The court may, at any stage of the proceedings, suspend for a specified period of time the operation of, or part of the operation of, a child-related order that is a parenting order.

Note: The court must not reconsider a final parenting order (other than a child maintenance order) unless the court has considered certain matters and is satisfied of certain matters: see section 65DAAA.

70NBD Post-separation parenting programs

Post-separation parenting program orders

- (1) The court may, at any stage of the proceedings, make an order requiring the respondent and, if appropriate, one or more other parties to the proceedings, to attend a post-separation parenting program or other specified program.

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 party's needs (see section 11E).

Note 2: Things said, or admission made by, a person in a post-separation parenting program are generally not admissible in a court: see section 10PA.

Section 70NBF

Duty of principal executive officer to notify program provider

- (2) The principal executive officer of the court must advise the provider of the program of the making of an order under subsection (1) as soon as reasonably practicable after the order is made.

Unsuitability to attend program or failure to attend program

- (3) The provider of the program must inform the court, and any other party to the proceedings, if:
- (a) the provider considers that a person ordered to attend the program is unsuitable to attend the program; or
 - (b) a person ordered to attend the program fails to attend the entire program, or any part of it.
- (4) The court may make any order (other than an order under paragraph 70NBF(1)(d)) that it considers appropriate if a person ordered to attend a program is considered as being unsuitable to attend the program, or fails to attend any part of the program.
- (5) If the court has found that the respondent has contravened the child-related order without having a reasonable excuse, then the court must take into account the seriousness of that contravention when making an order under subsection (4).

70NBF Orders where contravention established without reasonable excuse

Orders for contraventions without reasonable excuse

- (1) If the court finds that the respondent has contravened a child-related order without having a reasonable excuse, the court may make any of the following orders:
- (a) an order requiring the respondent to enter into a bond in accordance with section 70NCA;
 - (b) if an order is made under paragraph (a), and the respondent fails, without having a reasonable excuse, to enter into the

bond—an order imposing a fine not exceeding 10 penalty units on the respondent;

- (c) where the contravention resulted in a child not spending time with, or living with, a person (the *affected person*) for a period—an order requiring the respondent to compensate the affected person for some or all of any expenses the affected person reasonably incurred as a result of the contravention;
- (d) where the court is satisfied beyond reasonable doubt that the respondent contravened the order:
 - (i) an order imposing a fine not exceeding 60 penalty units;
 - (ii) an order imposing a term of imprisonment.

Note: For subparagraph (d)(ii), see subsection (4), subsection 70NCC(2) and section 70NCE for limits on how and when the court may impose a term of imprisonment on the respondent.

Matters to be considered by the court

- (2) In making an order mentioned in subsection (1), the court must have regard to:
 - (a) the likely effects of making the order on any child, or any other person; and
 - (b) the seriousness of the contravention.
- (3) Without limiting the matters the court may take into account, the following matters must be taken into account by the court when having regard to the seriousness of the contravention:
 - (a) whether a court has previously found that the respondent has contravened a child-related order without having a reasonable excuse;
 - (b) whether the respondent behaved in a way that showed a serious disregard of the respondent's obligations under the child-related order mentioned in subsection (1);
 - (c) the behaviour of any person with whom the child is to live or spend time under the child-related order mentioned in subsection (1).
- (4) The court may sentence the respondent to imprisonment under subparagraph (1)(d)(ii) only if the court is satisfied that, in all the

Section 70NCA

circumstances of the case, it would not be appropriate for the court to deal with the contravention in any other way under subsection (1).

Subdivision C—Further provisions relating to bonds and imprisonment

70NCA Matters relating to bonds

- (1) This section sets out requirements relating to bonds that the court may require the respondent to enter into under paragraph 70NBF(1)(a).

Matters dealt with in bonds

- (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 the respondent by a bond include (without limitation) conditions that require the respondent:
- (a) to attend a post-separation parenting program; or
 - (b) to attend an appointment (or a series of appointments) with a family consultant; or
 - (c) to attend family counselling; or
 - (d) to attend family dispute resolution; or
 - (e) to be of good behaviour.

Duty to explain bond

- (5) Before requiring the respondent to enter into a bond, the court must explain to the respondent, in language likely to be readily understood by the respondent:
- (a) the purpose and effect of the proposed requirement; and
 - (b) the consequences that may follow if the respondent:
 - (i) fails to enter into the bond; or

- (ii) having entered into the bond—fails to act in accordance with the bond.

70NCB Procedure for enforcing bonds

- (1) This section applies if:
 - (a) the court finds that the respondent has contravened a child-related order without having a reasonable excuse; and
 - (b) the respondent has entered into a bond in accordance with an order made under paragraph 70NBF(1)(a); and
 - (c) the respondent fails, without having a reasonable excuse, to comply with the bond.
- (2) The court may:
 - (a) without prejudice to the continuance of the bond, impose a fine not exceeding 10 penalty units on the respondent; or
 - (b) revoke the bond and deal with the respondent in any manner in which the respondent could have been dealt with for the contravention of the child-related order if:
 - (i) the bond had not been entered into; and
 - (ii) the respondent was before the court under this Division in respect of the contravention of the child-related order.
- (3) Without limiting the matters the court may take into account, the court must take into account the following matters when acting under subsection (2):
 - (a) the fact that the bond was entered into;
 - (b) anything done pursuant to the bond;
 - (c) any fine imposed, and any other order made, for or in respect of the contravention of the child-related order.

70NCC Matters relating to imprisonment

- (1) This section applies if a sentence of imprisonment is imposed on the respondent under subparagraph 70NBF(1)(d)(ii).

Section 70NCC

Limits on sentences of imprisonment

- (2) The sentence of imprisonment must be expressed to be:
- (a) for a specified period of no more than 12 months; or
 - (b) for a period ending at the earlier of:
 - (i) the time when the respondent complies with the child-related order concerned; or
 - (ii) the time when the respondent has been imprisoned under the sentence for 12 months, or such lesser period as is specified by the court ordering the sentence.

Good behaviour bonds

- (3) When sentencing the respondent to imprisonment, the court may direct that, after serving a specified part of the term of imprisonment, the respondent be released upon the respondent entering into a bond (with or without surety or security) that the respondent will be of good behaviour for a specified period of up to 2 years.

Statement of reasons

- (4) The court that sentences the respondent to imprisonment must:
- (a) state the reasons why it is satisfied as mentioned in subsection 70NBF(4); and
 - (b) cause those reasons to be entered in the records of the court.

Note: Subsection 70NBF(4) provides that the respondent may be sentenced to imprisonment only if the court is satisfied that it would not be appropriate for the court to deal with the contravention in any other way under subsection 70NBF(1).

- (5) The failure of the court to comply with subsection (4) does not invalidate a sentence.

70NCD Powers of court in relation to imprisoned person

Release of imprisoned respondent

- (1) The court that has sentenced the respondent to imprisonment may order the release of the respondent if it is satisfied that the respondent will, if released, comply with the court's orders.

Suspension of sentence

- (2) The court that sentences the respondent to imprisonment may:
 - (a) suspend the sentence upon the terms and conditions determined by the court; and
 - (b) terminate such a suspension.

70NCE Rules relating to child maintenance orders and child support

Sentences of imprisonment for contravention of child maintenance orders

- (1) The court must not make an order imposing a sentence of imprisonment on the respondent under subparagraph 70NBF(1)(d)(ii), 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.
- (2) To avoid doubt, the serving by the respondent of a period of imprisonment imposed under subparagraph 70NBF(1)(d)(ii) for failure to make a payment under a child maintenance order does not affect the respondent's liability to make the payment.

Court must not imprison respondent for contravention of child support assessments etc.

- (3) The court must not make an order imposing a sentence of imprisonment on the respondent under subparagraph 70NBF(1)(d)(ii) in respect of:

Section 70NDA

- (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
- (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).

Subdivision D—Miscellaneous

70NDA Court may issue warrant for arrest of alleged offender

- (1) The court may issue a warrant authorising a person to whom it is addressed to arrest the respondent if:
 - (a) a child-related order that is a parenting order provides that a child is to live with, spend time with or communicate with a person (the *complainant*); and
 - (b) the court is satisfied that there are reasonable grounds for believing that the respondent has contravened the order on any of the grounds mentioned in any of items 1 to 3 of the table in subsection 70NAC(2); and
 - (c) the issue of the warrant is necessary to ensure that the respondent will attend before the court to be dealt with under this Division for the alleged contravention.
- (2) A warrant stops being in force on the date specified in the warrant (which must be no more than 6 months after the issue of the warrant).

70NDB Relationship between Division and prosecutions for offences under other laws

- (1) This section applies if:
 - (a) an act or omission by the respondent:

- (i) constitutes an alleged contravention of a child-related order; and
 - (ii) also constitutes an alleged offence under any law; and
 - (b) the respondent is prosecuted in respect of the offence.
- (2) The court must:
- (a) dismiss proceedings in relation to the alleged contravention of the child-related order; or
 - (b) adjourn those proceedings until the prosecution has been completed.
- (3) Nothing in this Division renders a person liable to be punished twice in respect of the same act or omission.

70NDC Division does not limit operation of section 105

Nothing in this Division limits the operation of section 105 (which deals with enforcement generally).

Division 14—Miscellaneous

Subdivision A—What this Division does

70P What this Division does

This Division is about dealing with people who have been arrested and miscellaneous matters relating to children.

Subdivision B—Dealing with people who have been arrested

70PA Situation to which Subdivision applies

This Subdivision applies if a person:

- (a) is arrested under a warrant issued under subsection 70NDA(1) (warrants for arrest of persons alleged to have contravened a child-related order); or
- (b) is arrested without warrant under a recovery order.

70PB 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 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.

70PC 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 70PB; 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.

70PD Obligation of court—where no application before it, but application before another court, to deal with contravention

- (1) This section applies if:
 - (a) the alleged offender is brought before a court under section 70PB; and

Section 70PE

- (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 entering into a recognisance (with or without surety or security) that the alleged offender 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 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, the alleged offender must be released without delay.

70PE 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 70PB; and
-

Section 70PF

- (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.

70PF Applications heard as required by subsection 70PC(2) or paragraph 70PD(3)(b)

- (1) If a court hearing an application as required by subsection 70PC(2) or paragraph 70PD(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 entering into a recognisance (with or without surety or security) that the alleged offender 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 C—Other matters

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;

Section 70Q

- (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.

Part VIII—Property, spousal maintenance and maintenance agreements

71 Interpretation

In this Part:

marriage includes a void marriage.

remarriage, 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).
- (3) Section 71B has effect regardless of subsection (1) of this section.

71B Duty of disclosure

Duty of disclosure in proceedings

- (1) Each party to a proceeding relating to financial or property matters of a marriage (other than proceedings on appeal) has a duty to the court and to each other party to give full and frank disclosure, in a timely manner, of all information and documents relevant to:

Section 71B

- (a) for a party to the marriage—the issues in the proceeding that relate to financial or property matters of the marriage; or
 - (b) for any other party to the proceeding—so much of the party’s financial circumstances as are relevant to the issues in the proceeding that relate to financial or property matters of the marriage.
- (2) The duty under subsection (1) applies from the start of the proceeding and continues until the proceeding is finalised.
 - Note: Courts have a range of powers that may be exercised to impose consequences when a person fails to comply with their duty of disclosure. For example, a court might do any of the following:
 - (a) take the failure into account when making an order under section 79 (alteration of property interests);
 - (b) make any orders with respect to costs or security for costs against the person that the court considers just, having regard to the failure;
 - (c) make any orders with respect to disclosure that the court considers appropriate;
 - (d) if an order made by the court is contravened—impose sanctions under section 112AD;
 - (e) punish the person under section 112AP for contempt;
 - (f) stay or dismiss all or part of the proceedings.
- (3) If a party has a litigation guardian, the duty under subsection (1) is taken to have been complied with if the litigation guardian complies with the duty to the extent they are capable of doing so.
- (4) The duty under subsection (1) does not apply to the respondent to an application that alleges a contravention of a court order or a contempt of court in relation to that application.

Duty of disclosure while preparing for proceedings

- (5) If separated parties to a marriage are preparing for a proceeding relating to financial or property matters of the marriage (other than proceedings on appeal), each party has a duty to the other party to give full and frank disclosure, in a timely manner, of all information and documents relevant to the issues in the proposed proceeding that relate to financial or property matters of the marriage.

- (6) The duty under subsection (5) applies at any time while the party is preparing for the proceeding.

Note: If proceedings are instituted, consequences, as mentioned in the note beneath subsection (2), may apply to a person who has failed to comply with their duty of disclosure under subsection (5).

Financial or property matters of the marriage

- (7) Any of the following matters, so far as they relate to a marriage, are ***financial or property matters*** of the marriage:
- (a) financial matters;
 - (b) matters that are or might become the subject of proceedings under any of the following provisions of this Act:
 - (i) this Part (orders with respect to spousal maintenance or the property of the parties to the marriage);
 - (ii) section 90K (orders setting aside a financial agreement or a termination agreement);
 - (iii) Part VIIIB (orders with respect to allocation of superannuation interests);
 - (iv) section 106B (orders with respect to instruments or dispositions to defeat an existing or anticipated order in proceedings under this Act);
 - (c) matters that are or might become the subject of proceedings relating to the distribution, after the breakdown of the marriage, of any vested bankruptcy property in relation to a bankrupt party to the marriage;
 - (d) matters that are or might become the subject of proceedings under any of the following provisions of the *Child Support (Assessment) Act 1989*:
 - (i) section 116 (orders for departure from administrative assessment in special circumstances);
 - (ii) section 123 (orders for provision of child support otherwise than in form of periodic amounts paid to carer);
 - (iii) section 129 (orders modifying orders under section 123A or 124).

Section 72

Relevant information and documents

- (8) A party's duty to disclose information and documents is a duty to disclose information known to the party and documents that are or have been in the possession or under the control of the party.
- (9) A party's duty to disclose information and documents includes any information or documents prescribed by the applicable Rules of Court for the purposes of the duty.

Note: The duty to disclose is not limited to prescribed information and documents. The applicable Rules of Court may also prescribe other matters in relation to the duty of disclosure.

Practitioners' obligation to provide information etc.

- (10) A legal practitioner or family dispute resolution practitioner who engages with a separated party to a marriage who is or might be subject to the duty in subsection (1) or (5) must:
 - (a) provide the party with information about:
 - (i) the duties of disclosure under this section and explain the circumstances in which they apply; and
 - (ii) potential consequences of the party not complying with the duties; and
 - (b) encourage the party to take all necessary steps to comply with the duties.

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 of a child of the marriage who has not attained the age of 18 years; or
 - (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).
- (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

Section 74

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 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:
 - (aa) the effect of any family violence to which one party has subjected or exposed the other party, including on any of the matters mentioned elsewhere in this subsection; and
 - (a) the age and state of health of each of the parties; 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) the extent to which either party has the care of a child of the marriage who has not attained the age of 18 years, including the need of either party to provide appropriate housing for such a child; 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;

Section 75

- 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
 - (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
 - (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; and
 - (r) any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.
- (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 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:
-

Section 78

- (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.

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

Orders in property settlement proceedings

- (1) In property settlement proceedings, the court may, subject to subsection (6), 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.

Note: Subsection (6) relates to property that is a companion animal.

- (2) 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.
- (3) In considering what order (if any) should be made under this section in property settlement proceedings, the court:
- (a) is to identify:

Section 79

- (i) the existing legal and equitable rights and interests in any property of the parties to the marriage or either of them; and
 - (ii) the existing liabilities of the parties to the marriage or either of them; and
- (b) is to take into account (except for the purpose of making an order with respect to the ownership of property that is a companion animal):
 - (i) the considerations set out in subsection (4) (considerations relating to contributions); and
 - (ii) the considerations set out in subsection (5) (considerations relating to current and future circumstances).

Note: See subsections (6) and (7) in relation to orders with respect to property that is a companion animal.

Considerations relating to contributions

- (4) For the purposes of subparagraph (3)(b)(i), the court is to take into account the following considerations, so far as they are relevant:
 - (a) the 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;
 - (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;

- (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;
- (ca) the effect of any family violence, to which one party to the marriage has subjected or exposed the other party, on the ability of a party to the marriage to make the kind of contributions referred to in paragraphs (a), (b) and (c);
- (d) the effect of any proposed order upon the earning capacity of either party to the marriage;
- (f) any other order made under this Act affecting a party to the marriage or a child of the marriage;
- (g) any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided for a child of the marriage.

Considerations relating to current and future circumstances

- (5) For the purposes of subparagraph (3)(b)(ii), the court is to take into account the following considerations, so far as they are relevant:
 - (a) the effect of any family violence, to which one party to the marriage has subjected or exposed the other party, on the current and future circumstances of the other party, including on any of the matters mentioned elsewhere in this subsection;
 - (b) the age and state of health of each of the parties to the marriage;
 - (c) the income, property and financial resources of each of the parties to the marriage and the physical and mental capacity of each of them for appropriate gainful employment;
 - (d) the effect of any material wastage, caused intentionally or recklessly by a party to the marriage, of property or financial resources of either of the parties to the marriage or both of them;
 - (e) any liabilities incurred by either of the parties to the marriage or both of them, including the nature of the liabilities and the circumstances relating to them;

Section 79

- (f) the extent to which either party to the marriage has the care of a child of the marriage who has not attained the age of 18 years, including the need of either party to provide appropriate housing for such a child;
- (g) commitments of each of the parties to the marriage that are necessary to enable the party to support themselves and any child or other person that the party has a duty to maintain;
- (h) the responsibilities of either party to the marriage to support any other person;
- (i) the eligibility of either party to the marriage 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;
- (j) if either party to the marriage is eligible for a pension, allowance or benefit as mentioned in paragraph (i)—the rate at which it is being paid to the party;
- (k) if the parties to the marriage have separated or divorced, a standard of living that in all the circumstances is reasonable;
- (l) the extent to which an alteration of the interests of the parties to the marriage in any property would enable a party to undertake education or establish a business or otherwise obtain an adequate income;
- (m) the effect of any proposed order on the ability of a creditor of a party to the marriage to recover the creditor's debt, so far as that effect is relevant;
- (n) the extent to which each party to the marriage has contributed to the income, earning capacity, property and financial resources of the other party;
- (o) the duration of the marriage and the extent to which it has affected the earning capacity of each party to the marriage;
- (p) the need to protect a party to the marriage who wishes to continue that party's role as a parent;

- (q) if either party to the marriage is cohabiting with another person—the financial circumstances relating to the cohabitation;
- (r) 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);
- (s) any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage is to provide, or might be liable to provide in the future, for a child of the marriage;
- (t) the terms of any financial agreement that is binding on the parties to the marriage;
- (u) the terms of any Part VIIIAB financial agreement that is binding on a party to the marriage;
- (v) any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

Considerations relating to companion animals

- (6) In property settlement proceedings, so far as they are with respect to property that is a companion animal, the court may make an order (including a consent order or an interim order):
 - (a) that only one party to the marriage, or only one person who has been joined as a party to the proceedings, is to have ownership of the companion animal; or
 - (ab) that the companion animal be transferred to another person who has consented to the transfer; or
 - (b) that the companion animal be sold.

The court may not make any other kind of order under this section with respect to the ownership of the companion animal.

Section 79AA

Note: For *companion animal*, see subsection 4(1).

- (7) In considering what order (if any) should be made under this section with respect to the ownership of property that is a companion animal, the court is to take into account the following considerations, so far as they are relevant:
- (a) the circumstances in which the companion animal was acquired;
 - (b) who has ownership or possession of the companion animal;
 - (c) the extent to which each party cared for, and paid for the maintenance of, the companion animal;
 - (d) any family violence to which one party has subjected or exposed the other party;
 - (e) any history of actual or threatened cruelty or abuse by a party towards the companion animal;
 - (f) any attachment by a party, or a child of the marriage, to the companion animal;
 - (g) the demonstrated ability of each party to care for and maintain the companion animal in the future, without support or involvement from the other party;
 - (h) any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

79AA Other matters in relation to alteration of property interests

- (1) 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.

Enforcement of order after death of party

- (1A) An order made under section 79 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.

Adjournment of property settlement proceedings

- (2) The court may (subject to subsection (2A)) adjourn property settlement proceedings on the terms and conditions the court considers appropriate, for the period the court considers necessary to enable the parties to the marriage to consider the likely effects (if any) of an order under section 79 on the marriage or the children of the marriage.
- (2A) Subsection (2) does not apply if 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 an overseas country, if that divorce is recognised as valid in Australia under section 104; or
 - (c) parties to a marriage that has been annulled under the law of an overseas country, if that annulment is recognised as valid in Australia under section 104; or
 - (d) parties to a marriage who have been granted a legal separation under the law of an overseas country, if that legal separation is recognised as valid in Australia under section 104.
- (3) Nothing in subsection (2) limits any other power of the court to adjourn property settlement proceedings.
- (4) A party to property settlement proceedings that have been adjourned under subsection (2) may apply to the court for the hearing of the proceedings to be continued if:
- (a) the period of the adjournment has not expired; and
 - (b) any of the following subparagraphs apply:
 - (i) one or both of the parties to the marriage institutes divorce or validity of marriage proceedings;
 - (ii) 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;

Section 79AA

- (iii) the marriage is annulled under the law of an overseas country and the annulment is recognised as valid in Australia under section 104;
- (iv) the parties to the marriage are granted a legal separation under the law of an overseas country and the legal separation is recognised as valid in Australia under section 104.

Likely significant change in financial circumstances

- (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:
 - (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.

Section 79AA

- (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
 - (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.

Death of party before property settlement proceedings complete

- (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:

Section 79AA

- (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.

Attendance of parties at conference etc. before orders made

- (9) The Federal Circuit and Family Court of Australia (Division 1), or a Family Court of a State, shall not make an order under section 79 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:
 - (i) in the case of the Federal Circuit and Family Court of Australia (Division 1)—with the Chief Executive Officer, or a Senior Registrar or Registrar of the Court; or
 - (ii) in the case of the Family Court of that State—with a Senior Registrar or Registrar of that 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).

Section 79AA

Creditors etc. entitled to become party to proceedings

- (10) The following are entitled to become a party to proceedings in which an application is made for an order under section 79 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 section 79 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.

Section 79AA

Bankruptcy trustee to become party to proceedings on application

- (11) If:
- (a) an application is made for an order under section 79 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 section 79 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.

Trustee of insolvency agreement to become party to proceedings on application

- (14) If:
- (a) an application is made for an order under section 79 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 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 section 79 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.

When application is taken to be finally determined for purposes of subsections (11) and (14)

- (17) For the purposes of subsections (11) and (14), an application for an order under section 79 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.

Section 79A

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 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;
 - (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.
-

Section 79A

- (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 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:
 - (a) a person is a party to property settlement or spousal maintenance proceedings under this Part; and
 - (b) the person is notified by the proceeds of crime authority 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:

Section 79C

- (c) notify the Registry Manager in writing of the proceeds of crime order or forfeiture application; and
 - (d) give the Registry Manager:
 - (i) a copy of the notification referred to in paragraph (b) (if the notification is in writing); and
 - (ii) a copy of the proceeds of crime order or forfeiture application (if the notification is accompanied by a copy of the order or 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 proceeds of crime authority to make submissions relating to staying the proceedings.
- (2) A court must, on the application of the proceeds of crime authority, 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 proceeds of crime authority if the court stays property settlement or spousal maintenance proceedings under subsection (1) or (2).
- (4) The proceeds of crime authority 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.

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 proceeds of crime authority consents to such an application; or
 - (b) the proceeds of crime authority 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 proceeds of crime authority consents to such a motion.
- (3) Giving the Registry Manager written notice of the proceeds of crime authority's consent under this section is taken to be the giving of that consent, unless the court requires the authority to appear in the proceedings. The notice may be given by the authority or by a party to the proceedings.

79E Intervention by proceeds of crime authority

- (1) The proceeds of crime authority may intervene in any property settlement or spousal maintenance proceedings in relation to which

Section 79F

a court is notified under section 79B, or in any proceedings under section 79C or 79D in which the authority is not already a party.

- (2) If the proceeds of crime authority intervenes, the authority 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;

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;
- 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 Circuit and Family Court of Australia (Division 2) 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*.

Section 79J

- (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
 - (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;
 - (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.
-

Section 81

- (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.

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 remarriage of the party unless in special circumstances a court having jurisdiction under this Act otherwise orders.
- (6) Where a remarriage 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 remarriage.
- (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
 - (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.

Section 83

- (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 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 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.

Section 85A

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 subsections 79(4), (5) and (7) 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.

- (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
-

Section 87

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);

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

- (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.
- (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:

Section 87

- (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 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);
- 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.
- (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.

- (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

Section 87

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 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 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):

Section 88

- (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, 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 authorising 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 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))

Section 90

- 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.