

FAMILY LAW ACT 1975

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An Act relating to Marriage and to Divorce and Matrimonial Causes and, in relation thereto and otherwise, Parental Responsibility for Children, and to financial matters arising out of the breakdown of

- LONG TITLE

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

FAMILY LAW ACT 1975

- SECT 1

Short title

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

FAMILY LAW ACT 1975

- SECT 2

Commencement

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

FAMILY LAW ACT 1975

- SECT 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(1) The Matrimonial Causes Act 1959, the Matrimonial Causes Act 1965 and the Matrimonial Causes Act 1966 are repealed.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 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(i) made before the commencement of this Act in the exercise of jurisdiction invested or conferred by the repealed Act, or in a matrimonial cause or proceedings for a separation order instituted under the law of that State or Territory, being a decree that was in force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.

FAMILY LAW ACT 1975

- SECT 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.

"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

(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.

"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.

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.

"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.

"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;

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:

(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

(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.

"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.

"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
- (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.

"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
 - (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
 - (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
 - (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).

"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:

- (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.

"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
- (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
- (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

(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

(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)).

(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.

(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";.

FAMILY LAW ACT 1975

- SECT 4AA

De facto relationships

Meaning of de facto relationship

(1) A person is in a de facto relationship with another person if:

- (a) the persons are not legally married to each other; and
- (b) the persons are not related by family (see subsection (6)); and
- (c) having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

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

Working out if persons have a relationship as a couple

(2) Those circumstances may include any or all of the following:

- (a) the duration of the relationship;
- (b) the nature and extent of their common residence;
- (c) whether a sexual relationship exists;
- (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;
- (e) the ownership, use and acquisition of their property;
- (f) the degree of mutual commitment to a shared life;
- (g) whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship;
- (h) the care and support of children;
- (i) the reputation and public aspects of the relationship.

(3) No particular finding in relation to any circumstance is to be regarded as necessary in deciding whether the persons have a de facto relationship.

(4) A court determining whether a de facto relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

(5) For the purposes of this Act:

- (a) a de facto relationship can exist between 2 persons of different sexes and between 2 persons of the same sex; and
- (b) a de facto relationship can exist even if one of the persons is legally married to someone else or in another de facto relationship.

When 2 persons are related by family

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

- (a) one is the child (including an adopted child) of the other; or
- (b) one is another descendant of the other (even if the relationship between them is traced through an adoptive parent); or

(c) they have a parent in common (who may be an adoptive parent of either or both of them).

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

FAMILY LAW ACT 1975

- SECT 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
- (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

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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;

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;

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.

FAMILY LAW ACT 1975

- SECT 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).

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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

(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.

FAMILY LAW ACT 1975

- SECT 9A

Use of protected names and symbols

(1) A person must not, without the Minister's written consent:

(a) use in relation to a business, trade, profession or occupation; or

(b) use as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship, aircraft or other craft; or

(c) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let for hire; or

(d) use in relation to:

(i) goods or services; or

(ii) the promotion, by any means, of the supply or use of goods or services:

either:

(e) a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it; or

(f) a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

Penalty: 30 penalty units.

(2) Subsection (1), so far as it applies in relation to a particular protected name or protected symbol, does not affect rights conferred by law on a person in relation to:

(a) a trade mark that is a registered trade mark for the purposes of the Trade Marks Act 1995; or

(b) a design registered under the Designs Act 2003;

that was so registered, or was registered under the Designs Act 1906, at the protection time in relation to the name or symbol.

(3) This section, so far as it applies in relation to a particular protected name or protected symbol, does not affect the use, or rights conferred by law relating to the use, of a name or symbol (the relevant name or symbol) by a person in a particular manner 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.

FAMILY LAW ACT 1975

- SECT 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
- (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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

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

FAMILY LAW ACT 1975

- SECT 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
 - (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.

FAMILY LAW ACT 1975

- SECT 10E

Admissibility of communications in family counselling and in referrals from family counselling

- (1) Evidence of anything said, or any admission made, by or in the company of:
- (a) a family counsellor conducting family counselling; or
 - (b) a person (the professional) to whom a family counsellor refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person; is not admissible:
 - (c) in any court (whether or not exercising federal jurisdiction); or
 - (d) in any proceedings before a person authorised to hear evidence (whether the person is authorised by a law of the Commonwealth, a State or a Territory, or by the consent of the parties).
- (2) Subsection (1) does not apply to:
- (a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse; or
 - (b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse;
- unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.
- (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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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 182I(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.

(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.

FAMILY LAW ACT 1975

- SECT 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

(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.

FAMILY LAW ACT 1975

- SECT 10J

Admissibility of communications in family dispute resolution and in referrals from family dispute resolution

(1) Evidence of anything said, or any admission made, by or in the company of:
 (a) a family dispute resolution practitioner conducting family dispute resolution; or
 (b) a person (the professional) to whom a family dispute resolution practitioner refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person;
 is not admissible:

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

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

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

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

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

(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.

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.
 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.

FAMILY LAW ACT 1975

- SECT 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.

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).

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.

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).

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.

FAMILY LAW ACT 1975

- SECT 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 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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 10M

Definition of arbitrator

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

FAMILY LAW ACT 1975

- SECT 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)).

FAMILY LAW ACT 1975

- SECT 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 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.

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 10S

Definition of family safety risk screening information

(1) Family safety risk screening information is:

- (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).

FAMILY LAW ACT 1975

- SECT 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).
- 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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

(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.

FAMILY LAW ACT 1975

- SECT 11H

Family report writers

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

FAMILY LAW ACT 1975

- SECT 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);

(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.

FAMILY LAW ACT 1975

- SECT 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 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;

(1) 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.

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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 12D

Prescribed information about Part VII proceedings

(1) The regulations may prescribe information that is to be included in documents provided under this Part to persons involved in proceedings under Part VII.

(2) Without limitation, the information must include information about the family counselling services available to assist the parties, and the child or children concerned, to adjust to the consequences of orders under that Part.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 12G

Obligations on family counsellors, family dispute resolution practitioners and arbitrators

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

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

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

Note: 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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's 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.

FAMILY LAW ACT 1975

- SECT 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's 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.

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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) Part VIIC proceedings;

(f) section 106A proceedings;

(g) 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.

FAMILY LAW ACT 1975

- SECT 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.

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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:
- (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.

FAMILY LAW ACT 1975

- SECT 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

(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 A 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 A 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).

(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.

FAMILY LAW ACT 1975

- SECT 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.

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

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 39H

Instituting proceedings

Instituting proceedings under this Act

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

FAMILY LAW ACT 1975

- SECT 39J

Jurisdiction in matters arising under Part VIIIC

(1) The following are each invested with federal jurisdiction with respect to matters arising under

Part VIIIC:

- (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.

FAMILY LAW ACT 1975

- SECT 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 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.

FAMILY LAW ACT 1975

- SECT 41

Establishment of State Family Courts

(1) As soon as practicable after the commencement of this Act, the Commonwealth Government shall take steps with a view to the making of agreements with the governments of the States providing for the creation of State courts to be known as Family Courts, being agreements under which the Commonwealth Government will provide the necessary funds for the establishment and administration of those courts (including the provision of counselling facilities for those courts).

(2) Where, whether before or after the commencement of this Act, a State has created a court known as a Family Court, the Governor-General may, by Proclamation, declare that, on and after a date specified in the Proclamation, this section applies to that court.

(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:

(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.

FAMILY LAW ACT 1975

- SECT 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 A (Applicable law) may affect the law to be applied by a court.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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;

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.

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

Proceedings relating to the same matterItemFirst proceedingsSecond proceedings1a matrimonial cause

instituted in relation to a marriage (or void marriage) a de facto financial cause instituted in relation to a de facto relationship^{2a} 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.

FAMILY LAW ACT 1975

- SECT 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.

(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.

(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.

FAMILY LAW ACT 1975

- SECT 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.

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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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 VIIIC.

(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.

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 47BA

Appeals relating to matters arising under Part VIIIC

(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

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 50

Effect of resumption of cohabitation

(1) For the purposes of proceedings for a divorce order, where, after the parties to the marriage separated, they resumed cohabitation on one occasion but, within a period of 3 months after the resumption of cohabitation, they again separated and thereafter lived separately and apart up to the date of the filing of the application, the periods of living separately and apart before and after the period of cohabitation may be aggregated as if they were one continuous period, but the period of cohabitation shall not be deemed to be 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 55

When divorce order takes effect

(1) Subject to this section, a divorce order made under this Act takes effect by force of this section:

- (a) at the expiration of a period of 1 month from the making of the order; or
 - (b) from the making of an order under section 55A;
- whichever is the later.

(2) If a divorce order has been made in any proceedings, the court of first instance (whether or not it made the order), or a court in which an appeal has been instituted, may, either before or after it has disposed of the proceedings or appeal, and whether or not a previous order has been made under this subsection:

- (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

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 58

Rescission of divorce order on ground of miscarriage of justice

If a divorce order has been made in proceedings but has not taken effect, the court by which the divorce order was made may, on the application of a party to the proceedings, or on the intervention of the Attorney-General, if it is satisfied that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence or any other circumstance, rescind the divorce order and, if it thinks fit, order that the proceedings be re-heard.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 60

No appeal after divorce order takes effect

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

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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 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.

FAMILY LAW ACT 1975

- SECT 60C

Outline of Part

An outline of this Part is set out below.

OUTLINE OF PART

Item Divisions and coverage

1--Introductory

object of Part and outline of Part

best interests of the child: court proceedings

best interests of the child: adviser's obligations

interpretation and application of this Part

how this Act applies to certain children

family dispute resolution

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

2--Parental responsibility

the concept of parental responsibility

3--Reports relating to children under 18

preparation of reports for use in proceedings relating to children under 18

4--Parenting plans

what parenting plans are

5--Parenting orders--what they are

what parenting orders are

6--Parenting orders other than child maintenance orders

applying for and making parenting orders (other than child maintenance orders) after attending, if necessary, family dispute resolution (see section 60I)

(OUTLINE OF PART)

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1--Introductory

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best interests of the child: court proceedings

best interests of the child: adviser's obligations

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what parenting plans are

5--Parenting orders--what they are

what parenting orders are

6--Parenting orders other than child maintenance orders

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--Child maintenance orders

objects and principles relevant to the making of child maintenance orders

the relationship between Division 7 and the Child Support (Assessment) Act 1989

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--Other matters relating to children

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--Injunctions

proceedings for injunctions in relation to children

10--The representation of the child's interests

the representation of a child's interests in proceedings by an independent children's lawyer

11--Family violence

the relationship between certain parenting orders and family violence orders

12--Proceedings and jurisdiction

institution of proceedings and procedure

(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--Child maintenance orders

objects and

principles relevant to the making of child maintenance orders the relationship between Division 7 and the Child Support (Assessment) Act 1989 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 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 proceedings for injunctions in relation to children 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 the relationship between certain parenting orders and family violence orders 12 Division 12--Proceedings and jurisdiction institution of proceedings and procedure jurisdiction of courts presumptions of parentage parentage evidence places and people to which this Part extends and applies 13 Division 13--State, Territory and overseas orders registration of State and Territory orders dealing with children registration of overseas orders dealing with children transmission of Australian orders to overseas jurisdictions 13A Division 13A--Orders in proceedings relating to contraventions of child-related orders 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 dealing with people who have been arrested and miscellaneous matters relating to children

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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:

(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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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.

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

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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:

- (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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

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.

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;

(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.

FAMILY LAW ACT 1975

- SECT 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

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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).

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

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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:

- (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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 61E

Effect of adoption on parental responsibility

(1) This section applies if:

(a) a child is adopted; and

(b) immediately before the adoption, a person had parental responsibility for the child, whether in full or to a limited extent and whether because of section 61C or because of a parenting order.

(2) The person's parental responsibility for the child ends on the adoption of the child, unless the adoption is by a prescribed adopting parent and leave was not granted under section 60G for the adoption proceedings to be commenced.

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 62A

What this Division does

This Division deals with the preparation of reports for use in proceedings relating to children who are under 18.

FAMILY LAW ACT 1975

- SECT 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's needs (see section 11E).

FAMILY LAW ACT 1975

- SECT 62G

Reports by family consultants

(1) This section applies if, in proceedings under this Act, the care, welfare and development of a child who is under 18 is relevant.

(2) The court may direct a family consultant to give the court a report on such matters relevant to the proceedings as the court thinks desirable.

(3) If the court makes a direction under subsection (2), it may, if it thinks it necessary, adjourn the proceedings until the report has been given to the court.

(3A) A family consultant who is directed to give the court a report on a matter under subsection (2) must:

(a) ascertain the views of the child in relation to that matter; and

(b) include the views of the child on that matter in the report.

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

(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.

FAMILY LAW ACT 1975

- SECT 63A

What this Division does

This Division explains what parenting plans are.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 63C

Meaning of parenting plan and related terms

(1) A parenting plan is an agreement that:

(a) is in writing; and

(b) is or was made between the parents of a child; and

(ba) is signed by the parents of the child; and

(bb) is dated; and

(c) deals with a matter or matters mentioned in subsection (2).

(1A) An agreement is not a parenting plan for the purposes of this Act unless it is made free from any threat, duress or coercion.

(2) A parenting plan may deal with one or more of the following:

(a) the person or persons with whom a child is to live;

(b) the time a child is to spend with another person or other persons;

(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
- (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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 63DB

Registered parenting plans

Application of section

(1) This section applies to a registered parenting plan.

Saving of registered parenting plan

(2) A registered parenting plan continues in force until revoked in accordance with section 63E, or set aside, varied or discharged as referred to in section 63H.

No variation of registered parenting plan

(3) A registered parenting plan cannot be varied.

Revocation of registered parenting plan

(4) Subject to subsection (5), a registered parenting plan may be revoked by agreement in writing between the parties to the plan.

Registration of revocation required

(5) An agreement revoking a registered parenting plan:

(a) may, subject to the applicable Rules of Court, be registered, in a court having jurisdiction under this Part, under section 63E; and

(b) does not have effect to revoke the plan until it is so registered.

FAMILY LAW ACT 1975

- SECT 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 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).

FAMILY LAW ACT 1975

- SECT 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.

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 63H

Court's powers to set aside, discharge, vary, suspend or revive registered parenting plans

(1A) This section applies to a registered parenting plan.

(1) The court in which the plan was registered may set aside the plan, and its registration, if the court is satisfied:

- (a) that the concurrence of a party was obtained by fraud, duress or undue influence; or
- (b) that the parties want the plan set aside; or
- (c) that it is in the best interests of a child to set aside the plan.

(2) In proceedings under subsection (1), to the extent that they are proceedings on the ground mentioned in paragraph (1)(c), the best interests of the child concerned are the paramount consideration.

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.

FAMILY LAW ACT 1975

- SECT 64A

What this Division does

This Division explains what parenting orders are.

FAMILY LAW ACT 1975

- SECT 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;

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 64D

Parenting orders subject to later parenting plans

(1) Subject to subsection (2), a parenting order in relation to a child is taken to include a provision that the order is subject to a parenting plan that is:

- (a) entered into subsequently by the child's parents; and
- (b) agreed to, in writing, by any other person (other than the child) to whom the parenting order applies.

(2) The court may, in exceptional circumstances, include in a parenting order a provision that the parenting order, or a specified provision of the parenting order, may only be varied by a subsequent order of the court (and not by a parenting plan).

(3) Without limiting subsection (2), exceptional circumstances for the purposes of that subsection include the following:

- (a) circumstances that give rise to a need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence;
- (b) the existence of substantial evidence that one of the child's parents is likely to seek to use coercion or duress to gain the agreement of the other parent to a parenting plan.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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 (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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 65G

Special conditions for making parenting order about whom a child lives with or the allocation of parental responsibility by consent in favour of non - parent

(1) This section applies if:

(a) a court proposes to make a parenting order that deals with whom a child is to live with; and

(b) under the order, the child would not live with a parent, grandparent or other relative of the child; and

(c) the court proposes to make that order with the consent of all the parties to the proceedings.

(1A) This section also applies if:

(a) a court proposes to make a parenting order that deals with the allocation of parental responsibility for a child; and

(b) under the order, no parent, grandparent or other relative of the child would be allocated parental responsibility for the child; and

(c) the court proposes to make that order with the consent of all the parties to the proceedings.

(2) The court must not make the proposed order unless:

(a) the parties to the proceedings have attended a conference with a family consultant to discuss the matter to be determined by the proposed order; or

(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.

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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 child, any person who, at that time, has any parental responsibility for the child is entitled to be a party to the proceedings.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

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

(2) In deciding whether to make a particular order under subsection (1), a court must regard the best interests of the child as the paramount consideration.

Note: Sections 60CB to 60CG deal with how a court determines a child's best interests.

(3) In this section:

"proceedings for a parenting order" includes:

(a) proceedings for the enforcement of a parenting order; and

(b) any other proceedings in which a contravention of a parenting order is alleged.

FAMILY LAW ACT 1975

- SECT 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 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

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

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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:

(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).

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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

(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.

FAMILY LAW ACT 1975

- SECT 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

(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.

FAMILY LAW ACT 1975

- SECT 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 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 66F

Who may apply for a child maintenance order

(1) Unless subsection (2) applies, a child maintenance order in relation to a child may be applied for by:

- (a) either or both of the child's parents; or
 - (b) the child; or
 - (ba) a grandparent of the child; or
 - (c) any other person concerned with the care, welfare or development of the child.
- (2) A child maintenance order in relation to a child who is under the guardianship, or in the care

(however described), of a person under a child welfare law may only be applied for by:

- (a) the child; or
- (b) a parent of the child who has the daily care of the child; or
- (c) a relative of the child who has the daily care of the child; or
- (d) a child welfare officer of the relevant State or Territory.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 66J

Matters to be taken into account in considering financial support necessary for maintenance of child

(1) In considering the financial support necessary for the maintenance of a child, the court must take into account these (and no other) matters:

- (a) the matters mentioned in section 66B; and
- (b) the proper needs of the child (this is expanded on in subsection (2)); and
- (c) the income, earning capacity, property and financial resources of the child (this is expanded on in subsection (3)).

(2) In taking into account the proper needs of the child the court:

- (a) must have regard to:
 - (i) the age of the child; and
 - (ii) the manner in which the child is being, and in which the parents expected the child to be, educated or trained; and
 - (iii) any special needs of the child; and
- (b) may have regard, to the extent to which the court considers appropriate in the circumstances of the case, to any relevant findings of published research in relation to the maintenance of children.

(3) In taking into account the income, earning capacity, property and financial resources of the child, the court must:

- (a) have regard to the capacity of the child to earn or derive income, including any assets of, under the control of or held for the benefit of the child that do not produce, but are capable of producing, income; and
- (b) disregard:
 - (i) the income, earning capacity, property and financial 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).

FAMILY LAW ACT 1975

- SECT 66K

Matters to be taken into account in determining contribution that should be made by party etc.

(1) In determining the financial contribution, or respective financial contributions, towards the financial support necessary for the maintenance of a child that should be made by a party, or by parties, to the proceedings, the court must take into account these (and no other) matters:

- (a) the matters mentioned in sections 66B, 66C and 66D; and
- (b) the income, earning capacity, property and financial resources of the party or each of those parties (this is expanded on in subsection (2)); and

(c) the commitments of the party, or each of those parties, that are necessary to enable the party to support:

(i) himself or herself; or

(ii) any other child or another person that the person has a duty to maintain; and

(d) the direct and indirect costs incurred by the parent or other person with whom the child lives in providing care for the child (this is expanded on in subsection (3)); and

(e) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

(2) In taking into account the income, earning capacity, property and financial resources of a party to the proceedings, the court must have regard to the capacity of the party to earn and derive income, including any assets of, under the control of or held for the benefit of the party that do not produce, but are capable of producing, income.

(3) In taking into account the direct and indirect costs incurred by the parent or other person with whom the child lives in providing care for the child, the court must have regard to the income and earning capacity forgone by the parent or other person in providing that care.

(4) In determining the financial contribution, or respective financial contributions, that should be made by a party, or by parties, to the proceedings, the court must disregard:

(a) any entitlement of the child, or the person with whom the child lives, to an income tested pension, allowance or benefit; and

(b) the income, earning capacity, property and financial resources of any person who does not have a duty to maintain the child, or has such a duty but is not a party to the proceedings, unless, in the special circumstances of the case, the court considers it appropriate to have regard to them.

(5) In determining the financial contribution, or respective financial contributions, that should be made by a party, or by parties, to the proceedings, the court must consider the capacity of the party, or each of those parties, to provide maintenance by way of periodic payments before considering the capacity of the party, or each of those parties, to provide maintenance:

(a) by way of lump sum payment; or

(b) by way of transfer or settlement of property; or

(c) in any other way.

(6) Subsections (2) to (5) do not limit, by implication, the matters to which the court may have regard in taking into account the matters referred to in subsection (1).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.
- (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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 66R

Specification in orders of payments etc. for child maintenance purposes

- (1) If:
 - (a) a court makes an order under this Act (whether or not the order is made in proceedings in relation to the maintenance of a child, is made by consent or varies an earlier order) that has the effect of requiring:
 - (i) payment of a lump sum, whether in one amount or by instalments; or
 - (ii) the transfer or settlement of property; and
 - (b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision

for the maintenance of a child or children;

the court must:

(c) express the order to be an order to which this section applies; and

(d) specify:

(i) the child or children for whose maintenance provision is made by the payment, transfer or settlement; and

(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.

FAMILY LAW ACT 1975

- SECT 66S

Modification of child maintenance orders

(1) This section applies if:

(a) there is in force an order (the first order), for the maintenance of a child (whether or not made under this Act and whether made before or after the commencement of this section):

(i) made by a court; or

(ii) registered in a court; and

(b) a person (being someone who could apply for a child maintenance order in relation to the child) or persons (each of whom could do that) apply to the court for an order under this section in relation to the first order.

(1A) With the consent of all the parties to the first order, the court may, subject to section 111AA, make an order:

(a) discharging the first order; or

(b) suspending its operation wholly or in part and either until further order or until a fixed time or the happening of a future event; or

(c) if the operation of the order has been suspended under paragraph (b) or (2)(b)--reviving its operation wholly or in part; or

(d) varying the order:

(i) so as to increase or decrease any amount ordered to be paid by the order; or

(ii) in any other way.

(1B) However, the court must not make an order under subsection (1A) that allows any entitlement of a child or another person to an income tested pension, allowance or benefit, to affect the duty of that child's parents to maintain the child.

Note: For the duty of a parent to maintain a child, see section 66C.

(2) In any other case, the court may, by order:

(a) discharge the first order if there is just cause for so doing; or

(b) suspend its operation wholly or in part and either until further order or until a fixed time or the happening of a future event; or

(c) if the operation of the order has been suspended under paragraph (b) or (1A)(b), revive its operation wholly or in part; or

(d) subject to subsection (3), vary the order:

(i) so as to increase or decrease any amount ordered to be paid by the order; or

(ii) in any other way.

(3) The court must not vary the order so as to increase or decrease any amount ordered to be paid by the order unless it is satisfied:

(a) that, since the order was made or last varied:

(i) the circumstances of the child have changed so as to justify the variation; or

(ii) the circumstances of the person liable to make payments under the order have changed so as to justify the variation; or

(iii) the circumstances of the person entitled to receive payments under the order have changed so as to justify the variation; or

(iv) in the case of an order that operates in favour of, or is binding on, a legal personal representative--the circumstances of the estate are such as to justify the variation; or

(b) that, since the order was made or last varied, the cost of living has changed to such an extent as to justify its so doing (this is expanded on in subsections (4) and (5)); or

(c) if the order was made by consent--that the amount ordered to be paid is not proper or adequate

(this is expanded on in subsection (6)); or

(d) that material facts were withheld from the court that made the order or from a court that varied the order, or material evidence previously given before such a court was false.

(4) In satisfying itself for the purposes of paragraph (3)(b), the court must have regard to any changes that have occurred in the Consumer Price Index published by the Australian Statistician.

(5) The court must not, in considering the variation of an order, have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or last varied having regard to a change in the cost of living.

(6) In satisfying itself for the purposes of paragraph (3)(c), the court must have regard to any payments, and any transfer or settlement of property, previously made to the child, or to any other person for the benefit of the child, by the person against whom the order was made.

(7) An order decreasing a periodic amount payable under the order, or discharging the order, may be expressed to be retrospective to such day as the court considers appropriate.

(8) If an order (the subsequent order) decreasing a periodic amount payable under the first order is expressed to be retrospective, amounts paid under the first order that are not payable under the first order as varied by the subsequent order may be recovered in a court having jurisdiction under this Part.

(9) If an order discharging the first order is expressed to be retrospective to a specified day, amounts paid under the first order since the specified day may be recovered in a court having jurisdiction under this Part.

(10) For the purposes of this section, the court must have regard to the provisions of Subdivisions B, C and D (to the extent applicable).

(11) The discharge of the first order does not affect the recovery of arrears due under the order when the discharge takes effect.

FAMILY LAW ACT 1975

- SECT 66SA

Varying the maintenance of certain children

(1) This section applies to persons who:

(a) are parties to an agreement (the original agreement) dealing with the maintenance of a child; or

(b) are entitled to receive, or required to pay, maintenance in respect of a child under a court order;

and cannot properly make an application under the Child Support (Assessment) Act 1989 for the other person to be assessed in respect of the costs of the child.

(2) The persons may, by registering a written agreement in a court having jurisdiction under this Part, vary or revoke the original agreement or order to the extent that it deals with maintenance of the child.

(3) However, the registered agreement is of no effect to the extent that it allows any entitlement of a child or another person to an income tested pension, allowance or benefit to affect the duty of that child's parents to maintain the child.

Note: For the duty of a parent to maintain a child, see section 66C.

(4) If the original agreement or order is varied under subsection (2), it:

(a) continues to operate despite the death of a party to the agreement or of a person entitled to receive, or required to pay, maintenance under the order; and

(b) operates in favour of, and is binding on, the legal representative of that party or person; unless the agreement or order provides otherwise.

(5) However, despite anything in the agreement or order, it does not continue to operate, to the extent that it requires the periodic payment of maintenance, after the death of the person entitled to receive those payments.

(6) This section applies despite anything in Division 4.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 66U

Effect of death of child, person liable to pay or person entitled to receive

(1) A child maintenance order in relation to a child stops being in force on the death of the child.

(2) A child maintenance order in relation to a child stops being in force on the death of the person

liable to make payments under the order.

(3) Subsection (2) does not apply to an order made before the commencement of section 38 of the Family Law Amendment Act 1983 if the order was expressed to continue in force throughout the life of the person for whose benefit the order was made or for a period that had not expired at the death of the person liable to make payments under the order and, in that case, the order is binding on the legal personal representative of the deceased person.

(4) A child maintenance order in relation to a child stops being in force on the death of the person entitled to receive payments under the order.

(5) Subsection (4) does not apply to an order if:

(a) the order is expressed to continue in force after the death of the person first entitled to receive payments under the order; and

(b) the order specifies the person who is to receive the payments after that death.

FAMILY LAW ACT 1975

- SECT 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.

(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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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

(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.

FAMILY LAW ACT 1975

- SECT 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

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

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 67B

Father liable to contribute towards maintenance and expenses of mother

The father of a child who is not married to the child's mother is, subject to this Division, liable to make a proper contribution towards:

(a) the maintenance of the mother for the childbirth maintenance period in relation to the birth of the child; and

(b) the mother's reasonable medical expenses in relation to the pregnancy and birth; and

(c) if the mother dies and the death is as a result of the pregnancy or birth, the reasonable expenses of the mother's funeral; and

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

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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)).

FAMILY LAW ACT 1975

- SECT 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.

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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 XIIIAA, 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.

FAMILY LAW ACT 1975

- SECT 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 XIIIAA, may make a Commonwealth information order if it is satisfied that information about the child's location is likely to be contained in, or to come into, the records of the Department or Commonwealth instrumentality concerned.

(3) A court must not make a Commonwealth information order unless:

(a) a copy of the application for the order has been served in accordance with the applicable Rules of Court on the person to whom the order will apply (being the Secretary of the Department concerned or an appropriate authority of the Commonwealth instrumentality concerned); and

(b) if that Department or Commonwealth instrumentality is prescribed for the purposes of this paragraph--either:

(i) the period of 7 days after service of that copy of the application has expired; or

(ii) the court considers that there are special circumstances because of which the order should be made before the end of that period of 7 days.

(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
- (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.

FAMILY LAW ACT 1975

- SECT 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;
- (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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 67Q

Meaning of recovery order

A recovery order is an order made by a court doing all or any of the following:

- (a) requiring the return of a child to:
 - (i) a parent of the child; or
 - (ii) a person with whom the child is to live under a parenting order; or
 - (iii) a person with whom the child is to spend time under a parenting order; or
 - (iv) a person with whom the child is to communicate under a parenting order; or
 - (v) a person who has parental responsibility for the child;
- (b) authorising or directing a person or persons, with such assistance as he or she requires or they require, and if necessary by force, to stop and search any vehicle, vessel or aircraft, and to enter and search any premises or place, for the purpose of finding a child;
- (c) authorising or directing a person or persons, with such assistance as he or she requires or they require, and if necessary by force, to recover a child;
- (d) authorising or directing a person to whom a child is returned, or who recovers a child, to deliver the child to:
 - (i) a parent of the child; or
 - (ii) a person described in subparagraph (a)(ii), (iii), (iv) or (v); or
 - (iii) some other person on behalf of a person described in subparagraph (i) or (ii);
- (e) giving directions about the day-to-day care of a child until the child is returned or delivered to another person;
- (f) prohibiting a person from again removing or taking possession of a child;
- (g) authorising or directing a person to arrest, without warrant, a person who again removes or takes possession of a child.

Note 1: Section 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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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 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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

(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.

FAMILY LAW ACT 1975

- SECT 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
- (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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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:

(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).

FAMILY LAW ACT 1975

- SECT 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;

(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).

FAMILY LAW ACT 1975

- SECT 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

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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).

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 67ZC

Orders relating to welfare of children

(1) In addition to the jurisdiction that a court has under this Part in relation to children, the court also has jurisdiction to make orders relating to the welfare of children.

Note: Division 4 of Part XIII A (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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 68A

What this Division does

This Division deals with proceedings for injunctions in relation to children.

FAMILY LAW ACT 1975

- SECT 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).

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 68LA

Role of independent children's lawyer

When section applies

(1) This section applies if an independent children's lawyer is appointed for a child in relation to proceedings under this Act.

General nature of role of independent children's lawyer

(2) The independent children's lawyer must:

(a) form an independent view, based on the evidence available to the independent children's lawyer, of what is in the best interests of the child; and

(b) act in relation to the proceedings in what the independent children's lawyer believes to be the best interests of the child.

(3) The independent children's lawyer must, if satisfied that the adoption of a particular course of action is in the best interests of the child, make a submission to the court suggesting the adoption of that course of action.

(4) The independent children's lawyer:

(a) is not the child's legal representative; and

(b) is not obliged to act on the child's instructions in relation to the proceedings.

Specific duties of independent children's lawyer

(5) The independent children's lawyer must:

(a) act impartially in dealings with the parties to the proceedings; and

(b) ensure that any views expressed by the child in relation to the matters to which the proceedings relate are fully put before the court; and

(c) if a report or other document that relates to the child is to be used in the proceedings:

(i) analyse the report or other document to identify those matters in the report or other document that the independent children's lawyer considers to be the most significant ones for determining what is in the best interests of the child; and

(ii) ensure that those matters are properly drawn to the court's attention; and

(d) endeavour to minimise the trauma to the child associated with the proceedings; and

(e) facilitate an agreed resolution of matters at issue in the proceedings to the extent to which doing so is in the best interests of the child.

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

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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) do not expose people to family violence; and
- (b) to achieve the objects in section 60B.

FAMILY LAW ACT 1975

- SECT 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.

(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 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.

FAMILY LAW ACT 1975

- SECT 68Q

Relationship of order or injunction made under this Act with existing inconsistent family violence order

(1) To the extent to which:

- (a) an order or injunction mentioned in paragraph 68P(1)(a) is made or granted that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; and
- (b) the order or injunction is inconsistent with an existing family violence order; the family violence order is invalid.

(2) An application for a declaration that the order or injunction is inconsistent with the family violence order may be made, to a court that has jurisdiction under this Part, by:

- (a) the applicant or respondent in the proceedings for the order or injunction mentioned in paragraph 68P(1)(a); or
- (b) the person against whom the family violence order is directed (if that person is not the applicant or respondent); or
- (c) the person protected by the family violence order (if that person is not the applicant or respondent).

(3) The court must hear and determine the application and make such declarations as it considers appropriate.

FAMILY LAW ACT 1975

- SECT 68R

Power of court making a family violence order to revive, vary, discharge or suspend an existing order, injunction or arrangement under this Act

Power

(1) In proceedings to make or vary a family violence order, a court of a State or Territory that has jurisdiction in relation to this Part may revive, vary, discharge or suspend:

- (a) a parenting order, to the extent to which it provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with the child; or
- (b) a recovery order (as defined in section 67Q) or any other order under this Act, to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child; or
- (c) an injunction granted under section 68B or 114, to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child; or
- (d) to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child:
 - (i) an undertaking given to, and accepted by, a court exercising jurisdiction under this Act; or
 - (ii) a registered parenting plan within the meaning of subsection 63C(6); or

(iii) a recognisance entered into under an order under this Act.

(2) The court may do so:

(a) on its own initiative; or

(b) on application by any person.

Limits on power

(3) The court must not do so unless:

(a) it also makes or varies a family violence order in the proceedings (whether or not by interim order); and

(b) if the court proposes to revive, vary, discharge or suspend an order or injunction mentioned in paragraph (1)(a), (b) or (c)--the court has before it material that was not before the 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 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.

FAMILY LAW ACT 1975

- SECT 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:

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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 .

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 69E

Child or parent to be present in Australia etc.

(1) Proceedings may be instituted under this Act in relation to a child only if:

- (a) the child is present in Australia on the relevant day (as defined in subsection (2)); or
 - (b) the child is an Australian citizen, or is ordinarily resident in Australia, on the relevant day;
- or
- (c) a parent of the child is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, on the relevant day; or
 - (d) a party to the proceedings is an Australian citizen, is ordinarily resident in Australia, or is

present in Australia, on the relevant day; or

(e) it would be in accordance with a treaty or arrangement in force between Australia and an overseas jurisdiction, or the common law rules of private international law, for the court to exercise jurisdiction in the proceedings.

(2) In this section:

"relevant day", in relation to proceedings, means:

(a) if the application instituting the proceedings is filed in a court--the day on which the application is filed; or

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

Note: Division 4 of Part XIII A (International protection of children) has effect despite this section.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 69G

Interpretation

In this Subdivision:

"matters arising under this Part" includes proceedings under Division 9 or section 68S.

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 69N

Transfer of proceedings from courts of summary jurisdiction in certain cases

(1) This section applies if:

(a) proceedings for a parenting order (other than a child maintenance order) are instituted in 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:

(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.

FAMILY LAW ACT 1975

- SECT 69P

Presumptions of parentage arising from marriage

(1) If a child is born to a woman while she is married, the child is presumed to be a child of the woman and her husband.

(2) If:

(a) at a particular time:

(i) a marriage to which a woman is a party is ended by death; or

(ii) a purported marriage to which a woman is a party is annulled; and

(b) a child is born to the woman within 44 weeks after that time;

the child is presumed to be a child of the woman and the husband or purported husband.

(3) If:

(a) the parties to a marriage separated at any time; and

(b) after the separation, they resumed cohabitation on one occasion; and

(c) within 3 months after the resumption of cohabitation, they separated again and lived separately and apart; and

(d) a child is born to the woman within 44 weeks after the end of the cohabitation, but after the divorce of the parties;
the child is presumed to be a child of the woman and the husband.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 69S

Presumptions of parentage arising from findings of courts

(1) If:

(a) during the lifetime of a particular person, a prescribed court (other than a court of a prescribed overseas jurisdiction) has:

- (i) found expressly that the person is a parent of a particular child; or
- (ii) made a finding that it could not have made unless the person was a parent of a particular child;
and
- (b) the finding has not been altered, set aside or reversed;
the person is conclusively presumed to be a parent of the child.

(1A) If:

(a) during the lifetime of a particular person, a court of a reciprocating jurisdiction within the meaning of section 110 or a jurisdiction mentioned in Schedule 4 or 4A to the regulations has:

- (i) found expressly that the person is a parent of a particular child; or
- (ii) made a finding that it could not have made unless the person was a parent of a particular child;
and
- (b) the finding has not been altered, set aside or reversed;
the person is presumed to be a parent of the child.

(2) If:

- (a) after the death of a particular person, a prescribed court has:
 - (i) found expressly that the person was a parent of a particular child; or
 - (ii) made a finding that it could not have made unless the person was a parent of a particular child;
and
- (b) the finding has not been altered, set aside or reversed;
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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 69X

Orders associated with parentage testing orders

- (1) If a court makes a parentage testing order, it may also make orders under subsection (2) or (4).
- (2) The court may make such orders as it considers necessary or desirable:
 - (a) to enable the parentage testing procedure to be carried out; 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.

FAMILY LAW ACT 1975

- SECT 69XA

Matters related particularly to parentage testing for purposes of an international agreement or arrangement

(1) The Secretary may commence or continue proceedings under section 69W if it is necessary or convenient to do so for the purposes of an international agreement or arrangement.

(2) Despite section 69X, a court must order that the costs of any parentage testing procedure ordered in proceedings mentioned in subsection (1) are payable by a party to those proceedings who:

(a) contested the making of a maintenance assessment or court order for child support on the ground of not being the parent of the child; or

(b) contested the enforcement of an overseas maintenance order, agreement or assessment on the ground of not being the parent of the child.

(3) If a parentage testing procedure that is ordered by a court in proceedings mentioned in subsection (1) establishes that a party contesting parentage in those proceedings was not a parent of the child, the court may order that the costs of the procedure are 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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
 - (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.

FAMILY LAW ACT 1975

- SECT 69ZE

Extension of Part to the States

(1) Subject to this section and section 69ZF, this Part extends to New South Wales, Victoria, Queensland, South Australia and Tasmania.

(2) Subject to this section and section 69ZF, this Part extends to Western Australia if:

(a) the Parliament of Western Australia refers to the Parliament of the Commonwealth the following matters or matters that include, or are included in, the following matters:

- (i) the maintenance of children and the payment of expenses in relation to children or child bearing;
- (ii) parental responsibility for children; or
- (b) Western Australia adopts this Part.

(3) This Part extends to a State under subsection (1) or (2) only for so long as there is in force:

(a) an Act of the Parliament of the State by which there is referred to the Parliament of the Commonwealth:

- (i) the matters referred to in subparagraphs (2)(a)(i) and (ii); or

- (ii) matters that include, or are included in, those matters; or
- (b) a law of the State adopting this Part.

(4) This Part extends to a State at any time under subsection (1) or paragraph (2)(a) only in so far as it makes provision with respect to:

- (a) the matters that are at that time referred to the Parliament of the Commonwealth by the Parliament of the State; or
- (b) matters incidental to the execution of any power vested by the Constitution in the Parliament of the Commonwealth in relation to those matters.

FAMILY LAW ACT 1975

- SECT 69ZF

Unless declaration in force, Part's extension to a State has effect subject to modifications

(1) The Governor-General may, by Proclamation, declare that all the child welfare law provisions of this Part extend to a specified State.

(2) Despite anything in section 69ZE, if no declaration under subsection (1) is in force in relation to a particular State, this Part, as it extends to that State because of section 69ZE, has effect as if:

- (a) subsection 66F(2) were omitted; and
- (b) subsections 69ZE(1) and (2) were amended by omitting "and section 69ZF" and
- (c) section 69ZF were omitted; and
- (d) paragraph 69ZK(1)(b) were omitted; and
- (e) subsection 69ZK(2) were amended by adding at the end the following word and paragraphs: "or (d) the jurisdiction of a court under a child welfare law to make an order in relation to the maintenance of the child; or
- (e) an order of the kind referred to in paragraph (d)."

(3) A Proclamation that was in force in relation to a State under subsection 60E(6) of this Act as in force before the commencement of this section has effect, after that commencement, as if it were a Proclamation under subsection (1) of this section.

Note: This section preserves the effect of subsections 60E(6) and (7) of this Act as in force before the commencement of this section. Under those subsections, the amendments of this Act made by the Law and Justice Legislation Amendment Act 1992 did not extend to a State unless a Proclamation was in force in relation to the State.

FAMILY LAW ACT 1975

- SECT 69ZG

Application of Part in, and in relation to, Territories

This Part applies in and in relation to the Territories.

FAMILY LAW ACT 1975

- SECT 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
 - (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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 69ZK

Child welfare laws not affected

(1) A court having jurisdiction under this Act must not make an order under this Act (other than an order under Division 7) in relation to a child who is under the care (however described) of a person under a child welfare law unless:

(a) the order is expressed to come into effect when the child ceases to be under that care; or

(b) the order is made in proceedings relating to the child in respect of the institution or continuation of which the written consent of a child welfare officer of the relevant State or Territory has been obtained.

(2) Nothing in this Act, and no decree under this Act, affects:

(a) the jurisdiction of a court, or the power of an authority, under a child welfare law to make an order, or to take any other action, by which a child is placed under the care (however described) of a person under a child welfare law; or

(b) any such order made or action taken; or

(c) the operation of a child welfare law in relation to a child.

(3) If it appears to a court having jurisdiction under this Act that another court or an authority proposes to make an order, or to take any other action, of the kind referred to in paragraph (2)(a) in relation to a child, the first-mentioned court may adjourn any proceedings before it that relate to the child.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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 (International protection of children) may affect the operation of a registered overseas child order.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 70L

Relationship between Australian orders and registered overseas child orders

(1) In this section:

"Australian child order" means:

- (a) a Subdivision C parenting order; or
- (b) a State child order.

"responsible person", in relation to an Australian child order or an overseas child order, means a person:

- (a) with whom the child is supposed to live under the order; or
 - (aa) whom the child is supposed to spend time with under the order; or
 - (ab) whom the child is supposed to have contact with under the order; or
 - (b) who is responsible for the child's day-to-day care, welfare and development under the order;
- or
- (c) who has a right to custody of, or access to, the child under the order.

(2) This section applies if:

(a) an Australian child order, whether made under this Part or another law, is in force under this Part in relation to a child; and

(b) an overseas child order, other than an excluded order, that relates to the child but that has a different effect from the 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.

FAMILY LAW ACT 1975

- SECT 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
- (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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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. 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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

(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 contravenes a child-related order

The order provides for ... and the person intentionally ...	1with 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.
2with whom a child is to spend time	hinders or prevents another person from spending time with the child in accordance with the order.	3with whom a child is to communicate	hinders or prevents another person from communicating with the child in accordance with the order.	4the 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.	5the 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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;

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

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).

FAMILY LAW ACT 1975

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

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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).

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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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:

- (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).

FAMILY LAW ACT 1975

- SECT 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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 70NDC

Division does not limit operation of section 105

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

FAMILY LAW ACT 1975

- SECT 70P

What this Division does

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

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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
- (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.

FAMILY LAW ACT 1975

- SECT 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
- (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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 70Q

Certain instruments not liable to duty

(1) The following instruments are not subject to any duty or charge under any law of a State or Territory or any law of the Commonwealth that applies only in relation to a Territory:

- (a) an instrument executed under, or for the purposes of, an order made under this Part;
- (b) an eligible parenting plan that confers a benefit in relation to a child, to the extent to which it confers the benefit;
- (c) an instrument executed under, or for the purposes of, an eligible parenting plan and that confers a benefit in relation to a child, to the extent to which it confers the benefit.

(2) An eligible parenting plan is a parenting plan:

- (a) that is a registered parenting plan within the meaning of subsection 63C(6); and
- (b) that is not a maintenance agreement, or, if it is a maintenance agreement, it relates to a child who is not a child of the marriage to which the maintenance agreement relates; and
- (c) that:
 - (i) is made by the parties to a de facto relationship in connection with the breakdown of that relationship; or
 - (ii) relates to a child whose parents (being parties to the plan) were neither married to each other, nor living with each other in a de facto relationship, at the time of the child's conception.

(3) In this section, a reference to an instrument that confers a benefit in relation to a child includes a reference to an instrument that confers an entitlement to property in relation to a child even though the instrument also deprives the child or another person of an entitlement to other property in relation to the child.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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:

- (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).

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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 74

Power of court in spousal maintenance proceedings

(1) In proceedings with respect to the maintenance of a party to a marriage, the court may make such order as it considers proper for the provision of maintenance in accordance with this Part.

(2) If:

(a) an application is made for an order under this section in proceedings between the parties to a marriage with respect to the maintenance of a party to the marriage; and

(b) either of the following subparagraphs apply to a party to the marriage:

(i) when the application was made, the party was a bankrupt;

(ii) after the application was made but before the proceedings are finally determined, the party became a bankrupt; and

(c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and

(d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings;

the court must join the bankruptcy trustee as a party to the proceedings.

(3) If a bankruptcy trustee is a party to proceedings with respect to the maintenance of a party to a marriage, then, except with the leave of the court, the bankrupt party to the marriage is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.

(4) The court must not grant leave under subsection (3) unless the court is satisfied that there are exceptional circumstances.

(5) If:

(a) an application is made for an order under this section in 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.

FAMILY LAW ACT 1975

- SECT 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;
 - 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 77A

Specification in orders of payments etc. for spouse maintenance purposes

- (1) Where:
- (a) a court makes an order under this Act (whether or not the order is made in proceedings in relation to the maintenance of a party to a marriage, is made by consent or varies an earlier order), and the order has the effect of requiring:
 - (i) payment of a lump sum, whether in one amount or by instalments; or
 - (ii) the transfer or settlement of property; and
 - (b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a party to a marriage;
- the court shall:
- (c) express the order to be an order to which this section applies; and
 - (d) specify the portion of the payment, or the value of the portion of the property, attributable to

the provision of maintenance for the party.

(2) Where:

(a) a court makes an order of a kind referred to in paragraph (1)(a); and

(b) the order:

(i) is not expressed to be an order to which this section applies; or

(ii) is expressed to be an order to which this section applies, but does not comply with paragraph

(1)(d);

any payment, transfer or settlement of a kind referred to in paragraph (1)(a), that the order has the effect of requiring, shall be taken not to make provision for the maintenance of a party to the relevant marriage.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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:

(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;

(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.

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.

FAMILY LAW ACT 1975

- SECT 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;
 - (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.

(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:

(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).

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 VIIIB 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.

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.

FAMILY LAW ACT 1975

- SECT 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.

(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.

FAMILY LAW ACT 1975

- SECT 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:

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

(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).

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

(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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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 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.

FAMILY LAW ACT 1975

- SECT 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:

(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 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.

FAMILY LAW ACT 1975

- SECT 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):

- (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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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.

FAMILY LAW ACT 1975

- SECT 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)) 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.

Family Law Act 1975

No. 53, 1975

Compilation No. 101

Compilation date: 10 June 2025

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This compilation is in 2 volumes

Volume 1: sections 1-90

Volume 2: sections 90AA-125

Schedule

Endnotes

Each volume has its own contents

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.

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FAMILY LAW ACT 1975

- SECT 90AA

Object of this Part

The object of this Part is to allow the court, in relation to the property of a party to a marriage, to:

- (a) make an order under section 79 or 114; or
 - (b) grant an injunction under section 114;
- that is directed to, or alters the rights, liabilities or property interests of a third party.

FAMILY LAW ACT 1975

- SECT 90AB

Definitions

In this Part:

"marriage" includes a void marriage.

"third party", in relation to a marriage, means a person who is not a party to the marriage.

FAMILY LAW ACT 1975

- SECT 90AC

This Part overrides other laws, trust deeds etc.

(1) This Part has effect despite anything to the contrary in any of the following (whether made before or after the commencement of this Part):

(a) any other law (whether written or unwritten) of the Commonwealth, a State or Territory;

(b) anything in a trust deed or other instrument.

(2) Without limiting subsection (1), nothing done in compliance with this Part by a third party in relation to a marriage is to be treated as resulting in a contravention of a law or instrument referred to in subsection (1).

FAMILY LAW ACT 1975

- SECT 90ACA

This Part not to apply to certain annuities

The powers of the court under this Part do not apply to superannuation annuities (within the meaning of the Income Tax Assessment Act 1997).

FAMILY LAW ACT 1975

- SECT 90AD

Extended meaning of matrimonial cause and property

(1) For the purposes of this Part, a debt owed by a party to a marriage is to be treated as property for the purposes of paragraph (ca) of the definition of matrimonial cause in section 4.

(2) For the purposes of paragraph 114(1)(e), property includes a debt owed by a party to a marriage.

FAMILY LAW ACT 1975

- SECT 90ADA

Other provisions of this Act not affected by this Part

This Part does not affect the operation of any other provision of this Act.

Example: Paragraph 90AE(3)(e) and subsection 90AE(4) do not limit the operation of any other provisions of this Act that require or permit the court to take matters into account in making an order in proceedings under section 79.

FAMILY LAW ACT 1975

- SECT 90AE

Court may make an order under section 79 binding a third party

(1) In proceedings under section 79, the court may make any of the following orders:

(a) an order directed to a creditor of the parties to the marriage to substitute one party for both parties in relation to the debt owed to the creditor;

(b) an order directed to a creditor of one party to a marriage to substitute the other party, or both parties, to the marriage for that party in relation to the debt owed to the creditor;

(c) an order directed to a creditor of the parties to the marriage that the parties be liable for a different proportion of the debt owed to the creditor than the proportion the parties are liable to before the order is made;

(d) an order directed to a director of a company or to a company to register a transfer of shares from one party to the marriage to the other party.

(2) In proceedings under section 79, the court may make any other order that:

(a) directs a third party to do a thing in relation to the property of a party to the marriage; or

(b) alters the rights, liabilities or property interests of a third party in relation to the marriage.

(3) The court may only make an order under subsection (1) or (2) if:

(a) the making of the order is reasonably necessary, or reasonably appropriate and adapted, to effect a division of property between the parties to the marriage; and

(b) if the order concerns a debt of a party to the marriage--it is not foreseeable at the time that

the order is made that to make the order would result in the debt not being paid in full; and

(c) the third party has been accorded procedural fairness in relation to the making of the order; and

(d) the court is satisfied that, in all the circumstances, it is just and equitable to make the order; and

(e) the court is satisfied that the order takes into account the matters mentioned in subsection (4).

(4) The matters are as follows:

(a) the taxation effect (if any) of the order on the parties to the marriage;

(b) the taxation effect (if any) of the order on the third party;

(c) the social security effect (if any) of the order on the parties to the marriage;

(d) the third party's administrative costs in relation to the order;

(e) if the order concerns a debt of a party to the marriage--the capacity of a party to the marriage to repay the debt after the order is made;

Note: See paragraph (3)(b) for requirements for making the order in these circumstances.

Example: The capacity of a party to the marriage to repay the debt would be affected by that party's ability to repay the debt without undue hardship.

(f) the economic, legal or other capacity of the third party to comply with the order;

Example: The legal capacity of the third party to comply with the order could be affected by the terms of a trust deed. However, after taking the third party's legal capacity into account, the court may make the order despite the terms of the trust deed. If the court does so, the order will have effect despite those terms (see section 90AC).

(g) if, as a result of the third party being accorded procedural fairness in relation to the making of the order, the third party raises any other matters--those matters;

Note: See paragraph (3)(c) for the requirement to accord procedural fairness to the third party.

(h) any other matter that the court considers relevant.

FAMILY LAW ACT 1975

- SECT 90AF

Court may make an order or injunction under section 114 binding a third party

(1) In proceedings under section 114, the court may:

(a) make an order restraining a person from repossessing property of a party to a marriage; or

(b) grant an injunction restraining a person from commencing legal proceedings against a party to a marriage.

(2) In proceedings under section 114, the court may make any other order, or grant any other injunction that:

(a) directs a third party to do a thing in relation to the property of a party to the marriage; or

(b) alters the rights, liabilities or property interests of a third party in relation to the marriage.

(3) The court may only make an order or grant an injunction under subsection (1) or (2) if:

(a) the making of the order, or the granting of the injunction, is reasonably necessary, or reasonably appropriate and adapted, to effect a division of property between the parties to the marriage; and

(b) if the order or injunction concerns a debt of a party to the marriage--it is not foreseeable at the time that the order is made, or the injunction granted, that to make the order or grant the injunction would result in the debt not being paid in full; and

(c) the third party has been accorded procedural fairness in relation to the making of the order or injunction; and

(d) for an injunction or order under subsection 114(1)--the court is satisfied that, in all the circumstances, it is proper to make the order or grant the injunction; and

(e) for an injunction under subsection 114(3)--the court is satisfied that, in all the circumstances, it is just or convenient to grant the injunction; and

(f) the court is satisfied that the order or injunction takes into account the matters mentioned in subsection (4).

(4) The matters are as follows:

(a) the taxation effect (if any) of the order or injunction on the parties to the marriage;

(b) the taxation effect (if any) of the order or injunction on the third party;

(c) the social security effect (if any) of the order or injunction on the parties to the marriage;

(d) the third party's administrative costs in relation to the order or injunction;

(e) if the order or injunction concerns a debt of a party to the marriage--the capacity of a party to the marriage to repay the debt after the order is made or the injunction is granted;

Note: See paragraph (3)(b) for requirements for making the order or granting the injunction in these circumstances.

Example: The capacity of a party to the marriage to repay the debt would be affected by that party's ability to repay the debt without undue hardship.

(f) the economic, legal or other capacity of the third party to comply with the order or injunction;

Example: The legal capacity of the third party to comply with the order or injunction could be affected by the terms of a trust deed. However, after taking the third party's legal capacity into account,

the court may make the order or grant the injunction despite the terms of the trust deed. If the court does so, the order or injunction will have effect despite those terms (see section 90AC).

(g) if, as a result of the third party being accorded procedural fairness in relation to the making of the order or the granting of the injunction, the third party raises any other matters--those matters;
Note: See paragraph (3)(c) for the requirement to accord procedural fairness to the third party.

(h) any other matter that the court considers relevant.

FAMILY LAW ACT 1975

- SECT 90AG

Orders and injunctions binding on trustees

If an order or injunction binds a person in the capacity of trustee in relation to property, then the order or injunction is also binding (by force of this section) on any person who subsequently becomes the trustee.

FAMILY LAW ACT 1975

- SECT 90AH

Protection for a third party

A third party in relation to a marriage is not liable for loss or damage suffered by any person because of things done (or not done) by the third party in good faith in reliance on an order or injunction made or granted by a court in accordance with this Part.

FAMILY LAW ACT 1975

- SECT 90AI

Service of documents on a third party

(1) If a document is required or permitted to be served for the purposes of this Part on a third party in relation to a marriage, the document may be served in any of the ways in which a document may be served under the applicable Rules of Court.

(2) Subsection (1) is in addition to any other method of service permitted by law.

FAMILY LAW ACT 1975

- SECT 90AJ

Expenses of third party

(1) Subsection (2) applies if:

(a) the court has made an order or granted an injunction in accordance with this Part in relation to a marriage; and

(b) a third party in relation to the marriage has incurred expense as a necessary result of the order or injunction.

(2) The court may make such order as it considers just for the payment of the reasonable expenses of the third party incurred as a necessary result of the order or injunction.

(3) In deciding whether to make an order under subsection (2), subject to what the court considers just, the court must take into account the principle that the parties to the marriage should bear the reasonable expenses of the third party equally.

(4) The regulations may provide, in situations where the court has not made an order under subsection (2):

(a) for the charging by the third party of reasonable fees to cover the reasonable expenses of the third party incurred as a necessary result of the order or injunction; and

(b) if such fees are charged--that each of the parties to the marriage is separately liable to pay the third party an amount equal to half of those fees; and

(c) for conferring jurisdiction on a particular court or courts in relation to the collection or recovery of such fees.

FAMILY LAW ACT 1975

- SECT 90AK

Acquisition of property

(1) The court must not make an order or grant an injunction in accordance with this Part if the order or injunction would:

(a) result in the acquisition of property from a person otherwise than on just terms; and

(b) be invalid because of paragraph 51(xxxi) of the Constitution.

(2) In this section:

"acquisition of property" has the same meaning as in paragraph 51(xxxi) of the Constitution.

"just terms" has the same meaning as in paragraph 51(xxxi) of the Constitution.

FAMILY LAW ACT 1975

- SECT 90A

Definitions

In this Part:

"dealt with" includes the meaning given by subsection 90F(2).

"marriage" includes a void marriage.

FAMILY LAW ACT 1975

- SECT 90B

Financial agreements before marriage

(1) If:

(a) people who are contemplating entering into a marriage with each other make a written agreement with respect to any of the matters mentioned in subsection (2); and

(aa) at the time of the making of the agreement, the people are not the spouse parties to any other binding agreement (whether made under this section or section 90C or 90D) with respect to any of those matters; and

(b) the agreement is expressed to be made under this section;
the agreement is a financial agreement. The people may make the financial agreement with one or more other people.

(2) The matters referred to in paragraph (1)(a) are the following:

(a) how, in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of the spouse parties at the time when the agreement is made, or at a later time and before divorce, is to be dealt with;

(b) the maintenance of either of the spouse parties:

(i) during the marriage; or

(ii) after divorce; or

(iii) both during the marriage and after divorce.

(3) A financial agreement made as mentioned in subsection (1) may also contain:

(a) matters incidental or ancillary to those mentioned in subsection (2); and

(b) other matters.

(4) A financial agreement (the new agreement) made as mentioned in subsection (1) may terminate a previous financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

FAMILY LAW ACT 1975

- SECT 90C

Financial agreements during marriage

(1) If:

(a) the parties to a marriage make a written agreement with respect to any of the matters mentioned in subsection (2); and

(aa) at the time of the making of the agreement, the parties to the marriage are not the spouse parties to any other binding agreement (whether made under this section or section 90B or 90D) with respect to any of those matters; and

(b) the agreement is expressed to be made under this section;
the agreement is a financial agreement. The parties to the marriage may make the financial agreement with one or more other people.

(2) The matters referred to in paragraph (1)(a) are the following:

(a) how, in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of the spouse parties at the time when the agreement is made, or at a later time and during the marriage, is to be dealt with;

(b) the maintenance of either of the spouse parties:

(i) during the marriage; or

(ii) after divorce; or

(iii) both during the marriage and after divorce.

(2A) For the avoidance of doubt, a financial agreement under this section may be made before or after the marriage has broken down.

(3) A financial agreement made as mentioned in subsection (1) may also contain:

(a) matters incidental or ancillary to those mentioned in subsection (2); and

(b) other matters.

(4) A financial agreement (the new agreement) made as mentioned in subsection (1) may terminate a previous financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

FAMILY LAW ACT 1975

- SECT 90D

Financial agreements after divorce order is made

(1) If:

(a) after a divorce order is made in relation to a marriage (whether it has taken effect or not), the parties to the former marriage make a written agreement with respect to any of the matters mentioned in subsection (2); and

(aa) at the time of the making of the agreement, the parties to the former marriage are not the spouse parties to any other binding agreement (whether made under this section or section 90B or 90C) with respect to any of those matters; and

(b) the agreement is expressed to be made under this section;
the agreement is a financial agreement. The parties to the former marriage may make the financial agreement with one or more other people.

(2) The matters referred to in paragraph (1)(a) are the following:

(a) how all or any of the property or financial resources that either or both of the spouse parties had or acquired during the former marriage is to be dealt with;

(b) the maintenance of either of the spouse parties.

(3) A financial agreement made as mentioned in subsection (1) may also contain:

(a) matters incidental or ancillary to those mentioned in subsection (2); and

(b) other matters.

(4) A financial agreement (the new agreement) made as mentioned in subsection (1) may terminate a previous financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

FAMILY LAW ACT 1975

- SECT 90DA

Need for separation declaration for certain provisions of financial agreement to take effect

(1) A financial agreement that is binding on the parties to the agreement, to the extent to which it deals with how, in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of the spouse parties:

(a) at the time when the agreement is made; or

(b) at a later time and before the termination of the marriage by divorce;
are to be dealt with, is of no force or effect until a separation declaration is made.

Note: Before the separation declaration is made, the financial agreement will be of force and effect in relation to the other matters it deals with (except for any matters covered by section 90DB).

(1A) Subsection (1) ceases to apply if:

(a) the spouse parties divorce; or

(b) either or both of them die.

Note: This means the financial agreement will be of force and effect in relation to the matters mentioned in subsection (1) from the time of the divorce or death(s).

(2) A separation declaration is a written declaration that complies with subsections (3) and (4), and may be included in the financial agreement to which it relates.

(3) The declaration must be signed by at least one of the spouse parties to the financial agreement.

(4) The declaration must state that:

(a) the spouse parties have separated and are living separately and apart at the declaration time; and
(b) in the opinion of the spouse parties making the declaration, there is no reasonable likelihood of cohabitation being resumed.

(5) In this section:

"declaration time" means the time when the declaration was signed by a spouse party to the financial agreement.

"separated" has the same meaning as in section 48 (as affected by section 49).

FAMILY LAW ACT 1975

- SECT 90DB

Whether or when certain other provisions of financial agreements take effect

(1) A financial agreement that is binding on the parties to the agreement, to the extent to which it provides for a third party to contribute to the maintenance of a spouse party during the marriage, is

of no force or effect.

(2) A financial agreement that is binding on the parties to the agreement, to the extent to which it provides for matters covered by paragraph 90B(3)(b) or 90C(3)(b), is of no force or effect unless and until the marriage breaks down.

FAMILY LAW ACT 1975

- SECT 90E

Requirements with respect to provisions in financial agreements relating to the maintenance of a party or a child or children

A provision of a financial agreement that relates to the maintenance of a spouse party to the agreement or a child or children is void unless the provision specifies:

- (a) the party, or the child or children, for whose maintenance provision is made; and
- (b) the amount provided for, or the value of the portion of the relevant property attributable to, the maintenance of the party, or of the child or each child, as the case may be.

FAMILY LAW ACT 1975

- SECT 90F

Certain provisions in agreements

(1) No provision of a financial agreement excludes or limits the power of a court to make an order in relation to the maintenance of a party to a marriage if subsection (1A) applies.

(1A) This subsection applies if the court is satisfied that, when the agreement came into effect, the circumstances of the party were such that, taking into account the terms and effect of the agreement, the party was unable to support himself or herself without an income tested pension, allowance or benefit.

(2) To avoid doubt, a provision in an agreement made as mentioned in subsection 90B(1), 90C(1) or 90D(1) that provides for property or financial resources owned by a spouse party to the agreement to continue in the ownership of that party is taken, for the purposes of that section, to be a provision with respect to how the property or financial resources are to be dealt with.

FAMILY LAW ACT 1975

- SECT 90G

When financial agreements are binding

(1) Subject to subsection (1A), a financial agreement is binding on the parties to the agreement if, and only if:

- (a) the agreement is signed by all parties; and
- (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the agreement; and
- (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the agreement); and
- (ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and
- (d) the agreement has not been terminated and has not been set aside by a court.

Note: For the manner in which the contents of a financial agreement may be proved, see section 48 of the Evidence Act 1995.

(1A) A financial agreement is binding on the parties to the agreement if:

- (a) the agreement is signed by all parties; and
- (b) one or more of paragraphs (1)(b), (c) and (ca) are not satisfied in relation to the agreement; and
- (c) a court is satisfied that it would be unjust and inequitable if the agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and
- (d) the court makes an order under subsection (1B) declaring that the agreement is binding on the parties to the agreement; and
- (e) the agreement has not been terminated and has not been set aside by a court.

(1B) For the purposes of paragraph (1A)(d), a court may make an order declaring that a financial agreement is binding on the parties to the agreement, upon application (the enforcement application) by a spouse party seeking to enforce the agreement.

(1C) To avoid doubt, section 90KA applies in relation to the enforcement application.

(2) A court may make such orders for the enforcement of a financial agreement that is binding on the

parties to the agreement as it thinks necessary.

FAMILY LAW ACT 1975

- SECT 90H

Effect of death of party to financial agreement

A financial agreement that is binding on the parties to the agreement continues to operate despite the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party.

FAMILY LAW ACT 1975

- SECT 90J

Termination of financial agreement

- (1) The parties to a financial agreement may terminate the agreement only by:
- (a) including a provision to that effect in another financial agreement as mentioned in subsection 90B(4), 90C(4) or 90D(4); or
 - (b) making a written agreement (a termination agreement) to that effect.
- (2) Subject to subsection (2A), a termination agreement is binding on the parties if, and only if:
- (a) the agreement is signed by all parties to the agreement; and
 - (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the agreement; and
 - (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the agreement); and
 - (ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and
 - (d) the agreement has not been set aside by a court.
- (2A) A termination agreement is binding on the parties if:
- (a) the agreement is signed by all parties to the agreement; and
 - (b) one or more of paragraphs (2)(b), (c) and (ca) are not satisfied in relation to the agreement; and
 - (c) a court is satisfied that it would be unjust and inequitable if the agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and
 - (d) the court makes an order under subsection (2B) declaring that the agreement is binding on the parties to the agreement; and
 - (e) the agreement has not been set aside by a court.
- (2B) For the purposes of paragraph (2A)(d), a court may make an order declaring that a termination agreement is binding on the parties to the agreement, upon application (the enforcement application) by a spouse party seeking to enforce the agreement.
- (2C) To avoid doubt, section 90KA applies in relation to the enforcement application.
- (3) A court may, on an application by a person who was a party to the financial agreement that has been terminated, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons. Note: For the manner in which the contents of a financial agreement may be proved, see section 48 of the Evidence Act 1995.

FAMILY LAW ACT 1975

- SECT 90K

Circumstances in which court may set aside a financial agreement or termination agreement

- (1) A court may make an order setting aside a financial agreement or a termination agreement if, and only if, the court is satisfied that:
- (a) the agreement was obtained by fraud (including non-disclosure of a material matter); or
 - (aa) a party to the agreement entered into the agreement:
 - (i) for the purpose, or for purposes that included the purpose, of defrauding or defeating a creditor or creditors of the party; or
 - (ii) with reckless disregard of the interests of a creditor or creditors of the party; or
 - (ab) a party (the agreement party) to the agreement entered into the agreement:
 - (i) for the purpose, or for purposes that included the purpose, of defrauding another person who is a party to a de facto relationship with a spouse party; or

- (ii) for the purpose, or for purposes that included the purpose, of defeating the interests of that other person in relation to any possible or pending application for an order under section 90SM, or a declaration under section 90SL, in relation to the de facto relationship; or
 - (iii) with reckless disregard of those interests of that other person; or
 - (b) the agreement is void, voidable or unenforceable; or
 - (c) in the circumstances that have arisen since the agreement was made it is impracticable for the agreement or a part of the agreement to be carried out; or
 - (d) since the making of the agreement, a material change in circumstances has occurred (being circumstances relating to the care, welfare and development of a child of the marriage) and, as a result of the change, the child or, if the applicant has caring responsibility for the child (as defined in subsection (2)), a party to the agreement will suffer hardship if the court does not set the agreement aside; or
 - (e) in respect of the making of a financial agreement--a party to the agreement engaged in conduct that was, in all the circumstances, unconscionable; or
 - (f) a payment flag is operating under Part VIIIB on a superannuation interest covered by the agreement and there is no reasonable likelihood that the operation of the flag will be terminated by a flag lifting agreement under that Part; or
 - (g) the agreement covers at least one superannuation interest that is an unsplitable interest for the purposes of Part VIIIB.
 - (1A) For the purposes of paragraph (1)(aa), creditor, in relation to a party to the agreement, includes a person who could reasonably have been foreseen by the party as being reasonably likely to become a creditor of the party.
 - (2) For the purposes of paragraph (1)(d), a person has caring responsibility for a child if:
 - (a) the person is a parent of the child with whom the child lives; or
 - (b) a parenting order provides that:
 - (i) the child is to live with the person; or
 - (ii) the person has parental responsibility for the child.
 - (3) A court may, on an application by a person who was a party to the financial agreement that has been set aside, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.
 - (4) An order under subsection (1) or (3) may, after the death of a party to the proceedings in which the order was made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
 - (5) If a party to proceedings under this section dies before the proceedings are completed:
 - (a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and
 - (b) if the court is of the opinion:
 - (i) that it would have exercised its powers under this section if the deceased party had not died; and
 - (ii) that it is still appropriate to exercise those powers;
 the court may make any order that it could have made under subsection (1) or (3); and
 - (c) an order under paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
 - (6) The court must not make an order under this section if the order would:
 - (a) result in the acquisition of property from a person otherwise than on just terms; and
 - (b) be invalid because of paragraph 51(xxi) of the Constitution.
- For this purpose, acquisition of property and just terms have the same meanings as in paragraph 51(xxi) of the Constitution.

FAMILY LAW ACT 1975

- SECT 90KA

Validity, enforceability and effect of financial agreements and termination agreements

The question whether a financial agreement or a termination agreement is valid, enforceable or effective is to be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts, and, in proceedings relating to such an agreement, the court:

- (a) subject to paragraph (b), has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction; and
- (b) has power to make an order for the payment, by a party to the agreement to another party to the agreement, of interest on an amount payable under the agreement, from the time when the amount became or becomes due and payable, at a rate not exceeding the rate prescribed by the applicable Rules of

Court; and

(c) in addition to, or instead of, making an order or orders under paragraph (a) or (b), may order that the agreement, or a specified part of the agreement, be enforced as if it were an order of the court.

FAMILY LAW ACT 1975

- SECT 90L

Financial and other agreements etc. not liable to duty

None of the following is subject to any duty or charge under any law of a State or Territory or any law of the Commonwealth that applies only in relation to a Territory:

- (a) a financial agreement;
- (b) a termination agreement;
- (c) a deed or other instrument executed by a person for the purposes of, or in accordance with, an order or financial agreement made under this Part.

FAMILY LAW ACT 1975

- SECT 90M

Notification of proceeds of crime orders etc.

(1) If:

(a) a person makes an application for an order, under this Part, with respect to:

(i) the property of the parties to a marriage or either 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:

(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.

FAMILY LAW ACT 1975

- SECT 90N

Court to stay property or spousal maintenance proceedings affected by proceeds of crime orders etc.

(1) A court in which property settlement or spousal maintenance proceedings are pending must stay those proceedings if notified under section 90M in relation to the proceedings.

(1A) The court may, before staying proceedings under subsection (1), invite or require the 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.

FAMILY LAW ACT 1975

- SECT 90P

Lifting a stay

(1) A court that stayed the property settlement or spousal maintenance proceedings under section 90N must wholly or partially lift the stay if:

(a) either party to the proceedings makes an application for the stay to be lifted and the 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 90N 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.

FAMILY LAW ACT 1975

- SECT 90Q

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 a court is notified under section 90M, or in any proceedings under section 90N or 90P 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.

FAMILY LAW ACT 1975

- SECT 90RA

Participating jurisdictions

Participating jurisdictions

(1) For the purposes of this Act, the following are the participating jurisdictions:

(a) each referring State;

(b) each Territory.

Referring States

(2) A State is a referring State if:

(a) the Parliament of the State has referred, or refers, to the Parliament of the Commonwealth financial matters relating to the parties to de facto relationships arising out of the breakdown of those de facto relationships; and

(b) the referral of the financial matters is made:

(i) for the purposes of paragraph 51(xxxvii) of the Constitution; and

(ii) to the extent that the financial matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution).

This subsection has effect subject to subsection (5).

(3) To avoid doubt, a State is not a referring State if its Parliament has referred, or refers, to the Parliament of the Commonwealth only a limited class of the matters referred to in paragraph (2)(a).

Note: Western Australia is not a referring State. Part VIIIC applies if the Parliament of Western Australia has referred to the Parliament of the Commonwealth superannuation matters relating to de facto partners (see paragraphs 4(1)(a) and (b) of the Commonwealth Powers (De Facto Relationships) Act 2006 (WA)).

(4) A State is a referring State even if a law of the State provides that a reference to the Commonwealth Parliament described in subsection (2) is to terminate in particular circumstances.

(5) A State ceases to be a referring State if the State's reference to the Commonwealth Parliament described in subsection (2) terminates.

FAMILY LAW ACT 1975

- SECT 90RB

Meaning of child of a de facto relationship

For the purposes of this Part, a child is a child of a de facto relationship if the child is the child of both of the parties to the de facto relationship.

Note: To determine who is a child of a person see Subdivision D of Division 1 of Part VII.

FAMILY LAW ACT 1975

- SECT 90RC

Relationship with State and Territory laws

De facto financial provisions

(1) In this section:

"de facto financial provisions" means the following provisions:

- (a) this Part;
- (b) Part VIIIAA (as applied by section 90TA);
- (c) Part VIIIB, to the extent to which it relates to a superannuation interest to be allocated between the parties to a de facto relationship;
- (d) subsection 114(2A).

State and Territory laws do not apply to financial matters

(2) Parliament intends that the de facto financial provisions are to apply to the exclusion of any law of a State or Territory to the extent that the law:

- (a) deals with financial matters relating to the parties to de facto relationships arising out of the breakdown of those de facto relationships; and
- (b) deals with those matters by referring expressly to de facto relationships (regardless of how the State or Territory law describes those relationships).

Note 1: If, for example, both this Part and a law of a non-referring State deal with the distribution of property between the parties to a de facto relationship that has broken down after the commencement of this section, then the parties can only seek to distribute the property under this Part. Subsection (2) has the effect of preventing the parties from seeking to distribute the property under the State law.

Note 2: For de facto relationship, see section 4AA.

Exception--insufficient link to a participating jurisdiction or Division 2 not applicable because of section 90SB

(3) Despite subsection (2), Parliament does not intend that the de facto financial provisions are to apply to the exclusion of a law of a State or Territory in relation to a financial matter relating to the parties to a de facto relationship arising out of the breakdown of the relationship if:

- (a) a court cannot make an order under this Part in relation to that financial matter because of section 90SB, 90SD or 90SK; and
- (b) there is no Part VIIIAA financial agreement that is binding on the parties dealing with that financial matter.

Example 1: Abbey and Bob are parties to a de facto relationship that has broken down, and have never been ordinarily resident in a participating jurisdiction. Subsection (3) has the effect that State law will govern financial matters arising out of the breakdown of their relationship.

Example 2: Cleo and Dan are parties to a de facto relationship that has broken down after the commencement of this section. Early in their relationship, they made a financial agreement under the law of a non-referring State, but later spent most of their relationship in a participating jurisdiction. Cleo and Dan now have a sufficient geographical link with a participating jurisdiction for either of them to apply for an order under this Part in relation to financial matters arising out of the breakdown of their relationship. This means that subsection (3) will not apply and that their financial agreement will not be enforceable under State law because of subsection (2). However, their financial agreement will be enforceable under this Part as a Part VIIIAA financial agreement (see section 90UE).

Exception--laws facilitating this Act

(4) Despite subsection (2), Parliament does not intend that the de facto financial provisions are to apply to the exclusion of a law of a State or Territory to the extent that the law facilitates the operation of this Act.

Note: This Part is not intended to apply to the exclusion of, for example, a State law that deals with superannuation entitlements by acknowledging superannuation splitting under Part VIIIB of this Act.

Exception--prescribed State or Territory laws

(5) Despite subsection (2), Parliament does not intend that the de facto financial provisions are to apply to the exclusion of a law of a State or Territory if the law is prescribed in regulations made for the purposes of this subsection.

FAMILY LAW ACT 1975

- SECT 90RD

Declarations about existence of de facto relationships

(1) If:

(a) an application is made for an order under section 90SE, 90SG or 90SM, or a declaration under section 90SL; and

(b) a claim is made, in support of the application, that a de facto relationship existed between the applicant and another person;

the court may, for the purposes of those proceedings (the primary proceedings), declare that a de facto relationship existed, or never existed, between those 2 persons.

(2) A declaration under subsection (1) of the existence of a de facto relationship may also declare any or all of the following:

(a) the period, or periods, of the de facto relationship for the purposes of paragraph 90SB(a);

(b) whether there is a child of the de facto relationship;

(c) whether one of the parties to the de facto relationship made substantial contributions of a kind mentioned in paragraph 90SM(4)(a), (b) or (c);

(d) when the de facto relationship ended;

(e) where each of the parties to the de facto relationship was ordinarily resident during the de facto relationship.

Note: For child of a de facto relationship, see section 90RB.

FAMILY LAW ACT 1975

- SECT 90RE

Effect of declarations

(1) A section 90RD declaration has effect as a judgment of the court.

(2) For the purposes of this Act (other than Part VII), a section 90RD declaration has effect according to its terms.

FAMILY LAW ACT 1975

- SECT 90RF

Applying for declarations

Any party to the primary proceedings may apply for a section 90RD declaration.

FAMILY LAW ACT 1975

- SECT 90RG

Geographical requirement

A court may make a section 90RD declaration only if the court is satisfied that a person referred to in paragraph 90RD(1)(b), or both of those persons, were ordinarily resident in a participating jurisdiction when the primary proceedings commenced.

FAMILY LAW ACT 1975

- SECT 90RH

Setting aside declarations

(1) If, in the primary proceedings, a person (the affected person) affected by a section 90RD declaration made in those proceedings applies under this subsection, and the court is satisfied that:

(a) a fact or circumstance has arisen that has not previously been disclosed to the court; and

(b) if the affected person was a party to the primary proceedings at the time the application for the declaration was made--the fact or circumstance was not within the affected person's knowledge at that time;

the court may do any of the following:

(c) vary the declaration;

(d) set the declaration aside;

(e) set the declaration aside and make another section 90RD declaration in substitution for the declaration so set aside.

(2) The setting aside of a declaration does not affect anything done in reliance on the declaration while it remained in force.

(3) If the court sets aside a section 90RD declaration, the court may, on application by the affected person or any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of placing as far as practicable any person affected by the setting aside of the declaration in the same position as that person would have been in if the declaration had not been made.

FAMILY LAW ACT 1975

- SECT 90RI

Duty of disclosure

Duty of disclosure in proceedings

(1) Each party to a proceeding relating to financial or property matters of a de facto relationship (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:

(a) for a party to the relationship--the issues in the proceeding that relate to financial or property matters of the relationship; 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 relationship.

(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 90SM (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 de facto relationship are preparing for a proceeding relating to financial or property matters of the relationship (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 relationship.

(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 relationship

(7) Any of the following matters, so far as they relate to a de facto relationship, are financial or property matters of the relationship:

(a) financial matters;

(b) matters that are or might become the subject of proceedings in a de facto financial cause;

(c) matters that are or might become the subject of proceedings under any of the following provisions of this Act:

(i) Division 7 of Part VII (child maintenance orders);

(ii) this Part (orders with respect to the maintenance of a party, or the property of the parties, to the relationship), other than Subdivision C of Division 1 (declarations about existence of de facto relationships);

(iii) section 90UM (orders setting aside a financial agreement or a termination agreement);

(iv) Part VIIIB (orders with respect to allocation of superannuation interests);

(v) section 106B (orders with respect to instruments or dispositions to defeat an existing or anticipated order in proceedings under this Act);

(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).

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 and 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 de facto relationship 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.

FAMILY LAW ACT 1975

- SECT 90SA

This Division does not apply to certain matters covered by binding financial agreements

(1) This Division does not apply to any of the following matters to which a Part VIIIAB financial agreement that is binding on the parties to the agreement applies:

(a) the maintenance of one of the spouse parties;

(b) the property of the spouse parties or of either of them;

(c) the financial resources of the spouse parties or of either of them.

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

(a) proceedings between:

(i) a party to a de facto relationship; and

(ii) the bankruptcy trustee of a bankrupt party to the de facto relationship;

with respect to the maintenance of the first -mentioned party after the breakdown of the de facto relationship; or

(b) proceedings between:

(i) a party to a de facto relationship; and

(ii) the bankruptcy trustee of a bankrupt party to the de facto relationship;

with respect to the distribution, after the breakdown of the de facto relationship, of any vested bankruptcy property in relation to the bankrupt party.

(3) Despite subsection (1), a party to a de facto relationship is not prevented from bringing property settlement proceedings under this Part if a Part VIIIAB financial agreement is not binding on that party.

Example: Before Amy and Ben's de facto relationship breaks down, Ben and Cathy make a Part VIIIAB financial agreement. Ben and Cathy's Part VIIIAB financial agreement does not prevent Amy from bringing property settlement proceedings against Ben.

(4) Section 90RI has effect regardless of subsection (1) of this section.

FAMILY LAW ACT 1975

- SECT 90SB

When this Division applies--length of relationship etc.

A court may make an order under section 90SE, 90SG or 90SM, or a declaration under section 90SL, in relation to a de facto relationship only if the court is satisfied:

(a) that the period, or the total of the periods, of the de facto relationship is at least 2 years;

or

(b) that there is a child of the de facto relationship; or

(c) that:

(i) the party to the de facto relationship who applies for the order or declaration made substantial contributions of a kind mentioned in paragraph 90SM(4)(a), (b) or (c); and

(ii) a failure to make the order or declaration would result in serious injustice to the applicant; or

(d) that the relationship is or was registered under a prescribed law of a State or Territory.

Note: For child of a de facto relationship, see section 90RB.

FAMILY LAW ACT 1975

- SECT 90SC

This Division ceases to apply in relation to a de facto relationship if the parties marry each other

(1) This Division (other than subsections 90SJ(2) to (5)) ceases to apply in relation to a de facto relationship if the parties to the de facto relationship later marry each other.

(2) Despite subsection (1), a declaration, order or injunction:

(a) made in property settlement proceedings under this Division in relation to the de facto relationship; and

(b) in force when the parties marry each other;

may, after the marriage, be enforced, varied or set aside in accordance with this Act.

(3) If a declaration, order or injunction is set aside as described in subsection (2), another declaration, order or injunction may be made under this Division in substitution for that declaration, order or injunction.

FAMILY LAW ACT 1975

- SECT 90SD

Geographical requirement

(1) A court may make an order under section 90SE or 90SG in relation to a de facto relationship only if the court is satisfied:

(a) that either or both of the parties to the de facto relationship were ordinarily resident in a participating jurisdiction when the application for the order was made (the application time); and

(b) that either:

(i) both parties to the de facto relationship were ordinarily resident during at least a third of the de facto relationship; or

(ii) the applicant for the order made substantial contributions, in relation to the de facto relationship, of a kind mentioned in paragraph 90SM(4)(a), (b) or (c);

in one or more States or Territories that are participating jurisdictions at the application time; or that the alternative condition in subsection (1A) is met.

(1A) The alternative condition is that the parties to the de facto relationship were ordinarily resident in a participating jurisdiction when the relationship broke down.

(2) For the purposes of paragraph (1)(b), a State need not have been a participating jurisdiction during the de facto relationship.

(3) If each State is a referring State, the Governor -General may, by Proclamation, fix a day as the day on which paragraph (1)(b), and the alternative condition in subsection (1A), cease to apply in relation to new applications.

Note: Paragraph (1)(b) and subsection (1A) will continue to apply in relation to applications made before the proclaimed day.

(4) If:

(a) a Proclamation under subsection (3) is in force; and

(b) a State ceases to be a referring State on a particular day;

the Proclamation is revoked by force of this subsection on and from that day.

(5) If, under subsection (4), a Proclamation under subsection (3) is revoked:

(a) this section has effect as if the revoked Proclamation had not been made; but

(b) the effect of the revoked Proclamation on applications made before the specified day is not affected.

FAMILY LAW ACT 1975

- SECT 90SE

Power of court in maintenance proceedings

(1) After the breakdown of a de facto relationship, a court may make such order as it considers proper for the maintenance of one of the parties to the de facto relationship in accordance with this Division.

Note 1: The geographical requirement in section 90SD must be satisfied.

Note 2: The court must be satisfied of at least one of the matters in section 90SB.

(2) If:

(a) an application is made for an order under this section in proceedings between the parties to a de facto relationship with respect to the maintenance of a party to the de facto relationship; and

(b) either of the following subparagraphs apply to a party to the de facto relationship:

(i) when the application was made, the party was a bankrupt;

(ii) after the application was made but before the proceedings are finally determined, the party became a bankrupt; and

(c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and

(d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings;

the court must join the bankruptcy trustee as a party to the proceedings.

(3) If, under subsection (2), a bankruptcy trustee is a party to proceedings with respect to the maintenance of a party to a de facto relationship, then, except with the leave of the court, the bankrupt party to the de facto relationship is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.

(4) The court must not grant leave under subsection (3) unless the court is satisfied that there are exceptional circumstances.

(5) If:

(a) an application is made for an order under this section in proceedings between the parties to a de facto relationship with respect to the maintenance of a party to the de facto relationship; and

(b) either of the following subparagraphs apply to a party to the de facto relationship (the debtor party):

(i) when the application was made, the debtor party was a debtor subject to a personal insolvency agreement;

(ii) after the application was made but before it is finally determined, the debtor party becomes a debtor subject to a personal insolvency agreement; and

(c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and

(d) the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings;

the court must join the trustee of the agreement as a party to the proceedings.

(6) If, under subsection (5), the trustee of a personal insolvency agreement is a party to proceedings with respect to the maintenance of a party to a de facto relationship, then, except with the leave of the court, the debtor party is not entitled to make a submission to the court in connection with any property subject to the agreement.

(7) The court must not grant leave under subsection (6) unless the court is satisfied that there are exceptional circumstances.

(8) For the purposes of subsections (2) and (5), an application for an order under this section is taken to be finally determined when:

(a) the application is withdrawn or dismissed; or

(b) an order (other than an interim order) is made as a result of the application.

FAMILY LAW ACT 1975

- SECT 90SF

Matters to be taken into consideration in relation to maintenance

(1) In exercising jurisdiction under section 90SE (after being satisfied of the matters in subsections 44(5) and (6) and sections 90SB and 90SD), the court must apply the principle that a party to a de facto relationship must maintain the other party to the de facto relationship:

(a) only to the extent that the first -mentioned party is reasonably able to do so; and

(b) only if the second -mentioned party is unable to support himself or herself adequately whether:

(i) by reason of having the care of a child of the de facto relationship who has not attained the age of 18 years; or

(ii) by reason of age or physical or mental incapacity for appropriate gainful employment; or

(iii) for any other adequate reason.

Note: For child of a de facto relationship, see section 90RB.

(2) In applying this principle, the court must take into account only the matters referred to in subsection (3).

(3) The matters to be so taken into account are:

(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 to the de facto relationship (the subject de facto relationship); and

(b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment; and

(c) the extent to which either party has the care of a child of the subject de facto relationship 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 (4), the eligibility of either party for a pension, allowance or benefit under:

(i) any law of the Commonwealth, of a State or Territory or of another country; or

(ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia;

and the rate of any such pension, allowance or benefit being paid to either party; and

(g) a standard of living that in all the circumstances is reasonable; and

(h) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income; and

- (i) the effect of any proposed order on the ability of a creditor of a party to recover the creditor's debt, so far as that effect is relevant; and
 - (j) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party; and
 - (k) the duration of the subject de facto relationship and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration; and
 - (l) the need to protect a party who wishes to continue that party's role as a parent; and
 - (m) if either party is cohabiting with another person--the financial circumstances relating to the cohabitation; and
 - (n) the terms of any order made or proposed to be made under section 90SM in relation to:
 - (i) the property of the parties; or
 - (ii) vested bankruptcy property in relation to a bankrupt party; and
 - (o) the terms of any order or declaration made, or proposed to be made, under this Part in relation to:
 - (i) a party to the subject de facto relationship (in relation to another de facto relationship); or
 - (ii) a person who is a party to another de facto relationship with a party to the subject de facto relationship; or
 - (iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or
 - (iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii); and
 - (p) the terms of any order or declaration made, or proposed to be made, under Part VIII in relation to:
 - (i) a party to the subject de facto relationship; or
 - (ii) a person who is a party to a marriage with a party to the subject de facto relationship; or
 - (iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or
 - (iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii); and
 - (q) any child support under the Child Support (Assessment) Act 1989 that a party to the subject de facto relationship has provided, is to provide, or might be liable to provide in the future, for a child of the subject de facto relationship; and
 - (s) the terms of any Part VIIIAB financial agreement that is binding on either or both of the parties to the subject de facto relationship; and
 - (t) the terms of any financial agreement that is binding on a party to the subject de facto relationship; and
 - (u) any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.
- (4) In exercising its jurisdiction under section 90SE, a court must disregard any entitlement of the party whose maintenance is under consideration to an income tested pension, allowance or benefit.

FAMILY LAW ACT 1975

- SECT 90SG

Urgent maintenance cases

If, in proceedings with respect to the maintenance of a party to a de facto relationship in accordance with this Division, it appears to the court that:

- (a) the party is in immediate need of financial assistance; and
 - (b) it is not practicable in the circumstances to determine immediately what order, if any, should be made;
- the court may order the payment, pending the disposal of the proceedings, of such periodic sum or other sums as the court considers reasonable.

Note 1: The geographical requirement in section 90SD must be satisfied.

Note 2: The court must be satisfied of at least one of the matters in section 90SB.

FAMILY LAW ACT 1975

- SECT 90SH

Specification in orders of payments etc. for maintenance purposes

(1) If:

- (a) a court makes an order under this Act (whether or not the order is made in proceedings in relation to the maintenance of a party to a de facto relationship in accordance with this Division, is made by consent or varies an earlier order), and the order has the effect of requiring:
 - (i) payment of a lump sum, whether in one amount or by instalments; or
 - (ii) the transfer or settlement of property; and
- (b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a party to a de facto relationship in relation to the breakdown of the de

facto relationship;

the court must:

(c) express the order to be an order to which this section applies; and
(d) specify the portion of the payment, or the value of the portion of the property, attributable to the maintenance of the party.

(2) If:

(a) a court makes an order of a kind referred to in paragraph (1)(a); and

(b) the order:

(i) is not expressed to be an order to which this section applies; or

(ii) is expressed to be an order to which this section applies, but does not comply with paragraph

(1)(d);

any payment, transfer or settlement of a kind referred to in paragraph (1)(a), that the order has the effect of requiring, must be taken not to make provision for the maintenance of a party to the relevant de facto relationship.

FAMILY LAW ACT 1975

- SECT 90SI

Modification of maintenance orders

(1) If there is in force an order with respect to the maintenance of a party to a de facto relationship in accordance with this Division:

(a) made by the court; or

(b) made by another court and registered in the first -mentioned court in accordance with the applicable Rules of Court;

the court may:

(c) discharge the order if there is any just cause for so doing; or

(d) suspend its operation wholly or in part and either until further order or until a fixed time or the happening of some future event; or

(e) revive wholly or in part an order suspended under paragraph (d); or

(f) subject to subsection (3), vary the order so as to increase or decrease any amount ordered to be paid or in any other manner.

(2) The court's jurisdiction under subsection (1) may be exercised:

(a) in any case--in proceedings with respect to the maintenance of a party to the de facto relationship in accordance with this Division; or

(b) if there is a bankrupt party to the de facto relationship--on the application of the bankruptcy trustee; or

(c) if a party to the de facto relationship is a debtor subject to a personal insolvency agreement--on the application of the trustee of the agreement.

(3) The court must not make an order increasing or decreasing an amount ordered to be paid by an order unless it is satisfied:

(a) that, since the order was made or last varied:

(i) the circumstances of a person for whose benefit the order was made have so changed (including the person entering into a stable and continuing de facto relationship); or

(ii) the circumstances of the person liable to make payments under the order have so changed; or

(iii) in the case of an order that operates in favour of, or is binding on, a legal personal representative--the circumstances of the estate are such;

as to justify its so doing; or

(b) that, since the order was made, or last varied, the cost of living has changed to such an extent as to justify its so doing; or

(c) in a case where the order was made by consent--that the amount ordered to be paid is not proper or adequate; or

(d) that:

(i) material facts were withheld from the court that made the order, or from a court that varied the order; or

(ii) material evidence previously given before such a court was false.

(4) In satisfying itself for the purposes of paragraph (3)(b), the court must have regard to any changes that have occurred in the Consumer Price Index published by the Australian Statistician.

(5) The court must not, in considering the variation of an order, have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or was last varied having regard to a change in the cost of living.

(6) In satisfying itself for the purposes of paragraph (3)(c), the court must have regard to any payments, and any transfer or settlement of property, previously made by a party to the de facto relationship, or by the bankruptcy trustee of a party to the de facto relationship, to:

(a) the other party; or

(b) any other person for the benefit of the other party.

(7) An order decreasing the amount of a periodic sum payable under an order or discharging an order may be expressed to be retrospective to such date as the court considers appropriate.

(8) If, as provided by subsection (7), an order decreasing the amount of a periodic sum payable under an order is expressed to be retrospective to a specified date, any money paid under the second-mentioned order since the specified date, being money that would not have been required to be paid under the second-mentioned order as varied by the first-mentioned order, may be recovered in a court having jurisdiction under this Act.

(9) If, as provided by subsection (7), an order discharging an order is expressed to be retrospective to a specified date, any money paid under the second-mentioned order since the specified date may be recovered in a court having jurisdiction under this Act.

(10) For the purposes of this section, the court must have regard to the provisions of section 90SF.

(11) The discharge of an order does not affect the recovery of arrears due under the order at the time as at which the discharge takes effect.

FAMILY LAW ACT 1975

- SECT 90SJ

Cessation of maintenance orders

(1) An order with respect to the maintenance of a party to a de facto relationship in accordance with this Division ceases to have effect upon:

- (a) the death of the party; or
- (b) the death of the person liable to make payments under the order.

(2) An order with respect to the maintenance of a party to a de facto relationship in accordance with this Division ceases to have effect upon the marriage of the party unless in special circumstances a court having jurisdiction under this Act otherwise orders.

(3) If a marriage referred to in subsection (2) takes place, it is the duty of the person for whose benefit the order was made to inform without delay the person liable to make payments under the order of the date of the marriage.

(4) Any money paid in respect of a period after the event referred to in subsection (2) may be recovered in a court having jurisdiction under this Act.

(5) Nothing in this section affects the recovery of arrears due under an order at the time when the order ceased to have effect.

FAMILY LAW ACT 1975

- SECT 90SK

Geographical requirement

(1) A court may make a declaration under section 90SL, or an order under section 90SM, in relation to a de facto relationship only if the court is satisfied:

(a) that either or both of parties to the de facto relationship were ordinarily resident in a participating jurisdiction when the application for the declaration or order was made (the application time); and

(b) that either:

(i) both parties to the de facto relationship were ordinarily resident during at least a third of the de facto relationship; or

(ii) the applicant for the declaration or order made substantial contributions in relation to the de facto relationship, of a kind mentioned in paragraph 90SM(4)(a), (b) or (c);

in one or more States or Territories that are participating jurisdictions at the application time; or that the alternative condition in subsection (1A) is met.

(1A) The alternative condition is that the parties to the de facto relationship were ordinarily resident in a participating jurisdiction when the relationship broke down.

(2) For the purposes of paragraph (1)(b), a State need not have been a participating jurisdiction during the de facto relationship.

(3) If each State is a referring State, the Governor-General may, by Proclamation, fix a day as the day on which paragraph (1)(b), and the alternative condition in subsection (1A), cease to apply in relation to new applications.

Note: Paragraph (1)(b) and subsection (1A) will continue to apply in relation to applications made before the proclaimed day.

(4) If:

(a) a Proclamation under subsection (3) is in force; and

(b) a State ceases to be a referring State on a particular day;

the Proclamation is revoked by force of this subsection on and from that day.

(5) If, under subsection (4), a Proclamation under subsection (3) is revoked:

(a) this section has effect as if the revoked Proclamation had not been made; but

(b) the effect of the revoked Proclamation on applications made before the specified day is not

affected.

FAMILY LAW ACT 1975

- SECT 90SL

Declaration of interests in property

(1) In proceedings between the parties to a de facto relationship:
 (a) after the breakdown of the de facto relationship; and
 (b) with respect to existing title or rights in respect of property;
 the court may declare the title or rights, if any, that a party has in respect of the property.

Note 1: The geographical requirement in section 90SK must be satisfied.

Note 2: The court must be satisfied of at least one of the matters in section 90SB.

(2) If a court makes a declaration under subsection (1), it may make consequential orders to give effect to the declaration, including orders as to sale or partition and interim or permanent orders as to possession.

FAMILY LAW ACT 1975

- SECT 90SM

Alteration of property interests

Orders in property settlement proceedings

(1) In property settlement proceedings after the breakdown of a de facto relationship, 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 de facto relationship or either of them--altering the interests of the parties to the de facto relationship in the property; or

(b) in the case of proceedings with respect to the vested bankruptcy property in relation to a bankrupt party to the de facto relationship--altering the interests of the bankruptcy trustee in the vested bankruptcy property;

including:

(c) an order for a settlement of property in substitution for any interest in the property; and

(d) an order requiring:

(i) either or both of the parties to the de facto relationship; or

(ii) the relevant bankruptcy trustee (if any);

to make, for the benefit of either or both of the parties to the de facto relationship or a child of the de facto relationship, such settlement or transfer of property as the court determines.

Note 1: The geographical requirement in section 90SK must be satisfied.

Note 2: The court must be satisfied of at least one of the matters in section 90SB.

Note 3: For child of a de facto relationship, see section 90RB.

Note 4: 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:

(i) the existing legal and equitable rights and interests in any property of the parties to the de facto relationship or either of them; and

(ii) the existing liabilities of the parties to the de facto relationship 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 de facto relationship, or a child of the de facto relationship:

(i) to the acquisition, conservation or improvement of any of the property of the parties to the de facto relationship or either of them; or

(ii) otherwise in relation to any of that last-mentioned property;

whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the de facto relationship or either of them;

(b) the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a party to the de facto relationship, or a child of the de facto relationship:

(i) to the acquisition, conservation or improvement of any of the property of the parties to the de facto relationship or either of them; or

(ii) otherwise in relation to any of that last -mentioned property;

whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the de facto relationship or either of them;

(c) the contribution made by a party to the de facto relationship to the welfare of the family constituted by the parties to the de facto relationship and any children of the de facto relationship, including any contribution made in the capacity of homemaker or parent;

(ca) the effect of any family violence, to which one party to the de facto relationship has subjected or exposed the other party, on the ability of a party to the de facto relationship 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 de facto relationship;

(f) any other order made under this Act affecting a party to the de facto relationship or a child of the de facto relationship;

(g) any child support under the Child Support (Assessment) Act 1989 that a party to the de facto relationship has provided for a child of the de facto relationship.

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 de facto relationship (the subject de facto relationship) 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 subject de facto relationship;

(c) the income, property and financial resources of each of the parties to the subject de facto relationship 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 subject de facto relationship, of property or financial resources of either of the parties to the subject de facto relationship or both of them;

(e) any liabilities incurred by either of the parties to the subject de facto relationship or both of them, including the nature of the liabilities and the circumstances relating to them;

(f) the extent to which either party to the subject de facto relationship has the care of a child of the de facto relationship 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 subject de facto relationship 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 subject de facto relationship to support any other person;

(i) the eligibility of either party to the subject de facto relationship 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 subject de facto relationship 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) 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 subject de facto relationship 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 subject de facto relationship to recover the creditor's debt, so far as that effect is relevant;

(n) the extent to which each party to the subject de facto relationship has contributed to the income, earning capacity, property and financial resources of the other party;

(o) the duration of the subject de facto relationship and the extent to which it has affected the earning capacity of each party to the subject de facto relationship;

(p) the need to protect a party to the de facto relationship who wishes to continue that party's role as a parent;

(q) if either party to the subject de facto relationship 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 this Part in relation to:

(i) a party to the subject de facto relationship (in relation to another de facto relationship); or

- (ii) a person who is a party to another de facto relationship with a party to the subject de facto relationship; or
- (iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or
- (iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii);
- (s) the terms of any order or declaration made, or proposed to be made, under Part VIII in relation to:

- (i) a party to the subject de facto relationship; or
- (ii) a person who is party to a marriage with a party to the subject de facto relationship; or
- (iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or
- (iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii);
- (t) any child support under the Child Support (Assessment) Act 1989 that a party to the subject de facto relationship is to provide, or might be liable to provide in the future, for a child of the subject de facto relationship;
- (u) the terms of any Part VIIIAB financial agreement that is binding on either or both of the parties to the subject de facto relationship;
- (v) the terms of any financial agreement that is binding on a party to the subject de facto relationship;
- (w) 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 de facto relationship, 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.

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 de facto relationship, 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.

FAMILY LAW ACT 1975

- SECT 90SMA

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

(2) If a party to the de facto relationship dies after the breakdown of the de facto relationship, an order made under section 90SM in property settlement proceedings may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

Likely significant change in financial circumstances

(5) Without limiting the power of any court to grant an adjournment in proceedings under this Act, if, in property settlement proceedings in relation to the parties to a de facto relationship, a court is of the opinion:

- (a) that there is likely to be a significant change in the financial circumstances of the parties to the de facto relationship or either of them and that, having regard to the time when that change is likely to take place, it is reasonable to adjourn the proceedings; and
- (b) that an order that the court could make with respect to:
 - (i) the property of the parties to the de facto relationship or either of them; or
 - (ii) the vested bankruptcy property in relation to a bankrupt de facto party to the de facto

relationship;

if that significant change in financial circumstances occurs is more likely to do justice as between the parties to the de facto relationship than an order that the court could make immediately with respect to:

(iii) the property of the parties to the de facto relationship or either of them; or

(iv) the vested bankruptcy property in relation to a bankrupt party to the de facto relationship; the court may, if so requested by either party to the de facto relationship or the relevant bankruptcy trustee (if any), adjourn the proceedings until such time, before the expiration of a period specified by the court, as that party to the de facto relationship or the relevant bankruptcy trustee, as the case may be, applies for the proceedings to be determined, but nothing in this subsection requires the court to adjourn any proceedings in any particular circumstances.

(6) If a court proposes to adjourn proceedings as provided by subsection (5), the court may, before so adjourning the proceedings, make such interim order or orders or such other order or orders (if any) as it considers appropriate with respect to:

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

(b) any of the vested bankruptcy property in relation to a bankrupt party to the de facto relationship.

(7) The court may, in forming an opinion for the purposes of subsection (5) as to whether there is likely to be a significant change in the financial circumstances of either or both of the parties to the de facto relationship, have regard to any change in the financial circumstances of a party to the de facto relationship that may occur by reason that the party to the de facto relationship:

(a) is a contributor to a superannuation fund or scheme, or participates in any scheme or arrangement that is in the nature of a superannuation scheme; or

(b) may become entitled to property as the result of the exercise in his or her favour, by the trustee of a discretionary trust, of a power to distribute trust property; but nothing in this subsection limits the circumstances in which the court may form the opinion that there is likely to be a significant change in the financial circumstances of a party to the de facto relationship.

Death of party before property settlement proceedings complete

(8) If a party to the de facto relationship dies after the breakdown of the de facto relationship, but before property settlement proceedings are completed:

(a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and

(b) if the court is of the opinion:

(i) that it would have made an order with respect to property if the deceased party had not died; and

(ii) that it is still appropriate to make an order with respect to property;

the court may make such order as it considers appropriate with respect to:

(iii) any of the property of the parties to the de facto relationship or either of them; or

(iv) any of the vested bankruptcy property in relation to a bankrupt de facto party to the de facto relationship; and

(c) an order made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

Attendance of parties at conference etc. before orders made

(9) The Federal Circuit and Family Court of Australia (Division 1) must not make an order under section 90SM in property settlement proceedings (other than an order until further order or an order made with the consent of all the parties to the proceedings) unless:

(a) the parties to the proceedings have attended a conference in relation to the matter to which the proceedings relate with the Chief Executive Officer, or a Senior Registrar or Registrar of the Federal Circuit and Family Court of Australia (Division 1); 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).

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 90SM by a party to a de facto relationship (the subject de facto relationship):

(a) a creditor of a party to the proceedings if the creditor may not be able to recover his or her debt if the order were made;

(b) a person:

(i) who is a party to a de facto relationship (the other de facto relationship) with a party to the subject de facto relationship; and

(ii) who could apply, or has an application pending, for an order under section 90SM, or a declaration under section 90SL, in relation to the other de facto relationship;

(c) a person who is a party to a Part VIIIAB financial agreement (that is binding on the person) with a party to the subject de facto relationship;

(d) a person:

(i) who is a party to a marriage with a party to the subject de facto relationship; and

(ii) who could apply, or has an application pending, for an order under section 79, or a declaration under section 78, in relation to the marriage (or void marriage);

(e) a person who is a party to a financial agreement (that is binding on the person) with a party to the subject de facto relationship;

(f) any other person whose interests would be affected by the making of the order.

(11) Subsection (10) does not apply to a creditor of a party to the proceedings:

(a) if the party is a bankrupt--to the extent to which the debt is a provable debt (within the meaning of the Bankruptcy Act 1966); or

(b) if the party is a debtor subject to a personal insolvency agreement--to the extent to which the debt is covered by the personal insolvency agreement.

(12) If a person becomes a party to proceedings under section 90SM because of paragraph (10)(b), 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 other de facto relationship described in that paragraph.

(13) If a person becomes a party to proceedings under section 90SM because of paragraph (10)(d), the person may, in the proceedings, apply for:

(a) an order under section 79; or

(b) a declaration under section 78;

in relation to the marriage (or void marriage) described in that paragraph.

Bankruptcy trustee to become party to proceedings on application

(14) If:

(a) an application is made for an order under section 90SM in proceedings between the parties to a de facto relationship with respect to the property of the parties to the de facto relationship or either of them; and

(b) either of the following subparagraphs apply to a party to the de facto relationship:

(i) when the application was made, the party was a bankrupt;

(ii) after the application was made but before it is finally determined, the party became a bankrupt; and

(c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and

(d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under section 90SM in the proceedings;

the court must join the bankruptcy trustee as a party to the proceedings.

(15) If a bankruptcy trustee is a party to property settlement proceedings in relation to the parties to a de facto relationship, then, except with the leave of the court, the bankrupt party to the de facto relationship is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.

(16) The court must not grant leave under subsection (15) unless the court is satisfied that there are exceptional circumstances.

Trustee of insolvency agreement to become party to proceedings on application

(17) If:

(a) an application is made for an order under section 90SM in proceedings between the parties to a de facto relationship with respect to the property of the parties to the de facto relationship or either of them; and

(b) either of the following subparagraphs apply to a party to the de facto relationship (the debtor party):

(i) when the application was made, the party was a debtor subject to a personal insolvency agreement;

(ii) after the application was made but before it is finally determined, the party becomes a debtor subject to a personal insolvency agreement; and

(c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and

(d) the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under section 90SM in the proceedings;

the court must join the trustee of the agreement as a party to the proceedings.

(18) If the trustee of a personal insolvency agreement is a party to property settlement proceedings in relation to the parties to a de facto relationship, then, except with the leave of the court, the party to the de facto relationship who is the debtor subject to the agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.

(19) The court must not grant leave under subsection (18) unless the court is satisfied that there are exceptional circumstances.

When application is taken to be finally determined for the purposes of subsections (14) and (17)

(20) For the purposes of subsections (14) and (17), an application for an order under section 90SM 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.

FAMILY LAW ACT 1975

- SECT 90SN

Varying and setting aside orders altering property interests

(1) If, on application by a person affected by an order made by a court under section 90SM in property settlement proceedings, the court is satisfied that:

(a) there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence (including failure to disclose relevant information), the giving of false evidence or any other circumstance; or

(b) in the circumstances that have arisen since the order was made it is impracticable for the order to be carried out or impracticable for a part of the order to be carried out; or

(c) a person has defaulted in carrying out an obligation imposed on the person by the order and, in the circumstances that have arisen as a result of that default, it is just and equitable to vary the order or to set the order aside and make another order in substitution for the order; or

(d) in the circumstances that have arisen since the making of the order, being circumstances of an exceptional nature relating to the care, welfare and development of a child of the de facto relationship, the child or, where the applicant has caring responsibility for the child (as defined in subsection (3)), the applicant, will suffer hardship if the court does not vary the order or set the order aside and make another order in substitution for the order; or

(e) a proceeds of crime order has been made covering property of the parties to the de facto relationship or either of them, or a proceeds of crime order has been made against a party to the de facto relationship;

the court may, in its discretion, vary the order or set the order aside and, if it considers appropriate, make another order under section 90SM in substitution for the order so set aside.

Note: For child of a de facto relationship, see section 90RB.

(2) A court may, on application by a person affected by an order made by a court under section 90SM in property settlement proceedings, and with the consent of all the parties to the proceedings in which the order was made, vary the order or set the order aside and, if it considers appropriate, make another order under section 90SM in substitution for the order so set aside.

(3) For the purposes of paragraph (1)(d), a person has caring responsibility for a child if:

(a) the person is a parent of the child with whom the child lives; or

(b) a parenting order provides that:

(i) the child is to live with the person; or

(ii) the person has parental responsibility for the child.

(4) An order varied or made under subsection (1) or (2) may, after the death of a party to the de facto relationship in relation to which the order was so varied or made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(5) If, before proceedings under this section in relation to an order made under section 90SM are completed, a party to the de facto relationship dies:

(a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and

(b) if the court is of the opinion:

(i) that it would have exercised its powers under subsection (1) or (2) in relation to the order if the deceased party had not died; and

(ii) that it is still appropriate to exercise its powers under subsection (1) or (2) in relation to the order;

the court may vary the order, set the order aside, or set the order aside and make another order under section 90SM in substitution for the order so set aside; and

(c) an order varied or made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(6) In the exercise of its powers under subsection (1), (2) or (5), a court must have regard to the interests of, and must make any order proper for the protection of, a bona fide purchaser or other person interested.

(7) For the purposes of this section, a creditor of a party to the proceedings in which the order under section 90SM was made is taken to be a person whose interests are affected by the order if the creditor may not be able to recover his or her debt because the order has been made.

(8) For the purposes of this section, if:

(a) an order is made by a court under section 90SM in proceedings with respect to the property of the parties to a de facto relationship or either of them; and

(b) either of the following subparagraphs apply to a party to the de facto relationship:

(i) when the order was made, the party was a bankrupt;
(ii) after the order was made, the party became a bankrupt;
the bankruptcy trustee is taken to be a person whose interests are affected by the order.

(9) For the purposes of this section, if:

(a) a party to a de facto relationship is a bankrupt; and
(b) an order is made by a court under section 90SM in proceedings with respect to the vested bankruptcy property in relation to the bankrupt party;

the bankruptcy trustee is taken to be a person whose interests are affected by the order.

(10) For the purposes of this section, if:

(a) an order is made by a court under section 90SM in proceedings with respect to the property of the parties to a de facto relationship or either of them; and

(b) either of the following subparagraphs apply to a party to the de facto relationship:

(i) when the order was made, the party was a debtor subject to a personal insolvency agreement;
(ii) after the order was made, the party became a debtor subject to a personal insolvency agreement;
the trustee of the agreement is taken to be a person whose interests are affected by the order.

FAMILY LAW ACT 1975

- SECT 90SO

Notifying third parties about application

The applicable Rules of Court may specify the circumstances in which a person who:

(a) applies for an order under this Division; or
(b) is a party to a proceeding for an order under this Division;

is to give notice of the application to a person who is not a party to the proceedings.

Note: The applicable Rules of Court may, for example, make provision for the notification of a person married to, or in a de facto relationship with, the applicant or respondent to the proceedings.

FAMILY LAW ACT 1975

- SECT 90SP

Notifying bankruptcy trustee etc. about application under section 90SE, 90SL, 90SM or 90SN

(1) The applicable Rules of Court may make provision for a bankrupt who becomes a party to a proceeding for an application under section 90SE, 90SL, 90SM or 90SN to give notice of the application to the bankruptcy trustee.

(2) The applicable Rules of Court may make provision for a debtor subject to a personal insolvency agreement who becomes a party to a proceeding for an application under section 90SE, 90SL, 90SM or 90SN to give notice of the application to the trustee of the agreement.

FAMILY LAW ACT 1975

- SECT 90SQ

Notifying court about bankruptcy etc.

Bankruptcy

(1) The applicable Rules of Court may make provision for a person who:

(a) is a party to a de facto relationship that has broken down; and
(b) is a party to a proceeding for an application under section 90SE, 90SL, 90SM or 90SN; and
(c) before that application is finally determined, becomes a bankrupt;

to notify a court exercising jurisdiction under this Act that the person has become a bankrupt.
Debtor subject to a personal insolvency agreement

(2) The applicable Rules of Court may make provision for a person who:

(a) is a party to a de facto relationship that has broken down; and
(b) is a party to a proceeding for an application under section 90SE, 90SL, 90SM or 90SN; and
(c) before that application is finally determined, becomes a debtor subject to a personal insolvency agreement;

to notify a court exercising jurisdiction under this Act that the person has become a debtor subject to a personal insolvency agreement.

Institution of proceeding under the Bankruptcy Act 1966

(3) The applicable Rules of Court may make provision for a person who:

(a) is a party to a de facto relationship that has broken down; and
(b) is a party to a proceeding for an application under section 90SE, 90SL, 90SM or 90SN; and
(c) before that application is finally determined, becomes a party to a proceeding before the Federal Court or the Federal 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.

(4) The applicable Rules of Court may make provision for a person who:

(a) is the bankruptcy trustee of a bankrupt party to a de facto relationship; and

(b) the de facto relationship has broken down; and

(c) applies under section 139A of the Bankruptcy Act 1966 for an order under Division 4A of Part VI of that Act;

to notify a court exercising jurisdiction under this Act of the making of the application.

When application finally determined

(5) For the purposes of this section, an application for an order under section 90SE, 90SM or 90SN is taken to be finally determined when:

(a) the application is withdrawn or dismissed; or

(b) an order (other than an interim order) is made as a result of the application.

(6) For the purposes of this section, an application for a declaration under section 90SL is taken to be finally determined when:

(a) the application is withdrawn or dismissed; or

(b) a declaration is made as a result of the application.

FAMILY LAW ACT 1975

- SECT 90SR

Notifying non - bankrupt de facto party about application under section 139A of the Bankruptcy Act 1966

The applicable Rules of Court may make provision for a person who:

(a) is the bankruptcy trustee of a bankrupt party to a de facto relationship; and

(b) applies under section 139A of the Bankruptcy Act 1966 for an order under Division 4A of Part VI of that Act in relation to an entity (other than the other party to the de facto relationship);

to notify the other party to the de facto relationship of the making of the application if that bankruptcy trustee is aware that the de facto relationship has broken down.

FAMILY LAW ACT 1975

- SECT 90SS

General powers of court

General powers

(1) The court, in exercising its powers under this Division, may do any or all of the following:

(a) order payment of a lump sum, whether in one amount or by instalments;

(b) order payment of a weekly, monthly, yearly or other periodic sum;

(c) order that a specified transfer or settlement of property be made by way of maintenance for a party to a de facto relationship;

(d) order that payment of any sum ordered to be paid be wholly or partly secured in such manner as the court directs;

(e) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;

(f) appoint or remove trustees;

(g) order that payments be made direct to a party to the de facto relationship, to a trustee to be appointed or into court or to a public authority for the benefit of a party to the de facto relationship;

(h) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for a life or during joint lives or until further order;

(i) impose terms and conditions;

(j) make an order by consent;

(k) make any other order, or grant any other injunction, (whether or not of the same nature as those mentioned in the preceding paragraphs of this section) which it thinks it is necessary to make to do justice;

(l) subject to this Act and the applicable Rules of Court, make an order under this Division at any time before or after the making of a decree under another provision of this Act.

Note: The court also has specific powers in relation to third parties (see Division 3 of Part VIIIAA (as that Division has effect because of section 90TA)).

Limitation for orders or injunctions covered by section 90AF

(2) Subsection (1) has effect subject to subsection 90AF(3) (as that subsection has effect because of section 90TA).

Note: An order or injunction made or granted under subsection (1) that is of a kind covered by subsection 90AF(1) or (2) can only be made or granted in accordance with subsection 90AF(3).

Maintenance orders

(3) The making of an order of a kind referred to in paragraph (1)(c), or of any other order under this Division, in relation to the maintenance of a party to a de facto relationship does not prevent a court from making a subsequent order in relation to the maintenance of the party.

(4) The applicable Rules of Court may make provision with respect to the making of orders under this Division in relation to the maintenance of parties to de facto relationships (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.

Injunctions

(5) Without limiting paragraph (1)(k), the court may:

(a) grant:

(i) an interlocutory injunction; or

(ii) an injunction in aid of the enforcement of a decree;

in any case in which it appears to the court to be just or convenient to do so; and

(b) grant an injunction either unconditionally or upon such terms and conditions as the court considers appropriate.

Bankruptcy and insolvency

(6) If a bankruptcy trustee is a party to a proceeding before the court, the court may make an order under paragraph (1)(e) directed to the bankrupt.

(7) If the trustee of a personal insolvency agreement is a party to a proceeding before the court, the court may make an order under paragraph (1)(e) directed to the debtor subject to the agreement.

(8) Subsections (6) and (7) do not limit paragraph (1)(e).

(9) If a party to a de facto relationship is a bankrupt, a court may, on the application of the other party to the de facto relationship, by interlocutory order, grant an injunction under subsection (1) restraining the bankruptcy trustee from declaring and distributing dividends amongst the bankrupt's creditors.

(10) If a party to a de facto relationship is a debtor subject to a personal insolvency agreement, a court may, on the application of the other party to the de facto relationship, by interlocutory order, grant an injunction under subsection (1) restraining the trustee of the agreement from disposing of (whether by sale, gift or otherwise) property subject to the agreement.

(11) Subsections (9) and (10) do not limit subsections (1) and (5).

FAMILY LAW ACT 1975

- SECT 90ST

Duty of court to end financial relations

In proceedings under this Division, other than proceedings under section 90SL, the court must, as far as practicable, make such orders as will finally determine the financial relationships between the parties to the de facto relationship and avoid further proceedings between them.

FAMILY LAW ACT 1975

- SECT 90TA

Orders and injunctions binding third parties

(1) In addition to the effect Part VIIIAA has apart from this section, that Part also has effect in relation to:

(a) orders and injunctions under Division 2; and

(b) proceedings for orders or injunctions under Division 2;

with the modifications provided for in subsections (2) and (3).

(2) Part VIIIAA has effect in accordance with subsection (1) as if the following substitutions were made:

Substitutions to be madeItemFor a reference in Part VIIIAA to ...substitute a reference to ...1marriage2de facto relationship2section 79section 90SM3section 114section 90SS4paragraph (ca) of the definition of matrimonial causeparagraph (c) of the definition of de facto financial cause5orders or injunctions under section 114orders or injunctions under Division 2 of Part VIIIA6proceedings under section 114proceedings under Division 2 of Part VIIIA7an injunction under subsection 114(3)an injunction covered by subsection 90SS(5)

(3) Part VIIIAA has effect in accordance with subsection (1) as if:

(a) subsection 90AD(2) were replaced with the following:

"(2) For the purposes of section 90SS (to the extent that it provides for the granting of an injunction in relation to the property of a party to a de facto relationship), property includes a debt owed by a party to the de facto relationship."; and

(b) paragraph 90AF(3)(d) were omitted; and

(c) the following paragraph were inserted after paragraph 90AF(3)(e):

"(ea) for any other injunction--the court is satisfied that, in all the circumstances, it is

necessary to grant the injunction to do justice; and"; and

(d) the following subsection were added at the end of section 90AF:

"(5) Subsections (1) and (2) do not limit subsection 90SS(1).".

FAMILY LAW ACT 1975

- SECT 90UA

Geographical requirement for agreements made in participating jurisdictions

Two or more people can make a Part VIIIAB financial agreement under section 90UB, 90UC or 90UD only if the spouse parties are ordinarily resident in a participating jurisdiction when they make the agreement.

FAMILY LAW ACT 1975

- SECT 90UB

Financial agreements before de facto relationship

(1) If:

(a) people who are contemplating entering into a de facto relationship with each other make a written agreement with respect to any of the matters mentioned in subsection (2) in the event of the breakdown of the de facto relationship; and

(b) at the time of the making of the agreement, the people are not the spouse parties to any other Part VIIIAB financial agreement that is binding on them with respect to any of those matters; and

(c) the agreement is expressed to be made under this section;

the agreement is a Part VIIIAB financial agreement. The people may make the Part VIIIAB financial agreement with one or more other people.

(2) The matters referred to in paragraph (1)(a) are the following:

(a) how all or any of the:

(i) property; or

(ii) financial resources;

of either or both of the spouse parties at the time when the agreement is made, or at a later time and during the de facto relationship, is to be distributed;

(b) the maintenance of either of the spouse parties.

(3) A Part VIIIAB financial agreement made as mentioned in subsection (1) may also contain matters incidental or ancillary to those mentioned in subsection (2).

(4) A Part VIIIAB financial agreement (the new agreement) made as mentioned in subsection (1) may terminate a previous Part VIIIAB financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

FAMILY LAW ACT 1975

- SECT 90UC

Financial agreements during de facto relationship

(1) If:

(a) while in a de facto relationship, the parties to the de facto relationship make a written agreement about any of the matters mentioned in subsection (2) in the event of the breakdown of the de facto relationship; and

(b) at the time of the making of the agreement, the parties to the de facto relationship are not the spouse parties to any other Part VIIIAB financial agreement that is binding on them with respect to any of those matters; and

(c) the agreement is expressed to be made under this section;

the agreement is a Part VIIIAB financial agreement. The parties to the de facto relationship may make the Part VIIIAB financial agreement with one or more other people.

(2) The matters referred to in paragraph (1)(a) are the following:

(a) how all or any of the:

(i) property; or

(ii) financial resources;

of either or both of the spouse parties at the time when the agreement is made, or at a later time and during the de facto relationship, is to be distributed;

(b) the maintenance of either of the spouse parties.

(3) A Part VIIIAB financial agreement made as mentioned in subsection (1) may also contain matters incidental or ancillary to those mentioned in subsection (2).

(4) A Part VIIIAB financial agreement (the new agreement) made as mentioned in subsection (1) may terminate a previous Part VIIIAB financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

FAMILY LAW ACT 1975

- SECT 90UD

Financial agreements after breakdown of a de facto relationship

(1) If:

(a) after the breakdown of a de facto relationship, the parties to the former de facto relationship make a written agreement with respect to any of the matters mentioned in subsection (2); and

(b) at the time of the making of the agreement, the parties to the former de facto relationship are not the spouse parties to any other Part VIIIAB financial agreement that is binding on them with respect to any of those matters; and

(c) the agreement is expressed to be made under this section;

the agreement is a Part VIIIAB financial agreement. The parties to the former de facto relationship may make the Part VIIIAB financial agreement with one or more other people.

(2) The matters referred to in paragraph (1)(a) are the following:

(a) how all or any of the:

(i) property; or

(ii) financial resources;

that either or both of the spouse parties had or acquired during the former de facto relationship is to be distributed;

(b) the maintenance of either of the spouse parties.

(3) A Part VIIIAB financial agreement made as mentioned in subsection (1) may also contain matters incidental or ancillary to those mentioned in subsection (2).

(4) A Part VIIIAB financial agreement (the new agreement) made as mentioned in subsection (1) may terminate a previous Part VIIIAB financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

FAMILY LAW ACT 1975

- SECT 90UE

Agreements made in non - referring States that become Part VIIIAB financial agreements

How State agreements can become Part VIIIAB financial agreements

(1) This section applies if:

(a) 2 people (the couple) have made a written agreement, signed by both of them, with respect to any of the matters (the eligible agreed matters) mentioned in subsection (3); and

(b) the agreement was made under a non -referring State de facto financial law; and

(c) either:

(i) a court could not, because of that law, make an order under that law that is inconsistent with the agreement with respect to any of the eligible agreed matters; or

(ii) a court could not, because of that law, make an order under that law that is with respect to any of the eligible agreed matters to which the agreement applies; and

(d) at the time the agreement was made, the members of the couple were not the spouse parties to any Part VIIIAB financial agreement that is binding on them with respect to any of the eligible agreed matters; and

(e) at a later time (the transition time), the couple's circumstances change so that:

(i) if the de facto relationship has not broken down--sections 90SB, 90SD and 90SK would not prevent a court from making an order or declaration under this Part in relation to the eligible agreed matters if the de facto relationship were to break down; or

(ii) if the de facto relationship has broken down--sections 90SB, 90SD and 90SK do not prevent a court from making an order or declaration under this Part in relation to the eligible agreed matters; and

(f) immediately before the transition time:

(i) the agreement was in force under the non -referring State de facto financial law; and

(ii) the couple were not married to each other.

Paragraph (a) extends to agreements made before the commencement of this section, and to agreements made with one or more other people.

Note 1: This section extends to agreements made in contemplation of a de facto relationship, during a de facto relationship or after a de facto relationship has broken down.

Note 2: Part 2 of Schedule 1 to the Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008 deems certain agreements, made under a law of a State that is or becomes a participating jurisdiction, or made under a law of a Territory, to be Part VIIIAB financial agreements.

(2) For the purposes of this Act, the agreement is taken, on and after the transition time, to be a Part VIIIAB financial agreement to the extent that the agreement deals with:

(a) the eligible agreed matters; and

(b) matters incidental or ancillary to the eligible agreed matters.

Note: This means that, after the transition time, the agreement can only be enforced, varied,

terminated or otherwise set aside under this Act.

Eligible agreed matters

(3) The matters referred to in paragraph (1)(a) are the following:

(a) how all or any of the:

(i) property; or

(ii) financial resources;

of either member, or both members, of the couple at the time when the agreement is made, or at a later time and during a de facto relationship between them, is to be distributed;

(b) the maintenance of either member of the couple;

in the event of the breakdown of a de facto relationship between them, or in relation to a de facto relationship between them that has broken down, as the case requires.

(4) For the purposes of paragraph (1)(c), disregard whether the non-referring State de facto financial law permits the court to make such an order if the court varies or sets aside the agreement.

FAMILY LAW ACT 1975

- SECT 90UF

Need for separation declaration for certain provisions of financial agreement to take effect

(1) A Part VIIIAB financial agreement that is binding on the parties to the agreement, to the extent to which it deals with how, in the event of the breakdown of the de facto relationship, all or any of the property or financial resources of either or both of the spouse parties:

(a) at the time when the agreement is made; or

(b) at a later time and during the de facto relationship;

are to be dealt with, is of no force or effect until a separation declaration is made.

Note: Before the separation declaration is made, the financial agreement will be of force and effect in relation to the other matters it deals with (except for any matters covered by section 90UG).

(2) Subsection (1) ceases to apply if either or both of the spouse parties die.

Note: This means the financial agreement will be of force and effect in relation to the matters mentioned in subsection (1) from the time of the death(s).

Requirements for a valid separation declaration

(3) A separation declaration is a written declaration that complies with subsections (4) and (5), and may be included in the Part VIIIAB financial agreement to which it relates.

(4) The declaration must be signed by at least one of the spouse parties to the Part VIIIAB financial agreement.

(5) The declaration must state that:

(a) the spouse parties lived in a de facto relationship; and

(b) the spouse parties have separated and are living separately and apart at the declaration time; and

(c) in the opinion of the spouse parties making the declaration, there is no reasonable likelihood of cohabitation being resumed.

Meaning of declaration time

(6) In this section:

"declaration time" means the time when the declaration was signed by a spouse party to the Part VIIIAB financial agreement.

FAMILY LAW ACT 1975

- SECT 90UG

Whether or when certain other provisions of financial agreements take effect

A Part VIIIAB financial agreement that is binding on the parties to the agreement, to the extent to which it provides for matters covered by subsection 90UB(3) or 90UC(3) or paragraph 90UE(2)(b), is of no force or effect unless and until the de facto relationship breaks down.

FAMILY LAW ACT 1975

- SECT 90UH

Requirements with respect to provisions in financial agreements relating to the maintenance of a party or a child or children

(1) A provision of a Part VIIIAB financial agreement that relates to the maintenance of a spouse party to the agreement or a child or children is void unless the provision specifies:

(a) the party, or the child or children, for whose maintenance provision is made; and

(b) the amount provided for, or the value of the portion of the relevant property attributable to, the maintenance of the party, or of the child or each child, as the case may be.

Note: While Part VIIIAB financial agreements are not made with respect to child maintenance, provisions about child maintenance could be included in the same document for child support (or other non -Part VIIIAB) purposes.

(2) Subsection (1) does not apply in relation to a Part VIIIAB financial agreement covered by section 90UE.

FAMILY LAW ACT 1975

- SECT 90UI

Certain provisions in financial agreements

(1) No provision of a Part VIIIAB financial agreement excludes or limits the power of a court to make an order under Division 2 in relation to the maintenance of a party to the agreement if subsection (2) applies.

(2) This subsection applies if the court is satisfied that, when the agreement came into effect, the circumstances of the party were such that, taking into account the terms and effect of the agreement, the party was unable to support himself or herself without an income tested pension, allowance or benefit.

(3) To avoid doubt, a provision in a Part VIIIAB financial agreement:

(a) made as mentioned in subsection 90UB(1), 90UC(1) or 90UD(1); or

(b) covered by section 90UE;

that provides for property or financial resources owned by a spouse party to the agreement to continue in the ownership of that party is taken, for the purposes of that subsection or section, to be a provision with respect to how the property or financial resources are to be distributed.

FAMILY LAW ACT 1975

- SECT 90UJ

When financial agreements are binding

(1) Subject to subsection (1A), a Part VIIIAB financial agreement (other than an agreement covered by section 90UE) is binding on the parties to the agreement if, and only if:

(a) the agreement is signed by all parties; and

(b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the agreement; and

(c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the agreement); and

(ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and

(d) the agreement has not been terminated and has not been set aside by a court.

Note: For the manner in which the contents of a financial agreement may be proved, see section 48 of the Evidence Act 1995.

(1A) A Part VIIIAB financial agreement (other than an agreement covered by section 90UE) is binding on the parties to the agreement if:

(a) the agreement is signed by all parties; and

(b) one or more of paragraphs (1)(b), (c) and (ca) are not satisfied in relation to the agreement; and

(c) a court is satisfied that it would be unjust and inequitable if the agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and

(d) the court makes an order under subsection (1B) declaring that the agreement is binding on the parties to the agreement; and

(e) the agreement has not been terminated and has not been set aside by a court.

(1B) For the purposes of paragraph (1A)(d), a court may make an order declaring that a Part VIIIAB financial agreement is binding on the parties to the agreement, upon application (the enforcement application) by a spouse party seeking to enforce the agreement.

(1C) To avoid doubt, section 90UN applies in relation to the enforcement application.

(2) A Part VIIIAB financial agreement covered by section 90UE is binding on the parties to the agreement if, and only if, the agreement has not been terminated and has not been set aside by a court.

(3) A Part VIIIAB financial agreement ceases to be binding if, after making the agreement, the parties to the agreement marry each other.

(4) A court may make such orders for the enforcement of a Part VIIIAB financial agreement that is binding on the parties to the agreement as it thinks necessary.

FAMILY LAW ACT 1975

- SECT 90UK

Effect of death of party to financial agreement

A Part VIIIAB financial agreement that is binding on the parties to the agreement continues to operate despite the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party.

Note: If the parties are still in the de facto relationship when one of them dies, the de facto relationship is not taken to have broken down for the purposes of enforcing the matters mentioned in the financial agreement (see the definition of breakdown in subsection 4(1)).

FAMILY LAW ACT 1975

- SECT 90UL

Termination of financial agreement

(1) The parties to a Part VIIIAB financial agreement may terminate the agreement for the purposes of this Act only by:

(a) including a provision to that effect in another Part VIIIAB financial agreement as mentioned in subsection 90UB(4), 90UC(4) or 90UD(4); or

(b) making a written agreement (a Part VIIIAB termination agreement) to that effect.

(2) Subject to subsection (2A), a Part VIIIAB termination agreement is binding on the parties if, and only if:

(a) the termination agreement is signed by all parties to the Part VIIIAB financial agreement; and

(b) before signing the termination agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the termination agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the termination agreement; and

(c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the termination agreement); and

(ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and

(d) the termination agreement has not been set aside by a court.

(2A) A Part VIIIAB termination agreement is binding on the parties if:

(a) the termination agreement is signed by all parties to the Part VIIIAB financial agreement; and

(b) one or more of paragraphs (2)(b), (c) and (ca) are not satisfied in relation to the termination agreement; and

(c) a court is satisfied that it would be unjust and inequitable if the termination agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and

(d) the court makes an order under subsection (2B) declaring that the termination agreement is binding on the parties to the agreement; and

(e) the termination agreement has not been set aside by a court.

(2B) For the purposes of paragraph (2A)(d), a court may make an order declaring that a Part VIIIAB termination agreement is binding on the parties to the agreement, upon application (the enforcement application) by a spouse party seeking to enforce the agreement.

(2C) To avoid doubt, section 90UN applies in relation to the enforcement application.

(3) A court may, on an application by:

(a) a person who was a party to the Part VIIIAB financial agreement; or

(b) any other interested person;

make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of:

(c) persons who were parties to the Part VIIIAB financial agreement; and

(d) any other interested persons.

Note: For the manner in which the contents of a Part VIIIAB financial agreement may be proved, see section 48 of the Evidence Act 1995.

FAMILY LAW ACT 1975

- SECT 90UM

Circumstances in which court may set aside a financial agreement or termination agreement

(1) A court may make an order setting aside, for the purposes of this Act, a Part VIIIAB financial agreement or a Part VIIIAB termination agreement if, and only if, the court is satisfied that:

(a) the agreement was obtained by fraud (including non-disclosure of a material matter); or

(b) a party to the agreement entered into the agreement:

(i) for the purpose, or for purposes that included the purpose, of defrauding or defeating a creditor or creditors of the party; or

(ii) with reckless disregard of the interests of a creditor or creditors of the party; or

- (c) a party (the agreement party) to the agreement entered into the agreement:
 - (i) for the purpose, or for purposes that included the purpose, of defrauding another person who is a party to a de facto relationship (the other de facto relationship) with a spouse party; or
 - (ii) for the purpose, or for purposes that included the purpose, of defeating the interests of that other person in relation to any possible or pending application for an order under section 90SM, or a declaration under section 90SL, in relation to the other de facto relationship; or
 - (iii) with reckless disregard of those interests of that other person; or
- (d) a party (the agreement party) to the agreement entered into the agreement:
 - (i) for the purpose, or for purposes that included the purpose, of defrauding another person who is a party to a marriage with a spouse party; or
 - (ii) for the purpose, or for purposes that included the purpose, of defeating the interests of that other person in relation to any possible or pending application for an order under section 79, or a declaration under section 78, in relation to the marriage (or void marriage); or
 - (iii) with reckless disregard of those interests of that other person; or
- (e) the agreement is void, voidable or unenforceable; or
- (f) in the circumstances that have arisen since the agreement was made it is impracticable for the agreement or a part of the agreement to be carried out; or
- (g) since the making of the agreement, a material change in circumstances has occurred (being circumstances relating to the care, welfare and development of a child of the de facto relationship) and, as a result of the change, the child or, if the applicant has caring responsibility for the child (as defined in subsection (4)), a party to the agreement will suffer hardship if the court does not set the agreement aside; or
- (h) in respect of the making of a Part VIIIAB financial agreement--a party to the agreement engaged in conduct that was, in all the circumstances, unconscionable; or
- (i) a payment flag is operating under Part VIIIB on a superannuation interest covered by the agreement and there is no reasonable likelihood that the operation of the flag will be terminated by a flag lifting agreement under that Part; or
- (j) the agreement covers at least one superannuation interest that is an unsplitable interest for the purposes of Part VIIIB; or
- (k) if the agreement is a Part VIIIAB financial agreement covered by section 90UE--subsection (5) applies.

Note: For child of a de facto relationship, see section 90RB.

(2) For the purposes of paragraph (1)(b), creditor, in relation to a party to the agreement, includes a person who could reasonably have been foreseen by the party as being reasonably likely to become a creditor of the party.

(3) For the purposes of the application of subparagraph (1)(c)(ii) to a Part VIIIAB financial agreement covered by section 90UE:

(a) the reference in that subparagraph to an order under section 90SM is taken to include a reference to an order (however described) under a corresponding provision (if any) of the non-referring State de facto financial law concerned; and

(b) the reference in that subparagraph to a declaration under section 90SL is taken to include a reference to a declaration (however described) under a corresponding provision (if any) of the non-referring State de facto financial law concerned.

(4) For the purposes of paragraph (1)(g), a person has caring responsibility for a child if:

(a) the person is a parent of the child with whom the child lives; or

(b) a parenting order provides that:

(i) the child is to live with the person; or

(ii) the person has parental responsibility for the child.

(5) This subsection applies if:

(a) at least one of the spouse parties to the agreement was not provided, before signing the agreement, with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages to that party of making the agreement; or

(b) if this advice was provided to at least one of the spouse parties to the agreement--that party was not provided with a signed statement by the legal practitioner stating that this advice was given to that party;

and it would be unjust and inequitable, having regard to the eligible agreed matters (within the meaning of section 90UE) for the agreement, if the court does not set the agreement aside.

(6) A court may, on an application by a person who was a party to the Part VIIIAB financial agreement that has been set aside, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.

(7) An order under subsection (1) or (6) may, after the death of a party to the proceedings in which the order was made, be enforced on behalf of, or against, as the case may be, the estate of the

deceased party.

(8) If a party to proceedings under this section dies before the proceedings are completed:

(a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and

(b) if the court is of the opinion:

(i) that it would have exercised its powers under this section if the deceased party had not died; and

(ii) that it is still appropriate to exercise those powers;

the court may make any order that it could have made under subsection (1) or (6); and

(c) an order under paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(9) The court must not make an order under this section if the order would:

(a) result in the acquisition of property from a person otherwise than on just terms; and

(b) be invalid because of paragraph 51(xxxi) of the Constitution.

For this purpose, acquisition of property and just terms have the same meanings as in paragraph 51(xxxi) of the Constitution.

FAMILY LAW ACT 1975

- SECT 90UN

Validity, enforceability and effect of financial agreements and termination agreements

The question whether a Part VIIIAB financial agreement or a Part VIIIAB termination agreement is valid, enforceable or effective is to be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts, and, in proceedings relating to such an agreement, the court:

(a) subject to paragraph (b), has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction; and

(b) has power to make an order for the payment, by a party to the agreement to another party to the agreement, of interest on an amount payable under the agreement, from the time when the amount became or becomes due and payable, at a rate not exceeding the rate prescribed by the applicable Rules of Court; and

(c) in addition to, or instead of, making an order or orders under paragraph (a) or (b), may order that the agreement, or a specified part of the agreement, be enforced as if it were an order of the court.

FAMILY LAW ACT 1975

- SECT 90VA

Notification of proceeds of crime orders etc.

(1) If:

(a) a person makes an application for an order, under this Part, with respect to:

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

(ii) the maintenance of a party to a de facto relationship; and

(b) the person knows that the property of the parties to the de facto relationship or either of them is covered by:

(i) a proceeds of crime order; or

(ii) a forfeiture application;

the person must:

(c) disclose in the application the proceeds of crime order or forfeiture application; and

(d) give to the court a sealed copy of that order or application.

(2) A person who does not comply with subsection (1) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

(3) If:

(a) a person is a party to de facto property settlement or maintenance proceedings under this Part; and

(b) the person is notified by the proceeds of crime authority that the property of the parties to the de facto relationship or either of them is covered by:

(i) a proceeds of crime order; or

(ii) a forfeiture application;

the person must:

(c) 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.

FAMILY LAW ACT 1975

- SECT 90VB

Court to stay property or maintenance proceedings affected by proceeds of crime orders etc.

- (1) A court in which property settlement, or maintenance proceedings, are pending must stay those proceedings if notified under section 90VA in relation to the proceedings.
- (2) The court may, before staying proceedings under subsection (1), invite or require the proceeds of crime authority to make submissions relating to staying the proceedings.
- (3) A court must, on the application of the proceeds of crime authority, stay de facto property settlement or maintenance proceedings under this Part if the property of the parties to the de facto relationship or either of them is covered by:
- (a) a proceeds of crime order; or
 - (b) a forfeiture application.
- (4) A court must notify the proceeds of crime authority if the court stays de facto property settlement or maintenance proceedings under subsection (1) or (3).
- (5) 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.
- (6) For the purposes of subsection (5), a forfeiture application is taken to be finally determined when:
- (a) the application is withdrawn; or
 - (b) if the application is successful--the resulting forfeiture order comes into force; or
 - (c) if the application is unsuccessful--the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.

FAMILY LAW ACT 1975

- SECT 90VC

Lifting a stay

- (1) A court that stayed the de facto property settlement or maintenance proceedings under section 90VB must wholly or partially lift the stay if:
- (a) either party to the proceedings makes an application for the stay to be lifted and the 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 de facto property settlement or maintenance proceedings under section 90VB 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.

FAMILY LAW ACT 1975

- SECT 90VD

Intervention by proceeds of crime authority

- (1) The proceeds of crime authority may intervene in any de facto property settlement or maintenance proceedings in relation to which a court is notified under section 90VA, or in any proceedings under section 90VB or 90VC in which the 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.

FAMILY LAW ACT 1975

- SECT 90WA

Certain instruments not liable to duty

- (1) None of the following is subject to any duty or charge under any law of a State or Territory or any law of the Commonwealth that applies only in relation to a Territory:
- (a) a deed or other instrument executed by a person for the purposes of, or in accordance with, an order made under Division 2;

(b) a Part VIIIAB financial agreement;
 (c) a Part VIIIAB termination agreement;
 (d) a deed or other instrument executed by a person for the purposes of, or in accordance with, an order or Part VIIIAB financial agreement made under Division 4.

(2) Subsection (1) does not apply to a liability to pay duty or charge (if any) in relation to a Part VIIIAB financial agreement covered by section 90UE if the liability arises before the transition time (within the meaning of that section) for the agreement.

(3) Despite any State law, a failure to discharge a liability covered by subsection (2) in relation to an agreement has no effect for the purposes of this Act. In particular, the failure does not affect whether the agreement may be presented in evidence in a court for the purposes of this Act.

FAMILY LAW ACT 1975

- SECT 90XA

Object of this Part

The object of this Part is to allow certain payments (splittable payments) in respect of a superannuation interest to be allocated between:

(a) the parties to a marriage; or
 (b) the parties to a de facto relationship;
 either by agreement or by court order.

FAMILY LAW ACT 1975

- SECT 90XB

This Part overrides other laws, trust deeds etc.

(1) Subject to subsection (3), this Part has effect despite anything to the contrary in any of the following instruments (whether made before or after the commencement of this Part):

(a) any other law of the Commonwealth;
 (b) any law of a State or Territory;
 (c) anything in a trust deed or other instrument.

(2) Without limiting subsection (1), nothing done in compliance with this Part by the trustee of an eligible superannuation plan is to be treated as resulting in a contravention of a law or instrument referred to in subsection (1).

(3) This Part has effect subject to the Superannuation (Unclaimed Money and Lost Members) Act 1999.

FAMILY LAW ACT 1975

- SECT 90XC

Extended meanings of matrimonial cause and de facto financial cause

(1) A superannuation interest is to be treated as property for the purposes of paragraph (ca) of the definition of matrimonial cause in section 4.

(2) A superannuation interest is to be treated as property for the purposes of paragraph (c) of the definition of de facto financial cause in section 4.

FAMILY LAW ACT 1975

- SECT 90XD

Definitions

In this Part, unless the contrary intention appears:

"approved deposit fund" has the same meaning as in the SIS Act.

"declaration time", in relation to a separation declaration, means the time when the declaration was signed by a spouse (or last signed by a spouse, if both spouses have signed).

Note: If a spouse has died, the spouse's legal personal representative may sign a declaration (see subsection 90XP(2)).

"eligible superannuation plan" means any of the following:

(a) a superannuation fund within the meaning of the SIS Act;
 (b) an approved deposit fund;
 (c) an RSA;
 (d) an account within the meaning of the Small Superannuation Accounts Act 1995;
 (e) a superannuation annuity (within the meaning of the Income Tax Assessment Act 1997).

"flagging order" means an order mentioned in subsection 90XU(1).

"flag lifting agreement" has the meaning given by section 90XN.

"in force", in relation to an agreement, has the meaning given by section 90XG.

"interest" includes a prospective or contingent interest, and also includes an expectancy.

"marriage" includes a void marriage.

"member", in relation to an eligible superannuation plan, includes a beneficiary (including a contingent or prospective beneficiary).

"member spouse", in relation to a superannuation interest, means the spouse who has the superannuation interest.

"non-member spouse", in relation to a superannuation interest, means the spouse who is not the member spouse in relation to that interest.

"operative time":

(a) in relation to a payment split under a superannuation agreement or flag lifting agreement--has the meaning given by section 90XI; or

(b) in relation to a payment flag under a superannuation agreement--has the meaning given by section 90XK or paragraph 90XLA(2)(c) as appropriate; or

(c) in relation to a payment split under a court order--means the time specified in the order.

"payment flag" means:

(a) the application of section 90XL in relation to a superannuation interest; or

(b) the application of a flagging order in relation to a superannuation interest.

"payment split" means:

(a) the application of section 90XJ in relation to a splittable payment; or

(b) the application of a splitting order in relation to a splittable payment.

"percentage-only interest" means a superannuation interest prescribed by the regulations for the purposes of this definition.

"regulated superannuation fund" has the same meaning as in the SIS Act.

"reversionary beneficiary" means a person who becomes entitled to a benefit in respect of a superannuation interest of a spouse, after the spouse dies.

"reversionary interest" has the meaning given by section 90XF.

"RSA" means a retirement savings account within the meaning of the Retirement Savings Accounts Act 1997.

"secondary government trustee" means a trustee that:

(a) is the Commonwealth, a State or Territory; and

(b) is a trustee only because of the operation of section 90XDA.

"separation declaration" has the meaning given by section 90XP.

"SIS Act" means the Superannuation Industry (Supervision) Act 1993.

"splittable payment" has the meaning given by section 90XE.

"splitting order" means an order mentioned in subsection 90XT(1).

"spouse" means:

(a) a party to a marriage; or

(b) a party to a de facto relationship.

"superannuation agreement" has the meaning given by sections 90XH and 90XHA.

"superannuation interest" means an interest that a person has as a member of an eligible superannuation plan, but does not include a reversionary interest.

"trustee", in relation to an eligible superannuation plan, means:

(a) if the plan is a fund that has a trustee (within the ordinary meaning of that word)--the trustee of the plan; or

(b) if paragraph (a) does not apply and a person is identified in accordance with the regulations as the trustee of the plan for the purposes of this definition--the person identified in accordance with the regulations; or

(c) in any other case--the person who manages the plan.

"unflaggable interest" means a superannuation interest prescribed by the regulations for the purposes of this definition.

"unsplittable interest" means a superannuation interest prescribed by the regulations for the purposes of this definition.

FAMILY LAW ACT 1975

- SECT 90XDA

Extended meaning of trustee

If a person who is not the trustee of an eligible superannuation plan nevertheless has the power to make payments to members of the plan, then references in this Part to the trustee of the plan include references to that person.

FAMILY LAW ACT 1975

- SECT 90XE

Splittable payments

(1) Each of the following payments in respect of a superannuation interest of a spouse is a splittable payment:

- (a) a payment to the spouse;
- (b) a payment to another person for the benefit of the spouse;
- (c) a payment to the legal personal representative of the spouse, after the death of the spouse;
- (d) a payment to a reversionary beneficiary, after the death of the spouse;
- (e) a payment to the legal personal representative of a reversionary beneficiary covered by paragraph (d), after the death of the reversionary beneficiary.

(2) A payment is not a splittable payment if it is prescribed by the regulations for the purposes of this subsection. The regulations may prescribe a payment either:

(a) generally (that is, for the purposes of all payment splits in respect of a superannuation interest); or

(b) only for the purposes of applying this Part to a particular payment split in respect of a superannuation interest.

(3) If a payment is made to another person for the benefit of 2 or more persons who include the spouse, then the payment is nevertheless a splittable payment, to the extent to which it is paid for the benefit of the spouse.

FAMILY LAW ACT 1975

- SECT 90XF

Reversionary interest

For the purposes of this Part, a person's interest in an eligible superannuation plan is a reversionary interest at any time while the person's entitlement to benefits in respect of the interest is conditional on the death of another person who is still living.

FAMILY LAW ACT 1975

- SECT 90XG

Meaning of in force

(1) A financial agreement is in force at any time when it is binding on the parties in accordance with section 90G.

(1A) A Part VIIIAB financial agreement is in force at any time when it is binding on the parties in accordance with section 90UJ.

(2) A superannuation agreement is in force at any time when the relevant financial agreement, or relevant Part VIIIAB financial agreement, is in force.

(3) A flag lifting agreement is in force if, and only if:

(a) it meets the requirements set out in subsection 90XN(3); and

(b) it has not been set aside by a court and has not been terminated.

FAMILY LAW ACT 1975

- SECT 90XH

Superannuation agreement to be included in financial agreement if about a marriage

(1) A financial agreement under Part VIIIA may include an agreement that deals with superannuation interests of either or both of the spouse parties to the agreement as if those interests were property. It does not matter whether or not the superannuation interests are in existence at the time the agreement is made.

(2) The part of the financial agreement that deals with superannuation interests is a superannuation agreement for the purposes of this Part.

(3) A superannuation agreement has effect only in accordance with this Part. In particular, it cannot be enforced under Part VIIIA.

(4) A superannuation agreement that is included in a financial agreement under section 90B (in contemplation of marriage) has no effect unless and until the spouse parties marry.

(5) In applying sections 90B, 90C and 90D for the purposes of this Division, a superannuation interest of a spouse party to a financial agreement is treated as being acquired at the time when that party first becomes a member of the eligible superannuation plan in respect of that interest.

FAMILY LAW ACT 1975

- SECT 90XHA

Superannuation agreement to be included in Part VIIIAB financial agreement if about a de facto relationship

(1) A Part VIIIAB financial agreement may include an agreement that deals with superannuation interests of either or both of the spouse parties to the agreement as if those interests were property. It does not matter whether or not the superannuation interests are in existence at the time the agreement is made.

(2) The part of the Part VIIIAB financial agreement that deals with superannuation interests is a superannuation agreement for the purposes of this Part.

(3) A superannuation agreement has effect only in accordance with this Part. In particular, it cannot be enforced under Part VIIIAB.

(4) A superannuation agreement that is included in a Part VIIIAB financial agreement under section 90UB (in contemplation of a de facto relationship) has no effect unless and until the spouse parties enter into that de facto relationship.

(5) In applying sections 90UB, 90UC, 90UD and 90UE for the purposes of this Division, a superannuation interest of a spouse party to a Part VIIIAB financial agreement is treated as being acquired at the time when that party first becomes a member of the eligible superannuation plan in respect of that interest.

FAMILY LAW ACT 1975

- SECT 90XI

Operative time for payment split

(1) The operative time for a payment split under a superannuation agreement or flag lifting agreement is the beginning of the fourth business day after the day on which a copy of the agreement is served on the trustee, accompanied by:

(a) if the parties are divorced--a copy of the divorce order that has terminated the marriage; and

(aa) if, in the case of a payment split under a superannuation agreement:

(i) the parties are not divorced; and

(ii) a separation declaration is not part of the superannuation agreement;

a separation declaration; and

(b) if the agreement specifies a method for calculating a base amount--a document setting out the amount calculated using that method; and

(c) if a form of declaration is prescribed for the purposes of this paragraph--a declaration in that form.

Note: The base amount is used to calculate the entitlement of the non-member spouse under the regulations.

(2) For the purposes of subsection (1), the separation declaration must have a declaration time that is not more than 28 days before the service on the trustee.

FAMILY LAW ACT 1975

- SECT 90XJ

Payment split under superannuation agreement or flag lifting agreement

(1) This section applies to a superannuation interest if:

(a) the interest is identified in a superannuation agreement or flag lifting agreement; and

(b) if the interest is a percentage -only interest--the agreement does one of the following:

(i) it specifies a percentage that is to apply for the purposes of this sub -paragraph;

(ii) it specifies a percentage that is to apply to all splittable payments in respect of the interest;

and

(c) if the interest is not a percentage -only interest--the agreement does one of the following:

(i) it specifies an amount as a base amount in relation to the interest for the purposes of this Part;

(ii) it specifies a method by which such a base amount can be calculated at the time when the

agreement is served on the trustee under section 90XI;

(iii) it specifies a percentage that is to apply to all splittable payments in respect of the interest; and

(d) the agreement is in force at the operative time; and

(da) if the agreement relates to a marriage--the marriage is broken down at the operative time; and

(db) if the agreement relates to a de facto relationship--the de facto relationship is broken down at the operative time; and

(e) the interest is not an unsplittable interest.

Note: The base amount is used to calculate the entitlement of the non-member spouse under the regulations.

(2) The following provisions begin to apply to the interest at the operative time.

(3) Whenever a splittable payment becomes payable in respect of the interest:

(a) the non-member spouse is entitled to be paid the amount (if any) that is calculated under subsection (4); and

(b) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the payment split.

(4) The amount is calculated as follows:

(a) if the agreement specifies a percentage as mentioned in subparagraph (1)(b)(ii) or subparagraph

(1)(c)(iii)--the amount is calculated by applying the specified percentage to the splittable payment;

or

(b) otherwise--the amount is calculated in accordance with the regulations.

(5) Subject to section 90XV, this section continues to apply to the superannuation interest even if the agreement referred to in subsection (1) later ceases to be in force.

FAMILY LAW ACT 1975

- SECT 90XK

Operative time for payment flag

(1) The operative time for a payment flag under a superannuation agreement is:

(a) the service time, if the eligible superannuation plan is a self-managed superannuation fund; or

(b) otherwise, the beginning of the fourth business day after the day on which the service time occurs.

(2) In this section:

"self-managed superannuation fund" has the same meaning as in the SIS Act.

"service time" means the time when a copy of the agreement is served on the trustee, accompanied by:

(a) if the parties are divorced--a copy of the divorce order that has terminated the marriage; and

(aa) if the parties are not divorced--a separation declaration with a declaration time that is not more than 28 days before the service on the trustee; and

(b) if a form of declaration is prescribed for the purposes of this paragraph--a declaration in that form.

FAMILY LAW ACT 1975

- SECT 90XL

Payment flag

(1) This section applies to a superannuation interest if:

(a) the interest is identified in a superannuation agreement; and

(b) the agreement provides that the interest is to be subject to a payment flag under this Part; and

(c) the agreement is in force at the operative time; and

(d) the interest is not an unflaggable interest.

(2) A payment flag starts to operate on the superannuation interest at the operative time and continues to operate until either:

(a) a court terminates the operation of the payment flag by an order mentioned in section 90XM; or

(b) a flag lifting agreement is served on the trustee as mentioned in section 90XI in respect of the superannuation interest.

(3) If a payment flag ceases to operate because of paragraph (2)(b), the cessation is not affected by a later termination of the flag lifting agreement.

(4) While a payment flag is operating on a superannuation interest, the trustee must not make any splittable payment to any person in respect of the interest.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the Crimes Act 1914.

(4A) Subsection (4) does not apply if the splittable payment is made in circumstances in which section 90XLA applies.

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

(5) If a splittable payment becomes payable in respect of a superannuation interest while a payment flag is operating, the trustee must, within 14 days after it became payable, give written notice to the member spouse and the non-member spouse.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the Crimes Act 1914.

(6) Subsection (5) does not apply if the trustee has previously given a notice under that subsection, for an earlier splittable payment, in respect of the payment flag.

(7) If either spouse dies while a payment flag is operating:

(a) the payment flag nevertheless continues to operate; and

(b) the legal personal representative of the deceased spouse has all the rights the deceased spouse would have had in respect of the payment flag.

Note: The rights of the legal personal representative under paragraph (b) include the right to enter into a flag lifting agreement under section 90XN.

FAMILY LAW ACT 1975

- SECT 90XLA

Some splittable payments payable if payment flag operating

(1) This section applies if:

- (a) a superannuation interest (original interest) a person has in an eligible superannuation plan (old ESP) is identified in a superannuation agreement; and
- (b) a payment flag under section 90XL is operating on the original interest; and
- (c) a splittable payment is made by the trustee of the old ESP to the trustee of another eligible superannuation plan (new ESP) in respect of the original interest as part of a successor fund transfer.

(2) If this section applies, then:

- (a) the new interest in the new ESP is taken to be the original interest identified in the superannuation agreement; and
- (b) the payment flag operates on the new interest; and
- (c) despite section 90XK, the operative time for the payment flag in respect of the new interest is the time that the payment to the trustee of the new ESP is made.

(3) In this section:

"successor fund transfer" means the transfer of a person's superannuation interest in the old ESP in circumstances where:

- (a) the new ESP confers on the person, in relation to the new interest, equivalent rights to the rights the person had in relation to the original interest; and
- (b) before the transfer, the trustee of the new ESP had agreed with the trustee of the old ESP to the conferral of such rights.

FAMILY LAW ACT 1975

- SECT 90XM

Payment flag may be terminated by court

(1) If a court makes an order under section 90K setting aside a financial agreement in respect of which a payment flag is operating, the court may also make an order terminating the operation of the flag.

Note: Under section 90XH, a superannuation agreement must be part of a financial agreement. Therefore, setting aside the financial agreement also has the effect of setting aside the superannuation agreement.

(2) If a court makes an order under section 90UM setting aside a Part VIIIAB financial agreement in respect of which a payment flag is operating, the court may also make an order terminating the operation of the flag.

Note: Under section 90XHA, a superannuation agreement relating to a de facto relationship must be part of a Part VIIIAB financial agreement. Therefore, setting aside the financial agreement also has the effect of setting aside the superannuation agreement.

FAMILY LAW ACT 1975

- SECT 90XN

Flag lifting agreement etc.

(1) At any time when a payment flag is operating on a superannuation interest, the spouses may make an agreement (a flag lifting agreement) that either:

- (a) provides that the flag is to cease operating without any payment split; or
- (b) specifies an amount, method or percentage in accordance with subsection 90XJ(1).

(2) If the flag lifting agreement provides for a payment split, the spouses may at any time make an agreement (a termination agreement) that terminates the flag lifting agreement.

(3) A flag lifting agreement or termination agreement has no effect unless it complies with the following requirements:

- (a) the agreement must be signed by both spouses;
- (b) for each spouse, the agreement must contain a statement that the spouse has been provided with independent legal advice from a legal practitioner as to the legal effect of the agreement;
- (c) a certificate must be attached to the agreement, signed by the person who provided the legal advice and stating that the advice was provided;
- (d) after the agreement is signed by the spouses, each spouse must be provided with a copy of the agreement.

(4) A court may make an order setting aside a flag lifting agreement or termination agreement if, and only if, the court is satisfied as to:

- (a) if the spouses are parties to a marriage--any of the grounds set out in subsection 90K(1) (other than paragraph 90K(1)(f)); or
- (b) if the spouses are parties to a de facto relationship--any of the grounds set out in subsection 90UM(1) (other than paragraph 90UM(1)(i)).

(5) An order setting aside a flag lifting agreement also operates to set aside the related financial

agreement or Part VIIIAB financial agreement.

(6) An order under section 90K setting aside a financial agreement also operates to set aside the related flag lifting agreement.

(7) An order under section 90UM setting aside a Part VIIIAB financial agreement also operates to set aside the related flag lifting agreement.

FAMILY LAW ACT 1975

- SECT 90X0

Limitation on section 79 or 90SM order

(1) A court cannot make an order under section 79 or 90SM with respect to a superannuation interest if:

(a) the superannuation interest is covered by a superannuation agreement that is in force; or

(b) the non-member spouse has served a waiver notice on the trustee under section 90XZA in respect of the interest; or

(c) a payment flag is operating on the superannuation interest.

Note: Under section 90XM, the court can terminate the operation of a payment flag in certain circumstances.

(2) Subsection (1) does not prevent the court taking superannuation interests into account when making an order with respect to other property of the spouses.

FAMILY LAW ACT 1975

- SECT 90XP

Separation declaration

(1) A separation declaration is a written declaration that complies with this section, and may be included in the superannuation agreement to which it relates.

(2) The declaration must be signed by at least one of the spouses. For this purpose, if a spouse has died the spouse's legal personal representative may sign the declaration.

Spouses who are parties to a marriage

(3) If the spouses are parties to a marriage, the declaration must state:

(a) that the spouses are married, but are separated at the declaration time; or

(b) if either or both of the spouses have died--that the spouses were married, but separated at the most recent time when both spouses were alive.

(4) In subsection (3), separated has the same meaning as in section 48 (as affected by sections 49 and 50).

Spouses who are parties to a de facto relationship

(5) If the spouses are parties to a de facto relationship, the declaration must state:

(a) that the spouses lived in a de facto relationship, but are separated at the declaration time; or

(b) if either or both of the spouses have died--that the spouses lived in a de facto relationship, but were separated at the most recent time when both spouses were alive.

FAMILY LAW ACT 1975

- SECT 90XR

Enforcement by court order

(1) A court may make such orders as it thinks necessary for the enforcement of a payment split or payment flag under this Division.

(2) The question whether a superannuation agreement or flag lifting agreement is valid, enforceable or effective is to be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts.

(3) Without limiting subsection (2), in proceedings relating to a superannuation agreement or flag lifting agreement, the court has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction.

FAMILY LAW ACT 1975

- SECT 90XS

Order under section 79 or 90SM may include orders in relation to superannuation interests

(1) In proceedings under section 79 or 90SM with respect to the property of spouses, the court may, in accordance with this Division, also make orders in relation to superannuation interests of the spouses.

Note 1: Although the orders are made in accordance with this Division, they will be made under either

section 79 or 90SM. Therefore they will be generally subject to all the same provisions as other orders made under that section.

Note 2: Sections 71A and 90X0 limit the scope of section 79.

Note 3: Subsections 44(5) and (6) and sections 90SB, 90SK and 90X0 limit the scope of section 90SM.

(2) A court cannot make an order under section 79 or 90SM in relation to a superannuation interest except in accordance with this Part.

FAMILY LAW ACT 1975

- SECT 90XT

Splitting order

(1) A court, in accordance with section 90XS, may make the following orders in relation to a superannuation interest (other than an unsplittable interest):

(a) if the interest is not a percentage -only interest--an order to the effect that, whenever a splittable payment becomes payable in respect of the interest:

(i) the non-member spouse is entitled to be paid the amount (if any) calculated in accordance with the regulations; and

(ii) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order;

(b) an order to the effect that, whenever a splittable payment becomes payable in respect of the interest:

(i) the non-member spouse is entitled to be paid a specified percentage of the splittable payment; and

(ii) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order;

(c) if the interest is a percentage -only interest--an order to the effect that, whenever a splittable payment becomes payable in respect of the interest:

(i) the non-member spouse is entitled to be paid the amount (if any) calculated in accordance with the regulations by reference to the percentage specified in the order;

(ii) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order;

(d) such other orders as the court thinks necessary for the enforcement of an order under paragraph (a), (b) or (c).

(2) Before making an order referred to in subsection (1), the court must make a determination under paragraph (a) or (b) as follows:

(a) if the regulations provide for the determination of an amount in relation to the interest, the court must determine the amount in accordance with the regulations;

(b) otherwise, the court must determine the value of the interest by such method as the court considers appropriate.

(2A) The amount determined under paragraph (2)(a) is taken to be the value of the interest.

(3) Regulations for the purposes of subparagraph (1)(a)(i) or paragraph (2)(a) may provide for the amount concerned to be determined wholly or partly by reference to methods or factors that are approved in writing by the Minister for the purposes of the regulations (each of these is an approved method or factor).

(3A) If there is an approved method or factor for a superannuation interest in an eligible superannuation plan, the Minister may, in circumstances prescribed by the regulations, give a written direction to the trustee of that plan requiring the trustee, within the period specified in the direction, to do a thing prescribed by the regulations in relation to the approved method or factor.

(3B) The regulations may prescribe matters in relation to the content of a direction.

(3C) A direction made under subsection (3A) is not a legislative instrument.

(3D) A person commits an offence if:

(a) the person receives a direction from the Minister under subsection (3A); and

(b) the person does not comply with the direction.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the Crimes Act 1914.

(4) Before making an order referred to in paragraph (1)(a), the court must allocate a base amount to the non-member spouse, not exceeding the value determined under subsection (2).

Note: The base amount is used to calculate the entitlement of the non-member spouse under the regulations.

FAMILY LAW ACT 1975

- SECT 90XU

Flagging order

(1) A court, in accordance with section 90XS, may make an order in relation to a superannuation

interest (other than an unflaggable interest):

(a) directing the trustee not to make any splittable payment in respect of the interest without the leave of the court; and

(b) requiring the trustee to notify the member spouse and the non-member spouse, within a period specified in the order, of the next occasion when a splittable payment becomes payable in respect of the interest.

(2) In deciding whether to make an order in accordance with this section, the court may take into account such matters as it considers relevant and, in particular, may take into account the likelihood that a splittable payment will soon become payable in respect of the superannuation interest.

FAMILY LAW ACT 1975

- SECT 90XUA

Some splittable payments may be made without leave of court

(1) A flagging order made under subsection 90XU(1) in relation to a superannuation interest (original interest) a person has in an eligible superannuation plan (old ESP) does not apply to a splittable payment if the splittable payment is made by the trustee of the old ESP to the trustee of another eligible superannuation plan (new ESP) in respect of the original interest as part of a successor fund transfer.

(2) If the splittable payment is made, then the flagging order is taken to be made in relation to the new interest from the time that the payment to the trustee of the new ESP is made.

(3) In this section:

"successor fund transfer" means the transfer of a person's superannuation interest in the old ESP in circumstances where:

(a) the new ESP confers on the person, in relation to the new interest, equivalent rights to the rights the person had in relation to the original interest; and

(b) before the transfer, the trustee of the new ESP had agreed with the trustee of the old ESP to the conferral of such rights.

FAMILY LAW ACT 1975

- SECT 90XV

Court may cancel payment split

(1) A court may, under section 79 or 90SM, make an order terminating the operation of a payment split if:

(a) the superannuation agreement in respect of the payment split has ceased to be in force; and

(b) the non-member spouse has not served a waiver notice on the trustee under section 90XZA in respect of the payment split.

(2) The termination has effect for splittable payments that become payable after the date specified in the order.

FAMILY LAW ACT 1975

- SECT 90XW

Deductions from splittable payment before calculating payment split

Any deduction that the trustee is entitled to make from a splittable payment is to be deducted from the splittable payment before calculating any payment split and before applying section 90XX.

FAMILY LAW ACT 1975

- SECT 90XX

Multiple payment splits applying to the same splittable payment

(1) This section applies if 2 or more payment splits apply to the same splittable payment.

(2) The payments splits are to be calculated in order of their operative times, starting with the earliest time.

(3) For the purpose of calculating each of those payment splits (other than the one with the earliest operative time), the amount of the splittable payment is taken to be reduced by the amount to which a person other than the member spouse is entitled under the payment split with the next earlier operative time.

Example 1: W has a superannuation interest that is subject to 3 payment splits in respect of W's marriages to X, Y and Z (in that order). The operative times of the payment splits are in the same order as the marriages. Assume each payment split provides for a 50% share to the non-member spouse. W becomes entitled to a splittable payment of \$100. The final payment entitlements are as follows: X gets \$50. Y gets \$25. Z gets \$12.50. W gets the remaining \$12.50.

Example 2: W has a superannuation interest that is subject to 3 payment splits in respect of W's

de facto relationship with X, W's marriage to Y and W's de facto relationship with Z (in that order). The operative times of the payment splits are in the same order as the relationships. Assume each payment split provides for a 50% share to the non -member spouse. W becomes entitled to a splittable payment of \$100. The final payment entitlements are as follows: X gets \$50. Y gets \$25. Z gets \$12.50. W gets the remaining \$12.50.

FAMILY LAW ACT 1975

- SECT 90XY

Fees payable to trustee

- (1) The regulations may:
 - (a) allow trustees to charge reasonable fees:
 - (i) in respect of a payment split; or
 - (ii) otherwise in respect of the operation of this Part in relation to a superannuation interest; and
 - (b) prescribe the person or persons liable to pay those fees.
- (2) If any such fee remains unpaid after the time it is due for payment, then the trustee may recover any unpaid amount by deduction from amounts that would otherwise become payable by the trustee, in respect of the superannuation interest, to the person who is liable to pay the fee.

FAMILY LAW ACT 1975

- SECT 90XZ

Superannuation preservation requirements

- (1) If the eligible superannuation plan for a payment split is a regulated superannuation fund or approved deposit fund, then the entitlement of the non -member spouse is subject to any regulations made under the SIS Act that provide for payment of that entitlement to a regulated superannuation fund, approved deposit fund, RSA or exempt public sector superannuation scheme within the meaning of the SIS Act for the benefit of the non -member spouse.
- (2) If the eligible superannuation plan for a payment split is an RSA, then the entitlement of the non -member spouse is subject to any regulations made under the Retirement Savings Accounts Act 1997 that provide for payment of that entitlement to a regulated superannuation fund, approved deposit fund, RSA or exempt public sector superannuation scheme within the meaning of the SIS Act for the benefit of the non -member spouse.
- (3) If the eligible superannuation plan for a payment split is a constitutionally protected fund (within the meaning of the Income Tax Assessment Act 1997) or an exempt public sector superannuation scheme within the meaning of the SIS Act, then the entitlement of the non -member spouse is subject to any law or other instrument that provides for payment of that entitlement to a regulated superannuation fund, approved deposit fund, RSA or exempt public sector superannuation scheme within the meaning of the SIS Act for the benefit of the non -member spouse.

FAMILY LAW ACT 1975

- SECT 90XZA

Waiver of rights under payment split

- (1) If the non-member spouse serves a waiver notice on the trustee in respect of a payment split, then the following provisions apply for each splittable payment that becomes payable after the date specified in the waiver notice:
 - (a) the non-member spouse is not entitled to be paid any amount under the payment split in respect of the splittable payment;
 - (b) the entitlement of the person to whom the splittable payment would have been made but for the payment split continues to be reduced in the same way as it would have been reduced if the entitlement of the non -member spouse had not been terminated.

Example: X has a superannuation interest that is subject to a 50:50 payment split in favour of Y. Y serves a waiver notice on the trustee, in exchange for a lump sum payment made by the trustee to another fund for the benefit of Y. The effect is that X's payments will continue to be reduced by half, but Y will receive no further payments under the payment split.
- (2) To be effective for the purposes of this section, a waiver notice must be in the prescribed form and must be accompanied by:
 - (a) a statement to the effect that the non -member spouse has been provided with independent financial advice from a prescribed financial adviser as to the financial effect of the waiver notice; and
 - (b) a certificate signed by the person who provided the financial advice, stating that the advice was provided.

FAMILY LAW ACT 1975

- SECT 90XZB

Trustee to provide information

(1) An eligible person may make an application to the trustee of an eligible superannuation plan for information about a superannuation interest of a member of the plan.

(2) The application must be accompanied by:

(a) a declaration, in the prescribed form, stating that the applicant requires the information for either or both of the following purposes:

(i) to assist the applicant to properly negotiate a superannuation agreement;

(ii) to assist the applicant in connection with the operation of this Part in relation to the applicant; and

(b) the fee (if any) payable under regulations made for the purposes of section 90XY.

(3) If the trustee receives an application that complies with this section, the trustee must, in accordance with the regulations, provide information about the superannuation interest to the applicant.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the Crimes Act 1914.

(4) Regulations for the purposes of subsection (3) may specify circumstances in which the trustee is not required to provide information.

Example: The regulations might provide that a secondary government trustee is not required to provide information where there is another trustee of the eligible superannuation plan who is better able to provide the information.

(5) The trustee must not, in response to an application under this section by a spouse of the member, provide the spouse with any address of the member. For this purpose, address includes a postal address.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the Crimes Act 1914.

(6) If the trustee receives an application under this section from a person other than the member, the trustee must not inform the member that the application has been received.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the Crimes Act 1914.

(7) The regulations may require the trustee of an eligible superannuation plan, after the operative time for a payment split, to provide information to the non-member spouse about the superannuation interest concerned. Such regulations may prescribe penalties for contravention, not exceeding 10 penalty units.

(8) In this section:

"eligible person", in relation to a superannuation interest of a member of an eligible superannuation plan, means:

(a) the member; or

(aa) if the member has died--the legal personal representative of the member; or

(b) a spouse of the member; or

(ba) if a spouse of the member has died--the legal personal representative of the spouse; or

(c) a person who intends to enter into a superannuation agreement with the member.

FAMILY LAW ACT 1975

- SECT 90XZC

Death of non-member spouse

If the non-member spouse dies after the operative time for a payment split:

(a) the payment split nevertheless continues to operate; and

(b) the payment split then operates in favour of the legal personal representative of the deceased spouse and is binding on that legal personal representative; and

(c) the legal personal representative has all the rights the deceased spouse would have had in respect of the payment split, including the right to serve a waiver notice under section 90XZA.

FAMILY LAW ACT 1975

- SECT 90XZD

Orders binding on trustee

(1) An order under this Part in relation to a superannuation interest may be expressed to bind the person who is the trustee of the eligible superannuation plan at the time when the order takes effect. However:

(a) in the case of a trustee who is not a secondary government trustee--the court cannot make such an order unless the trustee has been accorded procedural fairness in relation to the making of the order;

and

(b) in the case of a secondary government trustee:

(i) the court cannot make such an order unless another trustee of the eligible superannuation plan has been accorded procedural fairness in relation to the making of the order; and

(ii) the court may, if it thinks fit, require that the secondary government trustee also be accorded procedural fairness.

(2) If an order is binding on the person who is the trustee of an eligible superannuation plan at the time when the order takes effect, then the order is also binding (by force of this subsection) on:

(a) any person who subsequently becomes the trustee of that eligible superannuation plan; or

(b) in a case where section 90XUA applies--a person who is the trustee, or any person who subsequently becomes the trustee, of the new ESP.

FAMILY LAW ACT 1975

- SECT 90XZE

Protection for trustee

The trustee of an eligible superannuation plan is not liable for loss or damage suffered by any person because of things done (or not done) by the trustee in good faith in reliance on:

(a) any document served on the trustee for the purposes of this Part; or

(b) an order made by a court in accordance with this Part.

FAMILY LAW ACT 1975

- SECT 90XZF

Service of documents on trustee

(1) If a document is required or permitted to be served for the purposes of this Part on the trustee of an eligible superannuation plan, the document may be served in any of the ways in which a document may be served under the Rules of Court.

(2) Subsection (1) is in addition to any other method of service permitted by law.

FAMILY LAW ACT 1975

- SECT 90XZG

False declarations

(1) A person commits an offence if:

(a) the person makes a statement in a declaration, knowing that the statement is false or misleading; and

(b) the declaration is served on the trustee of an eligible superannuation plan for the purposes of this Part.

(2) An offence against subsection (1) is punishable by imprisonment for a period of up to 12 months.

(3) Subsection (1) does not apply if the statement is not false or misleading in a material particular.

(4) Subsection (1) does not apply in relation to a declaration if a spouse to which the declaration relates died before the declaration was made.

FAMILY LAW ACT 1975

- SECT 90XZH

Terminating employment because of payment flag etc.

A person must not terminate the employment of an employee on either of the following grounds:

(a) a payment flag is operating in respect of a superannuation interest of the employee;

(b) a superannuation agreement or splitting order is in force in respect of a superannuation interest of the employee.

Penalty: 100 penalty units.

Note: The penalty for a body corporate is 500 penalty units. See subsection 4B(3) of the Crimes Act 1914.

FAMILY LAW ACT 1975

- SECT 90XZJ

Requests for Commissioner of Taxation to provide superannuation information

Application for superannuation information

(1) A person who is a party to property settlement proceedings:

(a) in the Federal Circuit and Family Court of Australia in relation to the person's marriage or de facto relationship with another person; or

(b) in the Family Court of Western Australia in relation to the person's marriage with another person;

may apply, in the approved form, to a Senior Registry official of that Court for that official to request the superannuation information of that other person (the other party).

Request for superannuation information

(2) If a Senior Registry official of a Court receives an application from a person under subsection (1) for the superannuation information of the other party, the official may:

(a) request the Commissioner of Taxation to disclose that superannuation information for the purpose of those proceedings; and

(b) if the Commissioner of Taxation discloses that superannuation information to the official for the purpose of those proceedings--disclose the superannuation information to the following:

(i) the person and each lawyer of the person;

(ii) the other party and each lawyer of the other party;

for the person, other party or lawyer to make a record of, or disclose, for the purpose of those proceedings.

Note 1: Making a record of, or on-disclosing, that superannuation information may be an offence unless it is for the purpose of those proceedings, see sections 355-155 and 355-175 in Schedule 1 to the Taxation Administration Act 1953.

Note 2: Disclosing superannuation information for the purpose of those proceedings extends to disclosing the superannuation information to the trustee of an eligible superannuation plan as part of an application under section 90XZB for the purpose of those proceedings.

Approved form

(3) An application made by a person under subsection (1) is in the approved form if and only if:

(a) for an application to a Senior Registry official of the Federal Circuit and Family Court of Australia--it is:

(i) in the form approved in writing by the Chief Executive Officer; and

(ii) given in the manner required by the Chief Executive Officer (which may include electronically); and

(b) for an application to a Senior Registry official of the Family Court of Western Australia--it is:

(i) in the form approved in writing by the official; and

(ii) given in the manner required by the official (which may include electronically); and

(c) it contains the information (including any declaration) that the form requires.

Delegation

(4) The Senior Registry official of the Family Court of Western Australia may, in writing, delegate any of the Senior Registry official's functions or powers under this section to any other appropriate officer or staff member of that Court.

Definitions

(5) In this section:

"Senior Registry official":

(a) of the Federal Circuit and Family Court of Australia--means a Registry Manager of that Court; or

(b) of the Family Court of Western Australia--means the Principal Registrar of that Court.

"superannuation information", of a person, means information about the following:

(a) the identity of each superannuation interest (within the meaning of the Income Tax Assessment Act 1997) held by the person and the value of that interest most recently reported to the Commissioner of Taxation under a taxation law (within the meaning of that Act);

(b) the identity and value of any account (within the meaning of the Small Superannuation Accounts Act 1995) in the person's name;

(c) any amounts payable by the Commissioner of Taxation to the person, or for the benefit of the person, under the Superannuation (Unclaimed Money and Lost Members) Act 1999;

(d) any amounts of a shortfall component (within the meaning of Part 8 of the Superannuation Guarantee (Administration) Act 1992) that is payable to the person, or for the benefit of the person, under that Part;

(e) any amounts payable by the Commissioner of Taxation to the person, or for the benefit of the person, under the Superannuation (Government Co-contribution for Low Income Earners) Act 2003.

Note: Paragraphs (c) to (e) of the definition of superannuation information cover amounts that are payable, but have not been paid, at the time a request for superannuation information is considered by the Commissioner of Taxation.

FAMILY LAW ACT 1975

- SECT 90YA

Object of this Part

The object of this Part is to allow certain payments (splittable payments) in respect of a superannuation interest to be allocated between de facto partners in a de facto relationship in Western Australia, either by agreement or by court order.

FAMILY LAW ACT 1975

- SECT 90YB

Application of this Part

(1) This Part applies if:

(a) the Parliament of Western Australia has referred to the Parliament of the Commonwealth superannuation matters relating to de facto partners arising out of the breakdown of de facto relationships; and

(b) the referral of the superannuation matters is made:

(i) for the purposes of paragraph 51(xxxvii) of the Constitution; and

(ii) to the extent that the superannuation matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution).

This subsection has effect subject to subsection (4).

(2) For the purposes of subsection (1), superannuation matters, in relation to de facto partners, means the distribution of superannuation benefits or prospective superannuation entitlements of or relating to de facto partners.

(3) This Part applies even if a law of Western Australia provides that a reference to the Commonwealth Parliament described in subsection (1) is to terminate in particular circumstances.

(4) This Part ceases to apply if Western Australia's reference to the Commonwealth Parliament described in subsection (1) terminates.

FAMILY LAW ACT 1975

- SECT 90YC

This Part overrides other laws, trust deeds etc.

(1) Subject to subsection (3), this Part has effect despite anything to the contrary in any of the following instruments (whether made before or after the commencement of this Part):

(a) any other law of the Commonwealth;

(b) any law of a State or Territory;

(c) anything in a trust deed or other instrument.

(2) Without limiting subsection (1), nothing done in compliance with this Part by the trustee of an eligible superannuation plan is to be treated as resulting in a contravention of a law or instrument referred to in subsection (1).

(3) This Part has effect subject to the Superannuation (Unclaimed Money and Lost Members) Act 1999.

FAMILY LAW ACT 1975

- SECT 90YD

Definitions

In this Part:

"approved deposit fund" has the same meaning as in the SIS Act.

"declaration time", in relation to a separation declaration, means the time when the declaration was signed by a party to the de facto relationship (or last signed by a party, if both parties have signed).

Note: If a party has died, the party's legal personal representative may sign a declaration (see subsection 90YU(2)).

"eligible superannuation plan" means any of the following:

(a) a superannuation fund within the meaning of the SIS Act;

(b) an approved deposit fund;

(c) an RSA;

(d) an account within the meaning of the Small Superannuation Accounts Act 1995;

(e) a superannuation annuity (within the meaning of the Income Tax Assessment Act 1997).

"flagging order" means an order mentioned in subsection 90YZ(1).

"flag lifting agreement" has the meaning given by section 90YS.

"in force", in relation to a superannuation agreement or flag lifting agreement, has the meaning given by section 90YI.

"interest" includes a prospective or contingent interest, and also includes an expectancy.

"member", in relation to an eligible superannuation plan, includes a beneficiary (including a contingent or prospective beneficiary).

"member spouse", in relation to a superannuation interest, means the party to the de facto relationship who has the superannuation interest.

"non-member spouse", in relation to a superannuation interest, means the party to the de facto relationship who is not the member spouse in relation to that interest.

"operative time":

(a) in relation to a payment split under a superannuation agreement or flag lifting agreement--has the meaning given by section 90YM; or

(b) in relation to a payment flag under a superannuation agreement--has the meaning given by section 90Y0 or paragraph 90YQ(2)(c) as appropriate; or

(c) in relation to a payment split under a court order--means the time specified in the order.

"payment flag" means:

(a) the application of section 90YP in relation to a superannuation interest; or

(b) the application of a flagging order in relation to a superannuation interest.

"payment split" means:

(a) the application of section 90YN in relation to a splittable payment; or

(b) the application of a splitting order in relation to a splittable payment.

"percentage-only interest" means a superannuation interest prescribed by the regulations for the purposes of this definition.

"regulated superannuation fund" has the same meaning as in the SIS Act.

"reversionary beneficiary" means a person who becomes entitled to a benefit in respect of a superannuation interest of a party to a de facto relationship, after the party dies.

"reversionary interest" has the meaning given by section 90YH.

"RSA" means a retirement savings account within the meaning of the Retirement Savings Accounts Act 1997.

"secondary government trustee" means a trustee that:

(a) is the Commonwealth, a State or a Territory; and

(b) is a trustee only because of the operation of section 90YF.

"separation declaration" has the meaning given by section 90YU.

"SIS Act" means the Superannuation Industry (Supervision) Act 1993.

"splittable payment" has the meaning given by section 90YG.

"splitting order" means an order mentioned in subsection 90YY(1).

"superannuation agreement" has the meaning given by section 90YK.

Note: See also subsection 90YL(2).

"superannuation interest" means an interest that a person has as a member of an eligible superannuation plan, but does not include a reversionary interest.

"trustee", in relation to an eligible superannuation plan, means:

(a) if the plan is a fund that has a trustee (within the ordinary meaning of that word)--the trustee of the plan; or

(b) if paragraph (a) does not apply and a person is identified in accordance with the regulations as the trustee of the plan for the purposes of this definition--the person identified in accordance with the regulations; or

(c) in any other case--the person who manages the plan.

"unflaggable interest" means a superannuation interest prescribed by the regulations for the purposes of this definition.

"unsplittable interest" means a superannuation interest prescribed by the regulations for the purposes of this definition.

"Western Australian financial agreement" means an agreement that is a financial agreement within the meaning of Part 5A of the Family Court Act 1997 (WA).

"Western Australian Rules of Court" means rules made under section 244 of the Family Court Act 1997 (WA) as in force from time to time.

FAMILY LAW ACT 1975

- SECT 90YE

Meaning of child of a de facto relationship

For the purposes of this Part, a child is a child of a de facto relationship if the child is the child of both of the parties to the de facto relationship.

Note: To determine who is a child of a person, see Subdivision D of Division 1 of Part VII.

FAMILY LAW ACT 1975

- SECT 90YF

Extended meaning of trustee

If a person who is not the trustee of an eligible superannuation plan nevertheless has the power to make payments to members of the plan, then references in this Part to the trustee of the plan include references to that person.

FAMILY LAW ACT 1975

- SECT 90YG

Splittable payments

(1) Each of the following payments in respect of a superannuation interest of a party to a de facto relationship is a splittable payment:

- (a) a payment to the party;
- (b) a payment to another person for the benefit of the party;
- (c) a payment to the legal personal representative of the party, after the death of the party;
- (d) a payment to a reversionary beneficiary, after the death of the party;
- (e) a payment to the legal personal representative of a reversionary beneficiary covered by paragraph (d), after the death of the reversionary beneficiary.

(2) A payment is not a splittable payment if it is prescribed by the regulations for the purposes of this subsection. The regulations may prescribe a payment either:

(a) generally (that is, for the purposes of all payment splits in respect of a superannuation interest); or

(b) only for the purposes of applying this Part to a particular payment split in respect of a superannuation interest.

(3) If a payment is made to another person for the benefit of 2 or more persons who include the party to the de facto relationship, then the payment is nevertheless a splittable payment, to the extent to which it is paid for the benefit of the party.

FAMILY LAW ACT 1975

- SECT 90YH

Reversionary interest

For the purposes of this Part, a person's interest in an eligible superannuation plan is a reversionary interest at any time while the person's entitlement to benefits in respect of the interest is conditional on the death of another person who is still living.

FAMILY LAW ACT 1975

- SECT 90YI

Meaning of in force

(1) Subject to subsection 90YS(7), a superannuation agreement is in force at any time when the relevant Western Australian financial agreement is binding on the parties to the Western Australian financial agreement in accordance with the Family Court Act 1997 (WA).

(2) A flag lifting agreement is in force if, and only if:

- (a) it meets the requirements set out in subsection 90YS(3); and
- (b) it has not been set aside by a court and has not been terminated.

FAMILY LAW ACT 1975

- SECT 90YJ

Rules of Court

(1) The power of the judges (within the meaning of the Family Court Act 1997 (WA)), or a majority of them, to make rules regulating the practice and procedure of the Family Court of Western Australia or the Magistrates Court of Western Australia extends to making any rules, not inconsistent with this Part or with any regulations made under this Part, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(2) This section does not affect any power to make rules under any other law.

FAMILY LAW ACT 1975

- SECT 90YJA

Duty of disclosure

Duty of disclosure in proceedings

(1) Each party to a proceeding under this Part (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:

(a) for a party to the de facto relationship concerned--the issues under this Part in the proceeding; or

(b) for any other party to the proceeding--so much of the party's financial circumstances as are relevant to the issues under this Part in the proceeding.

(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, including powers under the Family Court Act 1997 (WA) and the Western Australian Rules of Court.

(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 de facto relationship are preparing for a proceeding to be brought under this Part (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 under this Part in the proposed proceeding.

(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).

Relevant information and documents

(7) 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.

(8) The Western Australian Rules of Court may prescribe information or documents as information or documents to which the duty to disclose applies.

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

Practitioners' obligation to provide information etc.

(9) A legal practitioner or family dispute resolution practitioner who engages with a separated party to a de facto relationship 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.

FAMILY LAW ACT 1975

- SECT 90YK

Superannuation agreement to be included in Western Australian financial agreement if about a de facto relationship

(1) This section applies if a Western Australian financial agreement includes an agreement that deals with superannuation interests of either or both of the parties to the Western Australian financial agreement. It does not matter whether or not the superannuation interests are in existence at the time the agreement is made.

(2) The part of the Western Australian financial agreement that deals with superannuation interests is a superannuation agreement for the purposes of this Part.

(3) A superannuation agreement has effect only in accordance with this Part. In particular, it cannot be enforced under the Family Court Act 1997 (WA).

(4) A superannuation agreement that is included in a Western Australian financial agreement made under the Family Court Act 1997 (WA) in contemplation of a de facto relationship has no effect unless and until the parties enter into that de facto relationship.

(5) In applying the provisions of the Family Court Act 1997 (WA) relating to making a Western Australian financial agreement for the purposes of this Division, a superannuation interest of a party to a Western Australian financial agreement is treated as being acquired at the time when that party first becomes a member of the eligible superannuation plan in respect of that interest.

FAMILY LAW ACT 1975

- SECT 90YL

Part VIIIB superannuation agreements that become superannuation agreements for the purposes of this Part

(1) Subsection (2) applies if:

(a) 2 people (the couple) have made a superannuation agreement within the meaning of Part VIIIB (the Part VIIIB superannuation agreement) that is included in a Part VIIIB financial agreement; and

(b) at a later time after the commencement of this section (the transition time), the couple's circumstances change so that:

(i) if the de facto relationship has not broken down--sections 90YZB and 90YZC would not prevent a court from making an order or declaration under this Part in relation to the de facto relationship if the de facto relationship were to break down; or

(ii) if the de facto relationship has broken down--sections 90YZB and 90YZC do not prevent a court from making an order or declaration under this Part in relation to the de facto relationship; and

(c) immediately before the transition time:

(i) the Part VIIIB superannuation agreement was in force; and

(ii) the couple were not married to each other; and

(d) as at the transition time, the Part VIIIB financial agreement is taken, under a law of Western Australia, to be a Western Australian financial agreement.

Paragraph (a) extends to agreements made before the commencement of this section, and to agreements made with one or more other people.

(2) The Part VIIIB superannuation agreement is taken, from the transition time, to be a superannuation agreement within the meaning of this Part.

Note: Subsection (2) means that, from the transition time, the agreement has effect only in accordance with this Part.

(3) This Part applies in relation to a superannuation agreement covered by subsection (2) with such modifications as are necessary.

FAMILY LAW ACT 1975

- SECT 90YM

Operative time for payment split

(1) The operative time for a payment split under a superannuation agreement or flag lifting agreement is the beginning of the fourth business day after the day on which a copy of the agreement is served on the trustee, accompanied by:

(a) for a payment split under a superannuation agreement if a separation declaration is not part of the superannuation agreement--a separation declaration; and

(b) if the agreement specifies a method for calculating a base amount--a document setting out the amount calculated using that method; and

(c) if a form of declaration is prescribed for the purposes of this paragraph--a declaration in that form.

Note: The base amount is used to calculate the entitlement of the non-member spouse under the regulations.

(2) For the purposes of subsection (1), the separation declaration must have a declaration time that is not more than 28 days before the service on the trustee.

FAMILY LAW ACT 1975

- SECT 90YN

Payment split under superannuation agreement or flag lifting agreement

(1) This section applies to a superannuation interest if:

(a) the interest is identified in a superannuation agreement or flag lifting agreement; and

(b) if the interest is a percentage -only interest--the agreement does one of the following:

(i) it specifies a percentage that is to apply for the purposes of this subparagraph;

(ii) it specifies a percentage that is to apply to all splittable payments in respect of the interest; and

(c) if the interest is not a percentage -only interest--the agreement does one of the following:

(i) it specifies an amount as a base amount in relation to the interest for the purposes of this Part;

(ii) it specifies a method by which such a base amount can be calculated at the time when the agreement is served on the trustee under section 90YM;

(iii) it specifies a percentage that is to apply to all splittable payments in respect of the interest; and

(d) the agreement is in force at the operative time; and

(e) the de facto relationship to which the agreement relates is broken down at the operative time; and

(f) the interest is not an unsplittable interest.

Note: The base amount is used to calculate the entitlement of the non-member spouse under the regulations.

(2) The following provisions begin to apply to the interest at the operative time.

(3) Whenever a splittable payment becomes payable in respect of the interest:

(a) the non-member spouse is entitled to be paid the amount (if any) that is calculated under subsection (4); and

(b) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the payment split.

(4) The amount is calculated as follows:

(a) if the agreement specifies a percentage as mentioned in subparagraph (1)(b)(ii) or (c)(iii)--the amount is calculated by applying the specified percentage to the splittable payment;

(b) otherwise--the amount is calculated in accordance with the regulations.

(5) Subject to section 90YZL, this section continues to apply to the superannuation interest even if the agreement referred to in subsection (1) of this section later ceases to be in force.

FAMILY LAW ACT 1975

- SECT 90Y0

Operative time for payment flag

(1) The operative time for a payment flag under a superannuation agreement is:

- (a) the service time, if the eligible superannuation plan is a self-managed superannuation fund; or
- (b) otherwise, the beginning of the fourth business day after the day on which the service time occurs.

(2) In this section:

"self-managed superannuation fund" has the same meaning as in the SIS Act.

"service time" means the time when a copy of the agreement is served on the trustee, accompanied by:

- (a) a separation declaration with a declaration time that is not more than 28 days before the service on the trustee; and
- (b) if a form of declaration is prescribed for the purposes of this paragraph--a declaration in that form.

FAMILY LAW ACT 1975

- SECT 90YP

Payment flag

(1) This section applies to a superannuation interest if:

- (a) the interest is identified in a superannuation agreement; and
- (b) the agreement provides that the interest is to be subject to a payment flag under this Part; and
- (c) the agreement is in force at the operative time; and
- (d) the interest is not an unflaggable interest.

(2) A payment flag starts to operate on the superannuation interest at the operative time and continues to operate until either:

- (a) a court terminates the operation of the payment flag by an order mentioned in section 90YR; or
- (b) a flag lifting agreement is served on the trustee as mentioned in section 90YM in respect of the superannuation interest.

(3) If a payment flag ceases to operate because of paragraph (2)(b), the cessation is not affected by a later termination of the flag lifting agreement.

(4) While a payment flag is operating on a superannuation interest, the trustee must not make any splittable payment to any person in respect of the interest.

Penalty: 50 penalty units.

(5) Subsection (4) does not apply if the splittable payment is made in circumstances in which section 90YQ applies.

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

(6) If a splittable payment becomes payable in respect of a superannuation interest while a payment flag is operating, the trustee must, within 14 days after it became payable, give written notice to the member spouse and the non-member spouse.

Penalty: 50 penalty units.

(7) Subsection (6) does not apply if the trustee has previously given a notice under that subsection, for an earlier splittable payment, in respect of the payment flag.

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

(8) If either party to the de facto relationship dies while a payment flag is operating:

- (a) the payment flag nevertheless continues to operate; and
- (b) the legal personal representative of the deceased party has all the rights the deceased party would have had in respect of the payment flag.

Note: The rights of the legal personal representative under paragraph (b) include the right to enter into a flag lifting agreement under section 90YS.

FAMILY LAW ACT 1975

- SECT 90YQ

Some splittable payments payable if payment flag operating

(1) This section applies if:

- (a) a superannuation interest (original interest) a person has in an eligible superannuation plan (old ESP) is identified in a superannuation agreement; and
- (b) a payment flag under section 90YP is operating on the original interest; and

(c) a splittable payment is made by the trustee of the old ESP to the trustee of another eligible superannuation plan (new ESP) in respect of the original interest as part of a successor fund transfer.

(2) If this section applies, then:

(a) the new interest in the new ESP is taken to be the original interest identified in the superannuation agreement; and

(b) the payment flag operates on the new interest; and

(c) despite section 90Y0, the operative time for the payment flag in respect of the new interest is the time that the payment to the trustee of the new ESP is made.

(3) In this section:

"successor fund transfer" means the transfer of a person's superannuation interest in the old ESP in circumstances where:

(a) the new ESP confers on the person, in relation to the new interest, equivalent rights to the rights the person had in relation to the original interest; and

(b) before the transfer, the trustee of the new ESP had agreed with the trustee of the old ESP to the conferral of such rights.

FAMILY LAW ACT 1975

- SECT 90YR

Payment flag may be terminated by court

If the Family Court of Western Australia, or the Magistrates Court of Western Australia, makes an order under the Family Court Act 1997 (WA) setting aside a Western Australian financial agreement in respect of which a payment flag is operating, the court may also make an order terminating the operation of the flag.

Note: Under section 90YK, a superannuation agreement relating to a de facto relationship must be part of a Western Australian financial agreement. Therefore, setting aside the Western Australian financial agreement also has the effect of setting aside the superannuation agreement.

FAMILY LAW ACT 1975

- SECT 90YS

Flag lifting agreement etc.

(1) At any time when a payment flag is operating on a superannuation interest, the parties to the de facto relationship may make an agreement (a flag lifting agreement) that either:

(a) provides that the flag is to cease operating without any payment split; or

(b) specifies an amount, method or percentage in accordance with subsection 90YN(1).

(2) If the flag lifting agreement provides for a payment split, the parties to the de facto relationship may at any time make an agreement (a termination agreement) that terminates the flag lifting agreement.

(3) A flag lifting agreement or termination agreement has no effect unless it complies with the following requirements:

(a) the agreement must be signed by both parties to the de facto relationship;

(b) for each party, the agreement must contain a statement that the party has been provided with independent legal advice from a legal practitioner as to the legal effect of the agreement;

(c) a certificate must be attached to the agreement, signed by the person who provided the legal advice and stating that the advice was provided;

(d) after the agreement is signed by the parties, each party must be provided with a copy of the agreement.

(4) The Family Court of Western Australia or the Magistrates Court of Western Australia may make an order setting aside a flag lifting agreement or termination agreement if, and only if, the court is satisfied that:

(a) the agreement was obtained by fraud (including non-disclosure of a material matter); or

(b) a party to the agreement entered into the agreement:

(i) for the purpose, or for purposes that included the purpose, of defrauding or defeating a creditor or creditors of the party; or

(ii) with reckless disregard of the interests of a creditor or creditors of the party; or

(c) a party (the agreement party) to the agreement entered into the agreement:

(i) for the purpose, or for purposes that included the purpose, of defrauding another person who is a party to a de facto relationship (the other de facto relationship) with a party to the agreement; or

(ii) for the purpose, or for purposes that included the purpose, of defeating the interests of that other person in relation to any possible or pending application for an order under section 90SM or 90YX of this Act or section 205ZG of the Family Court Act 1997 (WA), or a declaration under section 90SL of this Act or section 205ZA of the Family Court Act 1997 (WA), in relation to the other de facto relationship; or

- (iii) with reckless disregard of those interests of that other person; or
- (d) a party (the agreement party) to the agreement entered into the agreement:
 - (i) for the purpose, or for purposes that included the purpose, of defrauding another person who is a party to a marriage with a party to the agreement; or
 - (ii) for the purpose, or for purposes that included the purpose, of defeating the interests of that other person in relation to any possible or pending application for an order under section 79, or a declaration under section 78, in relation to the marriage (or void marriage); or
 - (iii) with reckless disregard of those interests of that other person; or
- (e) the agreement is void, voidable or unenforceable; or
- (f) in the circumstances that have arisen since the agreement was made it is impracticable for the agreement or a part of the agreement to be carried out; or
- (g) since the making of the agreement, a material change in circumstances has occurred (being circumstances relating to the care, welfare and development of a child of the de facto relationship) and, as a result of the change, the child or, if the applicant has caring responsibility for the child (as defined in subsection (6)), a party to the agreement will suffer hardship if the court does not set the agreement aside; or
- (h) a party to the agreement engaged in conduct that was, in all the circumstances, unconscionable; or
- (i) the agreement covers at least one superannuation interest that is an unsplitable interest for the purposes of this Part.

Note: If a court makes an order setting aside a flag lifting agreement, the court may then make an order under section 90YX in relation to the superannuation interest.

(5) For the purposes of paragraph (4)(b), creditor, in relation to a party to the agreement, includes a person who could reasonably have been foreseen by the party as being reasonably likely to become a creditor of the party.

(6) For the purposes of paragraph (4)(g), a person has caring responsibility for a child if:

- (a) the person is a parent of the child with whom the child lives; or
- (b) a parenting order provides that:
 - (i) the child is to live with the person; or
 - (ii) the person has parental responsibility for the child.

(7) An order setting aside a flag lifting agreement also operates to set aside the related superannuation agreement.

(8) If the Family Court of Western Australia, or the Magistrates Court of Western Australia, makes an order under the Family Court Act 1997 (WA) setting aside a Western Australian financial agreement that has a related flag lifting agreement, the court must also make an order setting aside the flag lifting agreement. Subsection (4) of this section does not apply to the order setting aside the flag lifting agreement.

Note: If a court makes an order setting aside a flag lifting agreement, the court may then make an order under section 90YX in relation to the superannuation interest.

FAMILY LAW ACT 1975

- SECT 90YT

Limitation on section 90YX order

- (1) A court cannot make an order under section 90YX with respect to a superannuation interest if:
 - (a) the superannuation interest is covered by a superannuation agreement that is in force; or
 - (b) the non-member spouse has served a waiver notice on the trustee under section 90YZQ in respect of the interest; or
 - (c) a payment flag is operating on the superannuation interest.

Note: Under section 90YR, the Family Court of Western Australia or the Magistrates Court of Western Australia can terminate the operation of a payment flag in certain circumstances.

(2) Subsection (1) does not prevent the court taking superannuation interests into account when making an order under the Family Court Act 1997 (WA) with respect to other property of the parties to the de facto relationship.

FAMILY LAW ACT 1975

- SECT 90YU

Separation declaration

(1) A separation declaration is a written declaration that complies with this section, and may be included in the superannuation agreement to which it relates.

(2) The declaration must be signed by at least one of the parties to the de facto relationship. For this purpose, if a party has died the party's legal personal representative may sign the declaration.

(3) The declaration must state:

- (a) that the parties lived in a de facto relationship, but are separated, at the declaration time; or

(b) if either or both of the parties to the de facto relationship have died--that the parties lived in a de facto relationship, but were separated at the most recent time when both parties were alive.

FAMILY LAW ACT 1975

- SECT 90YW

Enforcement by court order

(1) The Family Court of Western Australia or the Magistrates Court of Western Australia may make such orders as it thinks necessary for the enforcement of a payment split or payment flag under this Division.

(2) The question whether a superannuation agreement or flag lifting agreement is valid, enforceable or effective is to be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts.

(3) Without limiting subsection (2), in proceedings relating to a superannuation agreement or flag lifting agreement, the Family Court of Western Australia, or the Magistrates Court of Western Australia, has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction.

FAMILY LAW ACT 1975

- SECT 90YX

Orders in relation to superannuation interests

(1) In proceedings between the parties to a de facto relationship with respect to a superannuation interest of either or both of the parties, the Family Court of Western Australia or the Magistrates Court of Western Australia may, in accordance with this Division, make orders in relation to the superannuation interest.

Note 1: The geographical requirement in section 90YZB must be satisfied.

Note 2: The court must be satisfied of at least one of the matters in section 90YZC.

Note 3: Subsections 44(7) and (9) and sections 90YT and 90YZD limit the scope of this section.

(2) A court cannot make an order under this section in relation to a superannuation interest except in accordance with this Part.

FAMILY LAW ACT 1975

- SECT 90YY

Splitting order

(1) The Family Court of Western Australia or the Magistrates Court of Western Australia may, under section 90YX, make the following orders in relation to a superannuation interest (other than an unsplittable interest):

(a) if the interest is not a percentage -only interest--an order to the effect that, whenever a splittable payment becomes payable in respect of the interest:

(i) the non-member spouse is entitled to be paid the amount (if any) calculated in accordance with the regulations; and

(ii) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order;

(b) an order to the effect that, whenever a splittable payment becomes payable in respect of the interest:

(i) the non-member spouse is entitled to be paid a specified percentage of the splittable payment; and

(ii) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order;

(c) if the interest is a percentage -only interest--an order to the effect that, whenever a splittable payment becomes payable in respect of the interest:

(i) the non-member spouse is entitled to be paid the amount (if any) calculated in accordance with the regulations by reference to the percentage specified in the order; and

(ii) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order;

(d) such other orders as the court thinks necessary for the enforcement of an order under paragraph (a), (b) or (c).

(2) Before making an order referred to in subsection (1), the court must make a determination under paragraph (a) or (b) of this subsection as follows:

(a) if the regulations provide for the determination of an amount in relation to the interest, the court must determine the amount in accordance with the regulations;

(b) otherwise, the court must determine the value of the interest by such method as the court

considers appropriate.

(3) The amount determined under paragraph (2)(a) is taken to be the value of the interest.

(4) Regulations for the purposes of subparagraph (1)(a)(i) or paragraph (2)(a) may provide for the amount concerned to be determined wholly or partly by reference to methods or factors that are approved in writing by the Minister for the purposes of the regulations (each of these is an approved method or factor).

(4A) If there is an approved method or factor for a superannuation interest in an eligible superannuation plan, the Minister may, in circumstances prescribed by the regulations, give a written direction to the trustee of that plan requiring the trustee, within the period specified in the direction, to do a thing prescribed by the regulations in relation to the approved method or factor.

(4B) The regulations may prescribe matters in relation to the content of a direction.

(4C) A direction made under subsection (4A) is not a legislative instrument.

(4D) A person commits an offence if:

(a) the person receives a direction from the Minister under subsection (4A); and

(b) the person does not comply with the direction.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the Crimes Act 1914.

Penalty: 50 penalty units.

(5) Before making an order referred to in paragraph (1)(a), the court must allocate a base amount to the non-member spouse, not exceeding the value determined under subsection (2).

Note: The base amount is used to calculate the entitlement of the non-member spouse under the regulations.

FAMILY LAW ACT 1975

- SECT 90YZ

Flagging order

(1) The Family Court of Western Australia or the Magistrates Court of Western Australia may, under section 90YX, make an order in relation to a superannuation interest (other than an unflaggable interest):

(a) directing the trustee not to make any splittable payment in respect of the interest without the leave of the court; and

(b) requiring the trustee to notify the member spouse and the non-member spouse, within a period specified in the order, of the next occasion when a splittable payment becomes payable in respect of the interest.

(2) In deciding whether to make an order in accordance with this section, the court may take into account such matters as it considers relevant and, in particular, may take into account the likelihood that a splittable payment will soon become payable in respect of the superannuation interest.

FAMILY LAW ACT 1975

- SECT 90YZA

Some splittable payments may be made without leave of court

(1) A flagging order made under subsection 90YZ(1) in relation to a superannuation interest (original interest) a person has in an eligible superannuation plan (old ESP) does not apply to a splittable payment if the splittable payment is made by the trustee of the old ESP to the trustee of another eligible superannuation plan (new ESP) in respect of the original interest as part of a successor fund transfer.

(2) If the splittable payment is made, then the flagging order is taken to be made in relation to the new interest from the time that the payment to the trustee of the new ESP is made.

(3) In this section:

"successor fund transfer" means the transfer of a person's superannuation interest in the old ESP in circumstances where:

(a) the new ESP confers on the person, in relation to the new interest, equivalent rights to the rights the person had in relation to the original interest; and

(b) before the transfer, the trustee of the new ESP had agreed with the trustee of the old ESP to the conferral of such rights.

FAMILY LAW ACT 1975

- SECT 90YZB

Geographical requirement

Before making an order under section 90YX, a court must be satisfied:

(a) that one or both of the parties to the application were resident in Western Australia on the day on which the application was made; and

(b) that:

- (i) both parties have resided in Western Australia for at least one third of the duration of their de facto relationship; or
- (ii) substantial contributions of the kind referred to in paragraph 205ZG(4)(a), (b) or (c) of the Family Court Act 1997 (WA) have been made in the State by the applicant.

FAMILY LAW ACT 1975

- SECT 90YZC

Length of relationship etc.

(1) A court may make an order under section 90YX in relation to a de facto relationship only if satisfied:

(a) that there has been a de facto relationship between the parties to the de facto relationship for at least 2 years; or

(b) that there is a child (within the meaning of the Family Court Act 1997 (WA)) of the de facto relationship and failure to make the order would result in serious injustice to the partner caring or responsible for the child; or

(c) that the party to the de facto relationship who applies for the order made substantial contributions of a kind mentioned in paragraph 205ZG(4)(a), (b) or (c) of the Family Court Act 1997 (WA) and failure to make the order would result in serious injustice to that party.

(2) In deciding whether there has been a de facto relationship between the parties to the de facto relationship for at least 2 years, the court must consider whether there was any break in the continuity of the relationship and, if so, the length of the break and the extent of the breakdown in the relationship.

(3) Subsection (2) does not limit the matters the court may consider.

FAMILY LAW ACT 1975

- SECT 90YZD

Other rules relating to proceedings under section 90YX

(1) If a party to a de facto relationship dies after the breakdown of the de facto relationship, an order made under section 90YX in relation to the de facto relationship may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(2) A court must not make an order under section 90YX unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

(3) To avoid doubt, for the purposes of being satisfied under subsection (2) of this section that, in all the circumstances, it is just and equitable to make an order under section 90YX of this Act, the circumstances include any other orders made, or to be made, under section 205ZG of the Family Court Act 1997 (WA) in relation to property of the parties to the de facto relationship.

(4) In considering what order (if any) should be made under section 90YX of this Act, the court must take into account:

(a) the financial contribution made directly or indirectly by or on behalf of a party to the de facto relationship, or a child of the de facto relationship:

(i) to the acquisition, conservation or improvement of any of the property of the parties to the de facto relationship or either of them; or

(ii) otherwise in relation to any of that last -mentioned property;

whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the de facto relationship or either of them; and

(b) the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a party to the de facto relationship, or a child of the de facto relationship:

(i) to the acquisition, conservation or improvement of any of the property of the parties to the de facto relationship or either of them; or

(ii) otherwise in relation to any of that last -mentioned property;

whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the de facto relationship or either of them; and

(c) the contribution made by a party to the de facto relationship to the welfare of the family constituted by the parties to the de facto relationship and any children of the de facto relationship, including any contribution made in the capacity of homemaker or parent; and

(ca) the effect of any family violence, to which one party to the de facto relationship has subjected or exposed the other party, on the ability of a party to the de facto relationship 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 de facto relationship; and

(e) the following matters, so far as they are relevant:

(i) the age and state of health of each of the parties to the de facto relationship (the subject de

facto relationship);

(ii) 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;

(iii) the extent to which either party has the care of a child of the subject de facto relationship who has not attained the age of 18 years, including the need of either party to provide appropriate housing for such a child;

(iv) commitments of each of the parties that are necessary to enable the party to support themselves and a child or another person that the party has a duty to maintain;

(v) the responsibilities of either party to support any other person;

(vi) the eligibility of either party for a pension, allowance or benefit under any law of the Commonwealth, of a State or Territory or of another country or under any superannuation fund or scheme (whether the fund or scheme was established, or operates, within or outside Australia) and the rate of any such pension, allowance or benefit being paid to either party;

(vii) a standard of living that in all the circumstances is reasonable;

(viii) 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;

(ix) the duration of the subject de facto relationship and the extent to which it has affected the earning capacity of the parties to the subject de facto relationship;

(x) the need to protect a party who wishes to continue that party's role as a parent;

(xi) if either party is cohabiting with another person--the financial circumstances relating to the cohabitation;

(xii) the effect of any family violence, to which one party to the subject de facto relationship has subjected or exposed the other party, on the current and future circumstances of the other party, including on any of the matters listed in this paragraph or any of paragraphs (f) to (n);

(xiii) the effect of any material wastage, caused intentionally or recklessly by a party to the subject de facto relationship, of property or financial resources of either of the parties to the subject de facto relationship or both of them;

(xiv) any liabilities incurred by either of the parties to the subject de facto relationship or both of them, including the nature of the liabilities and the circumstances relating to them; and

(f) the terms of any other order made or proposed to be made under section 205ZG of the Family Court Act 1997 (WA) in relation to vested bankruptcy property in relation to a bankrupt de facto party to the subject de facto relationship; and

(g) the terms of any other order or declaration made, or proposed to be made, under Part 5A of the Family Court Act 1997 (WA) in relation to vested bankruptcy property in relation to:

(i) a party to the subject de facto relationship (in relation to another de facto relationship); or

(ii) a person who is a party to another de facto relationship with a party to the subject de facto relationship; and

(h) the terms of any order or declaration made, or proposed to be made, under Part VIII of this Act in relation to vested bankruptcy property in relation to:

(i) a party to the subject de facto relationship; or

(ii) a person who is a party to a marriage with a party to the subject de facto relationship; and

(i) any other order made under Part 5A of the Family Court Act 1997 (WA) affecting a party to the subject de facto relationship or a child of the subject de facto relationship; and

(j) any child support under the Child Support (Assessment) Act 1989 that a party to the subject de facto relationship has provided, is to provide, or might be liable to provide in the future, for a child of the subject de facto relationship; and

(k) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; and

(l) the terms of any Part VIIIAB financial agreement that is binding on either or both of the parties to the subject de facto relationship; and

(m) the terms of any financial agreement that is binding on a party to the subject de facto relationship; and

(n) the terms of any Western Australian financial agreement that is binding on a party to the subject de facto relationship.

Note: For child of a de facto relationship, see section 90YE.

(5) Without limiting the power of any court to grant an adjournment in proceedings under this Act, if, in proceedings under section 90YX, a court is of the opinion:

(a) that there is likely to be a significant change in the financial circumstances of the parties to the de facto relationship or either of them and that, having regard to the time when that change is likely to take place, it is reasonable to adjourn the proceedings; and

(b) that an order that the court could make with respect to:

(i) the superannuation interests of the parties to the de facto relationship or either of them; or

(ii) any vested bankruptcy property in relation to a bankrupt de facto party to the de facto relationship;

if that significant change in financial circumstances occurs is more likely to do justice as between

the parties to the de facto relationship than an order that the court could make immediately with respect to:

(iii) the superannuation interests of the parties to the de facto relationship or either of them; or
 (iv) any vested bankruptcy property in relation to a bankrupt party to the de facto relationship;
 the court may, if so requested by either party to the de facto relationship or the relevant bankruptcy trustee (if any), adjourn the proceedings until such time, before the expiration of a period specified by the court, as that party to the de facto relationship or the relevant bankruptcy trustee, as the case may be, applies for the proceedings to be determined, but nothing in this subsection requires the court to adjourn any proceedings in any particular circumstances.

(6) If a court proposes to adjourn proceedings as provided by subsection (5), the court may, before so adjourning the proceedings, make such interim order or orders or such other order or orders (if any) as it considers appropriate with respect to:

(a) a superannuation interest of the parties to the de facto relationship or of either of them; or
 (b) any vested bankruptcy property in relation to a bankrupt party to the de facto relationship.

(7) The court may, in forming an opinion for the purposes of subsection (5) as to whether there is likely to be a significant change in the financial circumstances of either or both of the parties to the de facto relationship, have regard to any change in the financial circumstances of a party to the de facto relationship that may occur by reason that the party to the de facto relationship:

(a) is a contributor to a superannuation fund or scheme, or participates in any scheme or arrangement that is in the nature of a superannuation scheme; or

(b) may become entitled to property as the result of the exercise in the party's favour, by the trustee of a discretionary trust, of a power to distribute trust property;
 but nothing in this subsection limits the circumstances in which the court may form the opinion that there is likely to be a significant change in the financial circumstances of a party to the de facto relationship.

(8) If a party to the de facto relationship dies after the breakdown of the de facto relationship, but before proceedings under section 90YX are completed:

(a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the Western Australian Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and

(b) if the court is of the opinion:

(i) that it would have made an order with respect to a superannuation interest if the deceased party had not died; and

(ii) that it is still appropriate to make an order with respect to a superannuation interest;
 the court may make such order as it considers appropriate with respect to:

(iii) a superannuation interest of the parties to the de facto relationship or either of them; or

(iv) any vested bankruptcy property in relation to a bankrupt de facto party to the de facto relationship; and

(c) an order made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(9) A court must not make an order under section 90YX (other than an order until further order or an order made with the consent of all the parties to the proceedings) unless:

(a) the parties to the proceedings have attended a conference in relation to the matter to which the proceedings relate with a person referred to in paragraph 205ZG(9)(a) of the Family Court Act 1997 (WA); 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) of this subsection; 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) of this subsection.

(10) The following are entitled to become a party to proceedings in which an application is made for an order under section 90YX by a party to a de facto relationship (the subject de facto relationship):

(a) a creditor of a party to the proceedings if the creditor may not be able to recover the creditor's debt if the order were made;

(b) a person:

(i) who is a party to a de facto relationship (the other de facto relationship) with a party to the subject de facto relationship; and

(ii) who could apply, or has an application pending, for an order under section 90YX in relation to the other de facto relationship;

(c) a person who is a party to a Part VIIIAB financial agreement (that is binding on the person) or a Western Australian financial agreement with a party to the subject de facto relationship;

(d) a person:

(i) who is a party to a marriage with a party to the subject de facto relationship; and

(ii) who could apply, or has an application pending, for an order under section 79, or a declaration

under section 78, in relation to the marriage (or void marriage);

(e) a person who is a party to a financial agreement (that is binding on the person) with a party to the subject de facto relationship;

(f) any other person whose interests would be affected by the making of the order.

(11) Subsection (10) does not apply to a creditor of a party to the proceedings:

(a) if the party is a bankrupt--to the extent to which the debt is a provable debt (within the meaning of the Bankruptcy Act 1966); or

(b) if the party is a debtor subject to a personal insolvency agreement--to the extent to which the debt is covered by the personal insolvency agreement.

(12) If a person becomes a party to proceedings under section 90YX because of paragraph (10)(b) of this section, the person may, in the proceedings, apply for an order under that section in relation to the other de facto relationship described in that paragraph.

(13) If a person becomes a party to proceedings under section 90YX because of paragraph (10)(d) of this section, the person may, in the proceedings, apply for:

(a) an order under section 79; or

(b) a declaration under section 78;

in relation to the marriage (or void marriage) described in that paragraph.

(14) If:

(a) an application is made for an order under section 90YX in proceedings between the parties to a de facto relationship with respect to a superannuation interest of either or both of the parties; and

(b) either of the following subparagraphs apply to a party to the de facto relationship:

(i) when the application was made, the party was a bankrupt;

(ii) after the application was made but before it is finally determined, the party became a bankrupt; and

(c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and

(d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under section 90YX in the proceedings;

the court must join the bankruptcy trustee as a party to the proceedings.

(15) If a bankruptcy trustee is a party to proceedings under this Part in relation to a superannuation interest of either or both of the parties to a de facto relationship, then, except with the leave of the court, the bankrupt party to the de facto relationship is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.

(16) The court must not grant leave under subsection (15) unless the court is satisfied that there are exceptional circumstances.

(17) If:

(a) an application is made for an order under section 90YX in proceedings between the parties to a de facto relationship with respect to a superannuation interest of either or both of the parties; and

(b) either of the following subparagraphs apply to a party to the de facto relationship (the debtor party):

(i) when the application was made, the party was a debtor subject to a personal insolvency agreement;

(ii) after the application was made but before it is finally determined, the party becomes a debtor subject to a personal insolvency agreement; and

(c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and

(d) the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings;

the court must join the trustee of the agreement as a party to the proceedings.

(18) If the trustee of a personal insolvency agreement is a party to proceedings under this Part in relation to a superannuation interest of either or both of the parties to a de facto relationship, then, except with the leave of the court, the party to the de facto relationship who is the debtor subject to the agreement is not entitled to make a submission to the court in connection with any superannuation interest subject to the agreement.

(19) The court must not grant leave under subsection (18) unless the court is satisfied that there are exceptional circumstances.

(20) For the purposes of subsections (14) and (17), an application for an order under section 90YX 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.

FAMILY LAW ACT 1975

- SECT 90YZE

Varying and setting aside orders under section 90YX

(1) If, on application by a person affected by an order made by the Family Court of Western Australia or the Magistrates Court of Western Australia under section 90YX, 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 de facto relationship, the child or, where the applicant has caring responsibility for the child (as defined in subsection (3)), the applicant, will suffer hardship if the court does not vary the order or set the order aside and make another order in substitution for the order; or

(e) a proceeds of crime order has been made covering property of the parties to the de facto relationship or either of them, or a proceeds of crime order has been made against a party to the de facto relationship;

the court may, in its discretion, vary the order or set the order aside and, if it considers appropriate, make another order under section 90YX in substitution for the order so set aside.

Note: For child of a de facto relationship, see section 90YE.

(2) A court may, on application by a person affected by an order under section 90YX, 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 90YX in substitution for the order so set aside.

(3) For the purposes of paragraph (1)(d), a person has caring responsibility for a child if:

(a) the person is a parent of the child with whom the child lives; or

(b) a parenting order provides that:

(i) the child is to live with the person; or

(ii) the person has parental responsibility for the child.

(4) An order varied or made under subsection (1) or (2) may, after the death of a party to the de facto relationship in relation to which the order was so varied or made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(5) If, before proceedings under this section in relation to an order made under section 90YX are completed, a party to the de facto relationship dies:

(a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the Western Australian Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and

(b) if the court is of the opinion:

(i) that it would have exercised its powers under subsection (1) or (2) of this section in relation to the order if the deceased party had not died; and

(ii) that it is still appropriate to exercise its powers under subsection (1) or (2) of this section 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 90YX in substitution for the order so set aside; and

(c) an order varied or made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(6) In the exercise of its powers under subsection (1), (2) or (5), a court must have regard to the interests of, and must make any order proper for the protection of, a bona fide purchaser or other person interested.

(7) For the purposes of this section, a creditor of a party to the proceedings in which the order under section 90YX was made is taken to be a person whose interests are affected by the order if the creditor may not be able to recover the creditor's debt because the order has been made.

(8) For the purposes of this section, if:

(a) an order is made by a court under section 90YX in proceedings with respect to a superannuation interest of the parties to a de facto relationship or either of them; and

(b) either of the following subparagraphs apply to a party to the de facto relationship:

(i) when the order was made, the party was a bankrupt;

(ii) after the order was made, the party became a bankrupt;

the bankruptcy trustee is taken to be a person whose interests are affected by the order.

(9) For the purposes of this section, if:

(a) a party to a de facto relationship is a bankrupt; and

(b) an order is made by a court under section 90YX in proceedings with respect to any vested bankruptcy property in relation to the bankrupt party;

the bankruptcy trustee is taken to be a person whose interests are affected by the order.

(10) For the purposes of this section, if:

(a) an order is made by a court under section 90YX in proceedings with respect to a superannuation

interest of the parties to a de facto relationship or either of them; and

(b) either of the following subparagraphs apply to a party to the de facto relationship:

(i) when the order was made, the party was a debtor subject to a personal insolvency agreement;

(ii) after the order was made, the party became a debtor subject to a personal insolvency agreement;

the trustee of the agreement is taken to be a person whose interests are affected by the order.

FAMILY LAW ACT 1975

- SECT 90YZF

Notifying third parties about application

The Western Australian Rules of Court may specify the circumstances in which a person who:

(a) applies for an order under this Division; or

(b) is a party to a proceeding for an order under this Division;

is to give notice of the application to a person who is not a party to the proceedings.

Note: The Western Australian Rules of Court may, for example, make provision for the notification of a person married to, or in a de facto relationship with, the applicant or respondent to the proceedings.

FAMILY LAW ACT 1975

- SECT 90YZG

Notifying bankruptcy trustee etc. about application under section 90YX or 90YZE

(1) The Western Australian Rules of Court may make provision for a bankrupt who becomes a party to a proceeding for an application under section 90YX or 90YZE to give notice of the application to the bankruptcy trustee.

(2) The Western Australian 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 90YX or 90YZE to give notice of the application to the trustee of the agreement.

FAMILY LAW ACT 1975

- SECT 90YZH

Notifying court about bankruptcy etc.

Bankruptcy

(1) The Western Australian Rules of Court may make provision for a person who:

(a) is a party to a de facto relationship that has broken down; and

(b) is a party to a proceeding for an application under section 90YX or 90YZE; and

(c) before that application is finally determined, becomes a bankrupt;

to notify a court exercising jurisdiction under this Part that the person has become a bankrupt.

Debtor subject to a personal insolvency agreement

(2) The Western Australian Rules of Court may make provision for a person who:

(a) is a party to a de facto relationship that has broken down; and

(b) is a party to a proceeding for an application under section 90YX or 90YZE; 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 Part that the person has become a debtor subject to a personal insolvency agreement.

Institution of proceeding under the Bankruptcy Act 1966

(3) The Western Australian Rules of Court may make provision for a person who:

(a) is a party to a de facto relationship that has broken down; and

(b) is a party to a proceeding for an application under section 90YX or 90YZE; 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 Part of the institution of the proceeding under the Bankruptcy Act 1966.

(4) The Western Australian Rules of Court may make provision for a person who:

(a) is the bankruptcy trustee of a bankrupt party to a de facto relationship that has broken down; 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 Part of the making of the application.

When application finally determined

(5) For the purposes of this section, an application for an order under section 90YX or 90YZE 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.

FAMILY LAW ACT 1975

- SECT 90YZI

Notifying non - bankrupt de facto party about application under section 139A of the Bankruptcy Act 1966

The Western Australian Rules of Court may make provision for a person who:

- (a) is the bankruptcy trustee of a bankrupt party to a de facto relationship; and
- (b) applies under section 139A of the Bankruptcy Act 1966 for an order under Division 4A of Part VI of that Act in relation to an entity (other than the other party to the de facto relationship); to notify the other party to the de facto relationship of the making of the application if that bankruptcy trustee is aware;
- (c) that the de facto relationship has broken down; and
- (d) that either party to the de facto relationship is a party to proceedings under this Part.

FAMILY LAW ACT 1975

- SECT 90YZJ

Duty of court to end financial relations

In proceedings under this Division, the court must, as far as practicable, make such orders as will finally determine the distribution of superannuation benefits or prospective superannuation entitlements of the parties to the de facto relationship or either of them.

FAMILY LAW ACT 1975

- SECT 90YZK

Orders and injunctions binding third parties

(1) In addition to the effect Part VIIIAA has apart from this section, that Part also has effect in relation to:

- (a) orders under this Division; and
 - (b) proceedings for orders under this Division;
- with the modifications provided for in subsections (2) and (3).

(2) Part VIIIAA has effect in accordance with subsection (1) as if the following substitutions were made:

Substitutions to be madeItemFor a reference in Part VIIIAA to ...substitute a reference to ...1marriage2de facto relationship2section 79section 90YX3property (other than a reference in section 90AK)superannuation

- (3) Part VIIIAA has effect in accordance with subsection (1) as if:
 - (a) section 90AD were omitted; and
 - (b) paragraph 90AF(3)(d) were omitted.

FAMILY LAW ACT 1975

- SECT 90YZL

Court may cancel payment split

(1) The Family Court of Western Australia or the Magistrates Court of Western Australia may, under section 90YX, make an order terminating the operation of a payment split if:

- (a) the superannuation agreement in respect of the payment split has ceased to be in force; and
- (b) the non-member spouse has not served a waiver notice on the trustee under section 90YZQ in respect of the payment split.

(2) The termination has effect for splittable payments that become payable after the date specified in the order.

FAMILY LAW ACT 1975

- SECT 90YZM

Deductions from splittable payment before calculating payment split

Any deduction that the trustee is entitled to make from a splittable payment is to be deducted from the splittable payment before calculating any payment split and before applying section 90YZN.

FAMILY LAW ACT 1975

- SECT 90YZN

Multiple payment splits applying to the same splittable payment

(1) This section applies if 2 or more payment splits apply to the same splittable payment.

(2) The payments splits are to be calculated in order of their operative times, starting with the earliest time.

(3) For the purpose of calculating each of those payment splits (other than the one with the earliest operative time), the amount of the splittable payment is taken to be reduced by the amount to which a person other than the member spouse is entitled under the payment split with the next earlier operative time.

Example: W has a superannuation interest that is subject to 3 payment splits in respect of W's de facto relationship with X, W's de facto relationship with Y and W's de facto relationship with Z (in that order). The operative times of the payment splits are in the same order as the relationships. Assume each payment split provides for a 50% share to the non-member spouse. W becomes entitled to a splittable payment of \$100. The final payment entitlements are as follows: X gets \$50. Y gets \$25. Z gets \$12.50. W gets the remaining \$12.50.

FAMILY LAW ACT 1975

- SECT 90YZO

Fees payable to trustee

(1) The regulations may:

(a) allow trustees to charge reasonable fees:

(i) in respect of a payment split; or

(ii) otherwise in respect of the operation of this Part in relation to a superannuation interest; and

(b) prescribe the person or persons liable to pay those fees.

(2) If any such fee remains unpaid after the time it is due for payment, then the trustee may recover any unpaid amount by deduction from amounts that would otherwise become payable by the trustee, in respect of the superannuation interest, to the person who is liable to pay the fee.

FAMILY LAW ACT 1975

- SECT 90YZP

Superannuation preservation requirements

(1) If the eligible superannuation plan for a payment split is a regulated superannuation fund or approved deposit fund, then the entitlement of the non-member spouse is subject to any regulations made under the SIS Act that provide for payment of that entitlement to a regulated superannuation fund, approved deposit fund, RSA or exempt public sector superannuation scheme within the meaning of the SIS Act for the benefit of the non-member spouse.

(2) If the eligible superannuation plan for a payment split is an RSA, then the entitlement of the non-member spouse is subject to any regulations made under the Retirement Savings Accounts Act 1997 that provide for payment of that entitlement to a regulated superannuation fund, approved deposit fund, RSA or exempt public sector superannuation scheme within the meaning of the SIS Act for the benefit of the non-member spouse.

(3) If the eligible superannuation plan for a payment split is a constitutionally protected fund (within the meaning of the Income Tax Assessment Act 1997) or an exempt public sector superannuation scheme within the meaning of the SIS Act, then the entitlement of the non-member spouse is subject to any law or other instrument that provides for payment of that entitlement to a regulated superannuation fund, approved deposit fund, RSA or exempt public sector superannuation scheme within the meaning of the SIS Act for the benefit of the non-member spouse.

FAMILY LAW ACT 1975

- SECT 90YZQ

Waiver of rights under payment split

(1) If the non-member spouse serves a waiver notice on the trustee in respect of a payment split, then the following provisions apply for each splittable payment that becomes payable after the date specified in the waiver notice:

(a) the non-member spouse is not entitled to be paid any amount under the payment split in respect of the splittable payment;

(b) the entitlement of the person to whom the splittable payment would have been made but for the payment split continues to be reduced in the same way as it would have been reduced if the entitlement of the non-member spouse had not been terminated.

Example: X has a superannuation interest that is subject to a 50:50 payment split in favour of Y. Y serves a waiver notice on the trustee, in exchange for a lump sum payment made by the trustee to another fund for the benefit of Y. The effect is that X's payments will continue to be reduced by half, but Y will receive no further payments under the payment split.

(2) To be effective for the purposes of this section, a waiver notice must be in the prescribed form and must be accompanied by:

- (a) a statement to the effect that the non -member spouse has been provided with independent financial advice from a prescribed financial adviser as to the financial effect of the waiver notice; and
- (b) a certificate signed by the person who provided the financial advice, stating that the advice was provided.

FAMILY LAW ACT 1975

- SECT 90YZR

Trustee to provide information

(1) An eligible person may make an application to the trustee of an eligible superannuation plan for information about a superannuation interest of a member of the plan.

(2) The application must be accompanied by:

(a) a declaration, in the prescribed form, stating that the applicant requires the information for either or both of the following purposes:

- (i) to assist the applicant to properly negotiate a superannuation agreement;
- (ii) to assist the applicant in connection with the operation of this Part in relation to the applicant; and

(b) the fee (if any) payable under regulations made for the purposes of section 90YZO.

(3) If the trustee receives an application that complies with this section, the trustee must, in accordance with the regulations, provide information about the superannuation interest to the applicant.

Penalty: 50 penalty units.

(4) Regulations for the purposes of subsection (3) may specify circumstances in which the trustee is not required to provide information.

Example: The regulations might provide that a secondary government trustee is not required to provide information where there is another trustee of the eligible superannuation plan who is better able to provide the information.

(5) The trustee must not, in response to an application under this section by a party to a de facto relationship with the member, provide the party with any address of the member. For this purpose, address includes a postal address.

Penalty: 50 penalty units.

(6) If the trustee receives an application under this section from a person other than the member, the trustee must not inform the member that the application has been received.

Penalty: 50 penalty units.

(7) The regulations may require the trustee of an eligible superannuation plan, after the operative time for a payment split, to provide information to the non -member spouse about the superannuation interest concerned. Such regulations may prescribe penalties for contravention, not exceeding 10 penalty units.

(8) In this section:

"eligible person", in relation to a superannuation interest of a member of an eligible superannuation plan, means:

- (a) the member; or
- (b) if the member has died--the legal personal representative of the member; or
- (c) a party to a de facto relationship with the member; or
- (d) if a party to a de facto relationship with the member has died--the legal personal representative of the party; or
- (e) a person who intends to enter into a superannuation agreement with the member.

FAMILY LAW ACT 1975

- SECT 90YZS

Death of non - member spouse

If the non-member spouse dies after the operative time for a payment split:

- (a) the payment split nevertheless continues to operate; and
- (b) the payment split then operates in favour of the legal personal representative of the deceased non -member spouse and is binding on that legal personal representative; and
- (c) the legal personal representative has all the rights the deceased non -member spouse would have had in respect of the payment split, including the right to serve a waiver notice under section 90YZQ.

FAMILY LAW ACT 1975

- SECT 90YZT

Orders binding on trustee

(1) An order under this Part in relation to a superannuation interest may be expressed to bind the person who is the trustee of the eligible superannuation plan at the time when the order takes effect. However:

(a) in the case of a trustee who is not a secondary government trustee--the court cannot make such an order unless the trustee has been accorded procedural fairness in relation to the making of the order; and

(b) in the case of a secondary government trustee:

(i) the court cannot make such an order unless another trustee of the eligible superannuation plan has been accorded procedural fairness in relation to the making of the order; and

(ii) the court may, if it thinks fit, require that the secondary government trustee also be accorded procedural fairness.

(2) If an order is binding on the person who is the trustee of an eligible superannuation plan at the time when the order takes effect, then the order is also binding (by force of this subsection) on:

(a) any person who subsequently becomes the trustee of that eligible superannuation plan; or

(b) in a case where section 90YZA applies--a person who is the trustee, or any person who subsequently becomes the trustee, of the new ESP.

FAMILY LAW ACT 1975

- SECT 90YZU

Protection for trustee

The trustee of an eligible superannuation plan is not liable for loss or damage suffered by any person because of things done (or not done) by the trustee in good faith in reliance on:

(a) any document served on the trustee for the purposes of this Part; or

(b) an order made by a court in accordance with this Part.

FAMILY LAW ACT 1975

- SECT 90YZV

Service of documents on trustee

(1) If a document is required or permitted to be served for the purposes of this Part on the trustee of an eligible superannuation plan, the document may be served in any of the ways in which a document may be served under the Western Australian Rules of Court.

(2) Subsection (1) is in addition to any other method of service permitted by law.

FAMILY LAW ACT 1975

- SECT 90YZW

False declarations

(1) A person commits an offence if:

(a) the person makes a statement in a declaration, knowing that the statement is false or misleading; and

(b) the declaration is served on the trustee of an eligible superannuation plan for the purposes of this Part.

Penalty: Imprisonment for 12 months.

(2) Subsection (1) does not apply if the statement is not false or misleading in a material particular.

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

(3) Subsection (1) does not apply in relation to a declaration if a party to the de facto relationship to whom the declaration relates died before the declaration was made.

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

FAMILY LAW ACT 1975

- SECT 90YZX

Terminating employment because of payment flag etc.

A person must not terminate the employment of an employee on either of the following grounds:

(a) a payment flag is operating in respect of a superannuation interest of the employee;

(b) a superannuation agreement or splitting order is in force in respect of a superannuation interest of the employee.

Penalty: 100 penalty units.

FAMILY LAW ACT 1975

- SECT 90YZY

Requests for Commissioner of Taxation to provide superannuation information

Application for superannuation information

(1) A person who is a party to either of the following proceedings in the Family Court of Western Australia, in relation to the person's de facto relationship with another person (the other party):

(a) proceedings in relation to matters arising under this Part;

(b) proceedings under the Family Court Act 1997 (WA) with respect to the property of the parties to the de facto relationship or either of them, if the person is considering bringing, or is a party to, related proceedings in relation to matters arising under this Part;

may apply, in the approved form, to the Principal Registrar of that Court for the Principal Registrar to request the superannuation information of that other party.

Request for superannuation information

(2) If the Principal Registrar of that Court receives an application from a person under subsection (1) for the superannuation information of the other party, the Principal Registrar may:

(a) request the Commissioner of Taxation to disclose that superannuation information for the purpose of all of the following proceedings (the relevant proceedings) in relation to the person's de facto relationship with the other party:

(i) any proceedings in relation to matters arising under this Part;

(ii) any proceedings under the Family Court Act 1997 (WA) with respect to the property of the parties to the de facto relationship or either of them, if the person is considering bringing, or is a party to, related proceedings in relation to matters arising under this Part; and

(b) if the Commissioner of Taxation discloses that superannuation information to the Principal Registrar for the purpose of the relevant proceedings--disclose the superannuation information to the following:

(i) the person and each lawyer of the person;

(ii) the other party and each lawyer of the other party;

for the person, other party or lawyer to make a record of, or disclose, for the purpose of the relevant proceedings.

Note 1: Making a record of, or on-disclosing, that superannuation information may be an offence unless it is for the purpose of the relevant proceedings, see sections 355-155 and 355-175 in Schedule 1 to the Taxation Administration Act 1953.

Note 2: Disclosing superannuation information for the purpose of proceedings relating to matters arising under this Part extends to disclosing the superannuation information to the trustee of an eligible superannuation plan as part of an application under section 90YZR for the purpose of those proceedings.

Approved form

(3) An application made by a person under subsection (1) is in the approved form if and only if:

(a) it is in the form approved for the purposes of subparagraph 90XZJ(3)(b)(i); and

(b) it contains the information (including any declaration) that the form requires; and

(c) it is given in the manner required for the purposes of subparagraph 90XZJ(3)(b)(ii) (which may include electronically).

Delegation

(4) The Principal Registrar of the Family Court of Western Australia may, in writing, delegate any of the Principal Registrar's functions or powers under this section to any other appropriate officer or staff member of that Court.

Definitions

(5) In this section:

"relevant proceedings" has the meaning given by paragraph (2)(a).

"superannuation information" has the same meaning as in subsection 90XZJ(5).

FAMILY LAW ACT 1975

- SECT 91

Intervention by Attorney - General

(1) The Attorney-General may intervene in, and contest or argue any question arising in:

(a) any proceedings under this Act where the court requests the Attorney -General to do so or a matter arises that affects the public interest; or

(b) any proceedings under this Act for or in relation to:

(i) a parenting order, other than a child maintenance order; or

(ii) an order under section 67ZC.

(1A) At any time after a divorce order has been made in any proceedings and before it has taken effect, the Attorney -General may intervene in the proceedings for the purpose of bringing to the

notice of the court matters relevant to the exercise of its powers under section 58.

(2) Where the Attorney -General intervenes in any proceedings, the Attorney-General shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

FAMILY LAW ACT 1975

- SECT 91A

Delegation by Attorney - General

(1) Where, in a State, there is a Family Court of the State, the Attorney -General may, either generally or as otherwise provided by the instrument of delegation, by writing, delegate all or any of his or her powers and functions under section 91 in respect of intervention in proceedings in the Family Court of that State and in other courts of that State to the person occupying from time to time, while the delegation is in force, the office of Attorney -General of that State.

(2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Attorney -General.

(4) Where the Attorney -General of a State intervenes in any proceedings in accordance with a delegation under this section, the Attorney-General of the State shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

FAMILY LAW ACT 1975

- SECT 91B

Intervention by child welfare officer

(1) In any proceedings under this Act that affect, or may affect, the welfare of a child, the court may request the intervention in the proceedings of an officer of a State, of a Territory or of the Commonwealth, being the officer who is responsible for the administration of the laws of the State or Territory in which the proceedings are being heard that relate to child welfare.

(2) Where the court has, under subsection (1), requested an officer to intervene in proceedings:

(a) the officer may intervene in those proceedings; and

(b) where the officer so intervenes, the officer shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

Note: If an officer intervenes in proceedings and acts in good faith in relation to the proceedings, an order for costs, or for security for costs, cannot be made under subsection 114UB(2) against the officer: see subsection 114UC(5).

FAMILY LAW ACT 1975

- SECT 92

Intervention by other persons

(1) In proceedings (other than divorce or validity of marriage proceedings), any person may apply for leave to intervene in the proceedings, and the court may make an order entitling that person to intervene in the proceedings.

(1A) In divorce or validity of marriage proceedings, a person in relation to whom an order has been made under subsection 69W(1) requiring a parentage testing procedure to be carried out may apply for leave to intervene in the proceedings, and the court may make an order entitling the person to intervene in the proceedings.

(2) An order under this section may be made upon such conditions as the court considers appropriate.

(3) Where a person intervenes in any proceedings by leave of the court the person shall, unless the court otherwise orders, be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

FAMILY LAW ACT 1975

- SECT 92A

Intervention in child abuse cases

(1) This section applies to proceedings under this Act in which it has been alleged that a child has been abused or is at risk of being abused.

(2) Each of the following persons is entitled to intervene in the proceedings:

(a) a guardian of the child;

(b) a parent of the child with whom the child lives;

(ba) a person with whom the child is to live under a parenting order;

(bb) a person who has parental responsibility for the child under a parenting order;

(c) any other person responsible for the care, welfare or development of the child;

- (d) a prescribed child welfare authority;
 - (e) a person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.
- (3) Where a person intervenes in proceedings pursuant to this section, the person is, unless the court otherwise orders, to be taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

FAMILY LAW ACT 1975

- SECT 95

Overarching purpose of the family law practice and procedure provisions

- (1) The overarching purpose of the family law practice and procedure provisions is to facilitate the just resolution of disputes:
- (a) in a way that ensures the safety of families and children; and
 - (b) in relation to proceedings under this Act in which the best interests of a child are the paramount consideration--in a way that promotes the best interests of the child; and
 - (c) according to law; and
 - (d) as quickly, inexpensively and efficiently as possible.

Note: For family law practice and procedure provisions, see subsection (4).

- (2) Without limiting subsection (1), the overarching purpose includes the following objectives in relation to proceedings under this Act:
- (a) the just determination of all such proceedings;
 - (b) the efficient use of the judicial and administrative resources available for the purposes of courts exercising jurisdiction in such proceedings;
 - (c) the efficient disposal of the overall caseload of courts exercising jurisdiction in such proceedings;
 - (d) the disposal of all such proceedings in a timely manner;
 - (e) the resolution of disputes at a cost that is proportionate to the importance and complexity of the matters in dispute.
- (3) The family law practice and procedure provisions must be interpreted and applied, and any power conferred or duty imposed by them (including the power to make applicable Rules of Court) must be exercised or carried out, in the way that best promotes the overarching purpose.
- (4) The family law practice and procedure provisions are the following, so far as they apply in relation to proceedings under this Act:
- (a) the applicable Rules of Court;
 - (b) any other provision made by or under this Act, or any other Act, with respect to the practice and procedure of the Federal Circuit and Family Court of Australia or any other court .

FAMILY LAW ACT 1975

- SECT 96

Duty to act consistently with the overarching purpose

Duty of parties

- (1) The parties to proceedings under this Act must conduct the proceedings (including negotiations for settlement of the dispute to which the proceedings relate) in a way that is consistent with the overarching purpose of the family law practice and procedure provisions.

Duty of lawyers

- (2) A party's lawyer must, in the conduct of proceedings under this Act on the party's behalf (including in the conduct of negotiations for settlement of the dispute to which the proceedings relate):

- (a) take account of the duty imposed on the party by subsection (1); and
- (b) assist the party to comply with the duty.

Estimate of costs

- (3) In proceedings under this Act a court may, for the purpose of enabling a party to comply with the duty imposed by subsection (1), require the party's lawyer to give the party an estimate of:
- (a) the likely duration of the proceedings or part of the proceedings; and
 - (b) the likely amount of costs that the party will have to pay in connection with the proceedings or part of the proceedings (including the costs that the lawyer will charge to the party).

Costs orders

- (4) In exercising the discretion to award costs in proceedings under this Act, a court must take account of any failure to comply with the duty imposed by subsection (1) or (2).
- (5) Without limiting the exercise of that discretion, a court may order a party's lawyer to bear costs personally.
- (6) If a court orders a lawyer to bear costs personally because of a failure to comply with the duty imposed by subsection (2), the lawyer must not recover the costs from the lawyer's client.

FAMILY LAW ACT 1975

- SECT 97

Procedure

(1) Subject to this Act, to the regulations and to the applicable Rules of Court, all proceedings in the Federal Circuit and Family Court of Australia or in a court of a Territory (other than the Northern Territory) when exercising jurisdiction under this Act, shall be heard in open court.

(1AA) For the purposes of subsection (1), the circumstances in which a proceeding in the Federal Circuit and Family Court of Australia, or in a court of a Territory (other than the Northern Territory) when exercising jurisdiction under this Act, is heard in open court include where the proceeding is made accessible to the public by way of video link, audio link or other appropriate means.

(1A) The regulations and the applicable Rules of Court may authorise proceedings to be heard by:

(a) in the case of the Federal Circuit and Family Court of Australia (Division 1)--a Judge, the Chief Executive Officer, or a Senior Registrar or Registrar of the Court, sitting in Chambers; and

(b) in the case of the Federal Circuit and Family Court of Australia (Division 2)--a Judge, the Chief Executive Officer, or a Senior Registrar or Registrar of the Court, sitting in Chambers; and

(c) in any other case--a Judge, Registrar or magistrate sitting in Chambers.

(2) In any proceedings in the Federal Circuit and Family Court of Australia, or in another court when exercising jurisdiction under this Act, the court may, of its own motion or on the application of a party to the proceedings, make one or more of the following orders:

(a) an order that a specified person is not, or specified persons are not, to be present in court during the proceedings or during a specified part of the proceedings;

(b) an order that persons included in a specified class of persons are not to be present in court during the proceedings or during a specified part of the proceedings;

(c) an order that only the parties to the proceedings, their legal representatives and such other persons (if any) as are specified by the court may be present in court during the proceedings or during a specified part of the proceedings.

(2A) For the purposes of subsection (2), a person is taken to be present in court during a proceeding if the person accesses the proceeding by way of video link, audio link or any other means.

(3) In proceedings under this Act, the court shall proceed without undue formality and shall endeavour to ensure that the proceedings are not protracted.

FAMILY LAW ACT 1975

- SECT 98

Evidence by affidavit

The applicable Rules of Court may provide for evidence of any material matter to be given on affidavit at the hearing of:

(a) divorce or validity of marriage proceedings that are undefended at the time of hearing; and

(b) proceedings other than divorce or validity of marriage proceedings.

FAMILY LAW ACT 1975

- SECT 98A

Proceedings in absence of parties

(1) The applicable Rules of Court may provide that where, at the date fixed for the hearing of proceedings for a divorce order in relation to a marriage instituted by one party to the marriage:

(a) the proceedings are undefended; and

(c) the applicant has requested the court to determine the proceedings in the absence of the parties; and

(d) the respondent has not requested the court not to determine the proceedings in the absence of the parties;

the court may, in its discretion, determine the proceedings notwithstanding that neither the parties to the proceedings nor their legal representatives are present in court.

(2) The applicable Rules of Court may provide that where, at the date fixed for the hearing of proceedings for a divorce order in relation to a marriage instituted jointly by the parties to the marriage:

(a) one of the parties to the marriage has requested the court to determine the proceedings in the absence of the parties and the other party to the marriage has not requested the court not to determine the proceedings in the absence of the parties; or

(b) both parties to the marriage have requested the court to determine the proceedings in the absence of the parties;

the court may, in its discretion, determine the proceedings notwithstanding that neither the parties to the proceedings nor their legal representatives are present in court.

(2A) The court must not determine proceedings for the divorce order in relation to the marriage under subsection (1) or (2) if:

(a) there are any children of the marriage who are under 18; and

(b) the court is not satisfied that proper arrangements in all the circumstances have been made for the care, welfare and development of those children.

Note: If there are children of the marriage who are under 18, a divorce order cannot take effect until the court declares under section 55A that it is satisfied that proper arrangements in all the circumstances have been made for the care, welfare and development of the children, or that there are circumstances by reason of which the divorce should take effect regardless (see paragraph 55A(1)(b)).

(2B) The court may determine proceedings under subsection (1) or (2) in chambers.

(3) For the purposes of this section, a child (including an ex-nuptial child of either 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 for the divorce order in relation to the marriage.

FAMILY LAW ACT 1975

- SECT 100

Evidence of husbands, wives or spouses

(1) The parties to proceedings under this Act are competent and compellable witnesses.

(2) In proceedings under this Act, the parties to a marriage are competent and compellable to disclose communications made between them during the marriage.

(3) Subsection (2) applies to communications made before, as well as to communications made after, the date of commencement of this Act.

FAMILY LAW ACT 1975

- SECT 100B

Children swearing affidavits, being called as witnesses or being present in court

(1) A child, other than a child who is or is seeking to become a party to proceedings, must not swear an affidavit for the purposes of proceedings, unless the court makes an order allowing the child to do so.

(2) A child must not be called as a witness in, or be present during, proceedings in the Federal Circuit and Family Court of Australia, or in another court when exercising jurisdiction under this Act, unless the court makes an order allowing the child to be called as a witness or to be present (as the case may be).

(3) In this section:

"child" means a child under 18 years of age.

FAMILY LAW ACT 1975

- SECT 101

Protection of witnesses

(1) The court shall forbid the asking of, or excuse a witness from answering, a question that it regards as offensive, scandalous, insulting, abusive or humiliating, unless the court is satisfied that it is essential in the interests of justice that the question be answered.

(2) The court must forbid an examination of a witness that it regards as oppressive, repetitive or hectoring, or excuse a witness from answering questions asked during such an examination, unless the court is satisfied that it is essential in the interests of justice for the examination to continue or for the questions to be answered.

FAMILY LAW ACT 1975

- SECT 102

Proof of birth, parentage, death or marriage

In proceedings under this Act, the court may receive as evidence of the facts stated in it a document purporting to be either the original or a certified copy of:

(a) a certificate, entry or record of a birth, death or marriage alleged to have taken place, whether in Australia or elsewhere; or

(b) an entry in a register of parentage information kept under the law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction.

FAMILY LAW ACT 1975

- SECT 102A

Restrictions on examination of children

(1) Subject to this section, where a child is examined without the leave of the court, the evidence resulting from the examination which relates to the abuse of, or the risk of abuse of, the child is not admissible in proceedings under this Act.

(2) Where a person causes a child to be examined for the purpose of deciding:

(a) to bring proceedings under this Act involving an allegation that the child has been abused or is at risk of being abused; or

(b) to make an allegation in proceedings under this Act that the child has been abused or is at risk of being abused;

subsection (1) does not apply in relation to evidence resulting from the first examination which the person caused the child to undergo.

(3) In considering whether to give leave for a child to be examined, the court must have regard to the following matters:

(a) whether the proposed examination is likely to provide relevant information that is unlikely to be obtained otherwise;

(b) the qualifications of the person who proposes to conduct the examination to conduct that examination;

(c) whether any distress likely to be caused to the child by the examination will be outweighed by the value of the information that might be obtained from the examination;

(d) any distress already caused to the child by any previous examination associated with the proceedings or with related proceedings;

(e) any other matter that the court thinks is relevant.

(4) In proceedings under this Act, a court may admit evidence which is otherwise inadmissible under this section where it is satisfied that:

(a) the evidence relates to relevant matters on which the evidence already before the court is inadequate; and

(b) the court will not be able to determine the proceedings properly unless the evidence is admitted; and

(c) the welfare of the child concerned is likely to be served by the admission of the evidence.

(5) In this section:

"examined", in relation to a child, means:

(a) subjected to a medical procedure; or

(b) examined or assessed by a psychiatrist or psychologist (other than by a family counsellor or family consultant).

Note: Section 102NM is relevant to evidence of a representation by a child, if the admissibility of the evidence would otherwise be affected by the law against hearsay.

FAMILY LAW ACT 1975

- SECT 102B

Assessors

In any proceedings under this Act (other than prescribed proceedings), the court may, in accordance with the applicable Rules of Court, get an assessor to help it in the hearing and determination of the proceedings, or any part of them or any matter arising under them.

FAMILY LAW ACT 1975

- SECT 102BA

Definition of protected confidence

A protected confidence is a communication made:

(a) in the course of, or in connection with, a relationship in which one person (the confidant) is acting in a professional capacity to provide a professional service (see section 102BB) to another person (the protected confider); and

(b) in circumstances in which the confidant is under an obligation not to disclose communications made to them by, or in relation to, the protected confider (whether the obligation is express or inferred from the nature of the relationship).

FAMILY LAW ACT 1975

- SECT 102BB

Definition of professional service

(1) For the purpose of this Division, a professional service is any of the following:

(a) a health service mentioned in subsection (3) or (4);

(b) a specialist service in relation to:

(i) sexual assault; or

(ii) family violence;

(c) any activity prescribed by the regulations for the purpose of this paragraph.

(2) Despite subsection (1), an activity is not a professional service if it is prescribed by the regulations for the purposes of this subsection.

(3) An activity performed in relation to an individual is a health service if the activity is intended or claimed (expressly or otherwise) by the individual or the person performing it:

(a) to assess, maintain or improve the individual's health; or

(b) where the individual's health cannot be maintained or improved--to manage the individual's health; or

(c) to diagnose the individual's illness, disability or injury; or

(d) to treat the individual's illness, disability or injury or suspected illness, disability or injury; or

(e) to record the individual's health for the purposes of assessing, maintaining, improving or managing the individual's health.

(4) The dispensing on prescription of a drug or medicinal preparation by a pharmacist is a health service.

(5) To avoid doubt, a reference in this section to an individual's health includes the individual's physical or psychological health.

FAMILY LAW ACT 1975

- SECT 102BC

Direction in relation to adducing evidence

(1) The court may direct that evidence not be adduced in proceedings under this Act, if the court finds that adducing it would disclose:

(a) a protected confidence; or

(b) the contents of a document recording or relating to a protected confidence.

(2) The court may give the direction:

(a) on its own initiative; or

(b) on application by:

(i) the confidant; or

(ii) a person who is in possession or has control of a document recording or relating to a protected confidence; or

(iii) a litigation guardian; or

(c) if the protected confider is aged 18 or over--on application by the protected confider; or

(d) if the protected confider is a child aged under 18--on application by:

(i) a person who has parental responsibility (within the meaning of Part VII) for the child; or

(ii) an independent children's lawyer who represents the interests of the child in the proceedings; or

(iii) a person who has care of the child; or

(iv) a person who proposes to have parental responsibility for the child.

(3) Evidence that is not to be adduced in proceedings because of subsection (1) is not admissible in the proceedings.

FAMILY LAW ACT 1975

- SECT 102BD

Direction in relation to complying with disclosure requirement

(1) The court may direct that a document or part of a document not be produced, or not be inspected, or not be copied, in proceedings under this Act, despite a disclosure requirement (see subsection (2)), if the court finds that compliance with the disclosure requirement would disclose:

(a) a protected confidence; or

(b) the contents of a document recording or relating to a protected confidence.

(2) Each of the following is a disclosure requirement:

(a) a subpoena to produce a document;

(b) a requirement under this Act or the applicable Rules of Court that a party to proceedings produce a document or part of a document in the proceedings.

(3) The court may give the direction:

(a) on its own initiative; or

(b) on application by:

(i) the confidant; or

(ii) a person who is in possession or has control of a document recording or relating to a protected confidence; or

(iii) a litigation guardian; or

(c) if the protected confider is aged 18 or over--on application by the protected confider; or

(d) if the protected confider is a child aged under 18--on application by:

(i) a person who has parental responsibility (within the meaning of Part VII) for the child; or

(ii) an independent children's lawyer who represents the interests of the child in the proceedings; or

(iii) a person who has care of the child; or

(iv) a person who proposes to have parental responsibility for the child.

(4) The person to whom the disclosure requirement applies is not required to comply with it at any time while the court is deciding whether to give the direction.

(5) The court may order that a document or part of a document be produced to the court to inspect for the purposes of deciding whether to give the direction.

(6) A document or part of a document to which a direction under this section relates is not admissible in the proceedings.

FAMILY LAW ACT 1975

- SECT 102BE

Grounds and considerations for directions

(1) The court may give a direction under section 102BC or 102BD in relation to evidence, or a document or part of a document, if the court is satisfied that:

(a) it is likely that harm would or might be caused (directly or indirectly) to the protected confider, or to a child to whom the proceedings relate, if the evidence were adduced or the document or part produced, inspected or copied; and

(b) the nature and extent of the harm outweighs the desirability of adducing the evidence or producing, inspecting or copying the document or part.

(2) For the purposes of subsection (1), harm may include, but is not limited to, the following:

(a) physical harm;

(b) psychological harm or oppression;

(c) mental distress;

(d) a detrimental effect on the other party's capacity to care for a child;

(e) financial harm.

(3) If the direction is being made in proceedings under Part VII, the court must regard the best interests of the child as the paramount consideration.

(4) The court must have regard to the following matters in deciding whether to make the direction:

(a) in relation to the evidence, or the document or part:

(i) its probative value in the proceedings; and

(ii) its importance in the proceedings; and

(iii) the availability of other evidence or documents, concerning the matters to which the evidence, or the document or part, relates;

(b) the likely effect of adducing the evidence, or producing, inspecting or copying the document or part, including the likelihood of harm, and the nature and extent of harm, that would or might be caused:

(i) to the protected confider; or

(ii) to a child to which the proceedings relate;

(c) the means available to the court to limit the harm or extent of the harm likely to be caused if the evidence is adduced or the document or part produced, inspected or copied;

(d) whether the substance of the evidence, or of the document or part, has already been disclosed by the protected confider or any other person;

(e) the public interest in preserving the confidentiality of protected confidences;

(f) whether the protected confider opposes the disclosure of the protected confidence or any part of it;

(g) whether a lawyer is representing the protected confider in relation to the proceedings;

(h) if the protected confider is a child aged under 18--whether any of the following oppose the disclosure of the protected confidence or any part of it:

(i) a person who has parental responsibility (within the meaning of Part VII) for the child;

(ii) an independent children's lawyer who represents the interests of the child in the proceedings.

(5) Subsection (4) does not limit the matters to which the court may have regard in making the direction.

(6) The court must give reasons for making, or deciding not to make, a direction under this Division.

FAMILY LAW ACT 1975

- SECT 102BF

Consent by protected confider

The court must not give a direction under section 102BC or 102BD if:

- (a) the protected confider is an adult; and
- (b) the protected confider consents to the evidence being adduced or document or part of the document being disclosed; and
- (c) the consent is in writing and witnessed by an independent person who is 18 years of age or over and not party to the proceedings.

FAMILY LAW ACT 1975

- SECT 102C

Testimony

(1) The court or a Judge may, for the purposes of any proceedings, direct or allow testimony to be given by video link, audio link or other appropriate means.

Note: See also section 102F.

(2) The testimony must be given on oath or affirmation unless:

- (a) the person giving the testimony is in a foreign country; and
- (b) either:
 - (i) the law in force in that country does not permit the person to give testimony on oath or affirmation for the purposes of the proceedings; or
 - (ii) the law in force in that country would make it inconvenient for the person to give testimony on oath or affirmation for the purposes of the proceedings; and
- (c) the court or a Judge is satisfied that it is appropriate for the testimony to be given otherwise than on oath or affirmation.

(3) If the testimony is given otherwise than on oath or affirmation, the court or a Judge must give the testimony such weight as the court or the Judge thinks fit in the circumstances.

(4) The power conferred on the court or a Judge by subsection (1) may be exercised:

- (a) on the application of a party to the proceedings concerned; or
- (b) on the court's own initiative or on the Judge's own initiative, as the case may be.

(5) This section applies whether the person giving testimony is in or outside Australia, but does not allow testimony to be given by a person who is in New Zealand.

Note: See Part 6 of the Trans-Tasman Proceedings Act 2010.

FAMILY LAW ACT 1975

- SECT 102D

Appearance of persons

(1) The court or a Judge may, for the purposes of any proceedings, direct or allow a person to appear before the court or the Judge by way of video link, audio link or other appropriate means.

Note: See also section 102F.

(2) The power conferred on the court or a Judge by subsection (1) may be exercised:

- (a) on the application of a party to the proceedings concerned; or
- (b) on the court's own initiative or on the Judge's own initiative, as the case may be.

(3) This section applies whether the person appearing is in or outside Australia, but does not apply if the person appearing is in New Zealand.

Note: See Part 6 of the Trans-Tasman Proceedings Act 2010.

FAMILY LAW ACT 1975

- SECT 102E

Making of submissions

(1) The court or a Judge may, for the purposes of any proceedings, direct or allow a person to make a submission to the court or the Judge by way of video link, audio link or other appropriate means.

Note: See also section 102F.

(2) The power conferred on the court or a Judge by subsection (1) may be exercised:

- (a) on the application of a party to the proceedings concerned; or
- (b) on the court's own initiative or on the Judge's own initiative, as the case may be.

(3) This section applies whether the person making the submission is in or outside Australia, but does not apply if the person making the submission is in New Zealand.

Note: See Part 6 of the Trans-Tasman Proceedings Act 2010.

FAMILY LAW ACT 1975

- SECT 102F

Conditions for use of links

Video link

(1) The court or a Judge must not exercise the power conferred by subsection 102C(1), 102D(1) or 102E(1) in relation to a video link unless the court or the Judge is satisfied that the following conditions are met in relation to the video link:

(a) the courtroom is equipped with facilities (for example, television monitors) that enable all eligible persons present in that courtroom to see and hear the person (the remote person) who is:

- (i) giving the testimony; or
- (ii) appearing; or
- (iii) making the submission;

as the case may be, by way of the video link;

(b) the place at which the remote person is located is equipped with facilities (for example, television monitors) that enable all eligible persons present in that place to see and hear each eligible person who is present in the courtroom;

(c) such other conditions (if any) as are prescribed by the applicable Rules of Court in relation to the video link;

(d) such other conditions (if any) as are imposed by the court or a Judge.

(2) The conditions that may be prescribed by the applicable Rules of Court in accordance with paragraph (1)(c) include conditions relating to:

- (a) the form of the video link; and
- (b) the equipment, or class of equipment, used to establish the link; and
- (c) the layout of cameras; and
- (d) the standard of transmission; and
- (e) the speed of transmission; and
- (f) the quality of communication.

Audio link

(3) The court or a Judge must not exercise the power conferred by subsection 102C(1), 102D(1) or 102E(1) in relation to an audio link unless the court or a Judge is satisfied that the following conditions are met in relation to the audio link:

(a) the courtroom is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that courtroom to hear the person (the remote person) who is:

- (i) giving the testimony; or
- (ii) appearing; or
- (iii) making the submission;

as the case may be, by way of the audio link;

(b) the place at which the remote person is located is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that place to hear each eligible person who is present in the courtroom or other place where the court or the Judge is sitting;

(c) such other conditions (if any) as are prescribed by the applicable Rules of Court in relation to the audio link;

(d) such other conditions (if any) as are imposed by the court or a Judge.

(4) The conditions that may be prescribed by the applicable Rules of Court in accordance with paragraph (3)(c) include conditions relating to:

- (a) the form of the audio link; and
- (b) the equipment, or class of equipment, used to establish the audio link; and
- (c) the standard of transmission; and
- (d) the speed of transmission; and
- (e) the quality of communication.

Other appropriate means

(5) The court or a Judge must not exercise the power conferred by subsection 102C(1), 102D(1) or 102E(1) in relation to appropriate means other than video link or audio link unless the court or the Judge is satisfied that the following conditions are met in relation to that means:

(a) the conditions (if any) as are prescribed by the applicable Rules of Court in relation to that other appropriate means;

(b) such other conditions (if any) as are imposed by the court or the Judge.

Eligible persons

(6) For the purposes of the application of this section to particular proceedings, eligible persons are such persons as the court or the Judge considers should be treated as eligible persons for the purposes of the proceedings.

Meaning of courtroom

(7) In this section:

"courtroom", in relation to a Judge or a court, means the courtroom or other place where the Judge or court is sitting.

FAMILY LAW ACT 1975

- SECT 102G

Putting documents to a person

(1) This section applies if, in the course of an examination or appearance of a person by video link, audio link or other appropriate means in accordance with this Division, it is necessary to put a document to the person.

(2) A court or a Judge may direct or allow the document to be put to the person:

(a) if the document is physically present in the courtroom or other place where the court or the Judge is sitting:

(i) by causing a copy of the document to be transmitted to the place where the person is located; and

(ii) by causing the transmitted copy to be put to the person; or

(b) if the document is physically present in the place where the person is located:

(i) by causing the document to be put to the person; and

(ii) by causing a copy of the document to be transmitted to the courtroom or other place where the court or the Judge is sitting.

FAMILY LAW ACT 1975

- SECT 102J

Administration of oaths and affirmations

An oath to be sworn, or an affirmation to be made, by a person (the remote person) who is to give testimony by video link, audio link or other appropriate means in accordance with this Division may be administered:

(a) by means of the video link or audio link, as the case may be, in a way that, as nearly as practicable, corresponds to the way in which the oath or affirmation would be administered if the remote person were to give testimony in the courtroom or other place where the court or the Judge is sitting; or

(b) if the court or the Judge allows another person who is present at the place where the remote person is located to administer the oath or affirmation--by that other person.

FAMILY LAW ACT 1975

- SECT 102K

Expenses

(1) The court or a Judge may make such orders as the court or the Judge thinks just for the payment of expenses, including the court's expenses, incurred in connection with:

(a) the giving of testimony by video link, audio link or other appropriate means in accordance with this Division; or

(b) the appearance of a person by video link, audio link or other appropriate means in accordance with this Division; or

(c) the making of submissions by video link, audio link or other appropriate means in accordance with this Division.

(2) Subsection (1) has effect subject to the regulations.

FAMILY LAW ACT 1975

- SECT 102L

New Zealand proceedings

This Division does not affect the operation of the Trans-Tasman Proceedings Act 2010.

FAMILY LAW ACT 1975

- SECT 102NA

Mandatory protections for parties in certain cases

(1) If, in proceedings under this Act:

(a) a party (the examining party) intends to cross-examine another party (the witness party); and

(b) there is an allegation of family violence between the examining party and the witness party; and

(c) any of the following are satisfied:

(i) either party has been convicted of, or is charged with, an offence involving violence, or a threat of violence, to the other party;

(ii) a family violence order (other than an interim order) applies to both parties;

(iii) an injunction under section 68B or 114 for the personal protection of either party is directed against the other party;

(iv) the court makes an order that the requirements of subsection (2) are to apply to the cross-

examination;

then the requirements of subsection (2) apply to the cross-examination.

(2) Both of the following requirements apply to the cross-examination:

(a) the examining party must not cross-examine the witness party personally;

(b) the cross-examination must be conducted by a legal practitioner acting on behalf of the examining party.

Note 1: This section applies both in the case where the examining party is the alleged perpetrator of the family violence and the witness party is the alleged victim, and in the case where the examining party is the alleged victim and the witness party is the alleged perpetrator.

Note 2: This section does not limit other laws that apply to protect the witness party (for example, section 101 requires the court to forbid the asking of offensive questions and section 41 of the Evidence Act 1995 requires the court to disallow certain questions, such as misleading questions).

Note 3: To avoid doubt, a reference to a party in this section includes a reference to a person who is a party because of the operation of a provision of this Act (for example, sections 92 and 92A, which are about intervening parties). This section only applies to an intervening party if the intervening party is involved in the allegation of family violence, whether as the alleged perpetrator or as the alleged victim.

(3) The court may make an order under subparagraph (1)(c)(iv):

(a) on its own initiative; or

(b) on the application of:

(i) the witness party; or

(ii) the examining party; or

(iii) if an independent children's lawyer has been appointed for a child in relation to the proceedings--that lawyer.

FAMILY LAW ACT 1975

- SECT 102NB

Court - ordered protections in other cases

If, in proceedings under this Act:

(a) a party (the examining party) intends to cross-examine another party (the witness party) personally; and

(b) there is an allegation of family violence between the examining party and the witness party; and

(c) section 102NA does not apply to prevent the examining party cross-examining the witness party personally;

then the court must ensure that during the cross-examination there are appropriate protections for the party who is the alleged victim of the family violence.

Note 1: For example, the court may consider it appropriate to give a direction under subsection 102C(1) that the cross-examination be conducted by video link or audio link.

Note 2: This section does not limit other laws that apply to protect the witness party (for example, section 101 requires the court to forbid the asking of offensive questions and section 41 of the Evidence Act 1995 requires the court to disallow certain questions, such as misleading questions).

FAMILY LAW ACT 1975

- SECT 102NC

Review of this Division

The Minister must cause a review of the operation of this Division to be commenced as soon as possible after:

(a) the second anniversary of the commencement of this section; or

(b) if, before the second anniversary, the regulations prescribe a day that is after the second anniversary--that day.

FAMILY LAW ACT 1975

- SECT 102ND

Proceedings to which this Division applies

(1) This Division applies to proceedings that are wholly under Part VII.

(2) This Division also applies to proceedings between parties that are partly under Part VII:

(a) to the extent the proceedings are under Part VII; and

(b) to the extent the proceedings are not under Part VII if:

(i) the parties consent to this Division applying to the proceedings to the extent the proceedings are not under Part VII; or

(ii) the court orders that this Division applies to the proceedings to the extent the proceedings are not under Part VII (whether or not the parties consent).

(3) This Division also applies to proceedings between parties that are not to any extent under Part VII if:

- (a) the parties consent to this Division applying to the proceedings; or
- (b) the court orders that this Division applies to the proceedings (whether or not the parties consent).

(4) In deciding whether to make an order under subparagraph (2)(b)(ii), the court must have regard to the principles in section 102NE.

(5) In deciding whether to make an order under paragraph (3)(b), the court must have regard to the principles in section 102NE (other than subsection (3), paragraph (5)(a) and subsection (6) of that section).

(6) Proceedings to which this Division applies under subsection (1) or (2) are child-related proceedings.

(7) Proceedings to which this Division applies under subsection (3) are property or other non-child-related proceedings.

(8) Consent given for the purposes of subparagraph (2)(b)(i) or paragraph (3)(a) must be:

- (a) free from coercion; and
- (b) given in the form prescribed by the applicable Rules of Court.

(9) A party to proceedings may, with the leave of the court, revoke a consent given for the purposes of subparagraph (2)(b)(i) or paragraph (3)(a).

FAMILY LAW ACT 1975

- SECT 102NE

Principles for conducting child - related proceedings and property or other proceedings

Application of the principles

(1) The court must give effect to the principles in this section:

- (a) in performing duties and exercising powers (whether under this Division or otherwise) in relation to child -related proceedings or property or other non-child-related proceedings; and
- (b) in making other decisions about the conduct of child -related proceedings or property or other non-child-related proceedings.

Failure to do so does not invalidate the proceedings or any order made in them.

(2) Regard is to be had to the principles that are relevant to the particular proceedings in interpreting this Division.

Note: All the principles are relevant to child-related proceedings. The principles in subsection (3), paragraph (5)(a) and subsection (6) do not apply in relation to property or other non -child-related proceedings.

Principle 1

(3) The first principle is that the court is to consider the needs of the child concerned and the impact that the conduct of the proceedings may have on the child in determining the conduct of the proceedings.

Principle 2

(4) The second principle is that the court is to actively direct, control and manage the conduct of the proceedings.

Principle 3

(5) The third principle is that the proceedings are to be conducted in a way that will safeguard:

- (a) the child concerned from being subjected to, or exposed to, abuse, neglect or family violence; and
- (b) the parties to the proceedings against family violence.

Principle 4

(6) The fourth principle is that the proceedings are, as far as possible, to be conducted in a way that will promote cooperative and child -focused parenting by the parties.

Principle 5

(7) The fifth principle is that the proceedings are to be conducted without undue delay and with as little formality, and legal technicality and form, as possible.

FAMILY LAW ACT 1975

- SECT 102NF

This Division also applies to proceedings in Chambers

The following persons, when hearing child -related proceedings or property or other non-child-related proceedings in Chambers, have all of the duties and powers that a court has under this Division:

- (a) in the case of the Federal Circuit and Family Court of Australia (Division 1)--a Judge, the Chief Executive Officer, or a Senior Registrar or Registrar of the Court;
- (b) in the case of the Federal Circuit and Family Court of Australia (Division 2)--a Judge, the Chief Executive Officer, or a Senior Registrar or Registrar of the Court;
- (c) in any other case--a Judge, Registrar or magistrate.

Note: An order made in Chambers has the same effect as an order made in open court.

FAMILY LAW ACT 1975

- SECT 102NG

Powers under this Division may be exercised on court's own initiative

The court may exercise a power under this Division:

- (a) on the court's own initiative; or
- (b) at the request of one or more of the parties to the proceedings.

FAMILY LAW ACT 1975

- SECT 102NH

General duties

(1) In giving effect to the relevant principles in section 102NE, the court must:

- (a) ask each party to the proceedings whether the party considers that the party, or another party to the proceedings, has been, or is at risk of being, subjected to family violence; and
 - (b) in child-related proceedings--ask each party to the proceedings whether the party considers that the child concerned has been, or is at risk of being, subjected to, or exposed to, abuse, neglect or family violence; and
 - (c) decide which of the issues in the proceedings require full investigation and hearing and which may be disposed of summarily; and
 - (d) decide the order in which the issues are to be decided; and
 - (e) give directions or make orders about the timing of steps that are to be taken in the proceedings; and
 - (f) in deciding whether a particular step is to be taken--consider whether the likely benefits of taking the step justify the costs of taking it; and
 - (g) make appropriate use of technology; and
 - (h) if the court considers it appropriate--encourage the parties to use family dispute resolution or, in child-related proceedings, family counselling; and
 - (i) deal with as many aspects of the matter as it can on a single occasion; and
 - (j) deal with the matter, where appropriate, without requiring the parties' physical attendance at court.
- (2) Subsection (1) does not limit subsection 102NE(1).
- (3) A failure to comply with subsection (1) does not invalidate an order.

FAMILY LAW ACT 1975

- SECT 102NJ

Power to make determinations, findings and orders at any stage of proceedings

(1) If, at any time after the commencement of child-related proceedings or property or other non-child-related proceedings and before making final orders, the court considers that it may assist in the determination of the dispute between the parties, the court may do any or all of the following:

- (a) make a finding of fact in relation to the proceedings;
- (b) determine a matter arising out of the proceedings;
- (c) make an order in relation to an issue arising out of the proceedings.

Note: For example, the court may choose to use this power if the court considers that making a finding of fact at a particular point in the proceedings will help to focus the proceedings.

- (2) Subsection (1) does not prevent the court doing something mentioned in paragraph (1)(a), (b) or (c) at the same time as making final orders.
- (3) To avoid doubt, a person who exercises a power under subsection (1) in relation to proceedings is not, merely because of having exercised the power, required to be disqualified from a further hearing of the proceedings.

FAMILY LAW ACT 1975

- SECT 102NK

Use of family consultants

At any time during child-related proceedings, the court may designate a family consultant as the family consultant in relation to the proceedings.

Note 1: Family consultants have the functions described in section 11A. These include assisting and advising people involved in proceedings, and this assistance and advice may involve helping people to better understand the effect of things on the child concerned. Family consultants can also inform people about other services available to help them.

Note 2: The court may also order parties to proceedings to attend, or arrange for a child to attend,

appointments with a family consultant. See section 11F.

FAMILY LAW ACT 1975

- SECT 102NL

Rules of evidence not to apply unless court decides

(1) The following provisions of the Evidence Act 1995 do not apply to child-related proceedings or property or other non-child-related proceedings:

(a) Divisions 3, 4 and 5 of Part 2.1 (which deal with general rules about giving evidence, examination in chief, re-examination and cross-examination), other than sections 26, 30, 36 and 41; Note: Section 26 is about the court's control over questioning of witnesses. Section 30 is about interpreters. Section 36 relates to examination of a person without subpoena or other process. Section 41 is about improper questions.

(b) Parts 2.2 and 2.3 (which deal with documents and other evidence including demonstrations, experiments and inspections);

(c) Parts 3.2 to 3.8 (which deal with hearsay, opinion, admissions, evidence of judgments and convictions, tendency and coincidence, credibility and character).

(2) The court may give such weight (if any) as it thinks fit to evidence admitted as a consequence of a provision of the Evidence Act 1995 not applying because of subsection (1).

(3) Despite subsection (1), the court may decide to apply one or more of the provisions of a Division or Part mentioned in that subsection to an issue in the proceedings, if:

(a) the court is satisfied that the circumstances are exceptional; and

(b) the court has taken into account (in addition to any other matters the court thinks relevant):

(i) the importance of the evidence in the proceedings; and

(ii) the nature of the subject matter of the proceedings; and

(iii) the probative value of the evidence; and

(iv) the powers of the court (if any) to adjourn the hearing, to make another order or to give a direction in relation to the evidence.

(4) If the court decides to apply a provision of a Division or Part mentioned in subsection (1) to an issue in the proceedings, the court may give such weight (if any) as it thinks fit to evidence admitted as a consequence of the provision applying.

(5) Subsection (1) does not revive the operation of:

(a) a rule of common law; or

(b) a law of a State or a Territory;

that, but for subsection (1), would have been prevented from operating because of a provision of a Division or Part mentioned in that subsection.

FAMILY LAW ACT 1975

- SECT 102NM

Evidence of children

(1) This section applies if the court applies the law against hearsay under subsection 102NL(2) to child-related proceedings.

(2) Evidence of a representation made by a child about a matter that is relevant to the welfare of the child or another child, which would not otherwise be admissible as evidence because of the law against hearsay, is not inadmissible in the proceedings solely because of the law against hearsay.

(3) The court may give such weight (if any) as it thinks fit to evidence admitted under subsection (2).

(4) This section applies despite any other Act or rule of law.

(5) In this section:

"child" means a person under 18.

"representation" includes an express or implied representation, whether oral or in writing, and a representation inferred from conduct.

FAMILY LAW ACT 1975

- SECT 102NN

Court's general duties and powers relating to evidence

(1) In giving effect to the relevant principles in section 102NE, the court may:

(a) give directions or make orders about the matters in relation to which the parties are to present evidence; and

(b) give directions or make orders about who is to give evidence in relation to each issue; and

(c) give directions or make orders about how particular evidence is to be given; and

(d) if the court considers that expert evidence is required--give directions or make orders about:

(i) the matters in relation to which an expert is to provide evidence; and

- (ii) the number of experts who may provide evidence in relation to a matter; and
- (iii) how an expert is to provide the expert's evidence; and
- (e) ask questions of, and seek evidence or the production of documents or other things from, parties, witnesses and experts on matters relevant to the proceedings.
- (2) Without limiting subsection (1) or section 102NJ, the court may give directions or make orders:
 - (a) about the use of written submissions; or
 - (b) about the length of written submissions; or
 - (c) limiting the time for oral argument; or
 - (d) limiting the time for the giving of evidence; or
 - (e) that particular evidence is to be given orally; or
 - (f) that particular evidence is to be given by affidavit; or
 - (g) that evidence in relation to a particular matter not be presented by a party; or
 - (h) that evidence of a particular kind not be presented by a party; or
 - (i) limiting, or not allowing, cross-examination of a particular witness; or
 - (j) limiting the number of witnesses who are to give evidence in the proceedings.
- (3) The court may, in child-related proceedings or property or other non-child-related proceedings:
 - (a) receive into evidence the transcript of evidence in any other proceedings before:
 - (i) the court; or
 - (ii) another court; or
 - (iii) a tribunal;
 - and draw any conclusions of fact from that transcript that it thinks proper; and
 - (b) adopt any recommendation, finding, decision or judgment of any court, person or body of a kind mentioned in any of subparagraphs (a)(i) to (iii).
- (4) In proceedings under Part VII in which the court is required to regard the best interests of the child as the paramount consideration:
 - (a) subsection 126K(1) of the Evidence Act 1995 does not apply in relation to information that would:
 - (i) reveal the identity of a journalist's source; or
 - (ii) enable that identity to be discovered;
 - if the court considers that it is in the best interests of the child for the information to be disclosed; and
 - (b) the court must not direct, under a law of a State or Territory relating to professional confidential relationship privilege specified in the regulations, that evidence not be adduced if the court considers that adducing the evidence would be in the best interests of the child.

FAMILY LAW ACT 1975

- SECT 102P

Definitions

- In this Part:
- "information" includes any document.
 - "news publisher" means a person engaged in the business of publishing news or a public or community broadcasting service engaged in the publishing of news through a public news medium.
 - "non-publication order" means an order that prohibits or restricts the publication of information (but that does not otherwise prohibit or restrict the disclosure of information).
 - "party" to proceedings includes the complainant or victim (or alleged victim) in criminal proceedings and any person named in evidence given in proceedings and, in relation to proceedings that have concluded, means a person who was a party to the proceedings before the proceedings concluded.
 - "publish" means disseminate or provide access to the public or a section of the public by any means, including by:
 - (a) publication in a book, newspaper, magazine or other written publication; or
 - (b) broadcast by radio or television; or
 - (c) public exhibition; or
 - (d) broadcast or publication by means of the internet.
 - "suppression order" means an order that prohibits or restricts the disclosure of information (by publication or otherwise).

FAMILY LAW ACT 1975

- SECT 102PA

Powers of a court not affected

This Part does not limit or otherwise affect any powers that a court has apart from this Part to regulate its proceedings or to deal with a contempt of the court.

FAMILY LAW ACT 1975

- SECT 102PB

Other laws not affected

This Part does not limit or otherwise affect the operation of a provision made by or under any Act (other than this Act) that prohibits or restricts, or authorises a court to prohibit or restrict, the publication or other disclosure of information in connection with proceedings.

FAMILY LAW ACT 1975

- SECT 102PC

Relationship with Part XIVB

This Part and Part XIVB do not limit each other.

FAMILY LAW ACT 1975

- SECT 102PD

Safeguarding public interest in open justice

In deciding whether to make a suppression order or non -publication order, the court concerned must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

FAMILY LAW ACT 1975

- SECT 102PE

Power to make orders

(1) A court exercising jurisdiction in proceedings under this Act may, by making a suppression order or non -publication order on grounds permitted by this Part, prohibit or restrict the publication or other disclosure of:

- (a) information tending to reveal the identity of or otherwise concerning any party to or witness in the proceedings or any person who is related to or otherwise associated with any party to or witness in the proceedings; or
- (b) information that relates to the proceedings and is:
 - (i) information that comprises evidence or information about evidence; or
 - (ii) information obtained by the process of discovery; or
 - (iii) information produced under a subpoena; or
 - (iv) information lodged with or filed in the court.

(2) The court may make such orders as it thinks appropriate to give effect to an order under subsection (1).

FAMILY LAW ACT 1975

- SECT 102PF

Grounds for making an order

(1) The court may make a suppression order or non -publication order on one or more of the following grounds:

- (a) the order is necessary to prevent prejudice to the proper administration of justice;
- (b) the order is necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
- (c) the order is necessary to protect the safety of any person;
- (d) the order is necessary to avoid causing undue distress or embarrassment to a party to or witness in criminal proceedings involving an offence of a sexual nature (including an act of indecency).

(2) A suppression order or non -publication order must specify the ground or grounds on which the order is made.

FAMILY LAW ACT 1975

- SECT 102PG

Procedure for making an order

(1) The court may make a suppression order or non -publication order on its own initiative or on the application of:

- (a) a party to the proceedings concerned; or
- (b) any other person considered by the court to have a sufficient interest in the making of the order.

(2) Each of the following persons is entitled to appear and be heard by the court on an application for a suppression order or non -publication order:

- (a) the applicant for the order;
- (b) a party to the proceedings concerned;

- (c) the Government (or an agency of the Government) of the Commonwealth or a State or Territory;
 - (d) a news publisher;
 - (e) any other person who, in the court's opinion, has a sufficient interest in the question of whether a suppression order or non-publication order should be made.
- (3) A suppression order or non-publication order may be made at any time during proceedings or after proceedings have concluded.
- (4) A suppression order or non-publication order may be made subject to such exceptions and conditions as the court thinks fit and specifies in the order.
- (5) A suppression order or non-publication order must specify the information to which the order applies with sufficient particularity to ensure that the court order is limited to achieving the purpose for which the order is made.

FAMILY LAW ACT 1975

- SECT 102PH

Interim orders

- (1) If an application is made to the court for a suppression order or non-publication order, the court may, without determining the merits of the application, make the order as an interim order to have effect, subject to revocation by the court, until the application is determined.
- (2) If an order is made as an interim order, the court must determine the application as a matter of urgency.

FAMILY LAW ACT 1975

- SECT 102PI

Duration of orders

- (1) A suppression order or non-publication order operates for the period decided by the court and specified in the order.
- (2) In deciding the period for which an order is to operate, the court is to ensure that the order operates for no longer than is reasonably necessary to achieve the purpose for which it is made.
- (3) The period for which an order operates may be specified by reference to a fixed or ascertainable period or by reference to the occurrence of a specified future event.

FAMILY LAW ACT 1975

- SECT 102PJ

Exception for court officials

A suppression order does not prevent a person from disclosing information if the disclosure is not by publication and is in the course of performing functions or duties or exercising powers in a public official capacity:

- (a) in connection with the conduct of proceedings or the recovery or enforcement of any penalty imposed in proceedings; or
- (b) in compliance with any procedure adopted by the court for informing a news publisher of the existence and content of a suppression order or non-publication order made by the court.

FAMILY LAW ACT 1975

- SECT 102PK

Contravention of order

- (1) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
 - (b) the act or omission contravenes an order made by a court under section 102PE.
- Penalty: Imprisonment for 12 months, 60 penalty units or both.
- (2) An act or omission that constitutes an offence under this section may be punished as a contempt of court even though it could be punished as an offence.
- (3) An act or omission that constitutes an offence under this section may be punished as an offence even though it could be punished as a contempt of court.
- (4) If an act or omission constitutes both an offence under this section and a contempt of court, the offender is not liable to be punished twice.
- (5) Part XIIIIA does not apply in relation to a contravention of an order made by a court under section 102PE.

FAMILY LAW ACT 1975

- SECT 102QAA

Simplified outline

This Part sets out the court's powers to deal with proceedings that are unmeritorious, harmful, or vexatious. Unmeritorious proceedings are proceedings that are without reasonable prospect of success, frivolous, vexatious, or an abuse of process. Harmful proceedings are proceedings that may result in harm to another party, or to a child involved in the proceedings. The kinds of harms that might provide grounds for such an order could include severe stress (that could arise, for example, from repeated filings of applications against the respondent). Vexatious proceedings include proceedings that are an abuse of process, proceedings instituted without reasonable grounds, and proceedings instituted or conducted for a wrongful purpose.

FAMILY LAW ACT 1975

- SECT 102Q

Definitions

(1) In this Part:

"appropriate court official" means:

- (a) in relation to the Federal Circuit and Family Court of Australia--the Chief Executive Officer; and
- (c) in relation to the Family Court of Western Australia--the Principal Registrar of the Court; and
- (d) in relation to any other court--the chief executive officer or principal registrar (however described) of the court.

"Australian court or tribunal" means a court or tribunal of the Commonwealth, a State or a Territory.

"harmful proceedings order" means an order made under subsection 102QAC(1).

"institute", in relation to proceedings, includes:

- (a) for civil proceedings--the taking of a step or the making of an application that may be necessary before proceedings can be started against a party; and
- (b) for proceedings before a tribunal--the taking of a step or the making of an application that may be necessary before proceedings can be started before the tribunal; and
- (c) for criminal proceedings--the making of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) for civil or criminal proceedings or proceedings before a tribunal--the taking of a step or the making of an application that may be necessary to start an appeal in relation to the proceedings or to a decision made in the course of the proceedings.

"proceedings":

- (a) in relation to a court--has the meaning given by subsection 4(1); and
- (b) in relation to a tribunal--means a proceeding in the tribunal, whether between parties or not, and includes an incidental proceeding in the course of, or in connection with, a proceeding.

"proceedings of a particular type" includes:

- (a) proceedings in relation to a particular matter; and
- (b) proceedings against a particular person.

"vexatious proceedings" includes:

- (a) proceedings that are an abuse of the process of a court or tribunal; and
- (b) proceedings instituted in a court or tribunal to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
- (c) proceedings instituted or pursued in a court or tribunal without reasonable ground; and
- (d) proceedings conducted in a court or tribunal in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

"vexatious proceedings order" means an order made under subsection 102QB(2).

(2) A reference in this Part to a person acting in concert with another person in instituting or conducting proceedings does not include a reference to a person who is so acting as a lawyer or representative of the other person.

FAMILY LAW ACT 1975

- SECT 102QA

Interactions between provisions and with other powers of court

The provisions of this Part do not limit or otherwise affect:

- (a) each other; or
- (b) any other power that a court has to deal with proceedings.

FAMILY LAW ACT 1975

- SECT 102QAB

Summary decrees

No reasonable prospect of successfully defending proceedings

- (1) The court may make a decree for one party (the first party) against another in relation to the

whole or any part of proceedings if:

- (a) the first party is prosecuting the proceedings or that part of the proceedings; and
- (b) the court is satisfied that the other party has no reasonable prospect of successfully defending the proceedings or that part of the proceedings.

No reasonable prospect of successfully prosecuting proceedings

(2) The court may make a decree for one party (the first party) against another in relation to the whole or any part of a proceedings if:

- (a) the first party is defending the proceedings or that part of the proceedings; and
- (b) the court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceedings or that part of the proceedings.

When there is no reasonable prospect of success

(3) For the purposes of this section, a defence or proceedings or part of proceedings need not be:

- (a) hopeless; or
- (b) bound to fail;

to have no reasonable prospect of success.

Proceedings that are frivolous, vexatious or an abuse of process

(4) The court may dismiss all or part of proceedings at any stage if it is satisfied that the proceedings or the part is frivolous, vexatious or an abuse of process.

(5) To avoid doubt, proceedings or a part of proceedings are not frivolous, vexatious or an abuse or process merely because an application relating to the proceedings or the part is made and later withdrawn.

Costs

(6) If the court makes a decree, or dismisses all or part of proceedings, under this section, the court may make such order as to costs as the court considers just.

Action by court on its own initiative or on application

(7) The court may take action under this section on its own initiative or on application by a party to the proceedings.

FAMILY LAW ACT 1975

- SECT 102QAC

Making harmful proceedings orders

Making harmful proceedings orders

(1) A court exercising jurisdiction in proceedings under this Act may make an order (a harmful proceedings order) prohibiting a party (the first party) to the proceedings from instituting proceedings under this Act against another party to the proceedings without the leave of the court under section 102QAG, if the court is satisfied that there are reasonable grounds to believe that:

- (a) the other party would suffer harm if the first party instituted further proceedings against the other party; or
- (b) in the case of child -related proceedings (within the meaning of Part VII)--the child who is the subject of the proceedings would suffer harm if the first party instituted further proceedings against the other party.

Note: Proceedings includes cross-proceedings and incidental proceedings (see subsection 4(1)).

(2) For the purposes of subsection (1), harm may include, but is not limited to, the following:

- (a) psychological harm or oppression;
- (b) major mental distress;
- (c) a detrimental effect on the other party's capacity to care for a child;
- (d) financial harm.

(3) In determining whether to make an order under subsection (1), the court may have regard to:

- (a) the history of the proceedings under this Act between the first party and the other party; and
- (b) whether the first party has frequently instituted or conducted proceedings against the other party in any Australian court or tribunal (including proceedings instituted (or attempted to be instituted) or conducted, and orders made, before the commencement of this section); and
- (c) the cumulative effect, or any potential cumulative effect, of any harm resulting from the proceedings referred to in paragraphs (a) and (b).

(4) The court may make a harmful proceedings order on its own initiative or on application by a party to the proceedings.

(5) The court must not make a harmful proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.

(6) An order made under subsection (1) is a final order.

Order about notifying other party in relation to application for leave etc.

(7) If the court makes an order under subsection (1), the court must also make an order as to whether the court is to notify the other party, in the event that the first party makes an application under section 102QAE for leave to institute proceedings against the other party, of either or both of the following:

- (a) that the application has been made;
- (b) if the application is dismissed--that the application has been dismissed.
- (8) The court must have regard to the wishes of the other party in making an order under subsection (7).

FAMILY LAW ACT 1975

- SECT 102QAD

Proceedings in contravention of harmful proceedings order

(1) If a person is subject to a harmful proceedings order prohibiting the person from instituting proceedings under this Act in a court having jurisdiction under this Act:

- (a) the person must not institute proceedings in the court without the leave of the court under section 102QAG; and
- (b) another person must not, acting in concert with the person, institute proceedings in the court without the leave of the court under section 102QAG.

(2) If proceedings are instituted in contravention of subsection (1), the proceedings are stayed.

(3) Without limiting subsection (2), the court may make:

- (a) an order declaring proceedings are proceedings to which subsection (2) applies; and
- (b) any other order in relation to the stayed proceedings it considers appropriate, including an order for costs.
- (4) The court may make an order under subsection (3) on its own initiative or on the application of a person a party to the proceedings.

FAMILY LAW ACT 1975

- SECT 102QAE

Application for leave to institute proceedings

(1) This section applies to a person (the applicant) who is:

- (a) subject to a harmful proceedings order prohibiting the person from instituting further proceedings under this Act in a court having jurisdiction under this Act; or
- (b) acting in concert with another person who is subject to an order mentioned in paragraph (a).
- (2) The applicant may apply to the court for leave to institute proceedings that are subject to the order.

Note: The court may be required to give notice that the application has been made (see subsection 102QAC(7)).

(3) The applicant must file an affidavit with the application that:

- (a) lists all the occasions on which the applicant has applied for leave under this section; and
- (b) discloses all relevant facts about the application, whether supporting or adverse to the application, that are known to the applicant.

(4) The applicant must not serve a copy of the application or affidavit on a person unless an order is made under section 102QAG. If the order is made, the applicant must serve the copy in accordance with the order.

FAMILY LAW ACT 1975

- SECT 102QAF

Dismissing application for leave

(1) The court may make an order dismissing an application under section 102QAE for leave to institute proceedings if it considers the affidavit does not substantially comply with subsection 102QAE(3).

Note: The court may be required to give notice that the application has been dismissed (see subsection 102QAC(7)).

(2) The court must make an order dismissing an application under section 102QAE for leave to institute proceedings if it considers the proceedings are vexatious proceedings.

Note: The court may be required to give notice that the application has been dismissed (see subsection 102QAC(7)).

(3) The court may dismiss the application without an oral hearing (either with or without the consent of the applicant).

(4) The court may make an order under this section in Chambers.

FAMILY LAW ACT 1975

- SECT 102QAG

Granting application for leave

(1) The court may make an order granting the application for leave only if it is satisfied that the proceedings are not frivolous, vexatious or an abuse of process, and have reasonable prospects of

success.

(2) An order under subsection (1) may be made subject to the conditions the court considers appropriate.

FAMILY LAW ACT 1975

- SECT 102QB

Making vexatious proceedings orders

(1) This section applies if a court exercising jurisdiction in proceedings under this Act is satisfied:

(a) a person has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals; or

(b) a person, acting in concert with another person who is subject to a vexatious proceedings order or who is covered by paragraph (a), has instituted or conducted vexatious proceedings in an Australian court or tribunal.

(2) The court may make any or all of the following orders:

(a) an order staying or dismissing all or part of any proceedings in the court already instituted by the person;

(b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act;

(c) any other order the court considers appropriate in relation to the person.

Note: Examples of an order under paragraph (c) are an order directing that the person may only file documents by mail, an order to give security for costs and an order for costs.

(3) The court may make a vexatious proceedings order on its own initiative or on the application of any of the following:

(a) the Attorney-General of the Commonwealth or of a State or Territory;

(b) the appropriate court official;

(c) a person against whom another person has instituted or conducted vexatious proceedings;

(d) a person who has a sufficient interest in the matter.

(4) The court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.

(5) An order made under paragraph (2)(a) or (b) is a final order.

(6) For the purposes of subsection (1), the court may have regard to:

(a) proceedings instituted (or attempted to be instituted) or conducted in any Australian court or tribunal; and

(b) orders made by any Australian court or tribunal; and

(c) the person's overall conduct in proceedings conducted in any Australian court or tribunal (including the person's compliance with orders made by that court or tribunal); including proceedings instituted (or attempted to be instituted) or conducted, and orders made, before the commencement of this section.

FAMILY LAW ACT 1975

- SECT 102QC

Notification of vexatious proceedings orders

(1) A person may request the appropriate court official of a court for a certificate stating whether a person named in the request is or has been the subject of a vexatious proceedings order made by the court.

(2) If a person makes a request under subsection (1) and the person named in the request is or has been the subject of a vexatious proceedings order made by the court, the appropriate court official must issue to the person making the request a certificate:

(a) specifying the date of the order; and

(b) specifying any other information prescribed by the applicable Rules of Court.

(3) This section is subject to any law of the Commonwealth, or order of the court, restricting the publication or disclosure of the name of a party to proceedings in the court.

Note: Section 155 of the Evidence Act 1995 deals with adducing evidence of Commonwealth records.

FAMILY LAW ACT 1975

- SECT 102QD

Proceedings in contravention of vexatious proceedings order

(1) If a person is subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act:

(a) the person must not institute proceedings, or proceedings of that type, in the court without the

leave of the court under section 102QG; and

(b) another person must not, acting in concert with the person, institute proceedings, or proceedings of that type, in the court without the leave of the court under section 102QG.

(2) If proceedings are instituted in contravention of subsection (1), the proceedings are stayed.

(3) Without limiting subsection (2), the court may make:

(a) an order declaring proceedings are proceedings to which subsection (2) applies; and

(b) any other order in relation to the stayed proceedings it considers appropriate, including an order for costs.

(4) The court may make an order under subsection (3) on its own initiative or on the application of any of the following:

(a) the Attorney-General of the Commonwealth or of a State or Territory;

(b) the appropriate court official;

(c) a person against whom another person has instituted or conducted vexatious proceedings;

(d) a person who has a sufficient interest in the matter.

FAMILY LAW ACT 1975

- SECT 102QE

Application for leave to institute proceedings by person subject to vexatious proceedings order

(1) This section applies to a person (the applicant) who is:

(a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act; or

(b) acting in concert with another person who is subject to an order mentioned in paragraph (a).

(2) The applicant may apply to the court for leave to institute proceedings that are subject to the order.

(3) The applicant must file an affidavit with the application that:

(a) lists all the occasions on which the applicant has applied for leave under this section; and

(b) lists all other proceedings the applicant has instituted in any Australian court or tribunal, including proceedings instituted before the commencement of this section; and

(c) discloses all relevant facts about the application, whether supporting or adverse to the application, that are known to the applicant.

(4) The applicant must not serve a copy of the application or affidavit on a person unless an order is made under paragraph 102QG(1)(a). If the order is made, the applicant must serve the copy in accordance with the order.

FAMILY LAW ACT 1975

- SECT 102QF

Dismissing application for leave by person subject to vexatious proceedings order

(1) The court may make an order dismissing an application under section 102QE for leave to institute proceedings if it considers the affidavit does not substantially comply with subsection 102QE(3).

(2) The court must make an order dismissing an application under section 102QE for leave to institute proceedings if it considers the proceedings are vexatious proceedings.

(3) The court may dismiss the application without an oral hearing (either with or without the consent of the applicant).

(4) The court may make an order under this section in Chambers.

FAMILY LAW ACT 1975

- SECT 102QG

Granting application for leave by person subject to vexatious proceedings order

(1) Before the court makes an order granting an application under section 102QE for leave to institute proceedings, it must:

(a) order that the applicant serve:

(i) the person against whom the applicant proposes to institute the proceedings; and

(ii) any other person specified in the order;

with a copy of the application and affidavit and a notice that the person is entitled to be heard on the application; and

(b) give the applicant and each person described in subparagraph (a)(i) or (ii), on appearance, an opportunity to be heard at the hearing of the application.

(2) At the hearing of the application, the court may receive as evidence any record of evidence given, or affidavit filed, in any proceedings in any Australian court or tribunal in which the applicant is, or at any time was, involved either as a party or as a person acting in concert with a party.

(3) The court may make an order granting the application. The order may be made subject to the conditions the court considers appropriate.

(4) The court may grant leave only if it is satisfied the proceedings are not vexatious proceedings.

FAMILY LAW ACT 1975

- SECT 103

Decrees under this Act

A decree under this Act has effect throughout Australia and the external Territories.

FAMILY LAW ACT 1975

- SECT 104

Overseas decrees

(1) In this section:

"applicant", in relation to a divorce or the annulment of a marriage or the legal separation of the parties to a marriage, means:

- (a) the party at whose instance the divorce, annulment or legal separation was effected; or
- (b) where the divorce, annulment or legal separation was effected at the instance of both the parties—each of the parties.

"marriage" includes a purported marriage that is void.

"relevant date", in relation to a divorce or the annulment of a marriage or the legal separation of the parties to a marriage, means the date of the institution of the proceedings that resulted in the divorce, annulment or legal separation.

"respondent", in relation to a divorce or the annulment of a marriage or the legal separation of the parties to a marriage, means a party to the marriage, not being a party at whose instance the divorce, annulment or legal separation was effected.

(2) For the purposes of this section, a person who is a national of a country of which an overseas jurisdiction forms part shall be deemed to be a national of that overseas jurisdiction.

(3) A divorce or the annulment of a marriage, or the legal separation of the parties to a marriage, effected in accordance with the law of an overseas jurisdiction shall be recognised as valid in Australia where:

- (a) the respondent was ordinarily resident in the overseas jurisdiction at the relevant date;
- (b) the applicant or, in a case referred to in paragraph (b) of the definition of applicant in subsection (1), one of the applicants, was ordinarily resident in the overseas jurisdiction at the relevant date and either:
 - (i) the ordinary residence of the applicant or of that applicant, as the case may be, had continued for not less than 1 year immediately before the relevant date; or
 - (ii) the last place of cohabitation of the parties to the marriage was in that jurisdiction;
- (c) the applicant or the respondent or, in a case referred to in paragraph (b) of the definition of applicant in subsection (1), one of the applicants, was domiciled in the overseas jurisdiction at the relevant date;
- (d) the respondent was a national of the overseas jurisdiction at the relevant date;
- (e) the applicant or, in a case referred to in paragraph (b) of the definition of applicant in subsection (1), one of the applicants, was a national of the overseas jurisdiction at the relevant date and either:
 - (i) the applicant or that applicant, as the case may be, was ordinarily resident in that jurisdiction at that date; or
 - (ii) the applicant or that applicant, as the case may be, had been ordinarily resident in that jurisdiction for a continuous period of 1 year falling, at least in part, within the period of 2 years immediately before the relevant date; or
- (f) the applicant or, in a case referred to in paragraph (b) of the definition of applicant in subsection (1), one of the applicants, was a national of, and present in, the overseas jurisdiction at the relevant date and the last place of cohabitation of the parties to the marriage was an overseas jurisdiction the law of which, at the relevant date, did not provide for divorce, the annulment of marriage or the legal separation of the parties to a marriage, as the case may be.

(4) A divorce or the annulment of a marriage, or the legal separation of the parties to a marriage, shall not be recognised as valid by virtue of subsection (3) where:

- (a) under the common law rules of private international law, recognition of its validity would be refused on the ground that a party to the marriage had been denied natural justice; or
- (b) recognition would manifestly be contrary to public policy.

(5) Any divorce or any annulment of a marriage, or any legal separation of the parties to a marriage, that would be recognised as valid under the common law rules of private international law but to which none of the preceding provisions of this section applies shall be recognised as valid in Australia, and the operation of this subsection shall not be limited by any implication from those provisions.

(6) Notwithstanding anything contained in this section, the annulment in accordance with the law of an overseas jurisdiction of a marriage solemnized under Part V of the Marriage Act 1961, being an annulment on the ground only of non-compliance with the formalities prescribed by the law of the jurisdiction in which the marriage was solemnized, shall not be recognised as valid in Australia.

(7) For the purposes of this section, a court in Australia, in considering the validity of a divorce or an annulment of a marriage, or a legal separation of the parties to a marriage, effected under a law of an overseas jurisdiction:

(a) where the respondent appeared in the proceedings for the divorce, annulment or separation:

(i) is bound by the findings of fact on the basis of which a court of the overseas jurisdiction assumed jurisdiction to grant the divorce, annulment or separation; and

(ii) may treat as proved any other facts found by a court of the overseas jurisdiction or otherwise established for the purposes of the law of the overseas jurisdiction; or

(b) where the respondent did not appear in the proceedings for the divorce, annulment or separation--may treat as proved any facts found by a court of the overseas jurisdiction or otherwise established for the purposes of the law of the overseas jurisdiction.

(8) For the purposes of the preceding provisions of this section but without limiting the operation of those provisions, a divorce or the annulment of a marriage, or the legal separation of the parties to a marriage, shall be deemed to have been effected in accordance with the law of an overseas jurisdiction if it was effected in another overseas jurisdiction in circumstances in which, at the relevant date, it would have been recognised as valid by the law of the first-mentioned overseas jurisdiction.

(9) Where a divorce or the annulment of a marriage is to be recognised as valid in accordance with this section, the capacity of a party to that marriage to remarry in accordance with the law of Australia is not affected by the fact that the validity of the divorce or annulment is not recognised under the law of some other jurisdiction.

(10) The preceding provisions of this section apply in relation to divorces, annulments and legal separations effected whether by decree, legislation or otherwise, whether before or after the commencement of this Act, and, for the purposes of this section, any decree, legislation or other process by which it is established that a purported marriage was or is to become void shall be deemed to be an annulment of the marriage.

FAMILY LAW ACT 1975

- SECT 104A

Recognition in external Territories

(1) In this section:

"external Territory" does not include Norfolk Island.

"overseas jurisdiction" does not include an external Territory.

(2) A divorce or the annulment of a marriage, or the legal separation of the parties to a marriage, effected in accordance with the law of an overseas jurisdiction that is recognised as valid in Australia shall be recognised as valid in every external Territory.

(3) A divorce or the annulment of a marriage, or the legal separation of the parties to a marriage, effected in accordance with the law of an external Territory that is recognised as valid in Australia shall be recognised as valid in every other external Territory.

FAMILY LAW ACT 1975

- SECT 105

Enforcement generally

(1) Subject to this Part, to the regulations and to the applicable Rules of Court, all decrees made under this Act may be enforced by any court having jurisdiction under this Act.

(2) Except as prescribed, a court shall not entertain a proceeding under this Act for the enforcement of a decree made by another court unless the decree is registered in the first-mentioned court in accordance with the regulations.

(2A) Subsection (2) does not prevent a court from making an order under paragraph 90KA(c) or 90UN(c).

(3) Where a person bound by a decree made under this Act has died, the decree may, by leave of:

(a) the court by which it was made; or

(b) any court in which the decree has been registered in accordance with the regulations (whether the decree was registered before or after the death of the person);

and on such terms and conditions as the court considers appropriate, be enforced, in respect of liabilities that arose under the decree before the death of that person, against the estate of that person.

FAMILY LAW ACT 1975

- SECT 106

Maintenance orders--more than 12 months in arrears

In determining whether to make an order enforcing a maintenance order, a court must not require that there be special circumstances that justify enforcing the maintenance order merely because the maintenance payable under it is more than 12 months in arrears.

FAMILY LAW ACT 1975

- SECT 106A

Execution of instruments by order of court

(1) If:

(a) an order under this Act has directed a person to execute a deed or instrument; and
(b) that person has refused or neglected to comply with the direction or, for any other reason, the court considers it necessary to exercise the powers of the court under this subsection;
the court may appoint an officer of the court or other person to execute the deed or instrument in the name of the person to whom the direction was given and to do all acts and things necessary to give validity and operation to the deed or instrument.

(2) If:

(a) a provision of a maintenance agreement that has been registered under section 86 or approved by a court under section 87 requires a person to execute a deed or instrument; and
(b) that person has refused or neglected to comply with that provision of the maintenance agreement or, for any other reason, the court considers it necessary to exercise the powers of the court under this subsection;
the court may appoint an officer of the court or other person to execute the deed or instrument in the name of the person required by that provision of the maintenance agreement to execute the deed or instrument and to do all acts and things necessary to give validity and operation to the deed or instrument.

(3) The execution of a deed or instrument by a person appointed under this section to execute that deed or instrument has the same force and validity as if the deed or instrument had been executed by the person directed by an order referred to in paragraph (1)(a), or required by a provision of a maintenance agreement referred to in paragraph (2)(a), to execute it.

(4) The court may make such order as it considers just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

FAMILY LAW ACT 1975

- SECT 106B

Transactions to defeat claims

(1) In proceedings under this Act, the court may set aside or restrain the making of an instrument or disposition by or on behalf of, or by direction or in the interest of, a party, which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.

(1A) If:

(a) a party to a marriage, or a party to a de facto relationship, is a bankrupt; and
(b) the bankruptcy trustee is a party to proceedings under this Act;
the court may set aside or restrain the making of an instrument or disposition:
(c) which is made or proposed to be made by or on behalf of, or by direction or in the interest of, the bankrupt; and
(d) which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.

(1B) If:

(a) a party to a marriage, or a party to a de facto relationship, is a debtor subject to a personal insolvency agreement; and
(b) the trustee of the agreement is a party to proceedings under this Act;
the court may set aside or restrain the making of an instrument or disposition:
(c) which is made or proposed to be made by or on behalf of, or by direction or in the interest of, the debtor; and
(d) which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.

(2) The court may order that any money or real or personal property dealt with by any instrument or disposition referred to in subsection (1), (1A) or (1B) may be taken in execution or charged with the payment of such sums for costs or maintenance as the court directs, or that the proceeds of a sale must be paid into court to abide its order.

(3) The court must have regard to the interests of, and shall make any order proper for the protection

of, a bona fide purchaser or other person interested.

(4) A party or a person acting in collusion with a party may be ordered to pay the costs of any other party or of a bona fide purchaser or other person interested of and incidental to any such instrument or disposition and the setting aside or restraining of the instrument or disposition.

(4AA) An application may be made to the court for an order under this section by:

- (a) a party to the proceedings; or
- (b) a creditor of a party to the proceedings if the creditor may not be able to recover his or her debt if the instrument or disposition were made; or
- (c) any other person whose interests would be affected by the making of the instrument or disposition.

(4A) In addition to the powers the court has under this section, the court may also do any or all of the things listed in subsection 80(1) or 90SS(1).

(5) In this section:

"disposition" includes:

- (a) a sale or gift; and
- (b) the issue, grant, creation, transfer or cancellation of, or a variation of the rights attaching to, an interest in a company or a trust.

"interest":

(a) in a company includes:

- (i) a share in or debenture of the company; and
- (ii) an option over a share in or debenture of the company (whether the share or debenture is issued or not); and

(b) in a trust includes:

- (i) a beneficial interest in the trust; and
- (ii) the interest of a settlor in property subject to the trust; and
- (iii) a power of appointment under the trust; and
- (iv) a power to rescind or vary a provision of, or to rescind or vary the effect of the exercise of a power under, the trust; and
- (v) an interest that is conditional, contingent or deferred.

FAMILY LAW ACT 1975

- SECT 107

People not to be imprisoned for failure to comply with certain orders

(1) A person must not be imprisoned or otherwise placed in custody because of a contravention of an order for the payment of money made in a matrimonial cause or de facto financial cause.

(2) This section does not affect the operation of:

- (a) Division 13A of Part VII; or
- (b) Part XIII A; or
- (c) Part XIII B.

FAMILY LAW ACT 1975

- SECT 109

Inter - State enforcement of child bearing expenses order

(1) This section applies to the following orders made under the law of a State or Territory:

- (a) orders of a kind that may be made under section 67D;
- (b) orders for the payment of an amount in relation to the maintenance of a child.

(2) The regulations may make provision for and in relation to the enforcement in a State or Territory by a court having jurisdiction under this Act of orders to which this section applies made by a court in another State or Territory.

FAMILY LAW ACT 1975

- SECT 109A

Rules of Court relating to enforcement

(1) The power of Judges of the Federal Circuit and Family Court of Australia (Division 1) under section 123, and the power of Judges of a Family Court of a State under section 123A, to make Rules of Court extends to making Rules of Court for or in relation to, or for or in relation to anything incidental to, the enforcement by the court of:

- (a) a child-related order; or
- (b) an order under this Act (within the meaning of Part XIII A); or
- (c) the Child Support (Registration and Collection) Act 1988 ; or
- (d) the Child Support (Assessment) Act 1989 ;

and, in particular, for or in relation to any of the specific matters mentioned in subsection (2).

(2) The specific matters are as follows:

- (a) requiring a person to do any one or more of the following:
 - (i) to attend before a court or Registrar and answer questions or produce documents;
 - (ii) to deliver a document or article to, or to a person specified by, a court or Registrar;
 - (iii) to transfer the ownership of specified property to another person;
 - (iv) to give another person possession (including exclusive possession) of specified property;
 - (v) to deliver a specified chattel to another person;
 - (vi) to do, or abstain from doing, any other act;
- (b) prescribing the practice and procedure to be followed for a hearing before a court or Registrar for the purpose of giving effect to a requirement made as mentioned in subparagraph (a)(i);
- (c) taking any one or more of the actions mentioned in subsection (3) in respect of a person who:
 - (i) fails to pay the amount of a fine imposed under Division 13A of Part VII or under Part XIII A; or
 - (ii) fails to pay an amount payable under a bond entered into under Division 13A of Part VII or under Part XIII A; or
 - (iii) fails to pay under section 66L an amount of maintenance for a person over the age of 18 years; or
 - (iv) fails to pay an amount payable under a registered maintenance liability under the Child Support (Registration and Collection) Act 1988 or the Child Support (Assessment) Act 1989; or
 - (v) fails to comply with a requirement made as mentioned in paragraph (a);
- (d) delegating to a Registrar all or any of the powers conferred on a court under Rules of Court made under this section.
- (3) Subject to subsection (4), the actions in respect of a person the taking of which may be provided for by Rules of Court as mentioned in paragraph (2)(c) are as follows:
 - (a) the issue of a warrant for the arrest of the person;
 - (b) the issue of a warrant of execution against property of the person;
 - (c) the making of an order authorising the taking of possession of property of the person;
 - (d) the making of an order for the sequestration, and if necessary the sale, of property of the person;
 - (e) the making of an order for the attachment, by garnishment or attachment of earnings, of debts owed to the person;
 - (f) the appointment of a receiver of property of the person.
- (4) A reference in paragraph (2)(c) to a failure to pay an amount is a reference to any such failure irrespective of the length of the period during which the failure has continued, and includes a reference to a failure to pay part of an amount.
- (5) In this section:

"property" means real or personal property.

FAMILY LAW ACT 1975

- SECT 109AA

Rules of Court relating to enforcement--Federal Circuit and Family Court of Australia (Division 1)

(1) Section 109A applies to the making of Rules of Court under Chapter 3 of the Federal Circuit and Family Court of Australia Act 2021 in a corresponding way to the way in which it applies to the making of Rules of Court under section 123 of this Act.

(2) For the purposes of the application of section 109A in accordance with subsection (1) of this section:

- (a) the reference in subsection 109A(1) to the court is to be read as a reference to the Federal Circuit and Family Court of Australia (Division 1); and
- (b) each reference in subsection 109A(2) to a court is to be read as a reference to the Federal Circuit and Family Court of Australia (Division 1); and
- (c) each reference in subsection 109A(2) to a Registrar is to be read as a reference to the Chief Executive Officer, or a Senior Registrar or Registrar of the Federal Circuit and Family Court of Australia (Division 1).

(3) Section 109A has no effect in relation to the Federal Circuit and Family Court of Australia (Division 1) except as provided by subsections (1) and (2) of this section.

FAMILY LAW ACT 1975

- SECT 109B

Rules of Court relating to enforcement--Federal Circuit and Family Court of Australia (Division 2)

(1) Section 109A applies to the making of Rules of Court under Chapter 4 of the Federal Circuit and Family Court of Australia Act 2021 in a corresponding way to the way in which it applies to the making of Rules of Court under section 123 of this Act.

(2) For the purposes of the application of section 109A in accordance with subsection (1):

- (a) the reference in subsection 109A(1) to the court is to be read as a reference to the Federal Circuit and Family Court of Australia (Division 2); and

(b) each reference in subsection 109A(2) to a court is to be read as a reference to the Federal Circuit and Family Court of Australia (Division 2); and

(c) each reference in subsection 109A(2) to a Registrar is to be read as a reference to the Chief Executive Officer, or a Registrar of the Federal Circuit and Family Court of Australia (Division 2).

(3) Section 109A has no effect in relation to the Federal Circuit and Family Court of Australia (Division 2) except as provided by subsections (1) and (2) of this section.

FAMILY LAW ACT 1975

- SECT 110

Overseas enforcement of maintenance orders etc.

(1) In this section:

"jurisdiction with restricted reciprocity" means a country, or part of a country, outside Australia declared by the regulations to be a jurisdiction with restricted reciprocity for the purposes of this section.

"maintenance order" means:

(a) an order or determination (however described) with respect to the maintenance of a party to a marriage; or

(b) an order or determination (however described) with respect to the maintenance of a child who has not attained the age of 18 years, other than an order or determination of the kind referred to in paragraph (c); or

(c) an order or determination (however described) with respect to the maintenance of a child who has not attained the age of 18 years, if:

(i) the order or determination is expressed to continue in force until a day that is later than, or for a period that extends beyond, the day on which the child will attain that age; and

(ii) the provision of maintenance for the child is necessary to enable the child to complete a course of study, vocational training or an apprenticeship or to continue his or her education in any other way, or because the child is a child with disability; or

(d) an order or determination (however described) with respect to the maintenance of a child who has attained the age of 18 years, if:

(i) the order or determination is expressed to continue in force until a day, or for a period, specified in the order or determination; and

(ii) the provision of maintenance for the child is necessary to enable the child to complete a course of study, vocational training or an apprenticeship or to continue his or her education in any other way, or because the child is a child with disability; or

(e) to the extent provided by the regulations, an order made under section 67D, or an order or determination (however described) that deals with matters of a kind in relation to which orders may be made under that section.

"reciprocating jurisdiction" means a country, or part of a country, outside Australia declared by the regulations to be a reciprocating jurisdiction for the purposes of this section.

(2) The regulations may make provision for and in relation to:

(a) the registration in, and enforcement by, courts having jurisdiction under this Act of maintenance orders made by courts or authorities of reciprocating jurisdictions or of jurisdictions with restricted reciprocity;

(aa) the institution and prosecution, by an officer of a court having jurisdiction under this Act, a prescribed authority of the Commonwealth, of a State or Territory, or of another country or a part of another country, or a person for the time being holding a prescribed office under a law of the Commonwealth, of a State or Territory, or of another country or a part of another country, in his, her or its discretion, of proceedings:

(i) on behalf of the person entitled to moneys payable under a maintenance order made by a court or authority of a reciprocating jurisdiction or of a jurisdiction with restricted reciprocity, for the enforcement by a court having jurisdiction under this Act of that maintenance order; or

(ii) for the making of orders for the confirmation of provisional orders made by courts of reciprocating jurisdictions or of jurisdictions with restricted reciprocity, being provisional orders referred to in paragraph (d);

(ab) the institution and prosecution, by an authority entitled to moneys payable under a maintenance order, in the authority's discretion, of proceedings for the enforcement of that maintenance order by a court having jurisdiction under this Act;

(b) the transmission to appropriate courts or authorities of reciprocating jurisdictions or of jurisdictions with restricted reciprocity of maintenance orders made by courts having jurisdiction under this Act for the purpose of securing the enforcement of those orders in those jurisdictions;

(ba) the making of provisional maintenance orders, and the transmission of such orders to appropriate courts of reciprocating jurisdictions or jurisdictions with restricted reciprocity, for the purposes of obtaining the confirmation, and securing the enforcement, of those orders in those jurisdictions, and the effect in Australia of those orders;

(c) the making of orders (including provisional orders) for the variation, discharge, suspension or revival of maintenance orders registered in accordance with regulations under this section or of maintenance orders or provisional maintenance orders transmitted to other jurisdictions in accordance with regulations under this section, and the effect in Australia of orders under this paragraph;

(d) the making of orders for the confirmation of provisional orders made by courts in reciprocating jurisdictions or in jurisdictions with restricted reciprocity, being provisional maintenance orders or provisional orders varying, discharging, suspending or reviving maintenance orders, and the effect in Australia of orders under this paragraph; and

(e) the making of orders for giving effect to process certified or approved by a court in the United States of America, being process relating to the provision of maintenance, and the effect in Australia of orders under this paragraph.

(3) The regulations may make different provision under this section in relation to reciprocating jurisdictions from the provision made in relation to jurisdictions with restricted reciprocity.

FAMILY LAW ACT 1975

- SECT 110A

Registration and enforcement in Australia of overseas maintenance agreements etc.

The regulations may make provision for and in relation to the registration and enforcement in Australia of:

- (a) overseas maintenance agreements; or
- (b) overseas administrative assessments of maintenance liabilities.

FAMILY LAW ACT 1975

- SECT 110B

Transmission of agreements etc. to overseas jurisdictions

The regulations may make provision for and in relation to the transmission, to appropriate courts or authorities of prescribed overseas jurisdictions, of:

- (a) agreements registered under section 86; or
 - (b) agreements approved by courts under section 87; or
 - (c) financial agreements made as mentioned in subsection 90B(1) that contain matters referred to in paragraph 90B(2)(b); or
 - (d) financial agreements made as mentioned in subsection 90C(1) that contain matters referred to in paragraph 90C(2)(b); or
 - (e) financial agreements made as mentioned in subsection 90D(1) that contain matters referred to in paragraph 90D(2)(b); or
 - (f) administrative assessments of maintenance liabilities;
- for the purpose of securing the enforcement of those agreements or assessments in those jurisdictions.

FAMILY LAW ACT 1975

- SECT 111

Convention on Recovery Abroad of Maintenance

The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Recovery Abroad of Maintenance signed at New York on 20 June 1956 but any such regulations shall not come into operation until the day on which that Convention enters into force for Australia.

FAMILY LAW ACT 1975

- SECT 111A

Convention on Recognition and Enforcement of Decisions Relating to Maintenance Obligations

The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations signed at The Hague on 2 October 1973 but any such regulations shall not come into operation until the day on which that Convention enters into force for Australia.

FAMILY LAW ACT 1975

- SECT 111AA

Maintenance obligations with New Zealand

(1) This section has effect despite anything in Part VII.

(2) A court must not determine an application for payment of child or spousal maintenance (whether

under this Act or the regulations) if:

- (a) the person seeking payment is habitually resident in New Zealand; and
- (b) determining the application would require the court to make a decision mentioned in Article 1.2 of the Australia -New Zealand Agreement.

Note: Article 1.2 of the Agreement is as follows:

For the purposes of this Agreement a decision shall include:

- (a) a child support assessment issued by an administrative authority;
- (b) an agreement to make payments for the maintenance of a child or spouse which has been registered with an administrative authority;
- (c) an assessment, order or agreement suspending, modifying or revoking a decision of the kind referred to in (a) or (b);
- (d) an order for child maintenance made by a judicial authority;
- (e) an order for spousal maintenance made by a judicial authority;
- (f) an agreement to make payments for the maintenance of a child or spouse which has been registered with a judicial authority;
- (g) an order or agreement suspending, modifying or revoking a decision of the kind referred to in (d), (e) or (f);
- (h) a liability to pay an amount to an administrative authority for the maintenance of a child or as contribution to the cost of government benefits paid to a payee for the maintenance of a child.

(3) In this section:

"Australia-New Zealand Agreement" means the Agreement between the Government of Australia and the Government of New Zealand on Child and Spousal Maintenance signed at Canberra on 12 April 2000.

FAMILY LAW ACT 1975

- SECT 111AB

Agreement between the Government of the United States of America and the Government of Australia for the enforcement of Maintenance (Support) Obligations

The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Agreement between the Government of the United States of America and the Government of Australia for the enforcement of Maintenance (Support) Obligations, which was concluded and entered into force on 12 December 2002.

FAMILY LAW ACT 1975

- SECT 111B

Convention on the Civil Aspects of International Child Abduction

(1) The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980 (the Convention) but any such regulations shall not come into operation until the day on which that Convention enters into force for Australia.

(1A) In relation to proceedings under regulations made for the purposes of subsection (1), the regulations may make provision:

- (a) relating to the onus of establishing that a child should not be returned under the Convention; and
- (b) establishing rebuttable presumptions in favour of returning a child under the Convention; and
- (c) relating to a Central Authority within the meaning of the regulations applying on behalf of another person for a parenting order that deals with the person or persons with whom a child is to spend time or communicate if the outcome of the proceedings is that the child is not to be returned under the Convention.

(1C) A Central Authority within the meaning of the regulations may arrange to place a child, who has been returned to Australia under the Convention, with an appropriate person, institution or other body to secure the child's welfare until a court exercising jurisdiction under this Act makes an order (including an interim order) for the child's care, welfare or development.

(1D) A Central Authority may do so despite any orders made by a court before the child's return to Australia.

(1E) Any regulations made for the purposes of this section to give effect to Article 21 (rights of access) of the Convention may have effect regardless of:

- (a) whether an order or determination (however described) has been made under a law in force in another Convention country (within the meaning of the regulations made for the purposes of this section), with respect to rights of access to the child concerned; or
 - (b) if the child was removed to Australia--when that happened; or
 - (c) whether the child has been wrongfully removed to, or retained in, Australia.
- (2) Because of amendments of this Act made by the Family Law Reform Act 1995:

(a) a parent or guardian of a child is no longer expressly stated to have custody of the child; and
 (b) a court can no longer make an order under this Act expressed in terms of granting a person custody of, or access to, a child.

(3) The purpose of subsection (4) is to resolve doubts about the implications of these changes for the Convention. That is the only purpose of the subsection.

(4) For the purposes of the Convention:

(a) each of the parents of a child should be regarded as having rights of custody in respect of the child unless the parent has no parental responsibility for the child because of any order of a court for the time being in force; and

(b) subject to any order of a court for the time being in force, a person:

(i) with whom a child is to live under a parenting order; or

(ii) who has parental responsibility for a child under a parenting order; should be regarded as having rights of custody in respect of the child; and

(c) subject to any order of a court for the time being in force, a person who has parental responsibility for a child because of the operation of this Act or another Australian law and is responsible for the day-to-day or long-term care, welfare and development of the child should be regarded as having rights of custody in respect of the child; and

(d) subject to any order of a court for the time being in force, a person:

(i) with whom a child is to spend time under a parenting order; or

(ii) with whom a child is to communicate under a parenting order; should be regarded as having a right of access to the child.

Note: The references in paragraphs (b) and (d) to parenting orders also cover provisions of parenting agreements registered under section 63E (see section 63F, in particular subsection (3)).

(5) Subsection (4) is not intended to be a complete statement of the circumstances in which, under the laws of the Commonwealth, the States and the Territories, a person has, for the purposes of the Convention, custody of, or access to, a child, or a right or rights of custody or access in relation to a child.

(5A) Subsections (1A) and (2) to (5) do not, by implication, limit subsection (1).

(6) Expressions used in this section have the same meaning as they have in Part VII.

FAMILY LAW ACT 1975

- SECT 111C

International agreements about adoption etc.

(1) The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption signed at The Hague on 29 May 1993.

(2) The regulations do not come into force until the day on which the Convention enters into force for Australia.

(3) The regulations may make such provision as is necessary or convenient to give effect to any bilateral agreement or arrangement on the adoption of children made between:

(a) Australia, or a State or Territory of Australia; and

(b) a prescribed overseas jurisdiction.

(4) Regulations made for the purposes of subsection (3) may, in particular:

(a) provide for the recognition of adoptions made under a law of the prescribed overseas jurisdiction; and

(b) provide that the regulations do not affect the operation of laws of a State or Territory that relate to adoptions; and

(c) if a State or Territory has made such a bilateral agreement or arrangement on behalf of other States or Territories--give effect to the agreement or arrangement so far as it relates to all of those States or Territories, or to such of them as the regulations specify.

(5) Regulations made for the purposes of this section may:

(a) confer jurisdiction on a federal court (other than the High Court) or a court of a Territory; or

(b) invest a court of a State with federal jurisdiction.

Such jurisdiction is in addition to any other jurisdiction provided for under this Act or the Federal Circuit and Family Court of Australia Act 2021.

(6) Regulations made for the purposes of subsection (5) may make different provision in respect of matters arising in relation to different States or Territories. (This subsection does not, by implication, limit subsection 33(3A) of the Acts Interpretation Act 1901.)

(7) Subsections (4), (5) and (6) of this section do not, by implication, limit subsections (1) and (3) of this section.

(7A) The power of Judges of the Federal Circuit and Family Court of Australia (Division 1) under section 123, and the power of Judges of a Family Court of a State under section 123A, to make Rules of Court extends to making Rules of Court for or in relation to the making of adoption orders.

(7B) The power of Judges of the Federal Circuit and Family Court of Australia (Division 1) under Chapter 3 of the Federal Circuit and Family Court of Australia Act 2021 to make Rules of Court extends to making Rules of Court for or in relation to the making of adoption orders.

(7C) The power of Judges of the Federal Circuit and Family Court of Australia (Division 2) under Chapter 4 of the Federal Circuit and Family Court of Australia Act 2021 to make Rules of Court extends to making Rules of Court for or in relation to the making of adoption orders.

(8) In this section, despite subsection 4(1), Territory includes each external Territory.

FAMILY LAW ACT 1975

- SECT 111CA

Definitions

(1) In this Division:

"another country" means a Convention country or a non-Convention country.

"Australia" includes the external Territories.

"central authority" of a Convention country means:

(a) if there is one central authority of the Convention country under Article 29 of the Child Protection Convention--the Convention country's central authority; or

(b) otherwise--the central authority designated, under Article 29 of the Child Protection Convention, as the Convention country's central authority to which any communication may be addressed for transmission to the appropriate central authority of the Convention country.

"Child Protection Convention" means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children signed at The Hague on 19 October 1996, a copy of the English text of which is set out in Schedule 1.

"Commonwealth central authority" means the Secretary of the Attorney-General's Department.

"Commonwealth personal protection measure" relating to a child means a measure (within the meaning of the Child Protection Convention) under this Act that is directed to the protection of the person of the child.

"Commonwealth property protection measure" relating to a child means a measure (within the meaning of the Child Protection Convention) under this Act for appointing, or deciding the powers of, a guardian of the child's property.

"competent authority":

(a) competent authority of Australia means an entity that has responsibility or authority under the law in force in Australia, or part of Australia, to take measures or make decisions about:

(i) protecting the person of a child; or

(ii) appointing or deciding the powers of a guardian of a child's property; and

(b) competent authority of a Convention country means an entity that has responsibility or authority under the law in force in the Convention country to take, or make decisions about, a foreign measure relating to a child; and

(c) competent authority of a non-Convention country means an entity that has responsibility or authority under the law in force in the country to take measures or make decisions about:

(i) protecting the person of a child; or

(ii) appointing or deciding the powers of a guardian of a child's property.

"Convention country" means a country, other than Australia, for which the Child Protection Convention has entered into force.

"country of refuge" of a child means a country in which the child is present as a refugee child.

"entity" includes the following:

(a) an individual;

(b) a corporation;

(c) an unincorporated body;

(d) a government authority or body;

(e) a court or tribunal.

"foreign measure" means:

(a) a foreign personal protection measure; or

(b) a foreign property protection measure.

"foreign personal protection measure" relating to a child means a measure (within the meaning of the Child Protection Convention) taken by a competent authority of a Convention country for protecting the person of the child.

"foreign property protection measure" relating to a child means a measure (within the meaning of the Child Protection Convention) taken by a competent authority of a Convention country for appointing, or deciding the powers of, a guardian of the child's property.

"non-Convention country" means a country for which the Child Protection Convention has not entered into force.

"parental responsibility" has the same meaning as in the Child Protection Convention.

"refugee child" means a child:

- (a) who is a refugee; or
- (b) who is internationally displaced due to disturbances occurring in his or her country of habitual residence; or
- (c) whose country of habitual residence cannot be determined.

"Territory" includes each external Territory.

(2) Unless the contrary intention appears, expressions used:

- (a) in this Division; or
 - (b) in regulations made for the purposes of this Division;
- have the same meaning as they have in the Child Protection Convention.

FAMILY LAW ACT 1975

- SECT 111CB

Relationship between this Division and other provisions

(1) This Division has effect despite the rest of this Act, except sections 69ZK and 111B and the regulations made for the purposes of section 111B.

(2) This Division, except section 111CZ, has effect subject to sections 69ZK and 111B and the regulations made for the purposes of section 111B.

(3) Section 111CZ, and regulations made for the purposes of that section, have effect despite section 69ZK.

FAMILY LAW ACT 1975

- SECT 111CC

Application of this Subdivision

This Subdivision applies only if an issue under this Act is whether a court, as opposed to any of the following authorities, has jurisdiction to take measures directed to the protection of the person of a child:

- (a) a central authority or competent authority of a Convention country;
- (b) a competent authority of a non -Convention country.

FAMILY LAW ACT 1975

- SECT 111CD

Jurisdiction relating to the person of a child

(1) A court may exercise jurisdiction for a Commonwealth personal protection measure only in relation to:

- (a) a child who is present and habitually resident in Australia; or
- (b) a child who is present in Australia and habitually resident in a Convention country, if:
 - (i) the child's protection requires taking the measure as a matter of urgency; or
 - (ii) the measure is provisional and limited in its territorial effect to Australia; or
 - (iii) the child is a refugee child; or
 - (iv) a request to assume jurisdiction is made to the court by, or at the invitation of, a competent authority of the country of the child's habitual residence; or
 - (v) a competent authority of the country of the child's habitual residence agrees to the court assuming jurisdiction; or
 - (vi) the court is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3)); or
- (c) a child who is present in a Convention country, if:
 - (i) the child is habitually resident in Australia; or
 - (ii) the child has been wrongfully removed from or retained outside Australia and the court keeps jurisdiction under Article 7 of the Child Protection Convention; or
 - (iii) a request to assume jurisdiction is made to the court by, or at the invitation of, a competent authority of the country of the child's habitual residence or country of refuge; or
 - (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the court assuming jurisdiction; or
 - (v) the child is habitually resident in a Convention country and the court is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3)); or
- (d) a child who is present in Australia and is a refugee child; or
- (e) a child who is present in a non -Convention country, if:
 - (i) the child is habitually resident in Australia; and
 - (ii) any of paragraphs 69E(1)(b) to (e) applies to the child; or
 - (f) a child who is present in Australia, if:

- (i) the child is habitually resident in a non -Convention country; and
- (ii) any of paragraphs 69E(1)(b) to (e) applies to the child.

(2) A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(ii) if the measure is not incompatible with a foreign measure already taken by a competent authority of a Convention country under Articles 5 to 10 of the Child Protection Convention.

(3) A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(vi) or (c)(v) for a Commonwealth personal protection measure relating to a child if:

- (a) one or both of the child's parents are habitually resident in Australia when the proceedings referred to in that subparagraph begin; and
- (b) one or both of the parents have parental responsibility for the child; and
- (c) the jurisdiction of the court to take the measure is accepted by the parents and each other person with parental responsibility for the child; and
- (d) the exercise of jurisdiction to take the measure is in the best interests of the child; and
- (e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(4) Paragraphs 111CD(1)(a) to (d) are subject to the limitations in sections 111CE, 111CF and 111CH.

FAMILY LAW ACT 1975

- SECT 111CE

Limitation when a child is wrongfully removed from or retained outside a Convention country

A court must not, other than in a case of urgency, exercise jurisdiction in accordance with paragraph 111CD(1)(a), (b), (c) or (d) to take a Commonwealth personal protection measure relating to a child if:

- (a) the child has been wrongfully removed from or retained outside a Convention country; and
- (b) an authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

FAMILY LAW ACT 1975

- SECT 111CF

Limitations when prior proceedings pending in a Convention country

(1) This section applies to the exercise of jurisdiction by a court in accordance with paragraph 111CD(1)(a), subparagraph 111CD(1)(b)(iii), (iv), (v) or (vi) or paragraph 111CD(1)(c) or (d).

(2) The court must not exercise that jurisdiction to take a Commonwealth personal protection measure relating to a child if:

- (a) a corresponding measure has been sought from a competent authority of a Convention country at the time of commencement of the proceedings before the court; and
- (b) any of the following applies:
 - (i) the child is habitually resident in the Convention country;
 - (ii) the child is present in the Convention country and is a refugee child;
 - (iii) a request to assume jurisdiction is made to the competent authority of the Convention country by, or at the invitation of, a competent authority of the country of the child's habitual residence or country of refuge;
 - (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the competent authority of the Convention country assuming jurisdiction;
 - (v) the competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3));
 - (vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

(3) Subparagraph (2)(b)(v) only applies (subject to subsection (4)) if:

- (a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph commence; and
- (b) one or both of the parents has parental responsibility for the child; and
- (c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and
- (d) the exercise of jurisdiction to take the measure is in the best interests of the child; and
- (e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(4) Subsection (2) does not apply if the competent authority of the Convention country has declined jurisdiction or is no longer considering taking the measure sought.

FAMILY LAW ACT 1975

- SECT 111CG

If a court is asked to assume jurisdiction

(1) A court may, if it considers that it is in the child's best interests, accept or reject a request made under Article 8 of the Child Protection Convention by, or at the invitation of, a competent authority of a Convention country for the court to assume jurisdiction to take a Commonwealth personal protection measure relating to the child.

(2) A court may order, or invite the parties to proceedings before the court to ask, the Commonwealth central authority to do both of the following in a way that the Commonwealth central authority considers appropriate:

(a) to request, under Article 9 of the Child Protection Convention, that a competent authority of a Convention country agree to the court assuming jurisdiction to take a Commonwealth personal protection measure relating to the child;

(b) to report to the court about the outcome of the request.

(3) The court may only make the order or issue the invitation under subsection (2) if it considers that it is better placed than the competent authority to assess the child's best interests.

FAMILY LAW ACT 1975

- SECT 111CH

Limitation if a competent authority of a Convention country is asked to assume jurisdiction

(1) The court may order, or invite the parties to proceedings before the court to ask the Commonwealth central authority, in a way the Commonwealth central authority considers appropriate, to request a competent authority described in Article 8, paragraph 2, of the Child Protection Convention:

(a) to assume jurisdiction under Article 8 of the Convention for protecting the person of the child; and

(b) as the competent authority considers necessary, to take measures to protect the person of the child; and

(c) to report to the court about the outcome of the request.

(2) In addition, the court may make any other order it considers necessary for an order under subsection (1).

(3) The court may only make the order or issue the invitation under subsection (1) if the court considers that the competent authority is better placed to assess the child's best interests.

(4) The court may accept or reject a request under Article 9 of the Child Protection Convention made by, or at the invitation of, a competent authority of a Convention country described in Article 8, paragraph 2 of the Convention, for the competent authority to assume jurisdiction to take a measure for protecting the person of the child.

(5) If the competent authority assumes jurisdiction under the request, a court must not exercise jurisdiction in accordance with paragraph 111CD(1)(a), subparagraphs 111CD(1)(b)(iii) to (vi), or paragraph 111CD(1)(c) or (d), while the competent authority continues to exercise its jurisdiction.

FAMILY LAW ACT 1975

- SECT 111CI

When a certain Commonwealth personal protection measure lapses

(1) A Commonwealth personal protection measure relating to a child that is taken by a court exercising jurisdiction in accordance with subparagraph 111CD(1)(b)(i) or (ii) lapses if:

(a) a foreign personal protection measure relating to the child is taken by a competent authority of a Convention country; and

(b) any of the following applies:

(i) the child is habitually resident in the Convention country;

(ii) the child is present in the Convention country and is a refugee child;

(iii) a request to assume jurisdiction is made to the competent authority of the Convention country by, or at the invitation of, a competent authority of the country of the child's habitual residence;

(iv) a competent authority of the country of the child's habitual residence agrees to the competent authority of the Convention country assuming jurisdiction;

(v) a competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (2));

(vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

(2) Subparagraph (1)(b)(v) only applies if:

(a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph are started; and

- (b) one or both of the parents has parental responsibility for the child; and
- (c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and
- (d) the exercise of jurisdiction to take the measure is in the best interests of the child; and
- (e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(3) A Commonwealth personal protection measure relating to a child that is taken by a court exercising jurisdiction in a case of urgency, or in the taking of a measure of a provisional character, lapses if:

- (a) a measure required by the situation for protecting the person of the child is taken by a competent authority of a non-Convention country; and
- (b) the measure is registered:
 - (i) in accordance with regulations made for the purposes of section 70G; or
 - (ii) under a law of a State or Territory.

FAMILY LAW ACT 1975

- SECT 111CJ

Application of this Subdivision

This Subdivision applies only if an issue under this Act is whether a court, as opposed to any of the following authorities, has jurisdiction to appoint, or determine the powers of, a guardian of a child's property:

- (a) a central authority or competent authority of a Convention country;
- (b) a competent authority of a non-Convention country.

FAMILY LAW ACT 1975

- SECT 111CK

Jurisdiction to appoint, or determine the powers of, a guardian for a child's property

(1) A court may exercise jurisdiction for a Commonwealth property protection measure only in relation to:

- (a) a child who is habitually resident in Australia; or
- (b) a child who is habitually resident in a Convention country, if:
 - (i) the protection of the child's property in Australia requires taking the measure as a matter of urgency; or
 - (ii) the measure is provisional and limited in its territorial effect to property in Australia; or
 - (iii) a request to assume jurisdiction is made to the court by, or at the invitation of, a competent authority of the country of the child's habitual residence or country of refuge; or
 - (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the court assuming jurisdiction; or
 - (v) the child has been wrongfully removed from or retained outside Australia and the court keeps jurisdiction under Article 7 of the Child Protection Convention; or
 - (vi) the court is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3)); or
- (c) a child who is present in Australia and is a refugee child; or
- (d) a child who is present in a non-Convention country, if:
 - (i) the child is habitually resident in Australia; and
 - (ii) any of paragraphs 69E(1)(b) to (e) applies to the child; or
- (e) a child who is present in Australia, if:
 - (i) the child is habitually resident in a non-Convention country; and
 - (ii) any of paragraphs 69E(1)(b) to (e) applies to the child.

(2) A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(ii) if the measure is not incompatible with a foreign measure already taken by a competent authority of a Convention country under Articles 5 to 10 of the Child Protection Convention.

(3) A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(vi) for a Commonwealth property protection measure relating to a child if:

- (a) one or both of the child's parents are habitually resident in Australia when the proceedings referred to in that subparagraph begin; and
- (b) one or both of the parents have parental responsibility for the child; and
- (c) the jurisdiction of the court to take the measure is accepted by the parents and each other person with parental responsibility for the child; and
- (d) the exercise of jurisdiction to take the measure is in the best interests of the child; and
- (e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(4) Paragraphs (1)(a) to (c) are subject to the limitations in sections 111CL, 111CM and 111CO.

FAMILY LAW ACT 1975

- SECT 111CL

Limitation when a child is wrongfully removed from or retained outside a Convention country

A court must not, other than in a case of urgency, exercise jurisdiction in accordance with paragraph 111CK(1)(a), (b) or (c) to take a Commonwealth property protection measure relating to a child if:

- (a) the child has been wrongfully removed from or retained outside a Convention country; and
- (b) an authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

FAMILY LAW ACT 1975

- SECT 111CM

Limitations when prior proceedings pending in a Convention country

(1) This section applies to the exercise of jurisdiction by a court in accordance with paragraph 111CK(1)(a), subparagraph 111CK(1)(b)(iii), (iv), (v) or (vi) or paragraph 111CK(1)(c).

(2) The court must not exercise that jurisdiction to take a Commonwealth property protection measure relating to a child if:

- (a) a corresponding measure has been sought from a competent authority of a Convention country at the time of commencement of proceedings before the court; and
- (b) any of the following applies:
 - (i) the child is habitually resident in the Convention country;
 - (ii) the child is present in the Convention country and is a refugee child;
 - (iii) a request to assume jurisdiction is made to a competent authority of the country of the child's habitual residence or country of refuge;
 - (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the competent authority assuming jurisdiction;
 - (v) the competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3));
 - (vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.
- (3) Subparagraph (2)(b)(v) only applies (subject to subsection (4)) if:
 - (a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph are commenced; and
 - (b) one or both of the parents have parental responsibility for the child; and
 - (c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and
 - (d) the exercise of jurisdiction to take the measure is in the best interests of the child; and
 - (e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.
- (4) Subsection (2) does not apply if the competent authority of the Convention country has declined jurisdiction or is no longer considering taking the measure sought.

FAMILY LAW ACT 1975

- SECT 111CN

If a court is asked to assume jurisdiction

(1) A court may, if it considers that it is in the child's best interests, accept or reject a request made under Article 8 of the Child Protection Convention by, or at the invitation of, a competent authority of a Convention country for the court to assume jurisdiction to take a Commonwealth property protection measure relating to the child.

(2) A court may order, or invite the parties to proceedings before the court to ask, the Commonwealth central authority to do both of the following in a way that the Commonwealth central authority considers appropriate:

- (a) to request, under Article 9 of the Child Protection Convention, that a competent authority of a Convention country agree to the court assuming jurisdiction to take a Commonwealth property protection measure relating to the child;
- (b) to report to the court about the outcome of the request.

(3) The court may only make the order or issue the invitation under subsection (2) if it considers that it is better placed than the competent authority to assess the child's best interests.

FAMILY LAW ACT 1975

- SECT 111CO

Limitation if a competent authority of a Convention country is asked to assume jurisdiction

(1) The court may order, or invite the parties to proceedings before the court to ask the Commonwealth central authority, in a way the Commonwealth central authority considers appropriate, to request a competent authority described in Article 8, paragraph 2, of the Child Protection Convention:

(a) to assume jurisdiction under Article 8 of the Convention for appointing, or deciding the powers of, a guardian of the child's property; and

(b) as the competent authority considers necessary, to take a measure appointing, or deciding the powers of, a guardian of the child's property; and

(c) to report to the court about the outcome of the request.

(2) In addition, the court may make any other order it considers necessary for an order under subsection (1).

(3) The court may only make the order or issue the invitation under subsection (1) if the court considers that the competent authority is better placed to assess the child's best interests.

(4) The court may accept or reject a request under Article 9 of the Child Protection Convention made by, or at the invitation of, a competent authority of a Convention country described in Article 8, paragraph 2 of the Convention, for the competent authority to assume jurisdiction to take a measure for the protection of the child's property.

(5) If the competent authority assumes jurisdiction under the request, a court must not exercise jurisdiction in accordance with paragraph 111CK(a) or subparagraphs 111CK(1)(b)(iii) to (vi) or paragraph 111CK(1)(c), while the competent authority continues to exercise its jurisdiction.

FAMILY LAW ACT 1975

- SECT 111CP

When a certain Commonwealth property protection measure lapses

(1) A Commonwealth property protection measure relating to a child that is taken by a court exercising jurisdiction in accordance with subparagraph 111CK(1)(b)(i) or (ii) lapses if:

(a) a foreign property protection measure relating to the child is taken by a competent authority of a Convention country; and

(b) any of the following applies:

(i) the child is habitually resident in the Convention country;

(ii) the child is present in the Convention country and is a refugee child;

(iii) a request to assume jurisdiction is made to the competent authority of the Convention country by, or at the invitation of, a competent authority of the country of the child's habitual residence;

(iv) a competent authority of the country of the child's habitual residence agrees to the competent authority of the Convention country assuming jurisdiction;

(v) a competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (2));

(vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

(2) Subparagraph (1)(b)(v) only applies if:

(a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph are started; and

(b) one or both of the parents have parental responsibility for the child; and

(c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and

(d) the exercise of jurisdiction to take the measure is in the best interests of the child; and

(e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(3) A Commonwealth property protection measure relating to a child that is taken by a court exercising jurisdiction in a case of urgency, or in the taking of a measure of a provisional character, lapses if:

(a) a measure required by the situation for the appointment, or the determination of the powers, of a guardian for a child's property is taken by a competent authority of a non-Convention country; and

(b) the measure is registered:

(i) in accordance with regulations made for the purposes of section 70G; or

(ii) under a law of a State or Territory.

FAMILY LAW ACT 1975

- SECT 111CQ

Meaning of law

In this Subdivision:
 "law" does not include choice of law rules.

FAMILY LAW ACT 1975

- SECT 111CR

Applicable law generally

- (1) This section applies to a court exercising jurisdiction in accordance with Subdivision B or C.
- (2) The court must apply the law of Australia in exercising that jurisdiction.
- (3) However, the court may in exceptional circumstances apply or take into account the law of another country with which:
 - (a) a child has a substantial connection; or
 - (b) a child's property is substantially connected;
 if the court considers the protection of the person of the child, or the child's property, requires the court to do so.
- (4) In subsection (2):
 "law of Australia" means:
 - (a) law in force throughout Australia; or
 - (b) law in force in a part of Australia;
 and includes the principles and rules of the common law and of equity as so in force.

FAMILY LAW ACT 1975

- SECT 111CS

Applicable law concerning parental responsibility

- (1) The principles set out in this section apply despite anything in this Act.
- (2) The circumstances in which parental responsibility for a child is attributed to a person, or extinguished, by operation of law (without the intervention of a court or appropriate authority) are governed by the law that applies in the country of the child's habitual residence.
- (3) The circumstances in which parental responsibility for a child is attributed to a person, or extinguished, by an agreement or a unilateral act (without the intervention of a court or appropriate authority) are governed by the law that applies in the country of the child's habitual residence when the agreement or act takes effect.
- (4) The exercise of parental responsibility for a child is governed by the law applying in the country of the child's habitual residence.
- (5) If a child's country of habitual residence changes to another country:
 - (a) parental responsibility for the child that exists under the law applying in the country in which the child was habitually resident continues to exist; and
 - (b) the circumstances in which parental responsibility for the child is attributed by operation of law to a person who does not already have such responsibility are governed by the law applying in the country of the new habitual residence; and
 - (c) the exercise of parental responsibility for the child is governed by the law applying in the country of the new habitual residence.
- (6) Despite subsections (2) to (5), if:
 - (a) the law that applies because of this section is the law of a non-Convention country; and
 - (b) the choice of law rules of that non-Convention country designate that the law of another non-Convention country applies; and
 - (c) the other non-Convention country would apply its own law;
 the law of that other non-Convention country applies instead.
- (7) The parental responsibility referred to in subsection (2), (3), (4) or (5) may be ended, or the conditions of its exercise changed, by a measure taken in accordance with section 111CD or 111CK.
- (8) A court need not apply a principle set out in subsection (2), (3), (4) or (5) if, on the application of an interested person, the court considers that doing so would be manifestly contrary to public policy having regard to the best interests of the child concerned.

FAMILY LAW ACT 1975

- SECT 111CT

Effect of registered foreign measures

- (1) This section applies to a foreign measure that is registered in a court in accordance with regulations made for the purposes of section 111CZ.
- (2) The foreign measure:
 - (a) has the same force and effect as a Commonwealth personal protection measure or a Commonwealth property protection measure (as appropriate); and
 - (b) prevails over any earlier inconsistent measure in force in Australia, including:

- (i) an order registered under section 70D or 70G; or
- (ii) any other order made, or agreement registered, under this Act.

FAMILY LAW ACT 1975

- SECT 111CU

Obligation to obtain consent to place child

- (1) A court must obtain the consent of a competent authority of a Convention country before placing a child in a foster family, or in institutional care, in the Convention country.
- (2) Before placing a child, the court may order, or invite the parties to proceedings before the court to ask, the Commonwealth central authority to consult a competent authority of the Convention country concerned.
- (3) If the court orders the Commonwealth central authority to consult, then the court must provide the Commonwealth central authority with a report on the child and the reasons for the proposed placement.

FAMILY LAW ACT 1975

- SECT 111CV

Obligation to inform competent authority about serious danger to a child

- (1A) This section covers:
 - (a) a court; and
 - (b) the Chief Executive Officer; and
 - (ba) a Senior Registrar or Registrar of the Federal Circuit and Family Court of Australia (Division 1); and
 - (bb) a Senior Registrar or Registrar of the Federal Circuit and Family Court of Australia (Division 2); and
 - (c) the Registrar or a Deputy Registrar of a Registry of the Family Court of a State; and
 - (e) a family consultant; and
 - (f) a family counsellor; and
 - (fa) a CCS practitioner; and
 - (g) a family dispute resolution practitioner; and
 - (h) an arbitrator; and
 - (i) the provider of a course, program or service which a person is ordered to participate in under this Act; and
 - (j) 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.
- (1) A court or person covered by this section must inform a competent authority of another country about any information the court or person may have about any serious danger to a child:
 - (a) whose residence has moved from Australia to the other country; or
 - (b) who is present in the other country.
- (2) Subsection (1) has effect despite any obligation of confidentiality imposed on the court or a person by this Act, any other law or anything else (including a contract or professional ethics).
- (3) A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of the provision of information under subsection (1).
- (4) Evidence of the provision of information under subsection (1) is not admissible in any:
 - (a) court (whether or not exercising jurisdiction under this Act); or
 - (b) tribunal or other body concerned with professional ethics;
 except where that evidence is given by the person who provided the information.

FAMILY LAW ACT 1975

- SECT 111CW

Court proceedings dealing with whom a child spends time with

- (1) A court hearing proceedings under Part VII (Children) or regulations made for the purposes of section 111B dealing with:
 - (a) whom a child is to spend time with; or
 - (b) whom a child is to communicate with;
 must admit into evidence and consider the findings (if any) of a competent authority of a Convention country on the suitability of a parent as a person for the child to spend time with or communicate with.
- (2) The court may adjourn the proceedings pending the outcome of a request by a parent of the child to a competent authority of a Convention country for a finding on the suitability of the parent as a person for the child to spend time with or communicate with.
- (3) On the application of a parent who is an Australian resident seeking to have, or to continue to have, a child spend time with or communicate with the parent, a court may:

- (a) admit evidence; and
- (b) make a finding on the suitability of that parent as a person for the child to spend time with or communicate with; and
- (c) specify conditions on which the child is to spend time with or communicate with the person.

FAMILY LAW ACT 1975

- SECT 111CX

Jurisdiction for a location order or a Commonwealth information order

A court may make a location order under section 67M or a Commonwealth information order under section 67N for the purposes of the Child Protection Convention.

FAMILY LAW ACT 1975

- SECT 111CY

Giving information to central authorities and competent authorities in Convention countries

- (1) This section applies to:
 - (a) a court; and
 - (b) the Commonwealth central authority; and
 - (c) central authorities of Australia appointed as mentioned in Article 29, paragraph 2, of the Child Protection Convention; and
 - (d) other competent authorities of Australia.
- (2) If it would be consistent with this Division or the Child Protection Convention to do so, the court or authority may give information to:
 - (a) a court or an authority of Australia to which this section applies; or
 - (b) a central authority or other competent authority of a Convention country.

FAMILY LAW ACT 1975

- SECT 111CZ

Regulations to implement the Convention

- (1) The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Child Protection Convention.
 - (2) Regulations made for the purposes of this section may, in particular:
 - (a) provide that the regulations do not affect the operation of laws of a State or Territory that relate to the implementation of the Child Protection Convention; and
 - (b) provide that specified provisions of the Child Protection Convention have the force of law in Australia; and
 - (c) include a list of Convention countries or territorial units of Convention countries.
 - (3) Regulations made for the purposes of this section may:
 - (a) confer jurisdiction on a federal court (other than the High Court) or a court of a Territory; or
 - (b) invest a court of a State with federal jurisdiction.
- Such jurisdiction is in addition to any other jurisdiction provided for under this Act.
- (4) Regulations made for the purposes of subsection (3) may make different provision in respect of matters arising in relation to different States or Territories. This subsection does not, by implication, limit subsection 33(3A) of the Acts Interpretation Act 1901.
 - (5) Subsections (2), (3) and (4) do not, by implication, limit subsection (1).

FAMILY LAW ACT 1975

- SECT 111D

Regulations may provide for rules of evidence

- (1) Regulations made for the purposes of Part XIIIAA may make provision in relation to the rules of evidence that are to apply in proceedings under those regulations.
- (2) Such provisions have effect despite any inconsistency with the Evidence Act 1995 or with any other law about evidence.

FAMILY LAW ACT 1975

- SECT 112AA

Interpretation

- In this Part:
 - "applied provisions", in relation to a sentence passed or an order made pursuant to paragraph 112AD(2)
 - (b), means the provisions of the laws of a State or Territory, as modified by regulations under

subsection 112AG(5), that, because of regulations under that subsection, apply in relation to the sentence or order.

"court enforceable agreement" means:

(b) so much of a maintenance agreement as a court has, pursuant to paragraph 87(11)(c), ordered may be enforced as if it were an order of the court; or

(c) a maintenance agreement registered in a court under subsection 86(1), or deemed, by subsection 87(6), to be registered in a court.

"maintenance order", in relation to a court, means an order made by the court under this Act that deals with the maintenance of a person other than a child.

"order under this Act", in relation to a court, means:

(a) an order (however described) made by the court under this Act (other than a parenting order); or

(b) an injunction granted by the court under section 90SS or 114 except in so far as the injunction is for the protection of a child; or

(c) an undertaking given to, and accepted by, the court in proceedings under this Act other than proceedings that relate wholly or partly to, or to the making of, a parenting order; or

(d) a subpoena issued under the applicable Rules of Court in proceedings under this Act other than a subpoena issued in, and so issued to a party to, proceedings that relate wholly or partly to, or to the making of, a parenting order; or

(e) a court enforceable agreement; or

(f) a bond;

(i) entered into under an order of a court under this Act other than an order under Division 13A of Part VII; or

(ii) entered into for the purposes of subsection 112AE(5);

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

(g) is an order under this Act made by another court because of paragraph (a), (b), (e) or (f); and

(h) has been registered in the first -mentioned court.

FAMILY LAW ACT 1975

- SECT 112AB

Meaning of contravene an order

(1) A person shall be taken for the purposes of this Part to have contravened an order under this Act if, and only if:

(a) where the person is bound by the order--he or she has:

(i) intentionally failed to comply with the order; or

(ii) made no reasonable attempt to comply with the order; or

(b) in any other case--he or she has:

(i) intentionally prevented compliance with the order by a person who is bound by it; or

(ii) aided or abetted a contravention of the order by a person who is bound by it.

FAMILY LAW ACT 1975

- SECT 112AC

Meaning of reasonable excuse for contravening an order

(1) The circumstances in which a person may be taken to have had, for the purposes of this Part, a reasonable excuse for contravening an order under this Act include, but are not limited to, the circumstances set out in subsection (2).

(2) A person (in this subsection called the respondent) shall be taken to have had a reasonable excuse for contravening an order under this Act if:

(a) the respondent contravened the order because, or substantially because, he or she did not, at the time of the contravention, understand the obligations imposed by the order on the person who was bound by it; and

(b) the court is satisfied that the respondent ought to be excused in respect of the contravention.

FAMILY LAW ACT 1975

- SECT 112AD

Sanctions for failure to comply with orders

(1) If a court having jurisdiction under this Act is satisfied that a person has, without reasonable excuse, contravened an order under this Act, the court may make an order for the imposing, in respect of the person, of one or more of the sanctions available to be imposed under subsection (2), being a sanction or sanctions that the court considers to be the most appropriate in the circumstances.

(1A) The power given to the court under subsection (1) in respect of a contravention of a maintenance order applies even if the order has been complied with before the matter of the contravention comes before the court.

(2) The sanctions that are available to be imposed by the court are:

- (a) to require the person to enter into a bond in accordance with section 112AF; or
- (b) to impose a sentence by order on the person, or make an order directed to the person, in accordance with section 112AG; or
- (c) to fine the person not more than 60 penalty units; or
- (d) subject to subsection (2A), to impose a sentence of imprisonment on the person in accordance with section 112AE.

(2A) The court must not impose a sentence of imprisonment on the person under paragraph (2)(d) in respect of a contravention of a maintenance order unless the court is satisfied that the contravention was intentional or fraudulent.

(3) An order under subsection (1) may be expressed to take effect immediately, or at the end of a specified period or on the occurrence of a specified event.

(4) Where a court makes an order under subsection (1), the court may make such other orders as the court considers necessary to ensure compliance with the order that was contravened.

FAMILY LAW ACT 1975

- SECT 112AE

Sentences of imprisonment

(1) A sentence of imprisonment imposed on a person pursuant to paragraph 112AD(2)(d) shall be expressed to be:

- (a) for a specified period of 12 months or less; or
- (b) for a period ending when the person:
 - (i) complies with the order concerned; or
 - (ii) has been imprisoned pursuant to the sentence for 12 months or such lesser period as is specified by the court;
 whichever happens first.

(2) A court shall not sentence a person to imprisonment pursuant to paragraph 112AD(2)(d) unless the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention pursuant to any of the other paragraphs of subsection 112AD(2).

(3) If a court sentences a person to imprisonment pursuant to paragraph 112AD(2)(d), the court shall:

- (a) state the reasons why it is satisfied as mentioned in subsection (2); and
- (b) cause those reasons to be entered in the records of the court.

(4) The failure of a court to comply with subsection (3) does not invalidate a sentence.

(4A) A court that sentences a person to imprisonment under paragraph 112AD(2)(d) may:

- (a) suspend the sentence upon the terms and conditions determined by the court; and
- (b) terminate a suspension made under paragraph (a).

(5) A court, when sentencing a person to imprisonment under paragraph 112AD(2)(d) may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a bond described in subsection (6) after he or she has served a specified part of the term of imprisonment.

(6) A bond for the purposes of subsection (5) is a bond (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.

(7) Without limiting the circumstances in which a court may discharge an order under section 112AK, a court that has sentenced a person to imprisonment for a period expressed as provided by paragraph (1)

(b) may order the release of the person if it is satisfied that the person will, if he or she is released, comply with the order concerned.

(8) To avoid doubt, the serving by a person of a period of imprisonment under a sentence imposed on the person under paragraph 112AD(2)(d) for a failure to make a payment under a maintenance order does not affect the person's liability to make the payment.

FAMILY LAW ACT 1975

- SECT 112AF

Bonds

(1) This section provides for bonds that a court may require a person to enter into under paragraph 112AD(2)(a).

(2) A bond is to be for a specified period of up to 2 years.

(3) A bond may be:

- (a) with or without surety; and
- (b) with or without security.

(4) The conditions that may be imposed on a person by a bond include a condition requiring the person to be of good behaviour.

(5) If a court proposes to require a person to enter into a bond, it must, before making the requirement, explain to the person, in language likely to be readily understood by the person:

- (a) the purpose and effect of the proposed requirement; and
- (b) the consequences that may follow if the person fails:
 - (i) to enter into the bond; or
 - (ii) having entered into the bond--to act in accordance with the bond.

FAMILY LAW ACT 1975

- SECT 112AG

Additional sentencing alternatives

(1) Subject to this section, where:

(a) under the law of a participating State or a participating Territory, a court is empowered (whether generally or in particular cases) to impose a sentence by order or make an order of a kind to which subsection (3) applies in respect of a person convicted of an offence against the law of the State or Territory; and

(b) an arrangement under section 112AN in respect of the State or Territory makes provision for and in relation to the carrying out of sentences imposed, or orders made, of that kind under this Division; a court exercising jurisdiction in the State or Territory may, pursuant to paragraph 112AD(2)(b), impose a sentence or make an order of that kind.

(2) A sentence imposed on a person, or an order directed to a person, pursuant to paragraph 112AD(2)(b):

(a) shall be such that the total number of hours during which the sentence or order regulates the conduct of the person does not exceed the maximum period in relation to the State or Territory in which the sentence is imposed or the order is made; and

(b) ceases to have effect 2 years after it was made, or after such lesser period as is specified in the order.

(3) This subsection applies to sentences or orders of the following kinds:

(a) a sentence or order known as:

- (i) a community service order;
- (ii) a work order;
- (iii) a sentence of periodic detention;
- (iv) an attendance centre order;
- (v) a sentence of weekend detention;
- (vi) an attendance order; or
- (vii) a community based order;

(b) a sentence or order that is similar to a sentence or order referred to in paragraph (a);

(c) a sentence or order prescribed for the purposes of this subsection.

(4) Where a court proposes to impose a sentence on a person, or make an order directed to a person, pursuant to paragraph 112AD(2)(b), it shall, before doing so, explain or cause to be explained to the person, in language likely to be readily understood by the person:

(a) the purpose and effect of the proposed sentence or order;

(b) the consequences that may follow if the person fails to comply with the proposed sentence or order or with any requirements made in relation to the proposed sentence or order by or under the applied provisions; and

(c) if the proposed sentence or order may be revoked or varied under the applied provisions--that the proposed sentence or order may be so revoked or varied.

(5) Where a court exercising jurisdiction under section 112AD in a particular State or Territory imposes a sentence or makes an order pursuant to paragraph 112AD(2)(b), the provisions of the laws of the State or Territory with respect to a sentence or order of that kind that is imposed or made under those laws shall, to the extent provided by the regulations and subject to such modifications as are specified in the regulations, apply in relation to the sentence or order.

(6) In this section:

"maximum period", in relation to a State or Territory, means 500 hours or such lesser period as is prescribed in relation to the State or Territory.

"participating State" means a State in relation to which an agreement under section 112AN is in force.

"participating Territory" means a Territory in relation to which an agreement under section 112AN is in force.

FAMILY LAW ACT 1975

- SECT 112AH

Failure to comply with sentence passed, or order made, pursuant to paragraph 112AD(2)(b)

(1) This section applies where a court has, pursuant to paragraph 112AD(2)(b):

- (a) imposed a sentence on a person; or
- (b) made an order directed to a person.

(2) If the court (whether or not constituted by the judge or magistrate who imposed the sentence or

made the order) is satisfied that the person has, without reasonable excuse, failed to comply with:

- (a) the sentence or order; or
 - (b) any requirements made in relation to the sentence or order by or under the applied provisions;
- the court may take action under subsection (8).

(8) The court may:

- (a) without prejudice to the continuance of the sentence or order, impose a fine not exceeding 10 penalty units on the person; or
- (b) revoke the sentence or order and, subject to subsection (9), deal with the person, for the contravention in respect of which the sentence was passed or the order was made, in any manner in which he or she could have been dealt with for that contravention if:

- (i) the sentence had not been imposed, or the order had not been made; and
- (ii) the person was before the court under section 112AD in respect of the contravention.

Note: For the value of a penalty unit, see subsection 4AA(1) of the Crimes Act 1914.

(9) In dealing with the person as mentioned in paragraph (8)(b), the court shall, in addition to any other matters that it considers should be taken into account, take into account:

- (a) the fact that the sentence was imposed or the order was made;
- (b) anything done under the sentence or order; and
- (c) any fine imposed, and any other order made, for or in respect of the contravention.

FAMILY LAW ACT 1975

- SECT 112AK

Variation and discharge of orders

(1) Subject to this section, an order made under section 112AD may be varied or discharged by the court that made the order or the Federal Circuit and Family Court of Australia.

(2) A variation of an order under section 112AD shall be such that the order, as varied, is an order that could have been made under that section in respect of the contravention in respect of which the first-mentioned order was made.

(3) If a court discharges an order under section 112AD it may, subject to this Division, make another order under that section in respect of the contravention in respect of which the first-mentioned order was made.

(4) Where a court varies or discharges an order made under section 112AD, the court may give such directions as to the effect of the variation or discharge as the court considers appropriate.

FAMILY LAW ACT 1975

- SECT 112AM

Relationship between Division and other laws

(1) This section applies where an act or omission by a person:

- (a) constitutes a contravention of an order under this Act; and
- (b) is also an offence against any law.

(2) If the person is prosecuted in respect of the offence, a court in which proceedings have been brought under section 112AD in respect of the contravention of the order shall either:

- (a) adjourn those proceedings until the prosecution has been completed; or
- (b) dismiss those proceedings.

(3) The person may be prosecuted for, and convicted of, the offence.

(4) Nothing in this section renders the person liable to be punished twice in respect of the same act or omission.

FAMILY LAW ACT 1975

- SECT 112AN

Arrangements with States and Territories for carrying out of sentences and orders

(1) The Governor-General may make arrangements with the relevant authority of a State or a Territory (other than Norfolk Island) for:

- (a) the exercise of powers, and the performance of functions, by officers of the State or Territory; and
- (b) the making available of facilities of the State or Territory;

for and in relation to the carrying out of sentences imposed, and orders made, under this Division.

(2) In this section:

"relevant authority" means:

- (a) in relation to a State--the Governor of the State;
- (b) in relation to the Australian Capital Territory--the Chief Minister of the Australian Capital Territory;
- (c) in relation to the Northern Territory--the Administrator of the Northern Territory.

FAMILY LAW ACT 1975

- SECT 112A0

Division does not limit operation of section 105

Nothing in this Division is intended to limit the operation of section 105.

FAMILY LAW ACT 1975

- SECT 112AP

Contempt

(1) Subject to subsection (1A), this section applies to a contempt of a court that:

(a) does not constitute a contravention of an order under this Act; or

(b) constitutes a contravention of an order under this Act and involves a flagrant challenge to the authority of the court.

(1A) This section does not apply to a contempt that constitutes a contravention of a maintenance order if the order has been complied with before the matter of the contravention comes before the court.

(2) In spite of any other law, a court having jurisdiction under this Act may punish a person for contempt of that court.

(3) The applicable Rules of Court may provide for practice and procedure as to charging with contempt and the hearing of the charge.

(4) Where a natural person is in contempt, the court may punish the contempt by committal to prison or fine or both.

(5) Where a corporation is in contempt, the court may punish the contempt by sequestration or fine or both.

(6) The court may make an order for:

(a) punishment on terms;

(b) suspension of punishment; or

(c) the giving of security for good behaviour.

(7) Where a person is committed to prison for a term for contempt, the court may order the person's discharge before the expiry of that term.

(8) To avoid doubt, the serving by a person of a period of imprisonment as a result of a contempt of a court arising out of a failure by the person to make a payment in respect of the maintenance of another person does not affect the first-mentioned person's liability to make the payment.

(9) In this section:

"order under this Act" means a child-related order or an order under this Act within the meaning of Part XIII A.

FAMILY LAW ACT 1975

- SECT 112A

Interpretation

In this Part, marriage includes a void marriage.

FAMILY LAW ACT 1975

- SECT 113

Proceedings for declarations

In proceedings of the kind referred to in paragraph (b) of the definition of matrimonial cause in subsection 4(1), the court may make such declaration as is justified.

FAMILY LAW ACT 1975

- SECT 114

Injunctions

(1) In proceedings of the kind referred to in paragraph (e) of the definition of matrimonial cause in subsection 4(1), the court may make such order or grant such injunction as it considers proper with respect to the matter to which the proceedings relate, including:

(a) an injunction for the personal protection of a party to the marriage;

(b) an injunction restraining a party to the marriage from entering or remaining in the matrimonial home or the premises in which the other party to the marriage resides, or restraining a party to the

marriage from entering or remaining in a specified area, being an area in which the matrimonial home is, or the premises in which the other party to the marriage resides are, situated;

(c) an injunction restraining a party to the marriage from entering the place of work of the other party to the marriage;

(d) an injunction for the protection of the marital relationship;

(e) an injunction in relation to the property of a party to the marriage; or

(f) an injunction relating to the use or occupancy of the matrimonial home.

(2A) In a de facto financial cause (other than proceedings referred to in, or relating to, paragraph (e) or (f) of the definition of de facto financial cause in subsection 4(1)) the court may:

(a) make such order or grant such injunction as it considers proper with respect to the use or occupancy of a specified residence of the parties to the de facto relationship or either of them; and

(b) if it makes an order or grants an injunction under paragraph (a)--make such order or grant such injunction as it considers proper with respect to restraining a party to the de facto relationship from entering or remaining in:

(i) that residence; or

(ii) a specified area in which that residence is situated; and

(c) make such order or grant such injunction as it considers proper with respect to the property of the parties to the de facto relationship or either of them.

Sections 90SB and 90SK apply in relation to an order or injunction under this subsection in a corresponding way to the way in which those sections apply in relation to an order under section 90SM.

Note 1: This subsection does not apply to proceedings referred to in paragraph (g) of the definition of de facto financial cause that relate to proceedings referred to in paragraph (e) or (f) of that definition.

Note 2: The same requirements in sections 90SB (length of relationship etc.) and 90SK (geographical requirements) for section 90SM orders must be satisfied for orders and injunctions under this subsection.

(3) A court exercising jurisdiction under this Act in proceedings other than proceedings to which subsection (1) applies may grant an injunction, by interlocutory order or otherwise (including an injunction in aid of the enforcement of a decree), in any case in which it appears to the court to be just or convenient to do so and either unconditionally or upon such terms and conditions as the court considers appropriate.

(4) If a party to a marriage is a bankrupt, a court may, on the application of the other party to the marriage, by interlocutory order, grant an injunction under subsection (3) restraining the bankruptcy trustee from declaring and distributing dividends amongst the bankrupt's creditors.

(5) Subsection (4) does not limit subsection (3).

(6) If a party to a marriage is a debtor subject to a personal insolvency agreement, a court may, on the application of the other party to the marriage, by interlocutory order, grant an injunction under subsection (3) restraining the trustee of the agreement from disposing of (whether by sale, gift or otherwise) property subject to the agreement.

(7) Subsection (6) does not limit subsection (3).

FAMILY LAW ACT 1975

- SECT 114AA

Powers of arrest

(1) Where:

(a) an injunction is in force under section 114 for the personal protection of a person; and

(b) a police officer believes, on reasonable grounds, that the person against whom the injunction is directed (in this section called the respondent) has, since the injunction was granted, breached the injunction by:

(i) causing, or threatening to cause, bodily harm to the person referred to in paragraph (a); or

(ii) harassing, molesting or stalking that person;

the police officer may arrest the respondent without warrant.

Note: Section 122AA authorises the use of reasonable force in making an arrest.

(3) Where a police officer arrests a person pursuant to subsection (1):

(a) the police officer shall:

(i) ensure that the person is brought before the court that granted the injunction, or another court having jurisdiction under this Act, before the expiration of the relevant period; and

(ii) take all reasonable steps to ensure that, before the person is so brought before a court, the person on whose application the injunction under section 114 was granted is aware that the first-mentioned person has been arrested and of the court before which the person is to be brought; and

(b) the person shall not be released before the expiration of the relevant period except pursuant to an order of the court that granted the injunction or another court having jurisdiction under this Act; but nothing in this subsection authorises the keeping of the person in custody after the expiration of the relevant period.

(4) Where a person is brought before a court in accordance with subsection (3), the court shall:

(a) if there is an application before the court for the person to be dealt with for breach of the injunction--forthwith proceed to hear and determine that application; or

(b) if there is no application before the court as mentioned in paragraph (a)--order that the person be released forthwith.

(5) Where:

(a) a person is brought before a court in accordance with subsection (3);

(b) the court proceeds to hear and determine an application for the person to be dealt with for breach of an injunction as mentioned in paragraph (4)(a); and

(c) at the expiration of the relevant period the proceedings have not been determined; the person may be kept in custody after the expiration of the relevant period until:

(d) the court gives its decision on the proceedings;

(e) the court orders that the person be released; or

(f) the court adjourns the hearing for a period of more than 24 hours; whichever happens first.

(7) In this section:

"relevant period", in relation to a person's arrest, means the period starting when the person is arrested and ending at the close of business on the next day that is not a Saturday, Sunday or public holiday.

FAMILY LAW ACT 1975

- SECT 114AB

Operation of State and Territory laws

(1) Sections 68B, 68C, 114 and 114AA are not intended to exclude or limit the operation of a prescribed law of a State or Territory that is capable of operating concurrently with those sections.

(2) Where a person has instituted a proceeding or taken any other action under a prescribed law of a State or Territory in respect of a matter in respect of which the person would, but for this subsection, have been entitled to institute a proceeding under section 68B or 114, the person is not entitled to institute a proceeding under section 68B or 114 in respect of that matter, unless:

(a) where the person instituted a proceeding:

(i) the proceeding has lapsed, been discontinued, or been dismissed; or

(ii) the orders (if any) made as a result of the institution of the proceeding have been set aside or are no longer in force; and

(b) where the person took other action--neither that person nor any other person is required, at the time that the person institutes a proceeding under section 68B or 114, to do an act, or to refrain from doing an act.

FAMILY LAW ACT 1975

- SECT 114A

Interpretation

In this Part, unless the contrary intention appears:

"Director" means the Director of the Institute.

"Institute" means the Australian Institute of Family Studies established by this Part.

FAMILY LAW ACT 1975

- SECT 114B

Establishment of Institute

(1) There is established by this Part an Institute by the name of the Australian Institute of Family Studies.

(1A) There is to be a Director of the Institute.

(1B) The Institute consists of:

(a) the Director; and

(b) the staff referred to in section 114M.

Note: The Institute does not have a legal identity separate from the Commonwealth.

(1C) For the purposes of the finance law (within the meaning of the Public Governance, Performance and Accountability Act 2013):

(a) the Institute is a listed entity; and

(b) the Director is the accountable authority of the Institute; and

(c) the persons referred to in subsection (1B) are officials of the Institute; and

(d) the purposes of the Institute include:

- (i) the functions of the Director referred to in subsection (2); and
- (ii) the function of the Institute referred to in subsection (2A).

(2) The functions of the Director are:

(a) to promote, by the conduct, encouragement and co-ordination of research and other appropriate means, the identification of, and development of understanding of, the factors affecting marital and family stability in Australia, with the object of promoting the protection of the family as the natural and fundamental group unit in society; and

(b) to advise and assist the Minister in relation to the making of grants, and with the approval of the Minister to make grants, out of moneys available under appropriations made by the Parliament, for purposes related to the functions of the Institute and the supervising of the employment of grants so made.

(2A) The function of the Institute (other than the Director) is to assist the Director in the performance of his or her functions.

(3) The Minister may:

(a) request the Director to arrange for the Institute to engage in a particular activity (whether research or otherwise) in relation to a particular matter that is within the functions of the Institute; and

(b) after consultation with the Director, specify the priority that is to be given to the activity.

FAMILY LAW ACT 1975

- SECT 114C

Minister may give directions to Director

(1) Subject to subsection (2), the Minister may, by legislative instrument, give directions to the Director as to the performance of his or her functions.

(2) Directions given by the Minister under subsection (1) must be of a general nature only.

(3) The Director must comply with any direction given by the Minister under subsection (1).

FAMILY LAW ACT 1975

- SECT 114D

Appointment of Director

(1) The Director is to be appointed by the Minister by written instrument.

Note: The Director is eligible for reappointment: see section 33AA of the Acts Interpretation Act 1901.

(2) The Director is to be appointed on a full-time basis.

FAMILY LAW ACT 1975

- SECT 114E

Term of appointment

The Director holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

FAMILY LAW ACT 1975

- SECT 114F

Acting appointments

The Minister may appoint a person to act as the Director:

(a) during a vacancy in the office of Director, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Director is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the Acts Interpretation Act 1901.

FAMILY LAW ACT 1975

- SECT 114G

Director's remuneration

(1) The Director is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Director is to be paid the remuneration that is prescribed.

(2) The Director is to be paid the allowances that are prescribed.

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

FAMILY LAW ACT 1975

- SECT 114H
Outside employment

The Director must not engage in paid employment outside the duties of the Director's office without the Minister's approval.

FAMILY LAW ACT 1975
- SECT 114J
Leave of absence

(1) The Director has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the Director leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

FAMILY LAW ACT 1975
- SECT 114L
Other terms and conditions

The Director holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

FAMILY LAW ACT 1975
- SECT 114LA
Resignation

(1) The Director may resign his or her appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

FAMILY LAW ACT 1975
- SECT 114LB
Termination of appointment

(1) The Minister may terminate the appointment of the Director for misbehaviour or physical or mental incapacity.

(2) The Minister may terminate the appointment of the Director if:

(a) the Director:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the Director is absent, except on leave of absence, without reasonable excuse; or

(c) the Director fails, without reasonable excuse, to comply with section 114H (outside employment); or

(d) the Director fails, without reasonable excuse, to comply with section 29 of the Public Governance, Performance and Accountability Act 2013 (which deals with the duty to disclose interests) or rules made for the purposes of that section.

FAMILY LAW ACT 1975
- SECT 114LD
Delegation

(1) The Director may delegate all or any of his or her functions or powers under this Part to an SES employee, or an acting SES employee, of the Institute. The delegation must be in writing.

Note: For other powers of delegation, see section 110 of the Public Governance, Performance and Accountability Act 2013 and section 78 of the Public Service Act 1999.

(2) In performing a delegated function or exercising a delegated power, a delegate must comply with any written directions of the Director.

FAMILY LAW ACT 1975
- SECT 114M
Staff

(1) The staff of the Institute are to be persons engaged under the Public Service Act 1999.

(2) For the purposes of the Public Service Act 1999:

(a) the Director and the APS employees assisting the Director together constitute a Statutory Agency; and

(b) the Director is the Head of that Statutory Agency.

(3) The Director may, with the approval of the Minister, engage persons to assist the Institute as consultants or otherwise.

(4) The terms and conditions of engagement of persons under subsection (3) are as determined by the Director from time to time.

FAMILY LAW ACT 1975

- SECT 114N

Simplified outline of this Part

It is an offence to communicate an account of proceedings under this Act to the public, if the account identifies certain people involved in the proceedings. It is an offence to communicate a list of proceedings that are to be dealt with under this Act to the public, and that are identified by reference to the names of the parties to those proceedings. A communication is not made to the public if the communication is made to a person with a significant and legitimate interest in the subject matter of the communication that is greater than the interest of members of the public generally.

FAMILY LAW ACT 1975

- SECT 114P

Meaning of terms used in this Part

(1) In this Part:

"communicate" means communicate by any means, including by any of the following:

(a) publication in a book, newspaper, magazine or other written publication;

(b) broadcast by radio or television;

(c) public exhibition;

(d) broadcast or publication or other communication by means of the internet.

Example: For the purposes of paragraph (d), online communications and communications using a social media service.

"proceedings" includes a part of proceedings.

(2) In this Part (other than paragraph 114S(1)(b)):

"public" includes a section of the public.

FAMILY LAW ACT 1975

- SECT 114Q

Indictable offence--communication to the public of account of proceedings that identifies parties or others involved in proceedings

(1) A person commits an indictable offence if:

(a) the person communicates to the public an account of proceedings under this Act; and

(b) the account identifies:

(i) a party to the proceedings; or

(ii) a witness in the proceedings; or

(iii) a person who is related to, or is associated with, a party to the proceedings; or

(iv) a person who is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate.

Penalty: Imprisonment for 1 year.

(2) Subsection (1) does not apply if the communication is:

(a) in accordance with a direction of a court; or

(b) otherwise approved by a court.

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

(3) For the purposes of paragraph (1)(b), an account of proceedings is taken to identify a person if the account includes material that is sufficient to identify the person to a member of the public.

Examples of such material might include the following:

(a) a picture, recording, or physical description of the person;

(b) a name or title that identifies the person;

(c) an address or location where the person resides or works;

(d) details of the person's employment, paid or voluntary;

(e) the relationship or other connection between the person and an identified person or business;

(f) the person's political, philosophical or religious beliefs;

(g) any real or personal property associated with the person.

Note: Paragraphs (a) to (g) are examples of material that might be sufficient to identify a person to a member of the public. The examples are not exhaustive (see section 15AD of the Acts Interpretation Act 1901) and might not be sufficient to identify a person in every circumstance.

FAMILY LAW ACT 1975

- SECT 114R

Indictable offence--communication to the public of list of court etc. proceedings that refers to names of parties

(1) A person commits an indictable offence if the person communicates to the public a list of proceedings, identified by reference to the names of the parties to the proceedings, that are to be dealt with by any of the following under this Act:

(a) a court;

(b) an officer of a court investigating or dealing with a matter in accordance with this Act, the regulations or the applicable Rules of Court;

(c) a tribunal established by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for 1 year.

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

(a) the communication is the publication, by the court, officer or tribunal, of a list of proceedings the court, officer or tribunal is to deal with; or

(b) the communication is:

(i) in accordance with a direction of a court or otherwise approved by a court; or

(ii) in accordance with the applicable Rules of Court.

Example: For the purposes of paragraph (a), a list of proceedings a court is to deal with that is published by the court at the court's premises.

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

FAMILY LAW ACT 1975

- SECT 114S

When a communication is not a communication to the public

(1) For the purposes of paragraph 114Q(1)(a) and subsection 114R(1), a communication to a person or body is not a communication to the public if:

(a) the person or body has a significant and legitimate interest in the subject matter of the communication; and

(b) that interest is substantially greater than, or different from, the interests of members of the public generally.

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

(2) Without limiting subsection (1), none of the following is a communication to the public:

(a) a private communication between a party to proceedings and one or more persons who are members of the party's family or friends of the party;

(b) a communication of a pleading, transcript of evidence, or other document for use in connection with any of the following proceedings, to a person concerned in those proceedings:

(i) proceedings in a court;

(ii) proceedings before an officer of a court investigating or dealing with a matter in accordance with this Act, the regulations or the applicable Rules of Court;

(iii) proceedings in a tribunal established by or under a law of the Commonwealth or of a State or Territory;

(c) a communication of a pleading, transcript of evidence, or other document, to a prescribed authority of a State or Territory that has responsibilities relating to the welfare of children;

(d) a communication of a pleading, transcript of evidence, or other document, to:

(i) a body that is responsible for disciplining members of a profession in a State or Territory; or

(ii) a person concerned in disciplinary proceedings against a member of a profession in a State or Territory (being proceedings before a body that is responsible for disciplining members of that profession in that State or Territory);

(e) a communication of a pleading, transcript of evidence, or other document, to a body that grants assistance by way of legal aid for the purpose of facilitating a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case;

(f) a communication of material intended primarily for use by the members of any profession (being part of a series of law reports or any other publication of a technical character);

(g) a communication of an account of proceedings to a member of a profession in connection with:

- (i) the person's practice of that profession; or
- (ii) any form of professional training in which that person is involved;
- (h) a communication of an account of proceedings to a student in connection with the student's studies.

FAMILY LAW ACT 1975

- SECT 114T

Consent of Director of Prosecutions required to commence proceedings

Proceedings for an offence against subsection 114Q(1) or 114R(1) must not be commenced without the written consent of the Director of Public Prosecutions.

FAMILY LAW ACT 1975

- SECT 114UA

Definitions

In this Part:

"costs order" means an order made under subsection 114UB(2).

FAMILY LAW ACT 1975

- SECT 114UB

Costs orders--general

(1) Subject to subsection (2) of this section, subsection 102QAB(6) and sections 114UD and 114UE, each party to proceedings under this Act is to bear the party's own costs.

(2) If, in proceedings under this Act, the court is of the opinion that there are circumstances that justify it in doing so, the court may, subject to subsection (3) of this section, sections 114UC and 114UD and the applicable Rules of Court, make any order for costs and security for costs that the court considers just, whether by way of interlocutory order or otherwise.

Note 1: For other provisions about the award of costs by the Federal Circuit and Family Court of Australia (Division 1), see paragraphs 69(4)(d) and (e) of the Federal Circuit and Family Court of Australia Act 2021.

Note 2: For other provisions about the award of costs by the Federal Circuit and Family Court of Australia (Division 2), see paragraphs 192(4)(d) and (e) of the Federal Circuit and Family Court of Australia Act 2021.

Note 3: See also subsections 96(4) to (6) of this Act.

(3) In considering what costs order (if any) should be made, the court must have regard to the following:

- (a) the financial circumstances of each party to the proceedings;
- (b) whether any party to the proceedings is receiving assistance by way of legal aid in respect of the proceedings and, if so, the terms of the grant of the assistance to that party;
- (c) the conduct of the parties to the proceedings in relation to the proceedings including, without limiting paragraphs (a) and (b), the conduct of the parties in relation to pleadings, particulars, discovery, inspection, directions to answer questions, admissions of facts, production of documents and similar matters, and in relation to their duty of disclosure under subsection 71B(1), 90RI(1) or 90YJA(1);
- (d) whether the proceedings were necessitated by the failure of a party to the proceedings to comply with previous orders of the court;
- (e) whether any party to the proceedings has been wholly unsuccessful in the proceedings;
- (f) whether a party to the proceedings has made an offer in writing to the other party to the proceedings to settle the proceedings and the terms of any such offer;
- (g) such other matters as the court considers relevant.

(4) A party to the proceedings may make an application for costs:

- (a) at any stage during the proceedings; or
- (b) within 28 days after the final order in the proceedings is made.

(5) The court may order that a party is entitled to costs:

- (a) of a specific amount; or
- (b) as assessed on a particular basis (for example, party and party, solicitor and client or indemnity); or
- (c) to be calculated in accordance with the method stated in the order; or
- (d) for part of the proceedings, or part of an amount assessed in accordance with the applicable Rules of Court.

- (6) If the court makes a costs order but does not specify the method for the calculation of the costs,

the costs are to be assessed on a party and party basis.

(7) Subject to subsection (3), the court may make a costs order in favour of, or against, a party to the proceedings regardless of the degree to which the party has been successful in the proceedings.

FAMILY LAW ACT 1975

- SECT 114UC

Costs of independent children's lawyer and limitations on costs relating to intervening officer or litigation guardian etc.

(1) In proceedings in which an independent children's lawyer for a child has been appointed, the court may make a costs order, whether by way of interlocutory order or otherwise, to the effect that each party to the proceedings bears, in such proportion as the court considers just, the costs of the independent children's lawyer in relation to the proceedings.

(2) However, if:

(a) a party to the proceedings is receiving assistance by way of legal aid in respect of the proceedings; or

(b) the court considers that a party to the proceedings would suffer financial hardship if the party had to bear a proportion of the costs of the independent children's lawyer;

the court must not make a costs order against that party in relation to the costs of the independent children's lawyer.

(3) For the purposes of paragraph (2)(a), assistance by way of legal aid does not include assistance provided to a party in accordance with a Commonwealth scheme operating for the purpose of applying the requirements of subsection 102NA(2).

Funding of independent children's lawyer not to affect costs order

(4) In considering what costs order (if any) should be made under subsection (1) in proceedings in which an independent children's lawyer has been appointed, the court must disregard the fact that the independent children's lawyer is funded under a legal aid scheme or service:

(a) established under a law of the Commonwealth or of a State or Territory; or

(b) approved by the Attorney-General.

Limit on costs orders relating to intervention under section 91B

(5) If:

(a) under section 91B, an officer intervenes in proceedings; and

(b) the officer acts in good faith in relation to the proceedings;

the court must not, because of the intervention, make a costs order against the officer, or against an entity (including the Commonwealth or a State or Territory) by or on behalf of whom the officer was engaged or employed.

Limit on costs orders against litigation guardian or manager of affairs of party

(6) If a person has been appointed as a litigation guardian for a party, or a manager of the affairs of a party, to proceedings, the court must not make a costs order against the person unless the court is satisfied that one or more acts or omissions of the person relating to the proceedings are unreasonable or have delayed the proceedings unreasonably.

FAMILY LAW ACT 1975

- SECT 114UD

Costs in proceedings relating to overseas enforcement and international Conventions

(1) In proceedings under regulations made for the purposes of Part XIII IAA, the court may only make a costs order (other than orders as to security for costs):

(a) in favour of a party who has been substantially successful in the proceedings; and

(b) against a person or body who holds or held an office or appointment under those regulations and is a party to the proceedings in that capacity.

Note: For another case where the court may also make a costs order, see subsection (3).

(2) However, a costs order may only be made in respect of a part of the proceedings if, during that part, the party against whom the order is to be made asserted a meaning or operation of this Act or those regulations that the court considers:

(a) is not reasonable given the terms of the Act or regulations; or

(b) is not convenient to give effect to Australia's obligations under the Convention concerned, or to obtain for Australia the benefits of that Convention.

(3) In proceedings under regulations made for the purposes of section 111B, the court may also make a costs order that is:

(a) against a party who has wrongfully removed or retained a child, or wrongfully prevented the exercise of rights of access (within the meaning of the Convention referred to in that section) to a child; and

(b) in respect of the necessary expenses incurred by the person who made the application, under that Convention, concerning the child.

FAMILY LAW ACT 1975

- SECT 114UE

Security for costs

Despite section 114UB, a court must not make an order for security for costs in a proceeding involving a Convention country that is listed in Schedule 4A to the regulations.

FAMILY LAW ACT 1975

- SECT 115

Family Law Council

(1) The Attorney-General may establish a Family Law Council consisting of persons appointed by the Attorney -General in accordance with subsection (2).

(2) The Council shall consist of a Judge of the Federal Circuit and Family Court of Australia and such other judges, persons appointed or engaged under the Public Service Act 1999, officers of the Public Service of a State, family counsellors, family dispute resolution practitioners and other persons as the Attorney -General thinks fit.

(3) It is the function of the Council to advise and make recommendations to the Attorney -General, either of its own motion or upon request made to it by the Attorney-General, concerning:

- (a) the working of this Act and other legislation relating to family law;
- (b) the working of legal aid in relation to family law; and
- (c) any other matters relating to family law.

(4) The Attorney-General shall appoint one of its members to be Chairperson of the Council.

(5) A member of the Council shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, the member shall be paid such remuneration as is prescribed.

(5A) A member of the Council shall be paid such allowances as are prescribed.

(5B) Subsections (5) and (5A) have effect subject to the Remuneration Tribunal Act 1973.

(5C) Subject to this section, a member of the Council holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re -appointment.

(6) A member (including the Chairperson) may resign by writing signed and delivered to the Attorney - General.

(6A) The Attorney-General may terminate the appointment of a member by reason of the misbehaviour, or physical or mental incapacity, of the member.

(6B) If a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Attorney -General shall terminate the appointment of that member.

(7) Meetings of the Council shall be convened by the Chairperson or the Attorney -General.

(8) The Council shall cause records to be kept of its meetings.

(9) The Council shall, as soon as practicable after 30 June in each year, prepare and furnish to the Attorney-General a report of the operations of the Council during the year that ended on that 30 June.

(10) The Attorney-General shall cause a copy of a report furnished under subsection (9) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney -General.

FAMILY LAW ACT 1975

- SECT 117A

Reparation for certain losses and expenses relating to children

(1) Where:

(a) a court has found, for the purposes of Division 13A of Part VII, that a person has, by taking a child away from another person or by refusing or failing to deliver a child to another person, contravened a parenting order to the extent to which the order provides that:

- (i) a child is to live with a person; or
- (ii) a child is to spend time with a person; or
- (iii) a child is to communicate with a person;

(b) a person has been convicted of an offence against section 65Y, 65YA, 65Z or 65ZAA in respect of a child;

(c) a court has found, for the purposes of Division 13A of Part VII, that a person has, by taking a child away from another person or by refusing or failing to deliver a child to another person, contravened an injunction granted, or an order made, under section 114; or

(d) a person has been found to be in contempt of a court exercising jurisdiction under this Act by

reason of having taken a child away from another person or having refused or failed to deliver a child to another person;

a court having jurisdiction under this Act may, subject to subsection (2):

(e) on the application of the Commonwealth--order the person to make reparation to the Commonwealth or to a Commonwealth instrumentality, by way of money payment or otherwise, in respect of any loss suffered, or any expense incurred, by the Commonwealth or the Commonwealth instrumentality, as the case may be, in recovering the child and returning the child to a person; or

(f) on the application of any other person--order the first -mentioned person to make reparation to that other person, by way of money payment or otherwise, in respect of any loss suffered, or expense incurred, by that other person in recovering the child and, if applicable, returning the child to a person.

(2) Nothing in subsection (1) empowers a court to order a person to make reparation to the Commonwealth, to a Commonwealth instrumentality or to another person in respect of any loss suffered, or any expense incurred, where a court has, under section 21B of the Crimes Act 1914, ordered the first-mentioned person to make reparation to the Commonwealth, to the Commonwealth instrumentality or to that other person, as the case may be, in respect of the same loss suffered or expense incurred.

FAMILY LAW ACT 1975

- SECT 117B

Interest on moneys ordered to be paid

(1) Subject to any order made by the court under subsection (2), where, in proceedings under this Act, a court makes an order for the payment of money (other than an order for the payment by way of maintenance of a periodic sum), interest is payable, at the rate prescribed by the applicable Rules of Court, from:

(a) the date on which the order is made; or

(b) the date on which the order takes effect;

whichever is later, on so much of the money as is from time to time unpaid.

(2) A court that makes an order for the payment of money as mentioned in subsection (1) may order that interest is not payable on the money payable under the first-mentioned order or may order:

(a) that interest is payable at a rate specified in the order, being a rate other than the rate prescribed by the applicable Rules of Court; or

(b) that interest is payable from a date specified in the order, being a date other than the date from which the interest would be payable under subsection (1).

FAMILY LAW ACT 1975

- SECT 117C

Offers of settlement

(1) This section applies to proceedings under this Act other than the following proceedings:

(a) proceedings under Part VI;

(b) proceedings under Division 6, 9 or 13 of Part VII;

(c) proceedings to enforce a decree or injunction made under Division 6, 9 or 13 of Part VII.

(2) If:

(a) a party to proceedings to which this section applies makes an offer to the other party to the proceedings to settle the proceedings; and

(b) the offer is made in accordance with any applicable Rules of Court;

the terms of the offer must not be disclosed to the court in which the proceedings are being heard except for the purposes of the consideration by the court of whether it should make an order as to costs under subsection 114UB(2) and the terms of any such order.

FAMILY LAW ACT 1975

- SECT 119

Married persons may sue each other

Either party to a marriage may bring proceedings in contract or in tort against the other party.

FAMILY LAW ACT 1975

- SECT 120

Criminal conversation, adultery and enticement

After the commencement of this Act, no action lies for criminal conversation, damages for adultery, or for enticement of a party to a marriage.

FAMILY LAW ACT 1975

- SECT 122

Rights of legal practitioners

A person who is, under Part VIIIA of the Judiciary Act 1903, entitled to practise in any federal court as a barrister or solicitor, or as both, has the like right to practise in any State court exercising jurisdiction under this Act.

FAMILY LAW ACT 1975

- SECT 122AAA

Protection of Registrars conducting conferences about property matters

(1) In conducting a conference that:

(a) is with the parties to property settlement proceedings; and

(b) relates to the matter to which the proceedings relate;

a Registrar of a Family Court of a State has the same protection and immunity as a Judge of the Court has in performing the functions of a Judge.

(2) This section does not limit any other protection or immunity such a Registrar has (in relation to such a conference or otherwise).

FAMILY LAW ACT 1975

- SECT 122A

Making arrests under this Act or warrants

Application

(1) This section and section 122AA apply to any of the following persons (the arrester) who is authorised by this Act, or by a warrant issued under this Act or the applicable Rules of Court, to arrest another person (the arrestee):

(a) the Marshal of the Federal Circuit and Family Court of Australia (Division 1);

(b) a Deputy Marshal of the Federal Circuit and Family Court of Australia (Division 1);

(c) the Sheriff of the Federal Circuit and Family Court of Australia (Division 2);

(d) a Deputy Sheriff of the Federal Circuit and Family Court of Australia (Division 2);

(e) the Sheriff of a court of a State or Territory;

(f) a Deputy Sheriff of a court of a State or Territory;

(g) a police officer;

(i) an APS employee in the Department administered by the Minister administering the Australian Border Force Act 2015 and who is in the Australian Border Force (within the meaning of that Act).

Use of force

(2) In the course of arresting the arrestee, the arrester:

(a) must not use more force, or subject the arrestee to greater indignity, than is necessary and reasonable to make the arrest or to prevent the arrestee's escape after the arrest; and

(b) must not do anything that is likely to cause the death of, or grievous bodily harm to, the arrestee unless the arrester reasonably believes that doing that thing is necessary to protect life or prevent serious injury to another person (including the arrester); and

(c) if the arrestee is attempting to escape arrest by fleeing--must not do a thing described in paragraph (b) unless:

(i) the arrester reasonably believes that doing that thing is necessary to protect life or prevent serious injury to another person (including the arrester); and

(ii) the arrestee has, if practicable, been called on to surrender and the arrester reasonably believes that the arrestee cannot be arrested in any other way.

Informing the arrestee of grounds for arrest

(3) When arresting the arrestee, the arrester must inform the arrestee of the grounds for the arrest.

(4) It is sufficient if the arrestee is informed of the substance of those grounds, not necessarily in precise or technical language.

(5) Subsection (3) does not apply if:

(a) it is reasonable, in the circumstances, to assume that the arrestee knows the substance of the grounds for the arrest; or

(b) the arrestee's actions make it impracticable for the arrester to inform the arrestee of those grounds.

FAMILY LAW ACT 1975

- SECT 122AA

Powers to enter and search premises, and stop conveyances, for making arrests under this Act or warrants

Power to enter premises

(1) If the arrestor (see subsection 122A(1)) reasonably believes the arrestee (see that subsection) is on premises, the arrestor may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the arrestee or arresting the arrestee.

(2) However, the arrestor must not enter a dwelling house between 9 pm one day and 6 am the next day unless he or she reasonably believes that it would not be practicable to arrest the arrestee there or elsewhere at another time.

Power to stop and detain conveyance

(3) If the arrestor may enter and search a conveyance under subsection (1) (disregarding subsection (2)), the arrestor may, for the purposes of effecting the entry and search, stop and detain the conveyance.

Note: The reference in subsection (1) to premises covers a conveyance: see subsection (5).

Rules about stopping, detaining, entering and searching conveyances

(4) If the arrestor stops, detains, enters or searches a conveyance under this section for the purposes of arresting the arrestee, the arrestor:

- (a) may use such assistance as is necessary; and
- (b) must search the conveyance in a public place or in some other place to which members of the public have ready access; and
- (c) must not detain the conveyance for longer than is necessary and reasonable to search it; and
- (d) may use such force as is necessary and reasonable in the circumstances, but must not damage the conveyance by forcing open a part of the conveyance unless:
 - (i) the person (if any) apparently in charge of the conveyance has been given a reasonable opportunity to open that part; or
 - (ii) it is not possible to give that person such an opportunity.

Definition of premises

(5) In this section:

"premises" includes a place and a conveyance.

FAMILY LAW ACT 1975

- SECT 122B

Arrangements with States and Territories

(1) The Governor-General may make an arrangement with the relevant authority of a State or internal Territory for the performance by an officer of the State or Territory of a function under this Act.

(2) In this section:

"officer" includes the holder of a judicial office.

"relevant authority" means:

- (a) in relation to a State--the Governor of the State; or
- (b) in relation to the Australian Capital Territory--the Chief Minister for the Australian Capital Territory; or
- (c) in relation to the Northern Territory--the Administrator of the Northern Territory.

FAMILY LAW ACT 1975

- SECT 123

Rules of Court--standard Rules of Court

(1) The Judges of the Federal Circuit and Family Court of Australia (Division 1), or a majority of them, may make Rules of Court not inconsistent with this Act, providing for or in relation to the practice and procedure to be followed, subject to subsection 69GA(3) and section 90YJ, in a court exercising jurisdiction under this Act, and for and in relation to all matters and things incidental to any such practice and procedure, or necessary or convenient to be prescribed for the conduct of any business in the court and, in particular:

- (a) providing for and in relation to the attendance of witnesses; and
- (b) providing for and in relation to the manner of service of process of a court exercising jurisdiction under this Act, and for and in relation to dispensing with such service; and
- (ba) providing for and in relation to trial management; and
- (e) providing for and in relation to the prevention or termination of vexatious or harmful proceedings; and
- (f) prescribing the seals and stamps to be used in a court exercising jurisdiction under this Act; and
- (g) prescribing matters relating to the costs of proceedings (including solicitor and client costs and party and party costs) and the assessment or taxation of those costs; and
- (h) authorising a court to refer to an officer of the court for investigation, report and recommendation claims or applications for or relating to any matters before the court; and
- (j) authorising an officer making an investigation mentioned in paragraph (h) to:
 - (i) take evidence on oath or affirmation; and

- (ii) receive in evidence a report from a family consultant under section 55A or 62G; and
- (iii) receive in evidence a report from a person who has had dealings with a party to the matter under investigation under section 65F, 65L, 65LA, 70NBB, 70NBD or 70NBF; and
- (ja) enabling the summoning of witnesses before an officer making an investigation mentioned in paragraph (h) for the purposes of giving evidence or producing books or documents; and
- (k) regulating the procedure of a court upon receiving a report of an officer who has made an investigation referred to in paragraph (h); and
- (m) providing for and in relation to the procedure of a court exercising its powers under section 112AP to deal with a person for contempt of the court; and
- (ma) for the purposes of Division 2 of Part XI, providing for the conditions relating to the use of video links, audio links and other appropriate means of communication; and
- (n) providing for and in relation to the making of an application for a divorce order in relation to a marriage jointly by both parties to the marriage; and
- (o) providing for and in relation to the appointment, by the Attorney -General, or a court exercising jurisdiction under this Act, of a litigation guardian for a party, or a manager of the affairs of a party, to proceedings under this Act; and
- (q) providing for and in relation to:
 - (i) the forfeiture of bonds and recognisances entered into in pursuance of requirements made under this Act; and
 - (ii) the recovery of any money that may be due to the Commonwealth under such bonds and recognisances or from any person who has become a surety under this Act; and
 - (r) providing for and in relation to the attachment of moneys payable by the Commonwealth, a State, a Territory or the Administration of a Territory, or by an authority of the Commonwealth, of a State or of a Territory (other than moneys as to which it is provided by any law of the Commonwealth, of a State or of a Territory that they are not liable to attachment); and
 - (s) providing for and in relation to:
 - (i) the attendance at family counselling by parties to proceedings under this Act; and
 - (ii) the attendance at family dispute resolution by parties to proceedings under this Act; and
 - (iii) the giving of advice and assistance by family consultants to people involved in proceedings under this Act; and
 - (iv) the participation by parties to proceedings under this Act in courses, programs and other services (other than those mentioned in subparagraph (i), (ii) or (iii)) that the parties are ordered by the court to participate in; and
 - (v) the use, for the purposes of proceedings under this Act, by courts exercising jurisdiction under this Act and officers of such courts, of reports about the future conduct of the proceedings that have been prepared by persons who dealt with the parties in accordance with Rules of Court made under subparagraphs (i), (ii), (iii) or (iv); and
 - (sa) prescribing the functions and duties of assessors and of family consultants and arbitrators; and
 - (sb) providing for and in relation to the making of applications under this Act for arbitration and for orders under sections 13E and 13F; and
 - (sc) prescribing the disputes, proceedings or matters that may or may not be arbitrated under this Act; and
 - (sca) prescribing the disputes, proceedings or matters in relation to which family consultants may, or must not, perform their functions; and
 - (sd) providing for and in relation to:
 - (i) the functions to be performed by family consultants; and
 - (ii) the procedures to be followed in performing those functions; and
 - (iii) the procedures to be followed by persons involved in proceedings in relation to which a family consultant is performing functions; and
 - (iv) the procedures to be followed when a family consultant ceases performing functions in relation to a dispute, proceeding or matter; and
 - (sda) providing for and in relation to:
 - (i) the procedures to be followed by a family counsellor authorised under subsection 281(1) of the Federal Circuit and Family Court of Australia Act 2021 or engaged under subsection 18ZI(2) of the Federal Court of Australia Act 1976; and
 - (ii) the procedures to be followed by persons attending family counselling with such a counsellor; and
 - (iii) the procedures to be followed when family counselling with such a counsellor ends; and
 - (sdb) providing for and in relation to:
 - (i) the procedures to be followed by a family dispute resolution practitioner authorised under subsection 281(2) of the Federal Circuit and Family Court of Australia Act 2021 or engaged under subsection 18ZI(2) of the Federal Court of Australia Act 1976; and
 - (ii) the procedures to be followed by persons attending family dispute resolution with such a practitioner; and
 - (iii) the procedures to be followed when family dispute resolution with such a practitioner ends; and
 - (sdc) providing for and in relation to:

- (i) the procedures to be followed by an arbitrator in relation to a dispute, proceeding or matter under this Act; and
- (ii) the attendance by persons at conferences conducted by arbitrators for the purpose of arbitrating a dispute, proceeding or matter under this Act; and
- (iii) the procedure to be followed when arbitration ends, both where it has resulted in an agreement or award and where it has not; and
- (se) prescribing matters relating to the costs of arbitration by arbitrators, and the assessment or taxation of those costs; and
- (sea) prescribing matters relating to the costs of family counselling by family counsellors authorised under subsection 281(1) of the Federal Circuit and Family Court of Australia Act 2021 or engaged under subsection 18ZI(2) of the Federal Court of Australia Act 1976; and
- (seb) prescribing matters relating to the costs of family dispute resolution by family dispute resolution practitioners authorised under subsection 281(2) of the Federal Circuit and Family Court of Australia Act 2021 or engaged under subsection 18ZI(2) of the Federal Court of Australia Act 1976; and
- (sf) providing for and in relation to:
 - (i) the registration of awards under section 13H; and
 - (ii) the time and manner of making applications for review of registered awards under section 13J or for orders setting aside registered awards under section 13K; and
- (sg) providing for and in relation to conciliation conferences; and
- (t) prescribing matters incidental to the matters specified in the preceding paragraphs; and
- (u) prescribing penalties not exceeding 50 penalty units for offences against the standard Rules of Court.

Note: For other powers to make Rules of Court, see section 109A, subsection 111C(7A) and section 123A.

(1A) A reference in subsection (1) to a court exercising jurisdiction under this Act does not include a reference to:

- (a) the Federal Circuit and Family Court of Australia; or
- (b) if Rules of Court made under section 123A are in force for the purposes of a Family Court of a State--that Court.

Note: A reference to a Family Court of a State is a reference to a court to which section 41 applies (see subsection 4(1A)).

(2) The Legislation Act 2003 (other than sections 8, 9, 10 and 16 and Part 4 of Chapter 3 of that Act) applies in relation to rules of court made by Judges of the Federal Circuit and Family Court of Australia (Division 1) under this section or any other Act (other than the Federal Circuit and Family Court of Australia Act 2021):

- (a) as if a reference to a legislative instrument (other than in subparagraph 14(1)(a)(ii) and subsection 14(3) of that Act) were a reference to a rule of court; and
- (b) as if a reference to a rule-maker were a reference to the Chief Justice acting on behalf of the Judges of that Court; and
- (c) subject to such further modifications or adaptations as are provided for in regulations made under paragraph 125(1)(baa) of this Act.

(2A) Despite the fact that section 16 of the Legislation Act 2003 does not apply in relation to rules of court made by the Chief Justice of the Federal Circuit and Family Court of Australia (Division 1) under this Act, the Office of Parliamentary Counsel (established by subsection 2(1) of the Parliamentary Counsel Act 1970) may provide assistance in the drafting of any of those Rules if the Chief Justice so desires.

FAMILY LAW ACT 1975

- SECT 123A

Rules of Court--Family Courts of a State

(1) The Judges (however described) of a Family Court of a State (a State Court), or a majority of them, may make Rules of Court not inconsistent with this Act, providing for or in relation to the practice and procedure to be followed, subject to subsection 69GA(3), by the State Court when exercising jurisdiction under this Act, and for and in relation to all matters and things incidental to any such practice and procedure, or necessary or convenient to be prescribed for the conduct of any business in the State Court and, in particular:

- (a) providing for and in relation to the attendance of witnesses; and
- (b) providing for and in relation to the manner of service of process of the State Court, and for and in relation to dispensing with such service; and
- (c) providing for and in relation to trial management; and
- (d) providing for and in relation to the prevention or termination of vexatious or harmful proceedings; and
- (e) prescribing the seals and stamps to be used in the State Court; and
- (f) prescribing matters relating to the costs of proceedings (including solicitor and client costs and party and party costs) and the assessment or taxation of those costs; and

- (g) authorising the State Court to refer to an officer of the court for investigation, report and recommendation claims or applications for or relating to any matters before the court; and
- (h) authorising an officer making an investigation mentioned in paragraph (g) to:
 - (i) take evidence on oath or affirmation; and
 - (ii) receive in evidence a report from a family consultant under section 55A or 62G; and
 - (iii) receive in evidence a report from a person who has had dealings with a party to the matter under investigation under section 65F, 65L, 65LA, 70NBB, 70NBD or 70NBF; and
- (i) enabling the summoning of witnesses before an officer making an investigation mentioned in paragraph (g) for the purposes of giving evidence or producing books or documents; and
- (j) regulating the procedure of the State Court upon receiving a report of an officer who has made an investigation referred to in paragraph (g); and
- (k) providing for and in relation to the procedure of the State Court when exercising its powers under section 112AP to deal with a person for contempt of the court; and
- (l) for the purposes of Division 2 of Part XI, providing for the conditions relating to the use of video links, audio links and other appropriate means of communication; and
- (m) providing for and in relation to the making of an application for a divorce order in relation to a marriage jointly by both parties to the marriage; and
- (n) providing for and in relation to the appointment, by the Attorney -General of the Commonwealth, or a court exercising jurisdiction under this Act, of a litigation guardian for a party, or a manager of the affairs of a party, to proceedings under this Act; and
- (o) providing for and in relation to:
 - (i) the forfeiture of bonds and recognisances entered into in pursuance of requirements made under this Act; and
 - (ii) the recovery of any money that may be due to the Commonwealth under such bonds and recognisances or from any person who has become a surety under this Act; and
- (p) providing for and in relation to the attachment of moneys payable by the Commonwealth, a State, a Territory or the Administration of a Territory, or by an authority of the Commonwealth, of a State or of a Territory (other than moneys as to which it is provided by any law of the Commonwealth, of a State or of a Territory that they are not liable to attachment); and
- (q) providing for and in relation to:
 - (i) the attendance at family counselling by parties to proceedings under this Act; and
 - (ii) the attendance at family dispute resolution by parties to proceedings under this Act; and
 - (iii) the giving of advice and assistance by family consultants to people involved in proceedings under this Act; and
 - (iv) the participation by parties to proceedings under this Act in courses, programs and other services (other than those mentioned in subparagraph (i), (ii) or (iii)) that the parties are ordered by the State Court to participate in; and
- (v) the use, for the purposes of proceedings under this Act, by the State Court and officers of the court, of reports about the future conduct of the proceedings that have been prepared by persons who dealt with the parties in accordance with Rules of Court made under subparagraphs (i), (ii), (iii) or (iv); and
- (r) prescribing the functions and duties of assessors and of family consultants and arbitrators; and
- (s) providing for and in relation to the making of applications under this Act for arbitration and for orders under sections 13E and 13F; and
- (t) prescribing the disputes, proceedings or matters that may or may not be arbitrated under this Act; and
- (u) prescribing the disputes, proceedings or matters in relation to which family consultants may, or must not, perform their functions; and
- (v) providing for and in relation to:
 - (i) the functions to be performed by family consultants; and
 - (ii) the procedures to be followed in performing those functions; and
 - (iii) the procedures to be followed by persons involved in proceedings in relation to which a family consultant is performing functions; and
 - (iv) the procedures to be followed when a family consultant ceases performing functions in relation to a dispute, proceeding or matter; and
- (w) providing for and in relation to:
 - (i) the procedures to be followed by a family counsellor authorised under subsection 281(1) of the Federal Circuit and Family Court of Australia Act 2021 or engaged under subsection 18ZI(2) of the Federal Court of Australia Act 1976; and
 - (ii) the procedures to be followed by persons attending family counselling with such a counsellor; and
 - (iii) the procedures to be followed when family counselling with such a counsellor ends; and
- (x) providing for and in relation to:
 - (i) the procedures to be followed by a family dispute resolution practitioner authorised under subsection 281(2) of the Federal Circuit and Family Court of Australia Act 2021 or engaged under subsection 18ZI(2) of the Federal Court of Australia Act 1976; and

- (ii) the procedures to be followed by persons attending family dispute resolution with such a practitioner; and
- (iii) the procedures to be followed when family dispute resolution with such a practitioner ends; and
- (y) providing for and in relation to:
 - (i) the procedures to be followed by an arbitrator in relation to a dispute, proceeding or matter under this Act; and
 - (ii) the attendance by persons at conferences conducted by arbitrators for the purpose of arbitrating a dispute, proceeding or matter under this Act; and
 - (iii) the procedure to be followed when arbitration ends, both where it has resulted in an agreement or award and where it has not; and
 - (z) prescribing matters relating to the costs of arbitration by arbitrators, and the assessment or taxation of those costs; and
 - (za) prescribing matters relating to the costs of family counselling by family counsellors authorised under subsection 281(1) of the Federal Circuit and Family Court of Australia Act 2021 or engaged under subsection 182I(2) of the Federal Court of Australia Act 1976; and
 - (zb) prescribing matters relating to the costs of family dispute resolution by family dispute resolution practitioners authorised under subsection 281(2) of the Federal Circuit and Family Court of Australia Act 2021 or engaged under subsection 182I(2) of the Federal Court of Australia Act 1976; and
 - (zc) providing for and in relation to:
 - (i) the registration of awards under section 13H; and
 - (ii) the time and manner of making applications for review of registered awards under section 13J or for orders setting aside registered awards under section 13K; and
 - (zd) providing for and in relation to conciliation conferences; and
 - (ze) prescribing matters incidental to the matters specified in the preceding paragraphs; and
 - (zf) prescribing penalties not exceeding 50 penalty units, or an amount that is the monetary equivalent, for offences against Rules of Court made under this section for the purposes of the State Court.

Note 1: A reference to a Family Court of a State is a reference to a court to which section 41 applies (see subsection 4(1A)).

Note 2: Penalty unit has the meaning given by section 4AA of the Crimes Act 1914 (see section 2B of the Acts Interpretation Act 1901).

(2) The Legislation Act 2003 (other than sections 8, 9, 10 and 16 and Part 4 of Chapter 3 of that Act) applies in relation to rules of court made by Judges of a State Court under this section:

- (a) as if a reference to a legislative instrument (other than in subparagraph 14(1)(a)(ii) and subsection 14(3) of that Act) were a reference to a rule of court; and
- (b) as if a reference to a rule-maker were a reference to the Chief Judge (however described) acting on behalf of the Judges of that Court; and
- (c) subject to such further modifications or adaptations as are provided for in regulations made under paragraph 125(1)(baa) of this Act.

FAMILY LAW ACT 1975

- SECT 124

Rules Advisory Committee

(1) There shall be a Rules Advisory Committee consisting of such Judges of the Federal Circuit and Family Court of Australia (Division 1), such Judges of the Federal Circuit and Family Court of Australia (Division 2), such Judges of Family Courts of States and such other persons as are appointed by the Chief Justice of the Federal Circuit and Family Court of Australia (Division 1).

(2) The function of the Rules Advisory Committee is to advise the Judges of the Federal Circuit and Family Court of Australia (Division 1) in relation to the making of standard Rules of Court as requested from time to time.

(4) A Judge of a Family Court of a State shall not be appointed as a member of the Rules Advisory Committee unless the Governor-General has made an arrangement under section 122B in relation to the performance, by that Judge, of functions as a member of the Rules Advisory Committee.

(5) The members of the Rules Advisory Committee shall be paid such allowances in respect of expenses in connection with their duties as are prescribed.

(6) A member of the Rules Advisory Committee may resign by writing signed and delivered to the Chief Justice of the Federal Circuit and Family Court of Australia (Division 1).

FAMILY LAW ACT 1975

- SECT 124A

Regulations in relation to overseas - related maintenance obligations etc.

(1) The regulations may make provision for, and in relation to, the following matters:

- (a) giving effect to an international agreement that relates to maintenance obligations arising from

family relationship, parentage or marriage;

(b) maintenance obligations arising from family relationship, parentage or marriage, where:

- (i) the maintenance is claimed by or on behalf of a person who is in a reciprocating jurisdiction; or
- (ii) the person from whom the maintenance is claimed is in a reciprocating jurisdiction.

(2) Regulations made for the purposes of this section may:

- (a) confer jurisdiction on a federal court (other than the High Court) or a court of a Territory; or
- (b) invest a court of a State with federal jurisdiction.

(4) In this section:

"international agreement" means an agreement whose parties are:

- (a) Australia and a foreign country; or
- (b) Australia and 2 or more foreign countries.

"reciprocating jurisdiction" means:

- (a) a foreign country; or
- (b) a part of a foreign country;

that is prescribed by the regulations to be a reciprocating jurisdiction for the purposes of this section.

FAMILY LAW ACT 1975

- SECT 125

Regulations

(1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular:

(a) providing for and in relation to the service overseas, pursuant to any convention between Australia and another country, of any documents in proceedings under this Act; and

(b) providing for and in relation to the transcription of proceedings under this Act and the making available of copies of transcripts of those proceedings; and

(baa) modifying or adapting the provisions of the Legislation Act 2003 (other than the provisions of Part 2 of Chapter 3 of that Act or any other provisions whose modification or adaptation would affect the operation of that Part) in their application to a court exercising jurisdiction under this Act; and

(bb) prescribing requirements for arbitrators; and

(bba) the registration of awards made in family law arbitration; and

(bc) prescribing, or providing for or in relation to, anything that may be dealt with in Rules of Court made under paragraph 123(1)(sa), (sb), (sc), (sca), (sd), (sda), (sdb), (sdc), (se), (sea) or (seb); and

(bd) prescribing, or providing for or in relation to, anything that may be dealt with in Rules of Court made under paragraph 123A(1)(r), (s), (t), (u), (v), (w), (x), (y), (z), (za) or (zb); and

(c) prescribing court fees to be payable in respect of proceedings under this Act; and

(d) exempting persons included in particular classes of persons from liability to pay court fees prescribed under paragraph (c); and

(e) providing for the refund of court fees prescribed under paragraph (c) that have been paid in particular circumstances; and

(f) providing for an officer of a court exercising jurisdiction under this Act, a prescribed authority of the Commonwealth, of a State or of a Territory or the person for the time being holding a prescribed office under a law of the Commonwealth, of a State or of a Territory, in his, her or its discretion, to institute and prosecute proceedings, on behalf of the person entitled to moneys payable under a child maintenance order under Part VII or a maintenance order under Part VIII, for the purpose of enforcing payment of those moneys; and

(g) providing for and in relation to priority as between the execution of orders made under the regulations, or under the repealed Act, for the attachment of moneys payable by the Commonwealth, a State, a Territory or the Administration of a Territory, or by an authority of the Commonwealth, of a State or of a Territory (other than moneys as to which it is provided by any law of the Commonwealth, of a State or of a Territory that they are not liable to attachment) and the execution of orders made in accordance with the Maintenance Orders (Commonwealth Officers) Act 1966.

(2) Court fees payable in pursuance of regulations made under this section in respect of proceedings in a Family Court of a State are payable to the State.

(3) To the extent of any inconsistency between regulations and Rules of Court, the regulations prevail.

FAMILY LAW ACT 1975

- SCHEDULE 1

Child Protection Convention

Note: This is the copy of the Child Protection Convention referred to in the definition of Child

Protection Convention in subsection 111CA(1).

The undersigned, Delegates of the Governments of Argentina, Australia, Austria, Belgium, Canada, China, Croatia, the Czech Republic, Egypt, Finland, The former Yugoslav Republic of Macedonia, France, Germany, Greece, Ireland, Israel, Italy, Japan, Luxembourg, Malta, Mexico, Monaco, Morocco, the Netherlands, Norway, Poland, Portugal, Romania, the Slovak Republic, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela, Member States, as well as the Representatives of the Governments of Burkina Faso, Colombia, Costa Rica, Ecuador, Georgia, the Holy See, the Republic of Korea, Mauritius, New Zealand, Paraguay, Peru, the Philippines, the Russian Federation, South Africa and Sri Lanka, participating as Observers, convened at The Hague on 30 September 1996, at the invitation of the Government of the Netherlands, in the Eighteenth Session of the Hague Conference on Private International Law.

Following the deliberations laid down in the records of the meetings, have decided to submit to their Governments--

CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN

The States signatory to the present Convention,

Considering the need to improve the protection of children in international situations,

Wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of children,

Recalling the importance of international co-operation for the protection of children,

Confirming that the best interests of the child are to be a primary consideration,

Noting that the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors is in need of revision,

Desiring to establish common provisions to this effect, taking into account the United Nations Convention on the Rights of the Child of 20 November 1989,

Have agreed on the following provisions--

CHAPTER I--SCOPE OF THE CONVENTION

Article 1

1 The objects of the present Convention are--

a to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;

b to determine which law is to be applied by such authorities in exercising their jurisdiction;

c to determine the law applicable to parental responsibility;

d to provide for the recognition and enforcement of such measures of protection in all Contracting States;

e to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

2 For the purposes of this Convention, the term 'parental responsibility' includes parental authority, or any analogous relationship of authority determining the rights, powers and

responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child.

Article 2

The Convention applies to children from the moment of their birth until they reach the age of 18 years.

Article 3

The measures referred to in Article 1 may deal in particular with--

a the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;

b rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence;

c guardianship, curatorship and analogous institutions;

d the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;

e the placement of the child in a foster family or in institutional care, or the provision of care by kafala or an analogous institution;

f the supervision by a public authority of the care of a child by any person having charge of the child;

g the administration, conservation or disposal of the child's property.

Article 4

The Convention does not apply to--

a the establishment or contesting of a parent-child relationship;

b decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;

c the name and forenames of the child;

d emancipation;

e maintenance obligations;

f trusts or succession;

g social security;

h public measures of a general nature in matters of education or health;

i measures taken as a result of penal offences committed by children;

j decisions on the right of asylum and on immigration.

CHAPTER II--JURISDICTION

Article 5

1 The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

2 Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

Article 6

1 For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5.

2 The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.

Article 7

1 In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and

a each person, institution or other body having rights of custody has acquiesced in the removal or retention; or

b the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.

2 The removal or the retention of a child is to be considered wrongful where--

a it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

3 So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child.

Article 8

1 By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

-- request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or

-- suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.

2 The Contracting States whose authorities may be addressed as provided in the preceding paragraph are

a a State of which the child is a national,

b a State in which property of the child is located,

c a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,

d a State with which the child has a substantial connection.

3 The authorities concerned may proceed to an exchange of views.

4 The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.

Article 9

1 If the authorities of a Contracting State referred to in Article 8, paragraph 2, consider that they are better placed in the particular case to assess the child's best interests, they may either

-- request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary, or

-- invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child.

2 The authorities concerned may proceed to an exchange of views.

3 The authority initiating the request may exercise jurisdiction in place of the authority of the Contracting State of the habitual residence of the child only if the latter authority has accepted the request.

Article 10

1 Without prejudice to Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child if

a at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and

b the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child.

2 The jurisdiction provided for by paragraph 1 to take measures for the protection of the child ceases as soon as the decision allowing or refusing the application for divorce, legal separation or annulment of the marriage has become final, or the proceedings have come to an end for another reason.

Article 11

1 In all cases of urgency, the authorities of any Contracting State in whose territory the child or

property belonging to the child is present have jurisdiction to take any necessary measures of protection.

2 The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.

3 The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

Article 12

1 Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5 to 10.

2 The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken a decision in respect of the measures of protection which may be required by the situation.

3 The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in the Contracting State where the measures were taken as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

Article 13

1 The authorities of a Contracting State which have jurisdiction under Articles 5 to 10 to take measures for the protection of the person or property of the child must abstain from exercising this jurisdiction if, at the time of the commencement of the proceedings, corresponding measures have been requested from the authorities of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration.

2 The provisions of the preceding paragraph shall not apply if the authorities before whom the request for measures was initially introduced have declined jurisdiction.

Article 14

The measures taken in application of Articles 5 to 10 remain in force according to their terms, even if a change of circumstances has eliminated the basis upon which jurisdiction was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures.

CHAPTER III--APPLICABLE LAW

Article 15

1 In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law.

2 However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection.

3 If the child's habitual residence changes to another Contracting State, the law of that other State governs, from the time of the change, the conditions of application of the measures taken in the State of the former habitual residence.

Article 16

1 The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.

2 The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.

3 Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.

4 If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence.

Article 17

The exercise of parental responsibility is governed by the law of the State of the child's habitual residence. If the child's habitual residence changes, it is governed by the law of the State of the new habitual residence.

Article 18

The parental responsibility referred to in Article 16 may be terminated, or the conditions of its exercise modified, by measures taken under this Convention.

Article 19

1 The validity of a transaction entered into between a third party and another person who would be entitled to act as the child's legal representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the child's legal representative under the law designated by the provisions of this Chapter, unless the third party knew or should have known that the parental responsibility was governed by the latter law.

2 The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State.

Article 20

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

Article 21

1 In this Chapter the term "law" means the law in force in a State other than its choice of law rules.

2 However, if the law applicable according to Article 16 is that of a non-Contracting State and if the

choice of law rules of that State designate the law of another non-Contracting State which would apply its own law, the law of the latter State applies. If that other non-Contracting State would not apply its own law, the applicable law is that designated by Article 16.

Article 22

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

CHAPTER IV--RECOGNITION AND ENFORCEMENT

Article 23

1 The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.

2 Recognition may however be refused--

a if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;

b if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;

c on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;

d if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;

e if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;

f if the procedure provided in Article 33 has not been complied with.

Article 24

Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.

Article 25

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

Article 26

1 If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in

the law of the latter State.

2 Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.

3 The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.

Article 27

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

Article 28

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

CHAPTER V--CO-OPERATION

Article 29

1 A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on such authorities.

2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 30

1 Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

2 They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of children.

Article 31

The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to--

a facilitate the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter;

b facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;

c provide, on the request of a competent authority of another Contracting State, assistance in

discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State.

Article 32

On a request made with supporting reasons by the Central Authority or other competent authority of any Contracting State with which the child has a substantial connection, the Central Authority of the Contracting State in which the child is habitually resident and present may, directly or through public authorities or other bodies,

a provide a report on the situation of the child;

b request the competent authority of its State to consider the need to take measures for the protection of the person or property of the child.

Article 33

1 If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by kafala or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.

2 The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.

Article 34

1 Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so requires, may request any authority of another Contracting State which has information relevant to the protection of the child to communicate such information.

2 A Contracting State may declare that requests under paragraph 1 shall be communicated to its authorities only through its Central Authority.

Article 35

1 The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.

2 The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised. An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision.

3 An authority having jurisdiction under Articles 5 to 10 to decide on access may adjourn a proceeding pending the outcome of a request made under paragraph 2, in particular, when it is considering an application to restrict or terminate access rights granted in the State of the child's former habitual residence.

4 Nothing in this Article shall prevent an authority having jurisdiction under Articles 5 to 10 from

taking provisional measures pending the outcome of the request made under paragraph 2.

Article 36

In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child's residence has changed to, or that the child is present in another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.

Article 37

An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family.

Article 38

1 Without prejudice to the possibility of imposing reasonable charges for the provision of services, Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter.

2 Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges.

Article 39

Any Contracting State may enter into agreements with one or more other Contracting States with a view to improving the application of this Chapter in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

CHAPTER VI--GENERAL PROVISIONS

Article 40

1 The authorities of the Contracting State of the child's habitual residence, or of the Contracting State where a measure of protection has been taken, may deliver to the person having parental responsibility or to the person entrusted with protection of the child's person or property, at his or her request, a certificate indicating the capacity in which that person is entitled to act and the powers conferred upon him or her.

2 The capacity and powers indicated in the certificate are presumed to be vested in that person, in the absence of proof to the contrary.

3 Each Contracting State shall designate the authorities competent to draw up the certificate.

Article 41

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

Article 42

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State.

Article 43

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality.

Article 44

Each Contracting State may designate the authorities to which requests under Articles 8, 9 and 33 are to be addressed.

Article 45

1 The designations referred to in Articles 29 and 44 shall be communicated to the Permanent Bureau of the Hague Conference on Private International Law.

2 The declaration referred to in Article 34, paragraph 2, shall be made to the depositary of the Convention.

Article 46

A Contracting State in which different systems of law or sets of rules of law apply to the protection of the child and his or her property shall not be bound to apply the rules of the Convention to conflicts solely between such different systems or sets of rules of law.

Article 47

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units--

1 any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;

2 any reference to the presence of the child in that State shall be construed as referring to presence in a territorial unit;

3 any reference to the location of property of the child in that State shall be construed as referring to location of property of the child in a territorial unit;

4 any reference to the State of which the child is a national shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the child has the closest connection;

5 any reference to the State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage, shall be construed as referring to the territorial unit whose authorities are seised of such application;

6 any reference to the State with which the child has a substantial connection shall be construed as referring to the territorial unit with which the child has such connection;

7 any reference to the State to which the child has been removed or in which he or she has been retained shall be construed as referring to the relevant territorial unit to which the child has been removed or in which he or she has been retained;

8 any reference to bodies or authorities of that State, other than Central Authorities, shall be construed as referring to those authorised to act in the relevant territorial unit;

9 any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed as referring to the law or procedure or authority of the territorial unit in which such measure was taken;

10 any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought.

Article 48

For the purpose of identifying the applicable law under Chapter III, in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply--

a if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;

b in the absence of such rules, the law of the relevant territorial unit as defined in Article 47 applies.

Article 49

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Convention, the following rules apply--

a if there are rules in force in such a State identifying which among such laws applies, that law applies;

b in the absence of such rules, the law of the system or the set of rules of law with which the child has the closest connection applies.

Article 50

This Convention shall not affect the application of the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, as between Parties to both Conventions. Nothing, however, precludes provisions of this Convention from being invoked for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 51

In relations between the Contracting States this Convention replaces the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, and the Convention governing the guardianship of minors, signed at The Hague 12 June 1902, without prejudice to the recognition of measures taken under the Convention of 5 October 1961 mentioned above.

Article 52

1 This Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

2 This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of children habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.

3 Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.

4 The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

Article 53

1 The Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State.

2 The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State.

Article 54

1 Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English.

2 However, a Contracting State may, by making a reservation in accordance with Article 60, object to the use of either French or English, but not both.

Article 55

1 A Contracting State may, in accordance with Article 60,

a reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory;

b reserve the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property.

2 The reservation may be restricted to certain categories of property.

Article 56

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convoke a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII--FINAL CLAUSES

Article 57

1 The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Eighteenth Session.

2 It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 58

1 Any other State may accede to the Convention after it has entered into force in accordance with Article 61, paragraph 1.

2 The instrument of accession shall be deposited with the depositary.

3 Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub -paragraph b of Article 63. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 59

1 If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2 Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3 If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 60

1 Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 59, make one or both of the reservations provided for in Articles 54, paragraph 2, and 55. No other reservation shall be permitted.

2 Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.

3 The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 61

1 The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 57.

2 Thereafter the Convention shall enter into force--

a for each State ratifying, accepting or approving it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b for each State acceding, on the first day of the month following the expiration of three months after the expiration of the period of six months provided in Article 58, paragraph 3;

c for a territorial unit to which the Convention has been extended in conformity with Article 59, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 62

1 A State Party to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units to which the Convention applies.

2 The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period.

Article 63

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 58 of the following--

- a the signatures, ratifications, acceptances and approvals referred to in Article 57;
- b the accessions and objections raised to accessions referred to in Article 58;
- c the date on which the Convention enters into force in accordance with Article 61;
- d the declarations referred to in Articles 34, paragraph 2, and 59;
- e the agreements referred to in Article 39;
- f the reservations referred to in Articles 54, paragraph 2, and 55 and the withdrawals referred to in Article 60, paragraph 2;
- g the denunciations referred to in Article 62.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

[Signatures omitted]

Done at The Hague, on the 19th day of October 1996, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Eighteenth Session.

FAMILY LAW ACT 1975

- NOTES

No. 53, 1975

Compilation No. 101

Compilation date: 10 June 2025

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This compilation is in 2 volumes

Volume 1: sections 1-90

Volume 2: sections 90AA-125

Schedule

Endnotes

Each volume has its own contents

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.

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Subdivision C--Registration of overseas orders
70G Registration of orders
70H Effect of registration--general
70J Effect of registration on exercise of jurisdiction
70K Cancellation of registration if Subdivision C parenting order made
70L Relationship between Australian orders and registered overseas child orders
Subdivision D--Transmission of Australian orders to overseas jurisdictions
70M Registry Manager to send documents etc. to overseas jurisdiction
70N Regulations may deal with sending Australian orders etc. to overseas jurisdiction
Division 13A--Orders in proceedings relating to contraventions of child-related orders
Subdivision A--Preliminary
70NAA Simplified outline
70NAB Objects
70NAC Meaning of contravene a child-related order
70NAD Meaning of reasonable excuse for contravening a child-related order
70NADA Burden of proof in relation to reasonable excuse
70NAE Standard of proof
Subdivision B--Orders relating to contraventions of child-related orders
70NBA Court may make orders in proceedings relating to contravention of child-related orders
70NBB Make-up time parenting orders
70NBC Variation and suspension of child-related orders that are parenting orders
70NBD Post-separation parenting programs
70NBF Orders where contravention established without reasonable excuse
Subdivision C--Further provisions relating to bonds and imprisonment

70NCA Matters relating to bonds
 70NCB Procedure for enforcing bonds
 70NCC Matters relating to imprisonment
 70NCD Powers of court in relation to imprisoned person
 70NCE Rules relating to child maintenance orders and child support
 Subdivision D--Miscellaneous
 70NDA Court may issue warrant for arrest of alleged offender
 70NDB Relationship between Division and prosecutions for offences under other laws
 70NDC Division does not limit operation of section 105
 Division 14--Miscellaneous
 Subdivision A--What this Division does
 70P What this Division does
 Subdivision B--Dealing with people who have been arrested
 70PA Situation to which Subdivision applies
 70PB Arrested person to be brought before a court
 70PC Obligation of court--where application before it to deal with contravention
 70PD Obligation of court--where no application before it, but application before another court, to deal with contravention
 70PE Obligation of court--where no application before any court to deal with contravention
 70PF Applications heard as required by subsection 70PC(2) or paragraph 70PD(3)(b)
 Subdivision C--Other matters
 70Q Certain instruments not liable to duty
 Part VIII--Property, spousal maintenance and maintenance agreements
 71 Interpretation
 71A This Part does not apply to certain matters covered by binding financial agreements
 71B Duty of disclosure
 72 Right of spouse to maintenance
 74 Power of court in spousal maintenance proceedings
 75 Matters to be taken into consideration in relation to spousal maintenance
 77 Urgent spousal maintenance cases
 77A Specification in orders of payments etc. for spouse maintenance purposes
 78 Declaration of interests in property
 79 Alteration of property interests
 79AA Other matters in relation to alteration of property interests
 79A Setting aside of orders altering property interests
 79B Notification of proceeds of crime orders etc.
 79C Court to stay property or spousal maintenance proceedings affected by proceeds of crime orders etc.
 79D Lifting a stay
 79E Intervention by proceeds of crime authority
 79F Notifying third parties about application
 79G Notifying bankruptcy trustee etc. about application under section 74, 78, 79 or 79A
 79H Notifying court about bankruptcy etc.
 79J Notifying non-bankrupt spouse about application under section 139A of the Bankruptcy Act 1966
 80 General powers of court
 81 Duty of court to end financial relations
 82 Cessation of spousal maintenance orders
 83 Modification of spousal maintenance orders
 85A Ante-nuptial and post-nuptial settlements
 86A Certain maintenance agreements ineffective
 86 Registered maintenance agreements
 87 Operation of maintenance agreements entered into in substitution for rights under Act
 87A Specification in maintenance agreements of payments etc. for maintenance purposes
 88 Enforcement of maintenance agreements
 89 Overseas maintenance agreements
 89A Institution of spousal maintenance proceedings by authority or person
 90 Certain instruments not liable to duty

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Endnotes

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Endnote 1--About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1--About the endnotes

Endnote 2--Abbreviation key

Endnote 3--Legislation history

Endnote 4--Amendment history

Abbreviation key--Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history--Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The Legislation Act 2003 authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the Legislation Act 2003.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "misdescribed amendment" is added to the amendment history.

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Endnote 2--Abbreviation key

ad = added or inserted
 do = order(s)
 am = amended
 Ord = Ordinance
 amdt = amendment
 orig = original
 cl = clause(s)
 par = paragraph(s)/subparagraph(s)
 C[x] = Compilation No. x/sub-subparagraph(s)
 Ch = Chapter(s)
 pres = present
 def = definition(s)
 prev = previous
 Dict = Dictionary(prev ...) = previously
 disallowed = disallowed by Parliament
 Pt = Part(s)
 Div = Division(s)
 r = regulation(s)/rule(s)
 ed = editorial change
 reloc = relocated
 exp = expires/expired or ceases/ceased to have
 renum = renumbered
 effectrep = repealed
 F = Federal Register of Legislation
 rs = repealed and substituted
 gaz = gazettes = section(s)/subsection(s)
 LA = Legislation Act 2003
 Sch = Schedule(s)
 LIA = Legislative Instruments Act 2003
 Sdiv = Subdivision(s)
 (md) = misdescribed amendment can be given
 SLI = Select Legislative Instrument
 effectSR = Statutory Rules(md not incorp) = misdescribed amendment
 (ad = added or inserted)
 do = order(s)
 am = amended
 Ord = Ordinance
 amdt = amendment
 orig = original
 cl = clause(s)
 par = paragraph(s)/subparagraph(s)
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 ed = editorial change
 reloc = relocated
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 LA = Legislation Act 2003
 Sch = Schedule(s)
 LIA = Legislative Instruments Act 2003
 Sdiv = Subdivision(s)
 (md) = misdescribed amendment can be given
 SLI = Select Legislative Instrument
 effectSR = Statutory Rules(md not incorp) = misdescribed amendment
 Sub-Ch = Sub-Chapter(s)
 cannot be given effect
 SubPt = Subpart(s)
 mod = modified/modification
 underlining = whole or part
 notNo. = Number(s)
 commenced or to be commenced

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Endnote 3--Legislation history

ActNumber and yearAssentCommencementApplication, saving and transitional provisionsFamily Law Act 197553, 197512 June 19755 Jan 1976 (s 2 and gaz 1975, No G35, p 2) Family Law Amendment Act 197663, 19768 June 1976s 1, 2, 17, 18, 39 and Sch: 8 June 1976 (s 2(1))s 29 and 30: 5 Jan 1976 (s 2(2))Remainder: 1 July 1976 (s 2(3))s 19(2)Family Law Amendment Act (No. 2) 197695, 197628 Sept 197628 Sept 1976 (s 2)--Marriage Amendment Act 1976209, 197620 Dec 1976s 29: (s 2(3) and gaz 1977, No S93)--Family Law Amendment Act 1977102, 197711 Oct 197711 Oct 1977 (s 2)--Family Law Amendment Act 197923, 19795 Apr 1979s 4, 10, 11, 12(a), 17 and 23: 1 Aug 1979 (s 2(2) and gaz 1979, No S154)ActNumber and yearAssentCommencementApplication, saving and transitional provisionsFamily Law Act 197553, 197512 June 19755 Jan 1976 (s 2 and gaz 1975, No G35, p 2) Family Law Amendment Act 197663, 19768 June 1976s 1, 2, 17, 18, 39 and Sch: 8 June 1976 (s 2(1))s 29 and 30: 5 Jan 1976 (s 2(2))Remainder: 1 July 1976 (s 2(3))s 19(2)Family Law Amendment Act (No. 2) 197695, 197628 Sept 197628 Sept 1976 (s 2)--Marriage Amendment Act 1976209, 197620 Dec 1976s 29: (s 2(3) and gaz 1977, No S93)--Family Law Amendment Act 1977102, 197711 Oct 197711 Oct 1977 (s 2)--Family Law Amendment Act 197923, 19795 Apr 1979s 4, 10, 11, 12(a), 17 and 23: 1 Aug 1979 (s 2(2) and gaz 1979, No S154)Remainder: 5 Apr 1979 (s 2(1))s 18(2), 19(2) and 22(2)Domicile (Consequential Amendments) Act 19822, 19824 Mar 1982s 4: 1 July 1982 (s 2)--Family Law Amendment (Legal Aid Costs) Act 198367, 198320 Oct 198320 Oct 1983 (s 2)--Family Law Amendment Act 198372, 198328 Oct 1983s 1 and 2: 28 Oct 1983 (s 2(1))s 3-72: 25 Nov 1983 (s 2(2))Remainder: 2 Jan 1985 (s 2(3) and gaz 1984, No S532)s 3(2), 18(2), (3), 19(2), 44(2), (3), 51(2) and 68(2)Public Service Reform Act 198463, 198425 June 1984Sch 5: 20 July 1984 (s 2(4) and gaz 1984, No S276)--Statute Law (Miscellaneous Provisions) Act (No. 1) 198472, 198425 June 1984s 2(24): 25 June 1984 (s 2(2))s 5(1) and Sch (amdt to s 44 and 87): 25 Nov 1983 (s 2(12)(b), (24))s 5(1), Sch (remaining amdts to the Family Law Act 1975) and Note 1 of Notes about section headings: 2 Jan 1985 (s 2(12)(a), (c), (24) and gaz 1984, No S532)s 2(24) and 5(1)Statute Law (Miscellaneous Provisions) Act (No. 2) 1984165, 198425 Oct 1984s 6(1) and Sch 1: 2 Jan 1985 (s 2(10), (32))s 6(1)Remainder: 5 Apr 1979 (s 2(1))s 18(2), 19(2) and 22(2)Domicile (Consequential Amendments) Act 19822, 19824 Mar 1982s 4: 1 July 1982 (s 2)--Family Law Amendment (Legal Aid Costs) Act 198367, 198320 Oct 198320 Oct 1983 (s 2)--Family Law Amendment Act 198372, 198328 Oct 1983s 1 and 2: 28 Oct 1983 (s 2(1))s 3-72: 25 Nov 1983 (s 2(2))Remainder: 2 Jan 1985 (s 2(3) and gaz 1984, No S532)s 3(2), 18(2), (3), 19(2), 44(2), (3), 51(2) and 68(2)Public Service Reform Act 198463, 198425 June 1984Sch 5: 20 July 1984 (s 2(4) and gaz 1984, No S276)--Statute Law (Miscellaneous Provisions) Act (No. 1) 198472, 198425 June 1984s 2(24): 25 June 1984 (s 2(2))s 5(1) and Sch (amdt to s 44 and 87): 25 Nov 1983 (s 2(12)(b), (24))s 5(1), Sch (remaining amdts to the Family Law Act 1975) and Note 1 of Notes about section headings: 2 Jan 1985 (s 2(12)(a), (c), (24) and gaz 1984, No S532)s 2(24) and 5(1)Statute Law (Miscellaneous Provisions) Act (No. 2) 1984165, 198425 Oct 1984s 6(1) and Sch 1: 2 Jan 1985 (s 2(10), (32))s 6(1)Statute Law (Miscellaneous Provisions) Act (No. 1) 198565, 19855 June 1985Sch 1: 3 July 1985 (s 2(1))--Public Service and Statutory Authorities Amendment Act 1985166, 198511 Dec 1985s 45(2) and Sch: 8 Jan 1986 (s 2(7))s 45(2)Statute Law (Miscellaneous Provisions) Act (No. 2) 1985193, 198516 Dec 1985s 10, 16 and Sch 1: 16 Dec 1985 (s 2(1))s 10 and 16Statute Law (Miscellaneous Provisions) Act (No. 1) 198676, 198624 June 1986s 9 and Sch 1: 24 June 1986 (s 2(1))s 9Statute Law (Miscellaneous Provisions) Act (No. 2) 1986168, 198618 Dec 1986s 5(1) and Sch 1: 18 Dec 1986 (s 2(1))s 5(1)Statute Law (Miscellaneous Provisions) Act 1987141, 198718 Dec 1987s 5(1) and Sch 1: 18 Dec 1987 (s 2(1))s 5(1)Family Law Amendment Act 1987181, 198726 Dec 19871 Apr 1988 (s 2 and gaz 1988, No S83)s 64-68Statute Law (Miscellaneous Provisions) Act (No. 1) 198565, 19855 June 1985Sch 1: 3 July 1985 (s 2(1))--Public Service and Statutory Authorities Amendment Act 1985166, 198511 Dec 1985s 45(2) and Sch: 8 Jan 1986 (s 2(7))s 45(2)Statute Law (Miscellaneous Provisions) Act (No. 2) 1985193, 198516 Dec 1985s 10, 16 and Sch 1: 16 Dec 1985 (s 2(1))s 10 and 16Statute Law (Miscellaneous Provisions) Act (No. 1) 198676, 198624 June 1986s 9 and Sch 1: 24 June 1986 (s 2(1))s 9Statute Law (Miscellaneous Provisions) Act (No. 2) 1986168, 198618 Dec 1986s 5(1) and Sch 1: 18 Dec 1986 (s 2(1))s 5(1)Statute Law (Miscellaneous Provisions) Act 1987141, 198718 Dec 1987s 5(1) and Sch 1: 18 Dec 1987 (s 2(1))s 5(1)Family Law Amendment Act 1987181, 198726 Dec 19871 Apr 1988 (s 2 and gaz 1988, No S83)s 64-68as amended by Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 19888, 19885 Apr 1988s 44 and 45: 1 July 1988 (s 2(3) and gaz 1988, No S191)--Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 19888, 19885 Apr 1988s 6-11, 12(b), (c), (e), (f), 13-21, 27, 29, 30: 5 Apr 1988 (s 2(1))s 12(a) and (d): 1 Jan 1990 (s 2(2))s 22-26 and 28: 1 July 1988 (s 2(3) and gaz 1988, No S191)--as amended by Law and Justice Legislation Amendment Act 1988120, 198814 Dec 1988s 35: 5 Apr 1988 (s 2(6))--Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 198899, 19882 Dec 1988Sch: 2 Dec 1988 (s 2)--Law and Justice Legislation Amendment Act 1988120, 198814 Dec 1988s 36-39: 14 Dec 1988 (s 2(1))s 37(2), 38(2) and 39(2)Child Support (Assessment) Act 1989124, 198921 Sept 1989s 190-195: 1 Oct 1989 (s 2(1) and gaz 1989, No S314)(as amended by Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 19888, 19885 Apr 1988s 44 and 45: 1 July 1988 (s 2(3) and gaz 1988, No S191)--Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 19888, 19885 Apr 1988s 6-11, 12(b), (c), (e), (f), 13-21, 27, 29, 30: 5 Apr 1988 (s 2(1))s 12(a) and (d): 1 Jan 1990 (s 2(2))s 22-26 and 28: 1 July 1988 (s 2(3) and gaz 1988, No S191)--as amended by Law and Justice Legislation Amendment Act 1988120, 198814 Dec 1988s 35: 5 Apr 1988 (s 2(6))--Statutory Instruments (Tabling and Disallowance) Legislation

Amendment Act 198899, 19882 Dec 1988Sch: 2 Dec 1988 (s 2)--Law and Justice Legislation Amendment Act 1988120, 198814 Dec 1988s 36-39: 14 Dec 1988 (s 2(1))s 37(2), 38(2) and 39(2)Child Support (Assessment) Act 1989124, 198921 Sept 1989s 190-195: 1 Oct 1989 (s 2(1) and gaz 1989, No S314)--Courts and Tribunals Administration Amendment Act 1989157, 19895 Dec 1989s 11-13, 23: 1 Jan 1990 (s 2(2) and gaz 1989, No S398)s 23Family Law Amendment Act 1989182, 198928 Dec 198925 Jan 1990s 21(2) and 23(2)Law and Justice Legislation Amendment Act 1990115, 199021 Dec 1990Sch: 21 Dec 1990 (s 2(1))--Child Support Legislation Amendment Act 1990138, 199028 Dec 1990s 14, 15: 28 Dec 1990 (s 2)--Family Law Amendment Act 199137, 199127 Mar 199124 Apr 1991--Courts (Mediation and Arbitration) Act 1991113, 199127 June 1991s 4-9: 27 Dec 1991 (s 2(3))--Industrial Relations Legislation Amendment Act 1991122, 199127 June 1991s 31(2) and Sch: 10 Dec 1991 (s 3 and gaz 1991, No S332)s 31(2)¶(--Courts and Tribunals Administration Amendment Act 1989157, 19895 Dec 1989s 11-13, 23: 1 Jan 1990 (s 2(2) and gaz 1989, No S398)s 23Family Law Amendment Act 1989182, 198928 Dec 198925 Jan 1990s 21(2) and 23(2)Law and Justice Legislation Amendment Act 1990115, 199021 Dec 1990Sch: 21 Dec 1990 (s 2(1))--Child Support Legislation Amendment Act 1990138, 199028 Dec 1990s 14, 15: 28 Dec 1990 (s 2)--Family Law Amendment Act 199137, 199127 Mar 199124 Apr 1991--Courts (Mediation and Arbitration) Act 1991113, 199127 June 1991s 4-9: 27 Dec 1991 (s 2(3))--Industrial Relations Legislation Amendment Act 1991122, 199127 June 1991s 31(2) and Sch: 10 Dec 1991 (s 3 and gaz 1991, No S332)s 31(2)Law and Justice Legislation Amendment Act 1991136, 199112 Sept 1991Sch: 10 Oct 1991 (s 2(1))--Family Law Amendment Act (No. 2) 1991159, 199125 Oct 199125 Oct 1991 (s 2)--Prime Minister and Cabinet Legislation Amendment Act 1991199, 199118 Dec 1991Sch 3: 18 Dec 1991 (s 2)--Law and Justice Legislation Amendment Act 199222, 199213 Apr 1992Sch: 13 Apr 1992 (s 2(1))--Law and Justice Legislation Amendment Act (No. 2) 199223, 19926 May 1992Sch: 6 May 1992 (s 2)--Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 199294, 199230 June 1992Sch: 1 July 1990 (s 2(2))--Territories Law Reform Act 1992104, 199230 June 1992Sch 4: 1 July 1992 (s 2(3))--¶(Law and Justice Legislation Amendment Act 1991136, 199112 Sept 1991Sch: 10 Oct 1991 (s 2(1))--Family Law Amendment Act (No. 2) 1991159, 199125 Oct 199125 Oct 1991 (s 2)--Prime Minister and Cabinet Legislation Amendment Act 1991199, 199118 Dec 1991Sch 3: 18 Dec 1991 (s 2)--Law and Justice Legislation Amendment Act 199222, 199213 Apr 1992Sch: 13 Apr 1992 (s 2(1))--Law and Justice Legislation Amendment Act (No. 2) 199223, 19926 May 1992Sch: 6 May 1992 (s 2)--Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 199294, 199230 June 1992Sch: 1 July 1990 (s 2(2))--Territories Law Reform Act 1992104, 199230 June 1992Sch 4: 1 July 1992 (s 2(3))--Law and Justice Legislation Amendment Act (No. 4) 1992143, 19927 Dec 1992Sch: 1 Nov 1991 (s 2(3))Sch (new s 37C added): 7 Dec 1992 (s 2(1))--Social Security Legislation Amendment Act (No. 2) 1992229, 199224 Dec 1992Sch 4 (items 1-3): 24 Dec 1992 (s 2(1)(g))--Law and Justice Legislation Amendment Act 199484, 199423 June 1994s 35: 1 Nov 1991 (s 2(5))--Family Law Reform Act 1995167, 199516 Dec 1995s 1, 2 and 54: 16 Dec 1995 (s 2(1))s. 52: 25 Jan 1996 (s 2(2) and gaz 1996, No S27)Remainder: 11 June 1996 (s 2(2) and gaz 1996, No GN5)s 52(2) and 59Statute Law Revision Act 199643, 199625 Oct 1996Sch 4 (items 72-74): 25 Oct 1996 (s 2(1))--Family Law Amendment Act 199725, 199710 Apr 199710 Apr 1997 (s 2)--Law and Justice Legislation Amendment Act 199734, 199717 Apr 1997¶(Law and Justice Legislation Amendment Act (No. 4) 1992143, 19927 Dec 1992Sch: 1 Nov 1991 (s 2(3))Sch (new s 37C added): 7 Dec 1992 (s 2(1))--Social Security Legislation Amendment Act (No. 2) 1992229, 199224 Dec 1992Sch 4 (items 1-3): 24 Dec 1992 (s 2(1)(g))--Law and Justice Legislation Amendment Act 199484, 199423 June 1994s 35: 1 Nov 1991 (s 2(5))--Family Law Reform Act 1995167, 199516 Dec 1995s 1, 2 and 54: 16 Dec 1995 (s 2(1))s. 52: 25 Jan 1996 (s 2(2) and gaz 1996, No S27)Remainder: 11 June 1996 (s 2(2) and gaz 1996, No GN5)s 52(2) and 59Statute Law Revision Act 199643, 199625 Oct 1996Sch 4 (items 72-74): 25 Oct 1996 (s 2(1))--Family Law Amendment Act 199725, 199710 Apr 199710 Apr 1997 (s 2)--Law and Justice Legislation Amendment Act 199734, 199717 Apr 1997Sch 7: 17 Apr 1997 (s 2(1))--Child Support Legislation Amendment Act (No. 1) 199784, 199723 June 1997Sch 1 (items 40, 41): 21 July 1997 (s 2(1))--Audit (Transitional and Miscellaneous) Amendment Act 1997152, 199724 Oct 1997Sch 2 (items 751-759): 1 Jan 1998 (s 2(2))--Family Law Amendment Act (No. 1) 199889, 199814 July 1998Sch 2 (item 34): 14 July 1998 (s 2)--Statute Stocktake Act 1999118, 199922 Sept 199922 Sept 1999 (s 2(1))--Public Employment (Consequential and Transitional) Amendment Act 1999146, 199911 Nov 1999Sch 1 (items 439-454): 5 Dec 1999 (s 2(1), (2))--Corporate Law Economic Reform Program Act 1999156, 199924 Nov 1999Sch 10 (item 83): 13 Mar 2000 (s 2(2)(c) and gaz 2000, No S114)--Federal Magistrates (Consequential Amendments) Act 1999194, 1999¶(Sch 7: 17 Apr 1997 (s 2(1))--Child Support Legislation Amendment Act (No. 1) 199784, 199723 June 1997Sch 1 (items 40, 41): 21 July 1997 (s 2(1))--Audit (Transitional and Miscellaneous) Amendment Act 1997152, 199724 Oct 1997Sch 2 (items 751-759): 1 Jan 1998 (s 2(2))--Family Law Amendment Act (No. 1) 199889, 199814 July 1998Sch 2 (item 34): 14 July 1998 (s 2)--Statute Stocktake Act 1999118, 199922 Sept 199922 Sept 1999 (s 2(1))--Public Employment (Consequential and Transitional) Amendment Act 1999146, 199911 Nov 1999Sch 1 (items 439-454): 5 Dec 1999 (s 2(1), (2))--Corporate Law Economic Reform Program Act 1999156, 199924 Nov 1999Sch 10 (item 83): 13 Mar 2000 (s 2(2)(c) and gaz 2000, No S114)--Federal Magistrates (Consequential Amendments) Act 1999194, 199923 Dec 1999Sch 11: 23 Dec 1999 (s 2(1))--Child Support Legislation Amendment Act 200049, 20003 May 2000Sch 1 (item 5): 3 May 2000 (s 2)--Family Law Amendment Act 2000143, 200029 Nov 2000Sch 1, Sch 2 and Sch 3 (items 6-31, 32-40A, 42-116): 27 Dec 2000 (s 2(1))Sch 3 (item 31A): 29 Nov 2000 (s 2(1A))Sch 3 (item 41): 1 July 1988 (s 2(2))Sch 1 (item 31) and Sch 3 (items 20, 24, 40, 56, 56B, 75, 83)Jurisdiction of Courts (Miscellaneous Amendments) Act 2000161, 200021 Dec

2000Sch 1 (item 3): 21 Dec 2000 (s 2)Sch 1 (item 16)Law and Justice Legislation Amendment (Application of Criminal Code) Act 200124, 20016 Apr 2001s 4(1), (2) and Sch 27: 24 May 2001 (s 2(1)(a))s 4(1) and (2)Family Law Legislation Amendment (Superannuation) Act 200161, 200128 June 2001s 4, 5 and Sch 1 (items 3, 4): 28 Dec 2002 (s 2(2))s 4 and 5as amended by Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 200286, 200211 Oct 2002(23 Dec 1999Sch 11: 23 Dec 1999 (s 2(1))--Child Support Legislation Amendment Act 200049, 20003 May 2000Sch 1 (item 5): 3 May 2000 (s 2)--Family Law Amendment Act 2000143, 200029 Nov 2000Sch 1, Sch 2 and Sch 3 (items 6-31, 32-40A, 42-116): 27 Dec 2000 (s 2(1))Sch 3 (item 31A): 29 Nov 2000 (s 2(1A))Sch 3 (item 41): 1 July 1988 (s 2(2))Sch 1 (item 31) and Sch 3 (items 20, 24, 40, 56, 56B, 75, 83)Jurisdiction of Courts (Miscellaneous Amendments) Act 2000161, 200021 Dec 2000Sch 1 (item 3): 21 Dec 2000 (s 2)Sch 1 (item 16)Law and Justice Legislation Amendment (Application of Criminal Code) Act 200124, 20016 Apr 2001s 4(1), (2) and Sch 27: 24 May 2001 (s 2(1)(a))s 4(1) and (2)Family Law Legislation Amendment (Superannuation) Act 200161, 200128 June 2001s 4, 5 and Sch 1 (items 3, 4): 28 Dec 2002 (s 2(2))s 4 and 5as amended by Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 200286, 200211 Oct 2002Sch 5 (item 10): 1 Jan 2003 (s 2(1) item 4)--Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001114, 200118 Sept 2001Sch 1 (items 1-2A): 28 Dec 2002 (s 2)--Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001159, 20011 Oct 2001Sch 1 (items 52-56): 29 Oct 2001 (s 2(1))Sch 1 (item 97)Family Law Amendment (Child Protection Convention) Act 200269, 20023 Sept 2002Sch 1: 1 Aug 2003 (s 2(1) item 2)--Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 200286, 200211 Oct 2002Sch 5 (items 1-9): 1 Jan 2003 (s 2(1) item 3)--Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2002121, 20022 Dec 2002Sch 1: 28 Dec 2002 (s 2(1) item 2)--Family Law Amendment Act 2003138, 200317 Dec 2003Sch 1-3, Sch 4 (items 1, 3, 6-8, 14-19, 23, 24), Sch 5 (items 2, 3) and Sch 7 (items 1-19, 21-24, 27-29A, 32-35): 14 Jan 2004 (s 2(1) items 2-5, 7, 9, 11, 13, 16, 19, 21, 23, 25)Sch 4 (items 2, 4, 5, 9-13, 20-22, 25-27), Sch 5 (items 1A, 1, 4) and Sch 7 (items 20, 25, 26, 30, 31): 27 Dec 2000 (s 2(1) items (Sch 5 (item 10): 1 Jan 2003 (s 2(1) item 4)--Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001114, 200118 Sept 2001Sch 1 (items 1-2A): 28 Dec 2002 (s 2)--Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001159, 20011 Oct 2001Sch 1 (items 52-56): 29 Oct 2001 (s 2(1))Sch 1 (item 97)Family Law Amendment (Child Protection Convention) Act 200269, 20023 Sept 2002Sch 1: 1 Aug 2003 (s 2(1) item 2)--Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 200286, 200211 Oct 2002Sch 5 (items 1-9): 1 Jan 2003 (s 2(1) item 3)--Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2002121, 20022 Dec 2002Sch 1: 28 Dec 2002 (s 2(1) item 2)--Family Law Amendment Act 2003138, 200317 Dec 2003Sch 1-3, Sch 4 (items 1, 3, 6-8, 14-19, 23, 24), Sch 5 (items 2, 3) and Sch 7 (items 1-19, 21-24, 27-29A, 32-35): 14 Jan 2004 (s 2(1) items 2-5, 7, 9, 11, 13, 16, 19, 21, 23, 25)Sch 4 (items 2, 4, 5, 9-13, 20-22, 25-27), Sch 5 (items 1A, 1, 4) and Sch 7 (items 20, 25, 26, 30, 31): 27 Dec 2000 (s 2(1) items 6, 8, 10, 12, 14, 15, 17, 20, 22, 24)Sch 6: 17 Dec 2004 (s 2(1) item 18)Remainder: 17 Dec 2003 (s 2(1) items 1, 14A)Sch 2 (item 9), Sch 3 (item 29), Sch 4A (item 6), Sch 6 (item 2) and Sch 7 (item 35)Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003140, 200317 Dec 2003Sch 1 (items 19-22): 1 Jan 2005 (s 2(1) item 3)--Family Law Amendment (Annuities) Act 2004153, 200415 Dec 2004s 4: 15 Dec 2004 (s 2(1) item 1)Sch 1: 17 Dec 2004 (s 2(1) item 2)Sch 2: 15 June 2005 (s 2(1) item 3)s 4Bankruptcy and Family Law Legislation Amendment Act 200520, 200518 Mar 2005Sch 1 (items 9-60): 18 Sept 2005 (s 2(1) item 2)Sch 5: 15 Apr 2005 (s 2(1) item 4)Sch 1 (item 60)Family Law Amendment Act 200598, 20056 July 2005Sch 1 (items 1-137): 3 Aug 2005 (s 2(1) item 2)Sch 1 (item 139): 18 Sept 2005 (s 2(1) item 4)Sch 1 (items 4, 7, 14, 22, 35, 129, 131, 133, 135)Jurisdiction of Courts (Family Law) Act 200622, 20066 Apr 2006Sch 1 (items 10-27): 1 July 2006 (s 2(1) item 2)Sch 1 (items 28-30): 3 Aug 2005 (s 2(1) items 3-5)Sch 1 (item 27)Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 200623, 20066 Apr 2006Sch 2 (items 1, 2): 4 May 2006 (s 2(1) item 2)--Family Law Amendment (Shared Parental Responsibility) Act 200646, 200622 May 2006Sch 1, 2, Sch 3 (item 2-8), Sch 4 (items 9-86, 118-138, 139), Sch 5-7, Sch 8 (items 40-101, 103, 104) and Sch 9 (items 6-16, 18-41, 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Jan 2008 (s 2(1) item 5)Sch 2 (items 101-113): 19 July 2007 (s 2(1) item 10)--Evidence Amendment (Journalists' Privilege) Act 2007116, 200728 June 2007Sch 1 (items 3, 4): 26 July 2007 (s 2(1) item 2)--Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 200826, 200823 June 2008(8, 20101 Mar 2010Sch 2 (items 2, 3): 1 July 2008 (s 2(1) item 6)--Judiciary Legislation Amendment Act 2006151, 20067 Dec 2006Sch 1 (item 6): 7 Dec 2006 (s 2)--Statute Law Revision Act 20078, 200715 Mar 2007Sch 1 (items 9, 10): 15 Mar 2007 (s 2(1) item 8)--Superannuation Legislation Amendment (Simplification) Act 200715, 200715 Mar 2007Sch 1 (items 10-16, 406(1)-(3)): 15 Mar 2007 (s 2(1) item 2)Sch 1 (item 406(1)-(3))Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 200782, 200721 June 2007Sch 1 (item 99): 1 Jan 2008 (s 2(1) item 5)Sch 2 (items 101-113): 19 July 2007 (s 2(1) item 10)--Evidence Amendment (Journalists' Privilege) Act 2007116, 200728 June 2007Sch 1 (items 3, 4): 26 July 2007 (s 2(1) item 2)--Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 200826, 200823 June 2008Sch 1 (items 61-64): 23 June 2008 (s 2(1) item 4)--Statute Law Revision Act 200873, 20083 July 2008Sch 4 (items 289-293): 4 July 2008 (s 2(1) item 64)--Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008115, 200821 Nov 2008Sch 1 (items 1-4, 6-20, 22-93) and Sch 4 (item 1): 1 Mar 2009 (s 2(1) items 2, 2B, 2D, 7)Sch 1 (items 5, 21), Sch 3, Sch 3A and Sch 4 (items 1A, 1B): 21 Nov 2008 (s 2(1) items 1, 2A, 2C, 6, 6A)Sch 1 (items 85-93) and Sch 3A (item 9)Same-Sex Relationships (Equal Treatment in Commonwealth Laws-General Law Reform) Act 2008144, 20089 Dec 2008Sch 2 (items 52A-52C): 10 Dec 2008 (s 2(1) item 11)Sch 2 (item 52C)Access to Justice (Civil Litigation Reforms) Amendment Act 2009117, 20094 Dec 2009Sch 3 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18)--Evidence Amendment (Journalists' Privilege) Act 201121, 201112 Apr 2011Sch 1 (items 4, 5): 13 Apr 2011 (s 2)--Acts Interpretation Amendment Act 201146, 201127 June 2011Sch 2 (items 584-592) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12)Sch 3 (items 10, 11)Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 201158, 201128 June 2011Sch 1 (items 83, 84): 1 July 2011 (s 2(1) item 2)--Crimes Legislation Amendment Act (No. 2) 2011174, 20115 Dec 2011Sch 2 (items 155-194): 5 June 2012 (s 2(1) item 4)Sch 2 (item 194)Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011189, 20117 Dec 2011Sch 1: 7 June 2012 (s 2(1) item 2)Sch 2 (items 3-29, 31-38): 7 Dec 2011 (s 2(1) items 4, 6)Sch 2 (item 30): 4 Jan 2012 (s 2(1) item 5)Sch 1 (items 44-48) and Sch 2 (items 31-38)Family Law Amendment (Validation of Certain Orders and Other Measures) Act 201232, 201210 Apr 2012Sch 2: 21 Apr 2012 (s 2(1) item 3)Sch 2 (item 4)Parliamentary 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5 Mar 2016 (s 2(1) item 2)--Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015126, 201510 Sept 2015Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)--Acts and Instruments (Framework Reform) Act 201510, 20155 Mar 2015Sch 1 (items 128-135, 166-179): 5 Mar 2016 (s 2(1) item 2)Sch 1 (items 166-179)as amended by Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015126, 201510 Sept 2015Sch 3 (item 1): 5 Mar 2016 (s 2(1) item 8)--Statute Law Amendment (Prescribed Forms and Other Updates) Act 202374, 202320 Sept 2023Sch 6 (item 1): 18 Oct 2023 (s 2(1) item 3)--Norfolk Island Legislation Amendment Act 201559, 201526 May 2015Sch 2 (items 152-155): 1 July 2016 (s 2(1) item 5)Sch 2 (items 356-396): 18 June 2015 (s 2(1) item 6)Sch 2 (items 356-396)as amended by Territories Legislation Amendment Act 201633, 201623 Mar 2016Sch 2: 24 Mar 2016 (s 2(1) item 2)--Civil Law and Justice Legislation Amendment Act 2015113, 201517 Aug 2015Sch 3 and Sch 4 (items 12-15): 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- NOTES

Endnote 4--Amendment history

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- NOTES

Endnote 5--Miscellaneous

See Schedule 1 of the Family Law Amendment (Validation of Certain Parenting Orders and Other Measures) Act 2010 (No. 147, 2010) for validation of certain parenting orders.

See Schedule 1 of the Family Law Amendment (Validation of Certain Orders and Other Measures) Act 2012 (No. 32, 2012) for validation of certain parenting orders.