



# Family Law Act 1975

No. 53, 1975

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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

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## 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 March 2019 (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 Legislation Register ([www.legislation.gov.au](http://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 series page on the Legislation 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 series page on the Legislation 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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

**Part I—Preliminary**

**1 Short title**

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

**2 Commencement**

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

**3 Repeal and saving**

- (1) The *Matrimonial Causes Act 1959*, the *Matrimonial Causes Act 1965* and the *Matrimonial Causes Act 1966* are repealed.
- (2) Notwithstanding the repeal effected by subsection (1):
  - (a) the validity of a decree made before the commencement of the *Matrimonial Causes Act 1959* by virtue of the Imperial Act entitled the Matrimonial Causes (War Marriages) Act, 1944 or Part I of the Matrimonial Causes (War Marriages) Act 1947 of New Zealand and in force immediately before the commencement of this Act shall continue to be recognised in all courts in Australia;
  - (b) a decree of the Supreme Court of a State or Territory made before the commencement of the *Matrimonial Causes Act 1959* in the exercise of jurisdiction invested or conferred by

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the *Matrimonial Causes Act 1945*, or that Act as amended by the *Matrimonial Causes Act 1955*, and in force immediately before the commencement of this Act shall continue to have effect throughout Australia; and

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- (i) made before the commencement of this Act in the exercise of jurisdiction invested or conferred by the repealed Act, or in a matrimonial cause or proceedings for a separation order instituted under the law of that State or Territory, being a decree that was in force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

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

#### 4 Interpretation

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



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

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

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

**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.

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

**administrative affairs** of the Family Court has a meaning affected by subsection 38A(1A).

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

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

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

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

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

**applicable Rules of Court:**

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

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

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

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

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

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

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

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

**artificial conception procedure** includes:

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

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

**Australia** includes Norfolk Island.

**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.

**Chief Executive Officer** means the Chief Executive Officer and Principal Registrar of the Family Court.

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

**Chief Justice** means the Chief Justice of the Family Court, and includes the Deputy Chief Justice if the Deputy Chief Justice is for the time being performing the duties and exercising the powers of the Chief Justice.

**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).

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**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 proceedings** has the meaning given by section 69ZM.

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

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

- (a) a person who, because he or she holds, or performs the duties of, a prescribed office of the State or Territory, has

responsibilities in relation to a child welfare law of the State or Territory; or

- (b) a person authorised in writing by such a person for the purposes of Part VII.

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

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

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

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

***complaint*** means a complaint mentioned in paragraph 21B(1A)(c).

***complaint handler*** means:

- (a) the Chief Justice; or  
(b) a person who is authorised by the Chief Justice under subsection 21B(3A); or  
(c) a person who is a member of a body that is authorised by the Chief Justice under subsection 21B(3A).

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

***conveyance*** includes a vehicle, a vessel and an aircraft.

***corporate services*** of the Family Court has the meaning given by subsection 38A(1B).

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

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

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***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.

***Deputy Chief Justice*** means the Deputy Chief Justice of the Family Court.

***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.

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***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; orby 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.

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

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

***family violence*** 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 Court*** means the Federal Circuit Court of Australia.

***Federal Circuit Court Chief Executive Officer*** means the Chief Executive and Principal Registrar of the Federal Circuit Court of Australia.

***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.

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

***forfeiture application*** means an application for a forfeiture order.

***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.

***Full Court*** means:

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

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

***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.

**handle** a complaint means do one or more of the following acts relating to the complaint:

- (a) consider the complaint;
- (b) investigate the complaint;
- (c) report on an investigation of the complaint;
- (d) deal with a report of an investigation of the complaint;
- (e) dispose of the complaint;
- (f) refer the complaint to a person or body.

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

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

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

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

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

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

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

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

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

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**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.

**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:

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- (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
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(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

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- (b) relates to financial matters relating to the parties to de facto relationships arising out of the breakdown of those de facto relationships.

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

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



*ordinarily resident* includes habitually resident.

***overseas child order*** means:

(a) an order made by a court of a prescribed overseas jurisdiction that:

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

(ii) however it is expressed, has the effect of providing for a person or persons to spend time with a child who is under 18; or

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

(iv) varies or discharges an order of the kind referred to in subparagraph (i), (ii) or (iii), including an order of that kind made under this Act; or

(b) an order made for the purposes of the Convention referred to in section 111B by a judicial or administrative authority of a convention country (within the meaning of the regulations made for the purposes of that section).

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

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

***parent***, when used in Part VII in relation to a child who has been adopted, means an adoptive parent of the child.

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***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

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- (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.

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

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

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

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

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

***proceeds of crime 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 settlement or spousal maintenance proceedings*** means proceedings with respect to:

- (a) the property of the parties to a marriage or either of them; or

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

**property settlement proceedings** means:

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

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

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

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

**Registrar** means:

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

**Registry Manager** means:

- (a) for the Family Court—the Registry Manager of a Registry of the Court or any other appropriate officer or staff member of the Court; or
- (b) for any other court—the principal officer of the court or any other appropriate officer or staff member of the court.

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

***relative*** of a child:

- (a) in Part VII, means:
  - (i) a step-parent of the child; or
  - (ii) a brother, sister, half-brother, half-sister, step-brother or step-sister of the child; or
  - (iii) a grandparent of the child; or
  - (iv) an uncle or aunt of the child; or
  - (v) a nephew or niece of the child; or
  - (vi) a cousin of the child; and
- (b) in subsection (1AB), has the meaning given by subsection (1AC).

***relevant belief***: a person has a ***relevant belief*** in relation to a complaint about a Judge if:

- (a) the person believes that one or more of the circumstances that gave rise to the complaint may, if substantiated, justify consideration of the removal of the Judge in accordance with paragraph 72(ii) of the Constitution; or
- (b) the person believes that one or more of the circumstances that gave rise to the complaint may, if substantiated:
  - (i) adversely affect, or have adversely affected, the performance of judicial or official duties by the Judge; or
  - (ii) have the capacity to adversely affect, or have adversely affected, the reputation of the Court.

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

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

***restraining order*** means:

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

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- (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.

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

*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.

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

*spouse party* means:

- (a) in relation to a financial agreement—a party to the agreement who is a party to the contemplated marriage, marriage or former marriage to which the agreement relates; or
- (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 this Act.

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

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

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

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**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
  - (b) paragraphs 60CC(3)(j) and (k); 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 (as defined in subsection (1AC)); or
  - (f) an order under this Act described in subparagraph (i) or (ii) is or was (at any time) in force:
    - (i) a parenting order (other than a child maintenance order) that relates to a child who is either the first person or the second person and that is in favour of the other of those persons;
    - (ii) an order providing for the first person or the second person to have custody or guardianship of, or a right of access to, the other of those persons; or
  - (g) an order under a law of a State or Territory described in subparagraph (i) or (ii) is or was (at any time) in force:
    - (i) an order determining that the first person or the second person is or was to live with the other of those persons, or is or was to have custody or guardianship of the other of those persons;
    - (ii) an order providing for contact between the first person and the second person, or for the first person or the second person to have a right of access to the other of those persons; or
  - (h) the first person ordinarily or regularly resides or resided with the second person, or with another member of the family of the second person; or
  - (i) the first person is or has been a member of the family of a child of the second person.

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

- (a) a father, mother, grandfather, grandmother, step-father or step-mother of the person; or

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- (b) a son, daughter, grandson, grand-daughter, step-son or step-daughter of the person; or
  - (c) a brother, sister, half-brother, half-sister, step-brother or step-sister of the person; or
  - (d) an uncle or aunt of the person; or
  - (e) a nephew or niece of the person; or
  - (f) a cousin of the person; or
  - (g) if the person is or was married—in addition to paragraphs (a) to (f), a person who is or was a relative, of the kind described in any of those paragraphs, of the person's spouse; or
  - (h) if the person is or was in a de facto relationship with another person—in addition to paragraphs (a) to (f), a person who would be a relative of a kind described in any of those paragraphs if the persons in that de facto relationship were or had been married to each other.
- (1A) In this Act, the standard Rules of Court and the related Federal Circuit Court Rules:
- (a) a reference to the Family Court is a reference to the Family Court of Australia; and
  - (b) a reference to a Family Court of a State is a reference to a court to which section 41 applies.
- (2) A reference in this Act, the standard Rules of Court or the related Federal Circuit Court Rules to a party to a marriage includes a reference to a person who was a party to a marriage that has been:
- (a) terminated by divorce (in Australia or elsewhere); or
  - (b) annulled (in Australia or elsewhere); or
  - (c) terminated by the death of one party to the marriage.
- (2A) A reference in this Act, the standard Rules of Court or the related Federal Circuit Court Rules to a party to a de facto relationship includes a reference to a person who was a party to a de facto relationship that has broken down.
- (3) To avoid doubt, for all purposes:

- (a) jurisdiction under the standard Rules of Court is taken to be jurisdiction under this Act; and
  - (b) jurisdiction under the related Federal Circuit Court Rules is taken to be jurisdiction under this Act; and
  - (c) proceedings under the standard Rules of Court are taken to be proceedings under this Act; and
  - (d) proceedings under the related Federal Circuit Court Rules are taken to be proceedings under this Act; and
  - (e) an order (however described) made by a court under the standard Rules of Court is taken to be an order made by the court under this Act; and
  - (f) an order (however described) made by a court under the related Federal Circuit Court Rules is taken to be an order made by the court under this Act.
- (4) A reference in this Act to a person who has parental responsibility for a child is a reference to a person who:
- (a) has some or all of that responsibility solely; or
  - (b) shares some or all of that responsibility with another person.
- (5) A reference in this Act to a person who shares parental responsibility for a child with another person is a reference to a person who shares some or all of the parental responsibility for the child with that other person.
- (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”.

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**4AA De facto relationships**

*Meaning of de facto relationship*

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

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

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

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

- (5) For the purposes of this Act:
- (a) a de facto relationship can exist between 2 persons of different sexes and between 2 persons of the same sex; and
  - (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.

#### **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) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or

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- (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; 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.
- (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.

**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

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

**government body** means:

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

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

- (1) For the purposes of paragraph (f) of the definition of *de facto financial cause* in subsection 4(1), **third party proceedings** means proceedings between:
  - (a) any combination of:
    - (i) the parties to a Part VIIIAB financial agreement; and
    - (ii) the legal personal representatives of any of those parties who have died;(including a combination consisting solely of parties or consisting solely of representatives); and
  - (b) any of the following:
    - (i) a creditor;
    - (ii) if a creditor is an individual who has died—the legal personal representative of the creditor;
    - (iii) a government body acting in the interests of a creditor;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

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

**government body** means:

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

#### 4C Meaning of *proceeds of crime authority*

##### *Scope*

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

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

##### *Commonwealth proceeds of crime authorities*

- (2) For the purposes of paragraph (1)(a), **proceeds of crime authority** means the responsible authority for the relevant restraining order,

forfeiture order or forfeiture application under the *Proceeds of Crime Act 2002*.

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

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

*State or Territory proceeds of crime authorities*

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

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

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

For the purposes of this Act, if:

- (a) a person who is a debtor (within the meaning of Part X of the *Bankruptcy Act 1966*) executes a personal insolvency agreement; and

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- (b) the agreement has not ended (within the meaning of the *Bankruptcy Act 1966*);
- the person is a debtor subject to the personal insolvency agreement.

**6 Polygamous marriages**

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

**7 Extension of Act to certain Territories**

This Act extends to the following Territories:

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

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

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

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

**8 Supersession of existing laws**

- (1) After the commencement of this Act:
  - (a) proceedings by way of a matrimonial cause shall not be instituted except under this Act; and
  - (b) proceedings by way of a matrimonial cause instituted before the commencement of this Act shall not be continued except in accordance with section 9.
- (2) Proceedings for a decree of restitution of conjugal rights, of jactitation of marriage or of judicial separation shall not be instituted or continued after the commencement of this Act.

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

## **9 Transitional**

- (1) Subject to subsections (2) and (2A), pending proceedings for a decree of dissolution of marriage or for a decree of nullity of marriage on the ground that the marriage is voidable, and pending proceedings for a separation order, may be continued and shall be dealt with as if this Act had not been passed.
- (2) Where the parties have lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of commencement of this Act, pending proceedings for a decree of dissolution of marriage shall, if either party so requests, be dealt with as if they were proceedings instituted under this Act on the ground referred to in section 48, and, in relation to proceedings in which such a request is made, subsection 48(2) has effect as if the proceedings for dissolution of marriage had been instituted by an application filed on the date of commencement of this Act.
- (2A) Where subsection (2) does not apply but the parties have lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of making of the request under this subsection, pending proceedings for a decree of dissolution of marriage shall, if either party so requests, be dealt with as if they were proceedings instituted under this Act on the ground referred to in section 48, and, in relation to proceedings in which such a request is made, subsection 48(2) has effect as if the proceedings for dissolution of marriage had been instituted by an application filed on the date of making of the request.
- (3) Pending proceedings for a decree of nullity of marriage on the ground that the marriage is void or proceedings of a kind referred to in paragraph (b) of the definition of *matrimonial cause* in subsection 4(1) may be continued and shall be dealt with as if they were proceedings instituted under this Act.

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- (4) Pending proceedings constituting a matrimonial cause, not being proceedings for principal relief, whether instituted under the repealed Act or under the law of a State or Territory, may be continued and shall be dealt with as if they were proceedings instituted under this Act.
- (5) Subsection 117(1) does not apply to proceedings continued and dealt with under this section.
- (6) Where, in any proceedings constituting a matrimonial cause, a decree has been made before the commencement of this Act:
- (a) any appeal in respect of that decree may be continued or instituted;
  - (b) any new trial or re-hearing ordered upon the hearing of such an appeal, or upon an appeal heard before the commencement of this Act, may be had and completed; and
  - (c) any decree may be made upon any such appeal, new trial or re-hearing, and, if a decree so made is a decree nisi, the decree may become absolute;
- as if this Act had not been passed.
- (7) Where, in any proceedings constituting a matrimonial cause, a decree nisi was made before the commencement of this Act but did not become absolute before that date, the decree becomes absolute upon:
- (a) the expiration of 1 month from the date of making of the decree;
  - (b) the expiration of 1 month from the date of making of a relevant order under subsection 71(1) of the repealed Act or section 55A of this Act; or
  - (c) the date of commencement of this Act;
- whichever is the latest.
- (7A) Where, in any proceedings constituting a matrimonial cause, being proceedings continued and dealt with in accordance with subsection (1), a decree nisi was made on or after 5 January 1976 and before the date of commencement of this subsection, being a decree that did not become absolute before that last-mentioned



date, or is made on or after the date of commencement of this subsection, then:

- (a) except in the case of a decree made before the date of commencement of this subsection in respect of which a relevant order was made under subsection 71(1) of the repealed Act before that date—section 55A of this Act applies in relation to the decree; and
  - (b) the decree becomes absolute upon:
    - (i) the expiration of one month from:
      - (A) in the case of a decree in respect of which a relevant order was made under subsection 71(1) of the repealed Act before the date of commencement of this subsection—the date of making of that order; or
      - (B) in any other case—the date of making of a relevant order under section 55A of this Act; or
    - (ii) the date of commencement of this subsection;whichever is the later.
- (8) The law to be applied, and the practice and the procedure to be followed, in and in relation to pending proceedings that are continued as if this Act had not been passed shall be the same as if this Act had not been passed.
- (9) In this section:
- appeal*** includes:
- (a) an application for leave or special leave to appeal;
  - (b) an application for a new trial or for a re-hearing; and
  - (c) an intervention.
- pending proceedings*** means proceedings that were instituted before the date of commencement of this Act but were not completed before that date.

## Part IA—Protection of names

### 9A Use of protected names and symbols

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

Penalty: 30 penalty units.

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

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- (3) This section, so far as it applies in relation to a particular protected name or protected symbol, does not affect the use, or rights conferred by law relating to the use, of a name or symbol (the *relevant name or symbol*) by a person in a particular manner if, at the protection time in relation to the protected name or protected symbol, the person:
- (a) was using the relevant name or symbol in good faith in that manner; or
  - (b) would have been entitled to prevent another person from passing off, by means of the use of the relevant name or symbol or a similar name or symbol, goods or services as the goods or services of the first-mentioned person.
- (4) In this section:

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

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

*protection time* means:

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

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

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

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

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

**10A Accreditation Rules**

- (1) The regulations may prescribe Accreditation Rules. These are rules relating to:
  - (a) the accreditation of persons as family counsellors; and
  - (b) the accreditation of persons as family dispute resolution practitioners; and
  - (c) the accreditation of persons to perform other roles prescribed by regulations made for the purposes of this paragraph.
- (2) Examples of matters that the Accreditation Rules may deal with are:
  - (a) the standards that are to be met by persons who seek to be accredited; and
  - (b) who is responsible for determining whether a person meets the Accreditation Rules; and
  - (c) how accreditation is to be recognised (for example, by establishment of a register or other method); and
  - (d) the standards and other obligations that accredited persons must continue to meet to remain accredited; and
  - (e) who is responsible for monitoring compliance with ongoing requirements in the Rules; and
  - (f) the consequences of accredited persons failing to comply with the provisions of this Act and the Rules; and
  - (g) the obligations of accredited persons in relation to the monitoring of their compliance; and

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- (h) how and by whom an accredited person may have his or her accreditation (or recognition of that accreditation) suspended or cancelled; and
- (i) review of decisions to refuse, suspend or cancel accreditation (or recognition of accreditation); and
- (j) the process for handling complaints involving accredited persons; and
- (k) who may deliver recognised training to accredited persons, and
- (l) dealing with individuals or other persons who make false or misleading representations about a person's status as an accredited person.

## Division 2—Family counselling

### 10B Definition of *family counselling*

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

- (a) one or more persons to deal with personal and interpersonal issues in relation to marriage; or
- (b) one or more persons (including children) who are affected, or likely to be affected, by separation or divorce to deal with either or both of the following:
  - (i) personal and interpersonal issues;
  - (ii) issues relating to the care of children; or
- (c) one or more persons who may apply for a parenting order under section 65C to deal with issues relating to the care of children.

### 10C Definition of *family counsellor*

(1) A *family counsellor* is:

- (a) a person who is accredited as a family counsellor under the Accreditation Rules; or
- (b) a person who is authorised to act on behalf of an organisation designated by the Minister for the purposes of this paragraph; or
- (c) a person who is authorised to act under section 38BD as a family counsellor; or
- (d) a person who is authorised to act under section 93D of the *Federal Circuit Court of Australia Act 1999* 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.

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- (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.

**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

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- (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.

**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,



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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.

## Division 3—Family dispute resolution

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

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

- (a) in which a family dispute resolution practitioner:
  - (i) helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other; or
  - (ii) helps persons who may apply for a parenting order under section 65C to resolve some or all of their disputes with each other relating to the care of children; and
- (b) in which the practitioner is independent of all of the parties involved in the process.

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

- (1) A *family dispute resolution practitioner* is:
  - (a) a person who is accredited as a family dispute resolution practitioner under the Accreditation Rules; or
  - (b) a person who is authorised to act on behalf of an organisation designated by the Minister for the purposes of this paragraph; or
  - (c) a person who is authorised to act under section 38BD as a family dispute resolution practitioner; or
  - (d) a person who is authorised to act under section 93D of the *Federal Circuit Court of Australia Act 1999* as a family dispute resolution practitioner; or
  - (da) a person who is engaged under subsection 18ZI(2) of the *Federal Court of Australia Act 1976* as a family dispute resolution practitioner; or
  - (e) a person who is authorised by a Family Court of a State to act as a family dispute resolution practitioner.

- (2) The Minister must publish a list of organisations designated for the purposes of paragraph (b) of the definition of *family dispute resolution practitioner*.
- (3) An instrument under this section is not a legislative instrument.

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

- (1) A family dispute resolution practitioner must not disclose a communication made to the practitioner while the practitioner is conducting family dispute resolution, unless the disclosure is required or authorised by this section.
- (2) A family dispute resolution practitioner must disclose a communication if the practitioner reasonably believes the disclosure is necessary for the purpose of complying with a law of the Commonwealth, a State or a Territory.
- (3) A family dispute resolution practitioner may disclose a communication if consent to the disclosure is given by:
  - (a) if the person who made the communication is 18 or over— that person; or
  - (b) if the person who made the communication is a child under 18:
    - (i) each person who has parental responsibility (within the meaning of Part VII) for the child; or
    - (ii) a court.
- (4) A family dispute resolution practitioner may disclose a communication if the practitioner reasonably believes that the disclosure is necessary for the purpose of:
  - (a) protecting a child from the risk of harm (whether physical or psychological); or
  - (b) preventing or lessening a serious and imminent threat to the life or health of a person; or
  - (c) reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person; or

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- (d) preventing or lessening a serious and imminent threat to the property of a person; or
  - (e) reporting the commission, or preventing the likely commission, of an offence involving intentional damage to property of a person or a threat of damage to property; or
  - (f) if a lawyer independently represents a child's interests under an order under section 68L—assisting the lawyer to do so properly.
- (5) A family dispute resolution practitioner may disclose a communication in order to provide information (other than personal information within the meaning of section 6 of the *Privacy Act 1988*) for research relevant to families.
- (6) A family dispute resolution practitioner may disclose information necessary for the practitioner to give a certificate under subsection 60I(8).
- (7) Evidence that would be inadmissible because of section 10J is not admissible merely because this section requires or authorises its disclosure.

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

- (8) In this section:

*communication* includes admission.

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

- (1) Evidence of anything said, or any admission made, by or in the company of:
- (a) a family dispute resolution practitioner conducting family dispute resolution; or
  - (b) a person (the *professional*) to whom a family dispute resolution practitioner refers a person for medical or other

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professional consultation, while the professional is carrying out professional services for the person;

is not admissible:

- (c) in any court (whether or not exercising federal jurisdiction); or
  - (d) in any proceedings before a person authorised to hear evidence (whether the person is authorised by a law of the Commonwealth, a State or a Territory, or by the consent of the parties).
- (2) Subsection (1) does not apply to:
- (a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse; or
  - (b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse;
- unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.
- (3) Subsection (1) does not apply to information necessary for the practitioner to give a certificate under subsection 60I(8).
- (4) A family dispute resolution practitioner who refers a person to a professional (within the meaning of paragraph (1)(b)) must inform the professional of the effect of this section.

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

- (1) The regulations may prescribe requirements to be complied with by family dispute resolution practitioners in relation to the family dispute resolution services they provide.
- (2) The regulations may prescribe penalties not exceeding 10 penalty units in respect of offences against regulations made for the purposes of subsection (1).

## Division 4—Arbitration

### 10L Definition of *arbitration*

- (1) *Arbitration* is a process (other than the judicial process) in which parties to a dispute present arguments and evidence to an arbitrator, who makes a determination to resolve the dispute.
- (2) Arbitration may be either:
  - (a) *section 13E arbitration*—which is arbitration of Part VIII proceedings, or Part VIIIAB proceedings (other than proceedings relating to a Part VIIIAB financial agreement), carried out as a result of an order made under section 13E; or
  - (b) *relevant property or financial arbitration*—which is arbitration (other than section 13E arbitration) of:
    - (i) Part VIII proceedings, Part VIII A proceedings, Part VIIIAB proceedings, Part VIII B proceedings or section 106A proceedings; or
    - (ii) any part of such proceedings; or
    - (iii) any matter arising in such proceedings; or
    - (iv) a dispute about a matter with respect to which such proceedings could be instituted.

### 10M Definition of *arbitrator*

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

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

- (1) An arbitrator conducting arbitration may charge the parties to the arbitration fees for conducting it.
- (2) The arbitrator must give written information about those fees to the parties before the arbitration starts.

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

**10P Immunity of arbitrators**

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

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

## **Part III—Family consultants**

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

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

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

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

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

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

A *family consultant* is a person who is:

- (a) appointed as a family consultant under section 18ZH of the *Federal Court of Australia Act 1976*; or
- (c) appointed as a family consultant under the regulations; or
- (d) appointed under a law of a State as a family consultant in relation to a Family Court of that State.

Note: The Chief Executive Officer has all of the functions and powers of family consultants, and may direct consultants in the performance of their functions. See Division 1A of Part IVA of this Act.



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

- (1) Evidence of anything said, or any admission made, by or in the company of:
- (a) a family consultant performing the functions of a family consultant; or
  - (b) a person (the *professional*) to whom a family consultant refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person;

is admissible in proceedings under this Act.

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

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

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

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**11D Immunity of family consultants**

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

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

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

- (1) If, under this Act, a court has the power to:
- (a) order a person to attend family counselling or family dispute resolution; or
  - (b) order a person to participate in a course, program or other service (other than arbitration); or
  - (c) order a person to attend appointments with a family consultant; or
  - (d) advise or inform a person about family counselling, family dispute resolution or other courses, programs or services;
- the court:
- (e) may, before exercising the power, seek the advice of:
    - (i) if the court is the Family Court—a family consultant nominated by the Chief Executive Officer; or
    - (ia) if the court is the Federal Circuit Court of Australia—a family consultant nominated by the Federal Circuit Court 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), (ia) 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.

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

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

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

- (2) When making an order under subsection (1), the court must inform the parties of the effect of section 11G (consequences of failure to comply with order).
- (3) The court may make orders under this section:
- (a) on its own initiative; or
  - (b) on the application of:
    - (i) a party to the proceedings; or
    - (ii) a lawyer independently representing a child's interests under an order made under section 68L.

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

- (1) If a person who is ordered to attend an appointment with a family consultant under section 11F fails to comply with:
- (a) the order made by the court; or
  - (b) any instruction the consultant gives to the person;
- the consultant must report the failure to the court.

(1A) If:

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

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- (b) a child fails to attend an appointment with a family consultant as arranged in compliance with an order under section 11F;  
the consultant must report the failure to the court.
- (2) On receiving a report under subsection (1) or (1A), the court may make any further orders it considers appropriate.
- (3) The court may make orders under subsection (2):
  - (a) on its own initiative; or
  - (b) on the application of:
    - (i) a party to the proceedings; or
    - (ii) a lawyer independently representing a child's interests under an order made under section 68L.

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

**Division 1** Introduction

Section 12A

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

### **Division 1—Introduction**

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

The objects of this Part are:

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

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

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

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

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

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

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

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

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

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

**Section 12D**

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



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

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

- (1) A legal practitioner who is consulted by a person considering instituting proceedings under this Act must give the person documents containing the information prescribed under section 12B (about non-court based family services and court's processes and services).
- (2) A legal practitioner who is consulted by, or who is representing, a married person who is a party to:
  - (a) proceedings for a divorce order in relation to the marriage; or
  - (b) financial or Part VII proceedings in relation to the marriage;must give the person documents containing the information prescribed under section 12C (about reconciliation).
- (3) A legal practitioner representing a party in proceedings under Part VII must give the party documents containing the information prescribed under section 12D (about Part VII proceedings).

Note: For other obligations of legal practitioners in relation to Part VII matters, see sections 60D and 63DA.
- (4) A legal practitioner does not have to comply with subsection (1), (2) or (3) if the practitioner has reasonable grounds to believe that the person has already been given documents containing the prescribed information mentioned in that subsection.
- (5) A legal practitioner does not have to comply with subsection (2) if the practitioner considers that there is no reasonable possibility of a reconciliation between the parties to the marriage.

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

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

## Section 12F

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### **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).

#### *Obligation to respond to requests for information*

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

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

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

- (1) A family counsellor, family dispute resolution practitioner or arbitrator who deals with a married person considering instituting:
  - (a) proceedings for a divorce order in relation to the marriage; or
  - (b) financial or Part VII proceedings in relation to the marriage;must give the married person (and in appropriate cases, that person's spouse) documents containing the information prescribed under 12C (about reconciliation).

Note: 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.

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- (2) A family counsellor, family dispute resolution practitioner or arbitrator does not have to comply with subsection (1), if he or she:
- (a) has reasonable grounds to believe that the person has already been given documents containing the prescribed information;  
or
  - (b) considers that there is no reasonable possibility of a reconciliation between the parties to the marriage.

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

### **Division 1—Introduction**

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

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

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

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

- (1) A court exercising jurisdiction in:
  - (a) proceedings for a divorce order; or
  - (b) financial or part VII proceedings instituted by a party to a subsisting marriage;must consider, from time to time, the possibility of a reconciliation between the parties to the marriage.
- (2) If, during the proceedings, the court considers, from the evidence in the proceedings or the attitude of the parties to the marriage, that there is a reasonable possibility of a reconciliation between the parties, the court may adjourn the proceedings to give the parties the opportunity to consider a reconciliation.
- (3) If the court adjourns the proceedings under subsection (2), the court must advise the parties to attend family counselling, or use the services of another appropriate person or organisation.

Note: Before advising the parties, the court must consider seeking the advice of a family consultant about the services appropriate to the parties' needs (see section 11E).
- (4) If, after an adjournment under subsection (2), either of the parties requests that the proceedings resume, the court must resume the proceedings as soon as practicable.

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

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

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

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

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

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

- (2) The court may suggest a particular purpose for the attendance or participation.
- (3) The order may require the party or parties to encourage the participation of specified other persons who are likely to be affected by the proceedings.

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

- (4) The court may make any other orders it considers reasonably necessary or appropriate in relation to the order.
- (5) The court may make orders under this section:
- (a) on its own initiative; or
  - (b) on the application of:

- (i) a party to the proceedings; or
- (ii) a lawyer independently representing a child's interests under an order made under section 68L.

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

- (1) If a party fails to comply with an order of a court under section 13C, the family counsellor, family dispute resolution practitioner or provider of the course, program or other service must report the failure to the court.
- (2) On receiving the report, the court may make any further orders it considers appropriate.
- (3) The court may make orders under subsection (2):
  - (a) on its own initiative; or
  - (b) on the application of:
    - (i) a party to the proceedings; or
    - (ii) a lawyer independently representing a child's interests under an order made under section 68L.

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

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

- (1) With the consent of all of the parties to the proceedings, a court exercising jurisdiction in:
  - (a) Part VIII proceedings; or
  - (b) Part VIIIAB proceedings (other than proceedings relating to a Part VIIIAB financial agreement);may make an order referring the proceedings, or any part of them, or any matter arising in them, to an arbitrator for arbitration.
- (2) If the court makes an order under subsection (1), it may, if necessary, adjourn the proceedings and may make any additional orders as it thinks appropriate to facilitate the effective conduct of the arbitration.

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

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

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

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



- (c) the Federal Circuit Court of Australia.
- (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 Court of Australia has either:
  - (a) determined the question of law; or
  - (b) remitted the matter to the arbitrator having found that no question of law arises.

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

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

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

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

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)).

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- (2) On a review of an award under this section, the judge or Federal Circuit 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 Court of Australia thinks appropriate, including a decree affirming, reversing or varying the award.

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

- (1) If an award made in section 13E arbitration or relevant property or financial arbitration, or an agreement made as a result of such arbitration, is registered in:
- (a) the Family Court; or
  - (b) the Federal Circuit Court of Australia; 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.

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

### **Division 1—Interpretation**

#### **20 Interpretation**

In this Part, unless the contrary intention appears:

*Court* means the Family Court of Australia.

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

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

### **21 Creation of Court**

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

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

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

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

- (1) The Chief Justice is responsible for ensuring the effective, orderly and expeditious discharge of the business of the Court.
- (1A) In discharging his or her responsibility under subsection (1) (and without limiting the generality of that subsection) the Chief Justice:
  - (a) may, subject to this Act and to such consultation with Judges as is appropriate and practicable, do all or any of the following:

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- (i) make arrangements as to the Judge or Judges who is or are to constitute the Court, or the Full Court, in particular matters or classes of matters;
  - (ii) without limiting the generality of subparagraph (i)— assign particular caseloads, classes of cases or functions to particular Judges;
  - (iii) temporarily restrict a Judge to non-sitting duties; and
  - (b) must ensure that arrangements are in place to provide Judges with appropriate access to (or reimbursement for the cost of):
    - (i) annual health assessments; and
    - (ii) short-term counselling services; and
    - (iii) judicial education; and
  - (c) may deal, as set out in subsection (1B), with a complaint about the performance by another Judge of his or her judicial or official duties; and
  - (d) may take any measures that the Chief Justice believes are reasonably necessary to maintain public confidence in the Court, including, but not limited to, temporarily restricting another Judge to non-sitting duties.
- (1B) The Chief Justice may, if a complaint is made about another Judge, deal with the complaint by doing either or both of the following in respect of the complaint:
- (a) deciding whether or not to handle the complaint and then doing one of the following:
    - (i) dismissing the complaint;
    - (ii) handling the complaint if the Chief Justice has a relevant belief in relation to the complaint about the other Judge;
    - (iii) arranging for any other complaint handlers to assist the Chief Justice to handle the complaint if the Chief Justice has a relevant belief in relation to the complaint about the other Judge;
  - (b) arranging for any other complaint handlers to decide whether or not to handle the complaint and then to do one of the following:

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- (i) dismiss the complaint;
- (ii) handle the complaint if each of the complaint handlers has a relevant belief in relation to the complaint about the other Judge.

Note: A complaint handler (other than the Chief Justice) may handle a complaint by referring it to the Chief Justice. The Chief Justice may then do either or both of the things referred to in paragraph (a) or (b) in respect of the complaint.

- (2) The Deputy Chief Justice shall assist the Chief Justice in the exercise of the functions conferred on the Chief Justice by this section (other than paragraph (1A)(c) or (d)).
- (3A) The Chief Justice may authorise, in writing, a person or a body to do one or more of the following:
  - (a) assist the Chief Justice to handle complaints or a specified complaint;
  - (b) decide whether or not to handle complaints or a specified complaint;
  - (c) dismiss complaints or a specified complaint;
  - (d) handle complaints or a specified complaint.
- (3B) To avoid doubt, the Chief Justice may authorise under subsection (3A):
  - (a) the Deputy Chief Justice; or
  - (b) a body that includes the Deputy Chief Justice.
- (4) In exercising, or assisting in the exercise of, the functions or powers mentioned in paragraph (1A)(a), the Chief Justice and the Deputy Chief Justice have the same protection and immunity as if they were exercising, or assisting in the exercise of, those functions or powers as, or as members of, the Court.

Note: See also section 38Y.
- (5) Despite section 39B of the *Judiciary Act 1903*, the Federal Court of Australia does not have jurisdiction with respect to a matter relating to the exercise by the Chief Justice of, or relating to the

Deputy Chief Justice assisting in the exercise of, the functions or powers mentioned in subsection (1A), (1B) or (3A).

## Division 3—Judges

### 22 Appointment, removal and resignation of Judges

#### *Appointment of Judges*

- (1) A Judge:
  - (a) shall be appointed by the Governor-General; and
  - (b) shall not be removed except by the Governor-General, on an address from both Houses of the Parliament in the same session praying for the Judge's removal on the grounds of proved misbehaviour or incapacity.
- (2) A person shall not be appointed as a Judge unless:
  - (a) the person is or has been a Judge of another court created by the Parliament or of a court of a State or has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory for not less than 5 years; and
  - (b) by reason of training, experience and personality, the person is a suitable person to deal with matters of family law.

#### *Judges to be assigned to particular location*

- (2AAA) The commission of appointment of a Judge must assign the Judge to a particular location. The Judge:
- (a) must not sit at another location on a permanent basis unless the Attorney-General and the Chief Justice consent; and
  - (b) cannot be required to sit at another location on a permanent basis unless the Judge consents (in addition to the consents required by paragraph (a)); and
  - (c) may sit at another location on a temporary basis.
- (2AAB) In deciding whether to consent as mentioned in paragraph (2AAA)(a), the Chief Justice has the same protection and immunity as if he or she were making that decision as, or as a member of, the Court.



- (2AAC) Despite section 39B of the *Judiciary Act 1903*, the Federal Court of Australia does not have jurisdiction with respect to a matter relating to the exercise by the Attorney-General or the Chief Justice of the power to consent as mentioned in paragraph (2AAA)(a).

*Appeal Division*

- (2AA) The members of the Appeal Division of the Court are the Chief Justice, the Deputy Chief Justice and such other Judges as are assigned to the Appeal Division under this section.
- (2AB) The Governor-General may, in the commission of appointment of a Judge or, with the consent of the Judge but not otherwise, at a later time assign a Judge to the Appeal Division.
- (2AC) The Governor-General shall not assign a Judge to the Appeal Division under subsection (2AB) if, as a result of that assignment, the number of members of the Appeal Division assigned under that subsection would exceed the prescribed number.

*General Division*

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

*Appointment of Deputy Chief Justice*

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

*Judge of 2 or more courts*

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

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- (2AH) In subsection (2AG), *prescribed court* means:
- (a) a court (other than the Court) created by the Parliament; or
  - (b) the Supreme Court of the Northern Territory.
- (2A) A person may be appointed to the office of Judge of the Family Court of Australia notwithstanding that he or she holds an office of Judge of a Family Court of a State and may serve in that office of Judge of the Family Court of Australia notwithstanding that he or she continues to hold, and serve in, the office of Judge of the Family Court of that State.
- (2B) If a person who holds office as a Judge of the Family Court of Australia is appointed or serves as a Judge of a Family Court of a State, the appointment or service shall not affect his or her tenure of that office of Judge of the Family Court of Australia or his or her rank, title, status, precedence, salary or annual allowance or other rights or privileges as the holder of that office of Judge of the Family Court of Australia and, for all purposes, his or her service as a Judge of the Family Court of that State shall be taken to be service as the holder of that office of Judge of the Family Court of Australia.

*Resignation*

- (3) A Judge may resign office by writing under his or her hand addressed to the Governor-General.
- (3A) The resignation takes effect on:
- (a) the day on which it is received by the Governor-General; or
  - (b) a later day specified in the resignation document.

*Style*

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

**23 Seniority**

- (1) The Chief Justice is senior to all other Judges of the Court.

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

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Judges concerned, those Judges have such seniority in relation to each other as is assigned to them by the Governor-General.

- (10) If:
- (a) a person's commission of appointment as a Judge of a particular kind terminates; and
  - (b) a new commission of appointment of the person as a Judge of that kind takes effect immediately after the termination;
- the day of appointment of the person as a Judge of that kind is, for the purposes of this section, the day on which the earlier appointment took effect and not the day on which the later appointment took effect.
- (11) Subsection (10) applies to the termination of a commission of appointment however it occurs (whether because of resignation or because of the expiration of the term of the appointment or otherwise).

**24 Absence or illness of Chief Justice**

- (1) Whenever:
- (a) the Chief Justice is absent from Australia or from duty; or
  - (b) there is a vacancy in the office of Chief Justice;
- the Deputy Chief Justice or, if the Deputy Chief Justice is unavailable, the next senior Judge who is in Australia and is available and willing to do so shall perform the duties and may exercise the powers of the Chief Justice.
- (2) A Judge who is, under subsection (1), performing the duties and exercising the powers of the Chief Justice shall be called the Acting Chief Justice of the Court.

**25 Salary and allowances**

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

- (2) The salary and annual allowances of the Judges accrue from day to day and are payable monthly.
- (3) The Consolidated Revenue Fund is appropriated to the extent necessary for payment of salaries and annual allowances in accordance with this section.

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

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

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

*or*

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

## Division 4—Judicial Registrars

### 26A Judicial Registrars

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

### 26B Powers of Judicial Registrars

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

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

- (a) a parenting order to the extent to which it provides that:

- (i) a child is to live with a person; or
- (ii) a child is to spend time with a person; or
- (iii) a child is to communicate with a person; or
- (iv) a person is to have parental responsibility for a child; or

- (b) an order in relation to the welfare of a child;

other than:

- (c) a parenting order made under paragraph 70NEB(1)(b) or an order made under paragraph 70NFB(2)(c) that has the same effect as such a parenting order; or
- (d) an order until further order; or
- (e) an order made in undefended proceedings; or
- (f) an order made with the consent of all the parties to the proceedings.

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

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

- (b) delegating to the Judicial Registrars powers of the Court by reference to powers of the Court that have been delegated to the Registrars of the Court under section 37A.
- (3) A power delegated to the Judicial Registrars shall, when exercised by a Judicial Registrar, be deemed to have been exercised by the Court or a Judge, as the case requires.
- (4) The delegation of a power to the Judicial Registrars does not prevent the exercise of the power by the Court or a Judge.
- (5) The provisions of this Act, the regulations and the standard Rules of Court, and other laws of the Commonwealth, that relate to the exercise by the Court of a power that is, under a delegation made under subsection (1), exercisable by a Judicial Registrar, apply in relation to an exercise of the power by a Judicial Registrar as if references to the Court, or to a court exercising jurisdiction under this Act, were references to a Judicial Registrar.
- (6) The Judicial Registrars shall have, in addition to the powers delegated to them under subsection (1), such other powers (if any) as are conferred on them by this Act, the regulations and the standard Rules of Court.

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

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

- (1) A party to proceedings in which a Judicial Registrar has exercised a power delegated under subsection 26B(1) may, within the time prescribed by, or within such further time as is allowed in accordance with, Rules of Court made by the Judges or a majority of them, apply to the Court to review the exercise of the power.
- (2) The Court may, on application made under subsection (1) or of its own motion, review the exercise by a Judicial Registrar of a power delegated under subsection 26B(1), and may make such orders as it considers appropriate in relation to the matter in relation to which the power was exercised.

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

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

- (1) Where:

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

- (2) Where:

- (a) a power delegated under subsection 26B(1) is proposed to be exercised in a particular case by a Judicial Registrar; but
- (b) the Judicial Registrar has not commenced to exercise the power in that case;

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

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

**26E Application of the *Legislation Act 2003* to rules of court**

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 under sections 26B and 26C of this Act:



- (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; and
- (c) subject to such further modifications or adaptations as are provided for in regulations made under paragraph 125(1)(baa) of this Act.

### **26F Independence of Judicial Registrars**

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

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

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

### **26H Qualifications for appointment etc.**

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

### **26I Term of office**

- (1) A Judicial Registrar:
  - (a) shall be appointed with effect from the day specified in the instrument of appointment; and

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- (b) holds office, subject to this Act:
  - (i) for such term (not exceeding 7 years) as is specified in the instrument of appointment, but is eligible for re-appointment; or
  - (ii) if the instrument of appointment so provides, until attaining 65 years of age, but is eligible for re-appointment.

**26J Remuneration and allowances**

- (1) A Judicial Registrar shall be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) A Judicial Registrar shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**26JA Leave of absence**

- (1) A person appointed as a full-time Judicial Registrar has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Chief Justice may grant a person appointed as a full-time Judicial Registrar leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Chief Justice, with the approval of the Attorney-General, determines.

**26K Resignation**

- (1) A Judicial Registrar may resign office by writing under his or her hand addressed to the Governor-General.
- (2) The resignation takes effect on:
  - (a) the day on which it is received by the Governor-General; or
  - (b) a later day specified in the resignation document.

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

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

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

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

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

*or*

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

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

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

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

### **27 Place of sitting**

- (1) Sittings of the Court must be held from time to time as required and the Court may sit at any place in Australia.
- (2) The Court, in respect of proceedings, may be constituted by 2 or more Judges sitting at the same time, but in different places in Australia, using video link, audio link or other appropriate means to facilitate the Court sitting (*split court*).

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

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

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

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

### **28 Exercise of jurisdiction**

- (1) The original jurisdiction of the Court may be exercised by one or more Judges.
- (2) The jurisdiction of the Court in an appeal from the following court may be exercised by one Judge or by a Full Court:
  - (a) a court of summary jurisdiction;
  - (b) if the appeal is from a decision in section 69GA proceedings—the court that made the decision.
- (2A) Nothing in this Act prevents a Judge who is a member of the Appeal Division from exercising the jurisdiction of the Court that,

under subsection (1) or (2), may be exercised by one or more Judges.

- (3) The jurisdiction of the Court in an appeal from a Judge of the Court or of the Supreme Court of a State or Territory shall be exercised by a Full Court.
- (3A) The jurisdiction of the Court to hear and determine a case stated under section 94A shall be exercised by a Full Court.
- (4) Where, after a Full Court (including a Full Court constituted in accordance with this subsection) has commenced the hearing, or further hearing, of proceedings and before the proceedings have been determined, one of the Judges constituting the Full Court dies, resigns his or her office, ceases to be a member of the Court by reason that the term of his or her appointment expires or otherwise becomes unable to continue as a member of the Full Court for the purposes of the proceedings, then the hearing and determination, or the determination, of the proceedings may be completed:
  - (a) if only 2 Judges remain and one of those Judges is assigned to the Appeal Division, or if more than 2 Judges remain and a majority of those Judges are assigned to the Appeal Division—by the Court constituted by the remaining Judges; or
  - (b) with the consent of the parties—by the Court constituted by the remaining Judge or Judges and an additional Judge or Judges, where a majority of the Judges constituting the Court are assigned to the Appeal Division.
- (5) A Full Court constituted in accordance with subsection (4) may have regard to any evidence given or received, and arguments adduced, by or before the Full Court as previously constituted.
- (6) The Court constituted by one or more Judges may sit and exercise the jurisdiction of the Court notwithstanding that the Court constituted by one or more other Judges is at the same time sitting and exercising the jurisdiction of the Court.

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### 30 Court divided in opinion

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

- (a) in the case of an appeal from a judgment of the Family Court constituted by a single Judge, or of a Family Court of a State or the Supreme Court of a State or Territory—the judgment appealed from shall be affirmed; and
- (b) in any other case—the opinion of the Chief Justice or, if he or she is not one of the Judges constituting the Court, the opinion of the most senior of those Judges, shall prevail.

### 31 Original jurisdiction of Family Court

(1) Jurisdiction is conferred on the Family Court with respect to:

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

(d) matters (other than matters referred to in any of the preceding paragraphs) with respect to which proceedings may be instituted in the Family Court under this Act or any other Act.

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

Note: Division 4 of Part XIII<sup>AAA</sup> (International protection of children) may affect the jurisdiction of the Court.

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

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

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

- (1) Proceedings must not be instituted in the Family Court in respect of a matter if:
  - (a) the Federal Circuit Court of Australia has jurisdiction in that matter; and
  - (b) proceedings in respect of an associated matter are pending in the Federal Circuit Court of Australia.
- (2) Subsection (1) does not apply to:
  - (a) proceedings for a divorce order; or
  - (b) proceedings instituted in the Family Court under Division 13A of Part VII or under Part XIII or XIII<sup>A</sup>.
- (3) If:

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- (a) proceedings are instituted in the Family Court in contravention of subsection (1); and
  - (b) the proceedings are subsequently transferred to the Federal Circuit Court of Australia;
- the proceedings are taken to be as valid as they would have been if subsection (1) had not been enacted.

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

- (1) If a proceeding is pending in the Family Court, the Family Court may, by order, transfer the proceeding from the Family Court to the Federal Circuit Court of Australia.
- (2) The Family Court may transfer a proceeding under subsection (1):
  - (a) on the application of a party to the proceeding; or
  - (b) on its own initiative.
- (3) The standard Rules of Court may make provision in relation to the transfer of proceedings to the Federal Circuit Court of Australia under subsection (1).
- (4) In particular, the standard Rules of Court may set out factors that are to be taken into account by the Family Court in deciding whether to transfer a proceeding to the Federal Circuit Court of Australia under subsection (1).
- (5) Before standard Rules of Court are made for the purposes of subsection (3) or (4), the Family Court must consult the Federal Circuit Court of Australia.
- (6) In deciding whether to transfer a proceeding to the Federal Circuit Court of Australia under subsection (1), the Family Court must have regard to:
  - (a) any standard Rules of Court made for the purposes of subsection (4); and
  - (b) whether proceedings in respect of an associated matter are pending in the Federal Circuit Court of Australia; and



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- (c) whether the resources of the Federal Circuit Court of Australia are sufficient to hear and determine the proceeding; and
  - (d) the interests of the administration of justice.
- (7) If an order is made under subsection (1), the Family Court may make such orders as it considers necessary pending the disposal of the proceeding by the Federal Circuit Court of Australia.
- (8) An appeal does not lie from a decision of the Family Court in relation to the transfer of a proceeding under subsection (1).
- (8A) The Federal Circuit Court of Australia has jurisdiction in a matter that:
- (a) is the subject of a proceeding transferred to the court under this section; and
  - (b) is a matter in which the court does not have jurisdiction apart from this subsection.
- To avoid doubt, the court's jurisdiction under this subsection is not subject to limits set by another provision.
- (9) The reference in subsection (1) to a proceeding pending in the Family Court includes a reference to a proceeding that was instituted in contravention of section 33A.
- (10) This section does not apply to proceedings of a kind specified in the regulations.

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

- (1) If a proceeding of a kind specified in regulations made for the purposes of this subsection is pending in the Family Court, the Family Court must, before going on to hear and determine the proceeding, transfer the proceeding to the Federal Circuit Court of Australia.
- (2) If a proceeding is transferred under subsection (1), the Family Court may make such orders as it considers necessary pending the

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disposal of the proceedings by the Federal Circuit Court of Australia.

- (3) An appeal does not lie from a decision of the Family Court in relation to the transfer of a proceeding under subsection (1).
- (3A) The Federal Circuit Court of Australia has jurisdiction in a matter that:
- (a) is the subject of a proceeding transferred to the court under this section; and
  - (b) is a matter in which the court does not have jurisdiction apart from this subsection.
- To avoid doubt, the court's jurisdiction under this subsection is not subject to limits set by another provision.
- (4) The reference in subsection (1) to a proceeding pending in the Family Court includes a reference to a proceeding that was instituted in contravention of section 33A.
- (5) The Minister must cause a copy of regulations (***transfer regulations***) made for the purposes of subsection (1) to be tabled in each House of the Parliament.
- (6) Either House may, following a motion upon notice, pass a resolution disallowing the transfer regulations. To be effective, the resolution must be passed within 15 sittings days of the House after the copy of the transfer regulations was tabled in the House.
- (7) If neither House passes such a resolution, the transfer regulations commence on the day immediately after the last day upon which such a resolution could have been passed.
- (8) Subsections (5), (6) and (7) have effect despite anything in:
- (a) the *Acts Interpretation Act 1901*; or
  - (b) the *Legislation Act 2003*.

**34 Issue of certain writs etc.**

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

**35 Contempt of court**

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

## Division 6—Registries and officers

### 36 Registries

The Governor-General shall cause such Registries of the Court to be established as the Governor-General thinks fit.

### 37 Officers of Court

- (1) In relation to a proceeding under this Act, the officers of the Court have such duties, powers and functions as are given by this Act or the standard Rules of Court or by the Chief Justice.
- (2) The Chief Executive Officer may, subject to this Act, the regulations, the standard Rules of Court and any directions of the Chief Justice, give directions to the officers of the Court in relation to the manner in which the functions and duties of those officers are to be performed and the powers of those officers are to be exercised in relation to proceedings under this Act.

### 37A Delegation of powers to Registrars

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

- (i) sections 11F and 11G; and
  - (ii) sections 13C and 13D; and
  - (iii) subsection 65LA(1); and
  - (iv) paragraph 70NEB(1)(a);
- (ea) the power to direct a family consultant to give a report under section 62G;
- (f) the power, in proceedings under this Act, to make:
- (i) an order under section 66Q, 67E, 77 or 90SG; or
  - (ii) an order for the payment of maintenance pending the disposal of the proceedings;
- (g) the power to make, in proceedings under this Act, an order the terms of which have been agreed upon by all the parties to the proceedings;
- (h) the power, in proceedings under this Act, to make an order adjourning the hearing of the proceedings;
- (j) the power under section 117 to make an order as to costs;
- (m) the power to make an order exempting a party to proceedings under this Act from compliance with a provision of the regulations or Rules of Court.

Note: For how this section applies in relation to powers of the Court under certain provisions, see section 37AA.

- (2) The powers of the Court that may be delegated under subsection (1) do not include the power to make:
- (a) a divorce order in proceedings that are defended; or
  - (b) a decree of nullity of marriage; or
  - (c) a declaration as to the validity of:
    - (i) a marriage; or
    - (ii) a divorce; or
    - (iii) the annulment of a marriage; or
  - (d) an excluded child order (as defined in subsection (2A)); or
  - (e) an order setting aside a registered award under section 13K.

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

- (a) a parenting order to the extent to which it provides that:

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

an exercise of the power by a Registrar under the delegation as if references in those provisions to the Court or to a court exercising jurisdiction under this Act were references to a Registrar.

- (8) Notwithstanding any other provision of this Act and any provision of the *Public Service Act 1999* or of any other law, a Registrar is not subject to the direction or control of any person or body in relation to the manner in which he or she exercises powers pursuant to a delegation under subsection (1).
- (9) A party to proceedings in which a Registrar has exercised any of the powers of the Court pursuant to a delegation under subsection (1) may, within the time prescribed by, or within such further time as is allowed in accordance with, applicable Rules of Court made by the Judges or a majority of them for the purposes of this subsection, apply to the Court to review that exercise of power.
- (10) The Court may, on application under subsection (9) or of its own motion, review an exercise of power by a Registrar pursuant to a delegation under this section and may make such order or orders as it considers appropriate with respect to the matter with respect to which the power was exercised.
- (11) Where:
- (a) an application for the exercise of a power delegated under subsection (1) is to be, or is being, heard by a Registrar; and
  - (b) the Registrar considers that it is not appropriate for the application to be determined by a Registrar acting under the delegation;
- the Registrar shall not hear, or continue to hear, the application and shall make appropriate arrangements for the application to be heard by the Court.
- (12) Where:
- (a) a power delegated under subsection (1) is proposed to be exercised in a particular case by a Registrar; but
  - (b) the Registrar has not commenced to exercise the power in that case;

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

- (13) Where an application is made to a Judge under subsection (12) seeking an order that, in a particular case, a power be exercised by a Judge, the Registrar shall not commence to exercise the power in that case until the application has been determined.
- (14) 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 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 Justice acting on behalf of the Judges; and
  - (c) subject to such further modifications or adaptations as are provided for in regulations made under paragraph 125(1)(baa) of this Act.
- (15) In this section, **Registrar** means the Chief Executive Officer, a Registrar or a Deputy Registrar of the Court.

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

**37AA Delegation to Registrars of powers exercisable by court as constituted in a particular way**

- (1) Without limiting subsection 37A(1), the powers that may be delegated to a Registrar under that subsection include:
- (a) the powers of the Court, constituted in any way mentioned in subsection 94(2D), to hear and determine applications to which that subsection applies; and
  - (b) the powers of the Court, constituted in any way mentioned in subsection 94AAA(10), to hear and determine applications to which that subsection applies.



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- (2) If Rules of Court under subsection 37A(1) delegate powers referred to in paragraph (1)(a) or (b) of this section to a Registrar, those Rules may specify modifications of section 37A that are to have effect in relation to the exercise by a Registrar of the delegated powers.
- (3) In this section:
- Registrar* has the same meaning as in section 37A.

**37B Independence of Registrars**

- (1) Notwithstanding any provision of this Act other than subsection (3), and any provision of the *Public Service Act 1999* or any other law, in the performance of a function or the exercise of a power under this Act, under the regulations or under the standard Rules of Court (other than a power delegated by standard Rules of Court under subsection 37A(1)):
- (a) the Chief Executive Officer is subject to the direction and control of the Chief Justice and is not subject to the direction or control of any other person or body;
- (b) a Registrar is subject to the direction and control of:
- (i) the Chief Justice;
  - (ii) any other Judge authorised by the Chief Justice to direct and control that Registrar; and
  - (iii) the Chief Executive Officer;
- and is not subject to the direction or control of any other person or body; and
- (c) a Deputy Registrar is subject to the direction and control of:
- (i) the Chief Justice;
  - (ii) any other Judge authorised by the Chief Justice to direct and control that Deputy Registrar;
  - (iii) the Chief Executive Officer; and
  - (iv) the Registrars;
- and is not subject to the direction or control of any other person or body.

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- (2) Without limiting the generality of subsection (1), the Chief Executive Officer may, subject to this Act and to any directions of the Chief Justice, make arrangements as to the Registrars or Deputy Registrars who are to perform any functions or exercise any power under this Act, under the regulations or under the standard Rules of Court (including a power delegated by standard Rules of Court under subsection 37A(1)) in particular matters or classes of matters.
- (3) The powers of the Chief Executive Officer in relation to the Registrars and the Deputy Registrars, and the powers of the Registrars in relation to the Deputy Registrars, shall be exercised subject to the directions of the Chief Justice.
- (4) Subject to subsection (4A), action must not be taken in relation to a Registrar or a Deputy Registrar (or a former Registrar or Deputy Registrar):
- (a) by an Agency Head under section 15 of the *Public Service Act 1999*; or
  - (b) by the Australian Public Service Commissioner under section 41B of that Act; or
  - (c) by the Merit Protection Commissioner under section 50A of that Act;
- unless the Chief Justice has requested the Agency Head, the Australian Public Service Commissioner or the Merit Protection Commissioner to take such action.
- Note: Sections 15, 41B and 50A of the *Public Service Act 1999* make provision for dealing with an alleged breach of the Code of Conduct (within the meaning of that Act) by an APS employee or a former APS employee.
- (4A) Subsection (4) does not apply if the Prime Minister has requested the Australian Public Service Commissioner to take action under section 41B of the *Public Service Act 1999* in relation to a Registrar or a Deputy Registrar (or a former Registrar or Deputy Registrar).
- (5) In this section, **Registrar** means a Registrar of the Court.

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

The Chief Executive Officer or a Registrar or Deputy Registrar shall, before proceeding to discharge the duties of the office, take, before the Chief Justice or another Judge of the Family Court, an oath or affirmation in the following form:

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

or

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

## Division 7—Practice and procedure

### 38 Practice and procedure

- (1) Subject to this Act, the practice and procedure of the Court shall be in accordance with the regulations and the standard Rules of Court.
- (2) In so far as the provisions applicable in accordance with subsection (1) are insufficient, the Rules of the High Court, as in force for the time being, apply, *mutatis mutandis*, so far as they are capable of application and subject to any directions of the Court or a Judge, to the practice and procedure of the Court.
- (2A) This section does not apply in relation to proceedings that are transferred to the Court from the Federal Court of Australia.
- (3) In this section, *practice and procedure* includes all matters with respect to which regulations or standard Rules of Court may be made under this Act.

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

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

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

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

(1A) The *administrative affairs* of the Court do not include the corporate services of the Court.

(1B) The following matters relating to the Court are the *corporate services* of the Court:

- (a) communications;
- (b) finance;
- (c) human resources;
- (d) information technology;
- (e) libraries;
- (f) procurement and contract management;
- (g) property;
- (h) risk oversight and management;
- (i) statistics;
- (j) any other matter prescribed by a determination under subsection (5).

(2) For the purpose referred to in subsection (1), the Chief Justice has power to do all things that are necessary or convenient to be done, including, on behalf of the Commonwealth:

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

**Part IVA** Management of the Court

**Division 1** Management responsibilities of the Chief Justice and the Chief Executive Officer

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- (3) The powers given to the Chief Justice by subsection (2) are in addition to any powers given to the Chief Justice by any other provision of this Act or by any other Act.
- (4) Subsection (2) does not authorise the Chief Justice to enter into a contract under which the Commonwealth is to pay or receive an amount exceeding \$1,000,000 or, if a higher amount is prescribed, that higher amount, except with the approval of the Attorney-General.
- (5) The Attorney-General may, by legislative instrument, determine matters that are the corporate services of the Court (see paragraph (1B)(j)).

Note 1: See Part IIB of the *Federal Court of Australia Act 1976* for provisions relating to the corporate services of the Court.

Note 2: For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the Chief Executive Officer, the officers of the Court and the staff of the Registries are officials of the listed entity referred to in section 18ZB of the *Federal Court of Australia Act 1976*.

Note 3: For the purposes of the *Public Service Act 1999*, the APS employees referred to in section 38N are part of the Statutory Agency declared under section 18ZE of the *Federal Court of Australia Act 1976*.

**38B Chief Executive Officer**

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

**38BAA Arrangements with other courts**

- (1) The Chief Justice may arrange with the chief judicial officer (however described) of another Australian court for an officer or officers of that court to perform on behalf of the Court any or all of the following functions:
  - (a) the receipt of documents to be lodged with or filed in the Court;
  - (b) the signing and issuing of writs, commissions and process for the purposes of any proceedings in the Court;

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- (c) the authentication of orders of the Court;
  - (d) the administration of oaths and affirmations, and the witnessing of affidavits, for the purposes of any proceedings in the Court;
  - (e) such other non-judicial functions as are permitted by the Rules of Court to be performed under such an arrangement;
  - (f) such other non-judicial functions as the Chief Justice considers appropriate.
- (2) If an arrangement under subsection (1) is in force in relation to the performance by an officer of an Australian court of a function on behalf of the Court, the officer may perform that function despite any other provision of this Act or any other law of the Commonwealth.
- (3) A function performed on behalf of the Court in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Court.
- (4) Copies of an arrangement under subsection (1) are to be made available for inspection by members of the public.
- (5) For the purposes of this section, a member of the staff of an Australian court is taken to be an officer of that court.

**38BAB Arrangements with agencies or organisations**

- (1) The Chief Justice may arrange with the chief executive officer (however described) of:
- (a) an agency of the Commonwealth, a State or a Territory; or
  - (b) another organisation;
- for an employee or employees of the agency or organisation to:
- (c) receive, on behalf of the Court, documents to be lodged with or filed in the Court; or
  - (d) perform, on behalf of the Court, other non-judicial functions of the Court.

**Part IVA** Management of the Court

**Division 1** Management responsibilities of the Chief Justice and the Chief Executive Officer

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- (2) If an arrangement under subsection (1) is in force in relation to the performance by an employee of an agency or organisation of a function on behalf of the Court, the employee may perform that function despite any other provision of this Act or any other law of the Commonwealth.
- (3) A function performed on behalf of the Court in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Court.
- (4) Copies of an arrangement under subsection (1) are to be made available for inspection by members of the public.



## **Division 1A—Administration of Court's family services**

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

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

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

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

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

The Chief Executive Officer may give directions that relate to:

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

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

- (1) The Chief Executive Officer may authorise an officer or staff member of the Family Court to provide family counselling under this Act.
- (2) The Chief Executive Officer may authorise an officer or staff member of the Family Court to provide family dispute resolution under this Act.
- (3) If an officer who is a family consultant also becomes a family counsellor, or family dispute resolution practitioner, because of an authorisation under this section:
  - (a) section 11C (admissibility of communications with family consultants) does not apply to the officer at any time while the officer is acting as a family counsellor or family dispute resolution practitioner; and
  - (b) the officer must not perform the functions of a family consultant in relation to particular proceedings, if the officer has conducted family counselling or family dispute resolution with a person involved in those proceedings.

## **Division 2—Chief Executive Officer**

### **38C Establishment and appointment of Chief Executive Officer**

- (1) There is to be a Chief Executive Officer and Principal Registrar of the Family Court.
- (2) The Chief Executive Officer is to be appointed by the Governor-General by written instrument on the nomination of the Chief Justice.

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

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

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

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

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

- (1) The Chief Executive Officer holds office for the period (not longer than 5 years) specified in the instrument of his or her appointment, but is eligible for re-appointment.
- (4) The Chief Executive Officer holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Chief Justice.

**38G Leave of absence**

- (1) The Chief Executive Officer has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Chief Justice may grant the Chief Executive Officer leave of absence, other than recreation leave, on such terms and conditions as the Chief Justice, with the approval of the Attorney-General, determines.

**38H Resignation**

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

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

- (1) Except with the consent of the Chief Justice, the Chief Executive Officer must not engage in paid employment outside the duties of his or her office.
- (2) The reference in subsection (1) to paid employment does not include service in the Defence Force.

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

- (1) The Governor-General may terminate the appointment of the Chief Executive Officer for misbehaviour or physical or mental incapacity.
- (2) The Governor-General is required to terminate the appointment of the Chief Executive Officer if he or she:
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
  - (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) engages in paid employment contrary to section 38J; or
  - (d) fails, without reasonable excuse, to comply with section 38L; or
  - (e) 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.
- (3) The Governor-General may, with the consent of the Chief Executive Officer who is:
  - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
  - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or
  - (c) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*;retire the Chief Executive Officer from office on the ground of incapacity.
- (4) In spite of anything contained in this section, if the Chief Executive Officer:
  - (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and

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- (b) has not reached his or her maximum retiring age (within the meaning of that Act);  
he or she is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless CSC has given a certificate under section 54C of that Act.
- (5) In spite of anything contained in this section, if the Chief Executive Officer:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
- (b) is under 60 years of age;  
he or she is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given a certificate under section 13 of that Act.
- (6) In spite of anything contained in this section, if the Chief Executive Officer:
- (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and
- (b) is under 60 years of age;  
he or she is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given an approval and certificate under section 43 of that Act.

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

- (1) The Chief Executive Officer must give written notice to the Chief Justice of all direct or indirect pecuniary interests that the Chief Executive Officer has or acquires in any business or in any body corporate carrying on a business.
- (2) The Chief Executive Officer must give written notice to the Chief Justice of all material personal interests that the Chief Executive Officer has that relate to the affairs of the Family Court.
- (3) Subsections (1) and (2) apply in addition to section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests).

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

The Chief Justice may, in writing, appoint a person to act in the office of Chief Executive Officer:

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

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

## **Division 3—Other officers and staff of Registries**

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

- (1) In addition to the Chief Executive Officer, there are the following officers of the Court:
  - (b) such Registrars and Deputy Registrars of the Court as are necessary;
  - (c) such Registry Managers of the Court as are necessary;
  - (d) such family consultants as are necessary;
  - (e) the Marshal of the Court;
  - (f) such Deputy Marshals of the Court as are necessary.
- (2) The officers of the Court, other than the Chief Executive Officer, have such duties, powers and functions as are given to them by this Act, by the standard Rules of Court or by the Chief Justice.
- (4) The officers of the Court, other than the Chief Executive Officer and the Deputy Marshals, are to be persons engaged under the *Public Service Act 1999*.
- (5) The Deputy Marshals may be persons engaged under the *Public Service Act 1999*.
- (6) The Chief Executive Officer may, on behalf of the Chief Justice, arrange with an Agency Head (within the meaning of the *Public Service Act 1999*), or with an authority of the Commonwealth, for the services of officers or employees of the Department or authority to be made available for the purposes of the administrative affairs of the Court.
- (7) There are to be such staff of the Registries as are necessary.
- (8) The staff of the Registries is to consist of persons engaged under the *Public Service Act 1999*.



**38P Marshal**

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

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

### **38S Annual report**

- (1) As soon as practicable after 30 June in each year, the Chief Justice must prepare a report of the management of the administrative affairs of the Court during the year.
- (2) A report prepared after 30 June in a year must be given to the Attorney-General by 15 October of that year.
- (3) The Attorney-General must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable.
- (4) A report prepared under this section may be included in a report prepared and given to the Attorney-General under section 46 of the *Public Governance, Performance and Accountability Act 2013* in relation to the listed entity referred to in section 18ZB of the *Federal Court of Australia Act 1976*.

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

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

### **38X Proceedings arising out of administration of Court**

Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Court under this Part, including any proceeding relating to anything done by the Chief Executive Officer under this Part, may be instituted by or against the Commonwealth, as the case requires.

### **38Y Protection of persons involved in handling etc. complaints**

- (1) In exercising powers or performing functions under paragraph 21B(1A)(c) and subsection 21B(1B), or assisting in exercising those powers or performing those functions, a complaint

handler has the same protection and immunity as a Justice of the High Court.

- (2) In authorising a person or body under subsection 21B(3A), the Chief Justice has the same protection and immunity as a Justice of the High Court.
- (3) A witness requested to attend, or appearing, before a complaint handler handling a complaint has the same protection, and is subject to the same liabilities in a proceeding, as a witness in a case tried by the High Court.
- (4) A lawyer assisting, or appearing on behalf of a person before, a complaint handler handling a complaint has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

### **38Z 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 the Family Court, of the Federal Circuit Court or of a Family Court of a State has the same protection and immunity as a Judge of the Family Court has in performing the functions of a Judge.

Note: *Registrar* is defined in subsection 4(1).

- (2) This section does not limit any other protection or immunity such a Registrar has (in relation to such a conference or otherwise).

## **Part V—Jurisdiction of courts**

### **Division 1—Jurisdiction in matrimonial causes**

#### **39 Jurisdiction in matrimonial causes**

- (1) Subject to this Part, a matrimonial cause may be instituted under this Act:
  - (a) in the Family Court; or
  - (b) in the Supreme Court of a State or a Territory.
- (1A) Subject to this Part, a matrimonial cause (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of *matrimonial cause* in subsection 4(1)) may be instituted under this Act in the Federal Circuit Court of Australia.
- (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 Family Court and on the Supreme Court of each Territory, with respect to matters arising under this Act in respect of which:
- (a) matrimonial causes are instituted under this Act; or
- (b) matrimonial causes are continued in accordance with section 9; or
- (d) proceedings are instituted under regulations made for the purposes of section 109, 110, 111, 111A or 111B or of paragraph 125(1)(f) or (g) or under Rules of Court made for the purposes of paragraph 123(1)(r); or
- (da) proceedings are instituted under Division 4 of Part XIII AA or under regulations made for the purposes of section 111CZ; or
- (e) proceedings are instituted under section 117A.
- (5AA) Subject to this Part and to section 111AA, the Federal Circuit Court of Australia has, and is taken always to have had, jurisdiction with respect to matters arising under this Act in respect of which matrimonial causes (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of **matrimonial cause** in subsection 4(1)) are instituted under this Act.

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- (5A) Subject to this Part and to section 111AA, the Federal Circuit Court of Australia has jurisdiction with respect to matters arising under this Act in respect of which proceedings are instituted under:
- (a) regulations made for the purposes of section 109, 110, 111, 111A or 111B; or
  - (b) regulations made for the purposes of paragraph 125(1)(f) or (g); or
  - (c) section 117A; or
  - (d) proceedings are instituted under Division 4 of Part XIII AA or under regulations made for the purposes of section 111CZ.
- (6) Subject to this Part and to section 111AA, each court of summary jurisdiction of each State is invested with federal jurisdiction, and jurisdiction is conferred on each court of summary jurisdiction of each Territory, with respect to matters arising under this Act in respect of which:
- (a) matrimonial causes (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of *matrimonial cause* in subsection 4(1)) are instituted under this Act; or
  - (b) matrimonial causes (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of *matrimonial cause* in subsection 4(1)) are continued in accordance with section 9; or
  - (d) proceedings are instituted under:
    - (i) regulations made for the purposes of section 109, 110, 111, 111A or 111B; or
    - (ii) regulations made for the purposes of paragraph 125(1)(f) or (g); or
    - (iii) standard Rules of Court made for the purposes of paragraph 123(1)(r); or
    - (iv) Rules of Court made for the purposes of paragraph 87(1)(j) of the *Federal Circuit Court of Australia Act 1999*; or
  - (da) proceedings are instituted under Division 4 of Part XIII AA or under regulations made for the purposes of section 111CZ; or

- (e) proceedings are instituted under section 117A.
- (7) The Governor-General may, by Proclamation, fix a day as the day on and after which proceedings in relation to matters arising under this Part may not be instituted in, or transferred to, a court of summary jurisdiction in a specified State or Territory.
- (7AAA) Without limiting the generality of subsection (7), a Proclamation under that subsection may be expressed to apply only in relation to one or more of the following:
- (a) proceedings of specified classes;
  - (b) the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction in a specified part of a State or Territory;
  - (c) the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction constituted in a specified way.
- (7AA) A court of summary jurisdiction in a State or Territory shall not hear or determine proceedings under this Act instituted in or transferred to that court otherwise than in accordance with any Proclamation in force under subsection (7).
- (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.

**Part V** Jurisdiction of courts

**Division 1** Jurisdiction in matrimonial causes

**Section 39**

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- (9) The jurisdiction conferred on or invested in a court by this section includes jurisdiction with respect to matters arising under any law of the Commonwealth in respect of which proceedings are transferred to that court in accordance with this Act.



## **Division 2—Jurisdiction in de facto financial causes**

### **39A Instituting proceedings**

*Instituting proceedings under this Act*

- (1) A de facto financial cause may be instituted under this Act in:
  - (a) the Family Court; or
  - (b) the Federal Circuit Court of Australia; 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.

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

**39B Jurisdiction in de facto financial causes**

- (1) Jurisdiction is conferred on:
- (a) the Family Court; and
  - (b) the Federal Circuit Court of Australia; and
  - (c) the Supreme Court of the Northern Territory of Australia; and
  - (d) each court of summary jurisdiction of each Territory;
- with respect to matters arising under this Act in respect of which de facto financial causes are instituted under this Act.

Note 1: The exercise of this jurisdiction by the Family Court is subject to section 40.

Note 2: The exercise of this jurisdiction by the Federal Circuit Court of Australia is subject to section 40A.

Note 3: The exercise of this jurisdiction by a Territory court is subject to sections 39C, 39D, 39E and 39F.

- (2) Each court of summary jurisdiction of each referring State is invested with federal jurisdiction with respect to matters arising under this Act in respect of which de facto financial causes are instituted under this Act.

Note: The exercise of this jurisdiction by a State court is subject to sections 39D and 39E.

- (3) This section has effect subject to this Part.

**39C Ceasing jurisdiction of Supreme Court of the Northern Territory of Australia**

- (1) The Governor-General may, by Proclamation, fix a day as the day on and after which a de facto financial cause:
- (a) may not be instituted in, or transferred to, the Supreme Court of the Northern Territory of Australia; or
  - (b) may be so instituted or transferred only where specified conditions are complied with.

- (2) Without limiting the generality of subsection (1), a Proclamation under that subsection may be expressed to apply only in relation to one or more of the following:
  - (a) proceedings of specified classes;
  - (b) the institution of proceedings in, or the transfer of proceedings to, the Supreme Court of the Northern Territory of Australia.
- (3) The Supreme Court of the Northern Territory of Australia must not hear and determine de facto financial causes otherwise than in accordance with any Proclamation in force under subsection (1).

### **39D Ceasing jurisdiction of State or Territory courts of summary jurisdiction**

- (1) The Governor-General may, by Proclamation, fix a day as the day on and after which a de facto financial cause may not be instituted in, or transferred to, a court of summary jurisdiction in a specified participating jurisdiction.
- (2) Without limiting the generality of subsection (1), a Proclamation under that subsection may be expressed to apply only in relation to one or more of the following:
  - (a) proceedings of specified classes;
  - (b) the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction in a specified part of a participating jurisdiction;
  - (c) the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction constituted in a specified way.
- (3) A court of summary jurisdiction must not hear and determine de facto financial causes otherwise than in accordance with any Proclamation in force under subsection (1).

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**39E Revoking Proclamations ceasing jurisdiction of State or Territory courts**

- (1) The Governor-General may, by Proclamation, declare that a Proclamation under section 39C or 39D is revoked on and from a specified day.
- (2) If, under subsection (1), the Governor-General declares that a Proclamation under section 39C or 39D is revoked:
  - (a) this Part (including sections 39C and 39D) has effect as if the revoked Proclamation had not been made; but
  - (b) the effect of the revoked Proclamation on the jurisdiction of courts before the specified day is not affected.

**39F Territory court does not have jurisdiction unless a party is ordinarily resident in the Territory**

A court of a Territory must not hear or determine a de facto financial cause unless at least one of the parties to the proceedings is ordinarily resident in the Territory when the proceedings are instituted or are transferred to the court.

**39G Jurisdiction in relation to transferred matters under other Commonwealth laws**

If proceedings in relation to a matter arising under a law of the Commonwealth are transferred under this Act to a court that has jurisdiction conferred on or invested in it by this Division, the jurisdiction so conferred on or invested in the court includes jurisdiction in relation to that matter.

## **Division 3—Other provisions**

### **40 Limitations on jurisdiction of Family Court 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 Family Court under this Act 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.

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- (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 Family Court, may apply to the Family Court for an order transferring the proceedings to the Family Court, and the Court may order accordingly.
- (7) The standard Rules of Court may make provision in relation to matters arising in or in connexion with the transfer of proceedings in accordance with an order under subsection (6).
- (8) This section does not apply in relation to proceedings under Part VII or in relation to jurisdiction conferred on a federal court or a court of a Territory, or invested in a court of a State, by regulations made for the purposes of section 111C.

**40A Exercise of jurisdiction of Federal Circuit Court in certain States and Territories**

The jurisdiction of the Federal Circuit Court of Australia under this Act must not be exercised in respect of a particular proceeding in a particular State or Territory if the corresponding jurisdiction of the Family Court is not capable of being exercised in the State or Territory.

**41 Establishment of State Family Courts**

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

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- (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, 94 and 96 to the Supreme Court of a State were, in relation to the State in which the court referred to in the Proclamation is established, references to that court, and that court is invested with federal jurisdiction accordingly.
- (3A) Notwithstanding the issue of a Proclamation under subsection (2) and the provisions of subsection (3):
- (a) proceedings by way of cross-proceedings in relation to proceedings for principal relief that were pending in the Supreme Court of the State concerned immediately before the date fixed by the Proclamation; or
  - (b) proceedings of a kind referred to in any of paragraphs (c) to (f) of the definition of *matrimonial cause* in subsection 4(1) that:
    - (i) relate to proceedings for principal relief that were pending in the Supreme Court of the State concerned immediately before the date fixed by the Proclamation; or
    - (ii) are between parties between whom proceedings of a kind referred to in any of paragraphs (c) to (f) of that definition were so pending immediately before that date;
- may be instituted, heard and determined in that Supreme Court on or after the date fixed by the Proclamation.

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- (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 standard Rules of Court to a court of summary jurisdiction shall not be read as including references to a court to which this section applies.

**42 Law to be applied**

- (1) The jurisdiction conferred on a court, or with which a court is invested, by this Act shall be exercised in accordance with this Act and the applicable Rules of Court.
- (2) Where it would be in accordance with the common law rules of private international law to apply the laws of any country or place (including a State or Territory), the court shall, subject to the provisions of the *Marriage Act 1961*, apply the laws of that country or place.



**Note:** Subdivision D of Division 4 of Part XIII AA (Applicable law) may affect the law to be applied by a court.

### **43 Principles to be applied by courts**

- (1) The Family Court shall, in the exercise of its jurisdiction under this Act, and any other court exercising jurisdiction under this Act shall, in the exercise of that jurisdiction, have regard to:
  - (a) the need to preserve and protect the institution of marriage as the union of 2 people to the exclusion of all others voluntarily entered into for life;
  - (b) the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children;
  - (c) the need to protect the rights of children and to promote their welfare;
  - (ca) the need to ensure protection from family violence; and
  - (d) the means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationship to each other and to their children.
- (2) Paragraph (1)(a) does not apply in relation to the exercise of jurisdiction conferred or invested by Division 2.

### **44 Institution of proceedings**

- (1) Except as otherwise prescribed by the regulations or by the applicable Rules of Court, proceedings under this Act shall be instituted by application.

#### *Proceedings in relation to marriages*

- (1A) Proceedings under this Act for:
  - (a) a divorce order in relation to a marriage; or
  - (b) a decree of nullity of marriage;may be instituted by either party to the marriage or jointly by both parties to the marriage.

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*Limitation on applications for divorce orders within 2 years of marriage*

- (1B) An application for a divorce order in relation to a marriage shall not, without the leave of the court granted under subsection (1C), be filed within the period of 2 years after the date of the marriage unless there is filed with the application a certificate:
- (a) stating that the parties to the marriage have considered a reconciliation with the assistance of a specified person, who is:
    - (i) a family counsellor; or
    - (ii) if the court is the Family Court, the Federal Circuit Court of Australia or the Family Court of a State—an individual or an organisation nominated for the parties by a family consultant; or
    - (iii) if the court is not the Family Court, the Federal Circuit Court of Australia or the Family Court of a State—an individual or an organisation nominated for the parties by an appropriately qualified officer of the court; and
  - (b) signed by that person or on behalf of that organisation, as the case may be.
- (1C) Notwithstanding subsection (1B), if the court is satisfied that there are special circumstances by reason of which the hearing of an application for a divorce order in relation to a marriage should proceed notwithstanding that the parties have not considered a reconciliation with assistance of the kind referred to in subsection (1B), the court may:
- (a) if the application has not been filed—give leave for the application to be filed; or
  - (b) if the application has been filed—at any time before or during the hearing of the application, declare that it is so satisfied;
- and, where the court makes a declaration under paragraph (b), the application shall be deemed to have been duly filed and everything done pursuant to that application shall be as valid and effectual as

if the court had, before the application was filed, given leave under paragraph (a) for the application to be filed.

*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

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(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.

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- (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.

**44A Proceedings for divorce order**

The regulations may provide that proceedings for a divorce order may not be instituted in, or transferred to, a court of summary jurisdiction other than a prescribed court.

**45 Stay and transfer of proceedings**

- (1) Where there are pending in a court proceedings that have been instituted under this Act or are being continued in accordance with any of the provisions of section 9 and it appears to that court that other proceedings that have been so instituted or are being so continued in relation to the same marriage or void marriage or the same matter are pending in another court, the first-mentioned court may stay the first-mentioned proceedings for such time as it considers appropriate or may dismiss the proceedings.
- (1A) For the purposes of subsection (1), if the bankruptcy trustee of a bankrupt party to a marriage applies under section 139A of the *Bankruptcy Act 1966* for an order under Division 4A of Part VI of

that Act, proceedings relating to that application are taken to be proceedings under this Act in relation to the marriage.

(1B) For the purposes of subsection (1):

- (a) a de facto financial cause instituted in relation to a de facto relationship; and
- (b) proceedings relating to an application, by the bankruptcy trustee of one of the parties to the de facto relationship, under section 139A of the *Bankruptcy Act 1966* for an order under Division 4A of Part VI of that Act;

are taken to be proceedings under this Act in relation to the same matter.

(1C) For the purposes of subsection (1), the first proceedings set out in each item of following table, and the second proceedings set out in that item, are taken to relate to the same matter if one of the parties to each marriage, void marriage or de facto relationship referred to in that item is the same.

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**Proceedings relating to the same matter**

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<b>Item</b>	<b>First proceedings</b>	<b>Second proceedings</b>
1	a matrimonial cause instituted in relation to a marriage (or void marriage)	a de facto financial cause instituted in relation to a de facto relationship
2	a de facto financial cause instituted in relation to a de facto relationship	a de facto financial cause instituted in relation to a de facto relationship

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(2) Where there are pending in a court proceedings that have been instituted under this Act or are being continued in accordance with any of the provisions of section 9 and it appears to that court that it is in the interests of justice, or of convenience to the parties, that the proceedings be dealt with in another court having jurisdiction under this Act, the court may transfer the proceedings to the other court. However, this subsection does not apply to particular proceedings if:

- (a) the first-mentioned court is the Family Court and the other court is the Federal Circuit Court of Australia; or

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- (b) the first-mentioned court is the Federal Circuit Court of Australia and the other court is the Family Court.

Note 1: For transfers from the Family Court to the Federal Circuit Court of Australia, see section 33B.

Note 2: For transfers from the Federal Circuit Court of Australia to the Family Court, see section 39 of the *Federal Circuit Court of Australia Act 1999*.

- (3) A transfer under subsection (2) may be made on the application of any party to the proceedings.
- (4) A transfer under subsection (2) may be made on the transferring court's own initiative if the transfer is:
- (a) from a Family Court of a State to a court of summary jurisdiction prescribed in regulations made for the purposes of section 44A; or
  - (b) from a court of summary jurisdiction prescribed in those regulations to a Family Court of a State.

**45A Summary decrees**

*No reasonable prospect of successfully defending proceedings*

- (1) The court may make a decree for one 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 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



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- (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 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 of 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.

*This section does not limit other powers*

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

Note: Part XIB also gives courts powers relating to vexatious proceedings.

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**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 Family Court; or
    - (ia) a Family Court of a State; or
    - (ii) the Supreme Court of a State or Territory; or
    - (iii) the Federal Circuit Court of Australia; and
  - (b) unless the parties consent to the court hearing and determining the proceedings—the court must transfer the proceedings to:
    - (i) the Family Court; or
    - (ia) a Family Court of a State; or
    - (ii) the Supreme Court of a State or Territory; or
    - (iii) the Federal Circuit Court of Australia.
- (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 Family Court; or
  - (aa) a Family Court of a State; or
  - (b) the Supreme Court of a State or Territory; or
  - (c) the Federal Circuit Court of Australia.
- (2) Where proceedings referred to in subsection (1) are before it, the court may transfer the proceedings of its own motion, notwithstanding that the parties would be willing for the court to hear and determine the proceedings.
- (2A) If:
- (a) proceedings for a divorce order have been instituted in or transferred to a court of summary jurisdiction; and
  - (b) the proceedings are defended;
- the court is required to transfer the proceedings to:
- (c) the Family Court; or
  - (ca) a Family Court of a State; or
  - (d) the Supreme Court of a State or Territory; or
  - (e) the Federal Circuit Court of Australia.
- (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

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disposal of the proceedings by the court to which they are to be transferred.

- (3A) If proceedings instituted under this Act, or continued under section 9, are pending in a court of summary jurisdiction, each of the following Courts:
- (a) the Family Court;
  - (aa) a Family Court of a State;
  - (b) the Supreme Court of a State or Territory;
  - (c) the Federal Circuit Court of Australia;
- may, on the application of a party or of its own motion, order that the proceedings be removed to that Court.
- (4) Where proceedings are transferred or removed to a court in pursuance of this section, that court shall proceed as if the proceedings had been originally instituted in that court.
- (5) Without prejudice to the duty of a court of summary jurisdiction to comply with this section, failure by such a court so to comply does not invalidate any order of the court in the proceedings.

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

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

*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

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Minister must be satisfied that the Minister with responsibility for courts in that State or Territory has been consulted.

- (4) Subsection (3) does not limit section 17 of the *Legislation Act 2003* (rule-makers should consult before making legislative instrument).

**47 Courts to act in aid of each other**

All courts having jurisdiction under this Act shall severally act in aid of and be auxiliary to each other in all matters under this Act.

## Part VI—Divorce and nullity of marriage

### 48 Divorce

- (1) An application under this Act for a divorce order in relation to a marriage shall be based on the ground that the marriage has broken down irretrievably.
- (2) Subject to subsection (3), in a proceeding instituted by such an application, the ground shall be held to have been established, and the divorce order shall be made, if, and only if, the court is satisfied that the parties separated and thereafter lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of the filing of the application for the divorce order.
- (3) A divorce order shall not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

### 49 Meaning of separation

- (1) The parties to a marriage may be held to have separated notwithstanding that the cohabitation was brought to an end by the action or conduct of one only of the parties.
- (2) The parties to a marriage may be held to have separated and to have lived separately and apart notwithstanding that they have continued to reside in the same residence or that either party has rendered some household services to the other.

### 50 Effect of resumption of cohabitation

- (1) For the purposes of proceedings for a divorce order, where, after the parties to the marriage separated, they resumed cohabitation on one occasion but, within a period of 3 months after the resumption of cohabitation, they again separated and thereafter lived separately and apart up to the date of the filing of the application, the periods

of living separately and apart before and after the period of cohabitation may be aggregated as if they were one continuous period, but the period of cohabitation shall not be deemed to be part of the period of living separately and apart.

- (2) For the purposes of subsection (1), a period of cohabitation shall be deemed to have continued during any interruption of the cohabitation that, in the opinion of the court, was not substantial.

### **51 Nullity of marriage**

An application under this Act for a decree of nullity of marriage shall be based on the ground that the marriage is void.

### **52 Court not to make divorce order where application for decree of nullity before it**

Where both an application for a decree of nullity of a marriage and an application for a divorce order in relation to that marriage are before a court, the court shall not make a divorce order in relation to the marriage unless it has dismissed the application for a decree of nullity of the marriage.

### **53 Circumstances occurring before commencement of Act or outside Australia**

A decree may be made, or refused, under this Part by reason of facts and circumstances notwithstanding that those facts and circumstances, or some of them, took place before the commencement of this Act or outside Australia.

### **55 When divorce order takes effect**

- (1) Subject to this section, a divorce order made under this Act takes effect by force of this section:
- (a) at the expiration of a period of 1 month from the making of the order; or
  - (b) from the making of an order under section 55A;

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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 Family Court of Australia of the making, by a Registrar or a Judicial 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 Court of Australia of the making, by a 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.

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**55A Divorce order where children**

- (1) A divorce order in relation to a marriage does not take effect unless the court has, by order, declared that it is satisfied:
  - (a) that there are no children of the marriage who have not attained 18 years of age; or
  - (b) that the only children of the marriage who have not attained 18 years of age are the children specified in the order and that:
    - (i) proper arrangements in all the circumstances have been made for the care, welfare and development of those children; or
    - (ii) there are circumstances by reason of which the divorce order should take effect even though the court is not satisfied that such arrangements have been made.
- (2) Where, in proceedings for a divorce order in relation to a marriage, the court doubts whether the arrangements made for the care, welfare and development of a child of the marriage are proper in all the circumstances, the court may adjourn the proceedings until a report has been obtained from a family consultant regarding those arrangements.
- (3) For the purposes of this section, a child (including an ex-nuptial child of either party to the marriage, a child adopted by either of them or a child who is not a child of either of them) is a child of the marriage if the child was treated by both parties to the marriage as a child of their family at the relevant time.
- (4) For the purposes of subsection (3), the relevant time is the time immediately before the time when the parties to the marriage separated or, if they have separated on more than one occasion, the time immediately before the time when they last separated before the institution of the proceedings in which the divorce order was made.

**56 Certificate as to divorce order**

- (1) If a divorce order takes effect, the Registry Manager of the court by which the order was made must prepare and file a memorandum of the fact and of the date on which the divorce order took effect.
- (2) If a divorce order has taken effect, any person is entitled, on application to the Registry Manager of the court by which the divorce order was made, to receive a certificate signed by the Registrar of that court that the divorce order has taken effect.
- (3) A certificate given under subsection (2) is, in all courts (whether exercising federal jurisdiction or not) and for all purposes, prima facie evidence of the matters specified in the certificate.
- (4) The regulations may provide for the establishment of central records of decrees made under this Act and for the notification of decrees to the appropriate marriage registering authorities of the States and Territories.

**57 Rescission of divorce order where parties reconciled**

Despite anything contained in this Part, if a divorce order has been made in relation to a marriage, the court may, at any time before the order takes effect, upon the application of the parties to the marriage, rescind the divorce order on the ground that the parties have become reconciled.

**58 Rescission of divorce order on ground of miscarriage of justice**

If a divorce order has been made in proceedings but has not taken effect, the court by which the divorce order was made may, on the 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.

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**59 Re-marriage**

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

## **Part VII—Children**

### **Division 1—Introductory**

#### **Subdivision A—What this Division does**

##### **60A What this Division does**

This Division contains:

- (a) a statement of the object of this Part and the principles underlying it, and an outline of this Part (Subdivision B); and
- (aa) provisions dealing with the best interests of the child in court proceedings (Subdivision BA); and
- (ab) provisions dealing with an adviser's obligations in relation to the best interests of the child (Subdivision BB); and
- (b) provisions relevant to the interpretation and application of this Part (Subdivision C); and
- (c) provisions relevant to how this Act applies to certain children (Subdivision D); and
- (d) provisions about the use of family dispute resolution before applying for an order under this Part (Subdivision E).

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

#### **Subdivision B—Object, principles and outline**

##### **60B Objects of Part and principles underlying it**

- (1) The objects of this Part are to ensure that the best interests of children are met by:
  - (a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and

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- (b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and
  - (c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and
  - (d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.
- (2) The principles underlying these objects are that (except when it is or would be contrary to a child's best interests):
- (a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
  - (b) children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and
  - (c) parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and
  - (d) parents should agree about the future parenting of their children; and
  - (e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).
- (3) For the purposes of subparagraph (2)(e), an Aboriginal child's or Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:
- (a) to maintain a connection with that culture; and
  - (b) to have the support, opportunity and encouragement necessary:
    - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
    - (ii) to develop a positive appreciation of that culture.

- (4) An additional object of this Part is to give effect to the Convention on the Rights of the Child done at New York on 20 November 1989.

Note: The text of the Convention is set out in Australian Treaty Series 1991 No. 4 ([1991] ATS 4). In 2011, 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](http://www.austlii.edu.au)).

## 60C Outline of Part

An outline of this Part is set out below.

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

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



<b>OUTLINE OF PART</b>	
<b>Item</b>	<b>Divisions and coverage</b>
9	<b>Division 9—Injunctions</b> <ul style="list-style-type: none"><li>proceedings for injunctions in relation to children</li></ul>
10	<b>Division 10—The representation of the child’s interests</b> the representation of a child’s interests in proceedings by an independent children’s lawyer
11	<b>Division 11—Family violence</b> <ul style="list-style-type: none"><li>the relationship between certain parenting orders and family violence orders</li></ul>
12	<b>Division 12—Proceedings and jurisdiction</b> <ul style="list-style-type: none"><li>institution of proceedings and procedure</li><li>jurisdiction of courts</li><li>presumptions of parentage</li><li>parentage evidence</li><li>places and people to which this Part extends and applies</li></ul>
12A	<b>Division 12A—Principles for conducting child-related proceedings</b> <ul style="list-style-type: none"><li>principles for conducting proceedings under this Part and certain other incidental proceedings</li><li>duties and powers of the court related to giving effect to the principles</li><li>matters relating to evidence</li></ul>
13	<b>Division 13—State, Territory and overseas orders</b> <ul style="list-style-type: none"><li>registration of State and Territory orders dealing with children</li><li>registration of overseas orders dealing with children</li><li>transmission of Australian orders to overseas jurisdictions</li></ul>

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<b>OUTLINE OF PART</b>	
<b>Item</b>	<b>Divisions and coverage</b>
13A	<b>Division 13A—Enforcement of orders affecting children</b> <ul style="list-style-type: none"><li>• court may do any or all of the following:<ul style="list-style-type: none"><li>(a) require a person who contravenes an order affecting children to participate in an appropriate post-separation parenting program designed to help in the resolution of conflicts about parenting;</li><li>(b) make a further parenting order that compensates a person for time that a child did not spend with the person, or for time that a child did not live with the person, as a result of the contravention;</li><li>(c) adjourn the proceedings to enable an application to be made for a further parenting order;</li></ul></li><li>• court must take other action in respect of a person who contravenes an order affecting children if the court is satisfied:<ul style="list-style-type: none"><li>(a) where the contravention is an initial contravention—that the person has behaved in a way that showed a serious disregard for his or her parenting obligations; or</li><li>(b) where the contravention is a second or subsequent contravention—that it is not appropriate for the person to be dealt with by requiring his or her attendance at a post-separation parenting program;</li></ul></li></ul>
14	<b>Division 14—Miscellaneous</b> <ul style="list-style-type: none"><li>• miscellaneous matters relating to children</li></ul>

**Subdivision BA—Best interests of the child: court proceedings**

**60CA Child’s best interests paramount consideration in making a parenting order**

In deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

### **60CB Proceedings to which Subdivision applies**

- (1) This Subdivision applies to any proceedings under this Part in which the best interests of a child are the paramount consideration.

Note: Division 10 also allows a court to make an order for a child's interests to be independently represented by a lawyer in proceedings under this Part in which the best interests of a child are the paramount consideration.

- (2) This Subdivision also applies to proceedings, in relation to a child, to which subsection 60G(2), 63F(2) or 63F(6) or section 68R applies.

### **60CC How a court determines what is in a child's best interests**

#### *Determining child's best interests*

- (1) Subject to subsection (5), in determining what is in the child's best interests, the court must consider the matters set out in subsections (2) and (3).

Note: Section 68P also limits the effect of this section on a court making decisions under that section about limiting, or not providing, an explanation to a child of an order or injunction that is inconsistent with a family violence order.

#### *Primary considerations*

- (2) The primary considerations are:
- (a) the benefit to the child of having a meaningful relationship with both of the child's parents; and
  - (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

Note: Making these considerations the primary ones is consistent with the objects of this Part set out in paragraphs 60B(1)(a) and (b).

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- (2A) In applying the considerations set out in subsection (2), the court is to give greater weight to the consideration set out in paragraph (2)(b).

*Additional considerations*

- (3) Additional considerations are:
- (a) any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views;
  - (b) the nature of the relationship of the child with:
    - (i) each of the child's parents; and
    - (ii) other persons (including any grandparent or other relative of the child);
  - (c) the extent to which each of the child's parents has taken, or failed to take, the opportunity:
    - (i) to participate in making decisions about major long-term issues in relation to the child; and
    - (ii) to spend time with the child; and
    - (iii) to communicate with the child;
  - (ca) the extent to which each of the child's parents has fulfilled, or failed to fulfil, the parent's obligations to maintain the child;
  - (d) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:
    - (i) either of his or her parents; or
    - (ii) any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living;
  - (e) the practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;

- (f) the capacity of:
  - (i) each of the child's parents; and
  - (ii) any other person (including any grandparent or other relative of the child);to provide for the needs of the child, including emotional and intellectual needs;
- (g) the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant;
- (h) if the child is an Aboriginal child or a Torres Strait Islander child:
  - (i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
  - (ii) the likely impact any proposed parenting order under this Part will have on that right;
- (i) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
- (j) any family violence involving the child or a member of the child's family;
- (k) if a family violence order applies, or has applied, to the child or a member of the child's family—any relevant inferences that can be drawn from the order, taking into account the following:
  - (i) the nature of the order;
  - (ii) the circumstances in which the order was made;
  - (iii) any evidence admitted in proceedings for the order;
  - (iv) any findings made by the court in, or in proceedings for, the order;
  - (v) any other relevant matter;
- (l) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;

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- (m) any other fact or circumstance that the court thinks is relevant.

*Consent orders*

- (5) If the court is considering whether to make an order with the consent of all the parties to the proceedings, the court may, but is not required to, have regard to all or any of the matters set out in subsection (2) or (3).

*Right to enjoy Aboriginal or Torres Strait Islander culture*

- (6) For the purposes of paragraph (3)(h), an Aboriginal child's or a Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:
  - (a) to maintain a connection with that culture; and
  - (b) to have the support, opportunity and encouragement necessary:
    - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
    - (ii) to develop a positive appreciation of that culture.

**60CD How the views of a child are expressed**

- (1) Paragraph 60CC(3)(a) requires the court to consider any views expressed by a child in deciding whether to make a particular 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.

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Note 1: Paragraph (a)—subsection 62G(3A) generally requires the person giving the report to ascertain the child's views and include those views in the report.

Note 2: Paragraph (b)—paragraph 68LA(5)(b) requires the independent children's lawyer for the child to ensure that the child's views are fully put before the court.

**60CE Children not required to express views**

Nothing in this Part permits the court or any person to require the child to express his or her views in relation to any matter.

**60CF Informing court of relevant family violence orders**

- (1) If a party to the proceedings is aware that a family violence order applies to the child, or a member of the child's family, that party must inform the court of the family violence order.
- (2) If a person who is not a party to the proceedings is aware that a family violence order applies to the child, or a member of the child's family, that person may inform the court of the family violence order.
- (3) Failure to inform the court of the family violence order does not affect the validity of any order made by the court.

**60CG Court to consider risk of family violence**

- (1) In considering what order to make, the court must, to the extent that it is possible to do so consistently with the child's best interests being the paramount consideration, ensure that the order:
  - (a) is consistent with any family violence order; and
  - (b) does not expose a person to an unacceptable risk of family violence.
- (2) For the purposes of paragraph (1)(b), the court may include in the order any safeguards that it considers necessary for the safety of those affected by the order.

**60CH Informing court of care arrangements under child welfare laws**

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

**60CI Informing court of notifications to, and investigations by, prescribed State or Territory 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 a prescribed State or Territory agency; or
    - (ii) an investigation, inquiry or assessment (however described) by a prescribed State or Territory 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 a prescribed State or Territory agency; or
  - (ii) an investigation, inquiry or assessment (however described) by a prescribed State or Territory 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.
- (4) In this section:

*prescribed State or Territory agency* means an agency that is a prescribed State or Territory agency for the purpose of section 69ZW.

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

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

- (1) If an adviser gives advice or assistance to a person about matters concerning a child and this Part, the adviser must:
- (a) inform the person that the person should regard the best interests of the child as the paramount consideration; and
  - (b) encourage the person to act on the basis that the child’s best interests are best met:
    - (i) by the child having a meaningful relationship with both of the child’s parents; and
    - (ii) by the child being protected from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and
    - (iii) in applying the considerations set out in subparagraphs (i) and (ii)—by giving greater weight to the consideration set out in subparagraph (ii).

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(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.

**Subdivision C—Interpretation and application of Part**

**60E Application of Part to void marriages**

This Part applies in relation to a purported marriage that is void as if the purported marriage were a marriage.

**Subdivision D—Interpretation—how this Act applies to certain children**

**60EA Definition of *de facto partner***

For the purposes of this Subdivision, a person is the *de facto partner* of another person if:

- (a) a relationship between the person and the other person (whether of the same sex or a different sex) is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; or
- (b) the person is in a de facto relationship with the other person.

**60F Certain children are children of marriage etc.**

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

- (2) A reference in this Act to a child of a marriage includes a reference to a child of:
- (a) a marriage that has been terminated by divorce or annulled (in Australia or elsewhere); or
  - (b) a marriage that has been terminated by the death of one party to the marriage.
- (3) A child of a marriage who is adopted by a person who, before the adoption, is not a prescribed adopting parent ceases to be a child of that marriage for the purposes of this Act.
- (4) The following provisions apply in relation to a child of a marriage who is adopted by a prescribed adopting parent:
- (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:
- (a) the standard Rules of Court; and
  - (b) the related Federal Circuit Court Rules.

**60G Family Court may grant leave for adoption proceedings by prescribed adopting parent**

- (1) Subject to subsection (2), the Family Court, the Supreme Court of the Northern Territory or the Family Court of a State may grant leave for proceedings to be commenced for the adoption of a child by a prescribed adopting parent.

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- (2) In proceedings for leave under subsection (1), the court must consider whether granting leave would be in the child's best interests, having regard to the effect of paragraph 60F(4)(a), or paragraph 60HA(3)(a), and of sections 61E and 65J.

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

**60H Children born as a result of artificial conception procedures**

- (1) If:
- (a) a child is born to a woman as a result of the carrying out of an artificial conception procedure while the woman was married to, or a de facto partner of, another person (the *other intended parent*); and
  - (b) either:
    - (i) the woman and the other intended parent consented to the carrying out of the procedure, and any other person who provided genetic material used in the procedure consented to the use of the material in an artificial conception procedure; or
    - (ii) under a prescribed law of the Commonwealth or of a State or Territory, the child is a child of the woman and of the other intended parent;
- then, whether or not the child is biologically a child of the woman and of the other intended parent, for the purposes of this Act:
- (c) the child is the child of the woman and of the other intended parent; and
  - (d) if a person other than the woman and the other intended parent provided genetic material—the child is not the child of that person.
- (2) If:
- (a) a child is born to a woman as a result of the carrying out of an artificial conception procedure; and
  - (b) under a prescribed law of the Commonwealth or of a State or Territory, the child is a child of the woman;

then, whether or not the child is biologically a child of the woman, the child is her child for the purposes of this Act.

(3) If:

- (a) a child is born to a woman as a result of the carrying out of an artificial conception procedure; and
- (b) under a prescribed law of the Commonwealth or of a State or Territory, the child is a child of a man;

then, whether or not the child is biologically a child of the man, the child is his child for the purposes of this Act.

(5) For the purposes of subsection (1), a person is to be presumed to have consented to an artificial conception procedure being carried out unless it is proved, on the balance of probabilities, that the person did not consent.

(6) In this section:

*this Act* includes:

- (a) the standard Rules of Court; and
- (b) the related Federal Circuit Court Rules.

#### **60HA Children of de facto partners**

(1) For the purposes of this Act, a child is the child of a person who has, or had, a de facto partner if:

- (a) the child is a child of the person and the person's de facto partner; or
- (b) the child is adopted by the person and the person's de facto partner or by either of them with the consent of the other; or
- (c) the child is, under subsection 60H(1) or section 60HB, a child of the person and the person's de facto partner.

This subsection has effect subject to subsection (2).

(2) A child of current or former de facto partners ceases to be a child of those partners for the purposes of this Act if the child is adopted

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by a person who, before the adoption, is not a prescribed adopting parent.

- (3) The following provisions apply in relation to a child of current or former de facto partners who is adopted by a prescribed adopting parent:
- (a) if a court granted leave under section 60G for the adoption proceedings to be commenced—the child ceases to be a child of those partners for the purposes of this Act;
  - (b) in any other case—the child continues to be a child of those partners for the purposes of this Act.
- (4) In this section:
- this Act* includes:
- (a) the standard Rules of Court; and
  - (b) the related Federal Circuit Court Rules.

**60HB Children born under surrogacy arrangements**

- (1) If a court has made an order under a prescribed law of a State or Territory to the effect that:
- (a) a child is the child of one or more persons; or
  - (b) each of one or more persons is a parent of a child;
- then, for the purposes of this Act, the child is the child of each of those persons.
- (2) In this section:
- this Act* includes:
- (a) the standard Rules of Court; and
  - (b) the related Federal Circuit Court Rules.

## **Subdivision E—Family dispute resolution**

### **60I Attending family dispute resolution before applying for Part VII order**

#### *Object of this section*

- (1) The object of this section is to ensure that all persons who have a dispute about matters that may be dealt with by an order under this Part (a **Part VII order**) make a genuine effort to resolve that dispute by family dispute resolution before the Part VII order is applied for.

#### *Phase 1 (from commencement to 30 June 2007)*

- (2) The dispute resolution provisions of the *Family Law Rules 2004* impose the requirements for dispute resolution that must be complied with before an application is made to the Family Court of Australia for a parenting order.
- (3) By force of this subsection, the dispute resolution provisions of the *Family Law Rules 2004* also apply to an application to a court (other than the Family Court of Australia) for a parenting order. Those provisions apply to the application with such modifications as are necessary.
- (4) Subsection (3) applies to an application for a parenting order if the application is made:
  - (a) on or after the commencement of this section; and
  - (b) before 1 July 2007.

#### *Phase 2 (from 1 July 2007 to 30 June 2008)*

- (5) Subsections (7) to (12) apply to an application for a Part VII order in relation to a child if:
  - (a) the application is made on or after 1 July 2007 and before 1 July 2008; and

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- (b) none of the parties to the proceedings on the application has applied, before 1 July 2007, for a Part VII order in relation to the child.

*Phase 3 (from 1 July 2008)*

- (6) Subsections (7) to (12) apply to all applications for a Part VII order in relation to a child that are made on or after 1 July 2008.

*Requirement to attempt to resolve dispute by family dispute resolution before applying for a parenting order*

- (7) Subject to subsection (9), a court exercising jurisdiction under this Act must not hear an application for a Part VII order in relation to a child unless the applicant files in the court a certificate given to the applicant by a family dispute resolution practitioner under subsection (8). The certificate must be filed with the application for the Part VII order.

*Certificate by family dispute resolution practitioner*

- (8) A family dispute resolution practitioner may give one of these kinds of certificates to a person:
  - (a) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but the person's failure to do so was due to the refusal, or the failure, of the other party or parties to the proceedings to attend;
  - (aa) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, because the practitioner considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to conduct the proposed family dispute resolution;
  - (b) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or



parties to the proceedings in relation to the issue or issues that the order would deal with, and that all attendees made a genuine effort to resolve the issue or issues;

- (c) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the person, the other party or another of the parties did not make a genuine effort to resolve the issue or issues;
- (d) a certificate to the effect that the person began attending family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the practitioner considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to continue the family dispute resolution.

Note: When an applicant files one of these certificates under subsection (7), the court may take the kind of certificate into account in considering whether to make an order referring to parties to family dispute resolution (see section 13C) and in determining whether to award costs against a party (see section 117).

*Exception*

- (9) Subsection (7) does not apply to an application for a Part VII order in relation to a child if:
  - (a) the applicant is applying for the order:
    - (i) to be made with the consent of all the parties to the proceedings; or
    - (ii) in response to an application that another party to the proceedings has made for a Part VII order; or
  - (b) the court is satisfied that there are reasonable grounds to believe that:
    - (i) there has been abuse of the child by one of the parties to 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

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- (iii) there has been family violence by one of the parties to the proceedings; or
- (iv) there is a risk of family violence by one of the parties to the proceedings; or
- (c) all the following conditions are satisfied:
  - (i) the application is made in relation to a particular issue;
  - (ii) a Part VII order has been made in relation to that issue within the period of 12 months before the application is made;
  - (iii) the application is made in relation to a contravention of the order by a person;
  - (iv) the court is satisfied that there are reasonable grounds to believe that the person has behaved in a way that shows a serious disregard for his or her obligations under the order; or
- (d) the application is made in circumstances of urgency; or
- (e) one or more of the parties to the proceedings is unable to participate effectively in family dispute resolution (whether because of an incapacity of some kind, physical remoteness from dispute resolution services or for some other reason); or
- (f) other circumstances specified in the regulations are satisfied.

*Referral to family dispute resolution when exception applies*

- (10) If:
- (a) a person applies for a Part VII order; and
  - (b) the person does not, before applying for the order, attend family dispute resolution with a family dispute resolution practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with; and
  - (c) subsection (7) does not apply to the application because of subsection (9);

the court must consider making an order that the person attend family dispute resolution with a family dispute resolution

practitioner and the other party or parties to the proceedings in relation to that issue or those issues.

(11) The validity of:

- (a) proceedings on an application for a Part VII order; or
- (b) any order made in those proceedings;

is not affected by a failure to comply with subsection (7) in relation to those proceedings.

(12) In this section:

*dispute resolution provisions* of the *Family Law Rules 2004* means:

- (a) Rule 1.05 of those Rules; and
- (b) Part 2 of Schedule 1 to those Rules;

to the extent to which they deal with dispute resolution.

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

(1) If:

- (a) subsections 60I(7) to (12) apply to an application for a Part VII order (see subsections 60I(5) and (6)); and
- (b) subsection 60I(7) does not apply to the application because the court is satisfied that there are reasonable grounds to believe that:
  - (i) there has been abuse of the child by one of the parties to the proceedings; or
  - (ii) there has been family violence by one of the parties to the proceedings;

a court must not hear the application unless the applicant has indicated in writing that the applicant has received information from a family counsellor or family dispute resolution practitioner about the services and options (including alternatives to court action) available in circumstances of abuse or violence.

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- (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.

## **Division 2—Parental responsibility**

### **61A What this Division does**

This Division deals with the concept of parental responsibility including, in particular:

- (a) what parental responsibility is; and
- (b) who has parental responsibility.

### **61B Meaning of *parental responsibility***

In this Part, *parental responsibility*, in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

### **61C Each parent has parental responsibility (subject to court orders)**

- (1) Each of the parents of a child who is not 18 has parental responsibility for the child.

Note 1: This section states the legal position that prevails in relation to parental responsibility to the extent to which it is not displaced by a parenting order made by the court. See subsection (3) of this section and subsection 61D(2) for the effect of a parenting order.

Note 2: This section does not establish a presumption to be applied by the court when making a parenting order. See section 61DA for the presumption that the court does apply when making a parenting order.

Note 3: Under section 63C, the parents of a child may make a parenting plan that deals with the allocation of parental responsibility for the child.

- (2) Subsection (1) has effect despite any changes in the nature of the relationships of the child's parents. It is not affected, for example, by the parents becoming separated or by either or both of them marrying or re-marrying.

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- (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.

**61D Parenting orders and parental responsibility**

- (1) A parenting order confers parental responsibility for a child on a person, but only to the extent to which the order confers on the person duties, powers, responsibilities or authority in relation to the child.
- (2) A parenting order in relation to a child does not take away or diminish any aspect of the parental responsibility of any person for the child except to the extent (if any):
- (a) expressly provided for in the order; or
  - (b) necessary to give effect to the order.

**61DA Presumption of equal shared parental responsibility when making parenting orders**

- (1) When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

Note: The presumption provided for in this subsection is a presumption that relates solely to the allocation of parental responsibility for a child as defined in section 61B. It does not provide for a presumption about the amount of time the child spends with each of the parents (this issue is dealt with in section 65DAA).

- (2) The presumption does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in:
- (a) abuse of the child or another child who, at the time, was a member of the parent's family (or that other person's family); or

- (b) family violence.
- (3) When the court is making an interim order, the presumption applies unless the court considers that it would not be appropriate in the circumstances for the presumption to be applied when making that order.
- (4) The presumption may be rebutted by evidence that satisfies the court that it would not be in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

**61DB Application of presumption of equal shared parental responsibility after interim parenting order made**

If there is an interim parenting order in relation to a child, the court must, in making a final parenting order in relation to the child, disregard the allocation of parental responsibility made in the interim order.

**61E Effect of adoption on parental responsibility**

- (1) This section applies if:
  - (a) a child is adopted; and
  - (b) immediately before the adoption, a person had parental responsibility for the child, whether in full or to a limited extent and whether because of section 61C or because of a parenting order.
- (2) The person's parental responsibility for the child ends on the adoption of the child, unless the adoption is by a prescribed adopting parent and leave was not granted under section 60G for the adoption proceedings to be commenced.

**61F Application to Aboriginal or Torres Strait Islander children**

In:

- (a) applying this Part to the circumstances of an Aboriginal or Torres Strait Islander child; or

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(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.



## **Division 3—Reports relating to children under 18**

### **62A What this Division does**

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

### **62B Court’s obligation to inform people to whom Part VII orders apply about family counselling, family dispute resolution and other family services**

If a court makes an order in proceedings under this Part, the court must inform the parties to the proceedings about the family counselling services, family dispute resolution services and other courses, programs and services available to help the parties adjust to the consequences of that order.

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

### **62G Reports by family consultants**

- (1) This section applies if, in proceedings under this Act, the care, welfare and development of a child who is under 18 is relevant.
  - (2) The court may direct a family consultant to give the court a report on such matters relevant to the proceedings as the court thinks desirable.
  - (3) If the court makes a direction under subsection (2), it may, if it thinks it necessary, adjourn the proceedings until the report has been given to the court.
- (3A) A family consultant who is directed to give the court a report on a matter under subsection (2) must:
- (a) ascertain the views of the child in relation to that matter; and
  - (b) include the views of the child on that matter in the report.

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

- (3B) Subsection (3A) does not apply if complying with that subsection would be inappropriate because of:
- (a) the child's age or maturity; or
  - (b) some other special circumstance.
- (4) The family consultant may include in the report, in addition to the matters required to be included in it, any other matters that relate to the care, welfare or development of the child.
- (5) For the purposes of the preparation of the report, the court may make any other orders, or give any other directions, that the court considers appropriate (including orders or directions that one or more parties to the proceedings attend, or arrange for the child to attend, an appointment or a series of appointments with a family consultant).

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

- (6) If:
- (a) a person fails to comply with an order or direction under subsection (5); or
  - (b) a child fails to attend an appointment with a family consultant as arranged in compliance with an order or direction under subsection (5);
- the family consultant must report the failure to the court.
- (7) On receiving a report under subsection (6), the court may give such further directions in relation to the preparation of the report as it considers appropriate.
- (8) A report given to the court pursuant to a direction under subsection (2) may be received in evidence in any proceedings under this Act.

## **Division 4—Parenting plans**

### **63A What this Division does**

This Division explains what parenting plans are.

### **63B Parents encouraged to reach agreement**

The parents of a child are encouraged:

- (a) to agree about matters concerning the child; and
- (b) to take responsibility for their parenting arrangements and for resolving parental conflict; and
- (c) to use the legal system as a last resort rather than a first resort; and
- (d) to minimise the possibility of present and future conflict by using or reaching an agreement; and
- (e) in reaching their agreement, to regard the best interests of the child as the paramount consideration.

Note: Parents are encouraged to reach an informal agreement between themselves about matters concerning their children by entering into a parenting plan. Parents who seek enforceable arrangements require court orders. These can be obtained by consent.

### **63C Meaning of *parenting plan* and related terms**

- (1) A *parenting plan* is an agreement that:
  - (a) is in writing; and
  - (b) is or was made between the parents of a child; and
  - (ba) is signed by the parents of the child; and
  - (bb) is dated; and
  - (c) deals with a matter or matters mentioned in subsection (2).
- (1A) An agreement is not a *parenting plan* for the purposes of this Act unless it is made free from any threat, duress or coercion.
- (2) A parenting plan may deal with one or more of the following:

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- (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.
- (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*.

### **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*.

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**63D Parenting plan may be varied or revoked by further written agreement**

A parenting plan, other than a plan to which section 63DB applies, may be varied or revoked by agreement in writing between the parties to the plan.

**63DA Obligations of advisers**

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

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

- (1) If an adviser gives advice or assistance to people in relation to parental responsibility for a child following the breakdown of the relationship between those people, the adviser must:
- (a) inform them that they could consider entering into a parenting plan in relation to the child; and
  - (b) inform them about where they can get further assistance to develop a parenting plan and the content of the plan.
- (2) If an adviser gives advice to people in connection with the making by those people of a parenting plan in relation to a child, the adviser must:
- (a) inform them that, if the child spending equal time with each of them is:
    - (i) reasonably practicable; and
    - (ii) in the best interests of the child;they could consider the option of an arrangement of that kind; and
  - (b) inform them that, if the child spending equal time with each of them is not reasonably practicable or is not in the best interests of the child but the child spending substantial and significant time with each of them is:
    - (i) reasonably practicable; and
    - (ii) in the best interests of the child;

they could consider the option of an arrangement of that kind; and

- (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.

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- (3) For the purposes of paragraph (2)(b), a child will be taken to spend *substantial and significant time* with a parent only if:
- (a) the time the child spends with the parent includes both:
    - (i) days that fall on weekends and holidays; and
    - (ii) days that do not fall on weekends or holidays; and
  - (b) the time the child spends with the parent allows the parent to be involved in:
    - (i) the child's daily routine; and
    - (ii) occasions and events that are of particular significance to the child; and
  - (c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.
- (4) Subsection (3) does not limit the other matters to which regard may be had in determining whether the time a child spends with a parent would be substantial and significant.
- (5) In this section:
- adviser* means a person who is:
- (a) a legal practitioner; or
  - (b) a family counsellor; or
  - (c) a family dispute resolution practitioner; or
  - (d) a family consultant.

**63DB Registered parenting plans**

*Application of section*

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

*Saving of registered parenting plan*

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



*No variation of registered parenting plan*

- (3) A registered parenting plan cannot be varied.

*Revocation of registered parenting plan*

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

*Registration of revocation required*

- (5) An agreement revoking a registered parenting plan:
- (a) may, subject to the applicable Rules of Court, be registered, in a court having jurisdiction under this Part, under section 63E; and
  - (b) does not have effect to revoke the plan until it is so registered.

**63E Registration of a revocation of a registered parenting plan**

- (1) This section applies to a registered parenting plan.
- (2) To apply for registration of an agreement (*revocation agreement*) revoking a registered parenting plan:
- (a) an application for registration of the revocation agreement must be lodged in accordance with the applicable Rules of Court; and
  - (b) the application must be accompanied by:
    - (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

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to whom the agreement relates. In determining whether it is appropriate to register the revocation agreement, the court:

- (a) must have regard to the information accompanying the application for registration; and
- (b) may, but is not required to, have regard to all or any of the matters set out in subsections 60CC(2) and (3).

**63F Child welfare provisions of registered parenting plans**

*Application of section*

- (1) This section applies to a registered parenting plan that contains child welfare provisions.
- (2) The court may, by order, vary the child welfare provisions in the plan if it considers the variation is required in the best interests of a child.
- (3) The child welfare provisions have effect, subject to subsections (5) and (6), as if they were provisions of a parenting order.

Note: Provisions of this Act relevant to the child welfare provisions having effect as provided in this subsection include:

- (a) Subdivisions C, D and E of Division 6 of this Part (dealing with obligations created by parenting orders (other than child maintenance orders)); and
  - (b) Division 13A of this Part and Part XIII (dealing generally with enforcement of orders and sanctions for contravening orders); and
  - (c) subsection 65D(2) (providing for discharge, variation, suspension and revival of parenting orders other than child maintenance orders); and
  - (d) other provisions of this Act (including subsection 64B(6)) that refer to parenting orders.
- (4) If provisions of the plan have effect under subsection (3) as a court order, a person who is a party to the plan is taken (for example, for the purposes of section 65Y) to be a party to the proceedings in which the order was made.
  - (5) Subsection (3) does not apply to the plan (whenever registered) to the extent (if at all) that the plan purports to determine that the

child concerned is to live with a person who is not a parent of the child.

- (6) Even though the plan is registered, the court, or another court having jurisdiction under this Part, must not enforce the child welfare provisions if it considers that to do so would be contrary to the best interests of a child.

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

**63G Child maintenance provisions of registered parenting plans—  
where not enforceable as maintenance agreements**

- (1) This section applies if:
- (a) a registered parenting plan contains child maintenance provisions; and
  - (b) the plan is not a maintenance agreement or, if it is a maintenance agreement, the child concerned is not a child of the relevant marriage.

- (2) The child maintenance provisions have effect, subject to subsections (3), (4) and (5), as if they were a child maintenance order made by the court.

Note: Provisions of this Act relevant to the child maintenance provisions having effect as a child maintenance order include:

- (a) Parts XIII and XIII A (dealing generally with enforcement of orders and sanctions for contravening orders); and
- (b) section 66S (providing for discharge, variation, suspension and revival of child maintenance orders); and
- (c) other provisions of this Act that refer to parenting orders, or to child maintenance orders.

- (3) Unless the plan provides otherwise, the child maintenance 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.

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- (4) If the child maintenance provisions include provisions (the *periodic provisions*) for the periodic payment of maintenance:
- (a) the periodic provisions continue to operate, if the plan so provides, in spite of the death of a party to the plan who is liable to make the periodic payments, and are binding on the legal personal representative of that party; but
  - (b) the periodic provisions do not continue to operate, in spite of anything in the plan, after the death of the person entitled to receive the periodic payments.
- (5) The child maintenance provisions have no effect, and are not enforceable in any way, at any time when an application could properly be made under the *Child Support (Assessment) Act 1989* by one of the parties to the plan for administrative assessment of child support (within the meaning of that Act) for the child concerned.
- Note: This subsection does not affect the operation of provisions of a parenting plan referred to in section 63CAA (child support matters).
- (6) Subsection (5) has effect whether or not an application for administrative assessment of child support for the child has in fact been made by a party to the plan.

**63H Court's powers to set aside, discharge, vary, suspend or revive registered parenting plans**

- (1A) This section applies to a registered parenting plan.
- (1) The court in which the plan was registered may set aside the plan, and its registration, if the court is satisfied:
- (a) that the concurrence of a party was obtained by fraud, duress or undue influence; or
  - (b) that the parties want the plan set aside; or
  - (c) that it is in the best interests of a child to set aside the plan.
- (2) In proceedings under subsection (1), to the extent that they are proceedings on the ground mentioned in paragraph (1)(c), the best interests of the child concerned are the paramount consideration.

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

- (3) Other provisions of this Act under which provisions of the parenting plan may be set aside or otherwise affected are:
- (a) subsection 63F(2)—under that subsection a court may vary child welfare provisions in the plan; and
  - (b) subsection 65D(2)—under that subsection a court may make a parenting order that discharges, varies, suspends or revives provisions of the plan that have effect as if they were a parenting order (other than a child maintenance order); and
  - (c) section 66S—under that section a court may discharge, vary, suspend or revive provisions of the plan that have effect as if they were a child maintenance order.
- (4) Except as permitted by subsection (1) or by a provision mentioned in subsection (3), a court must not set aside, discharge, vary, suspend or revive the whole or a part of the parenting plan.

## Division 5—Parenting orders—what they are

### 64A What this Division does

This Division explains what parenting orders are.

### 64B Meaning of *parenting order* and related terms

(1) A *parenting order* is:

- (a) an order under this Part (including an order until further order) dealing with a matter mentioned in subsection (2); or
- (b) an order under this Part discharging, varying, suspending or reviving an order, or part of an order, described in paragraph (a).

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

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

- (a) the person or persons with whom a child is to live;
- (b) the time a child is to spend with another person or other persons;
- (c) the allocation of parental responsibility for a child;
- (d) if 2 or more persons are to share parental responsibility for a child—the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility;
- (e) the communication a child is to have with another person or other persons;
- (f) maintenance of a child;
- (g) the steps to be taken before an application is made to a court for a variation of the order to take account of the changing needs or circumstances of:
  - (i) a child to whom the order relates; or
  - (ii) the parties to the proceedings in which the order is made;

- (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.
- (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

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- (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:
- (a) the standard Rules of Court; and
  - (b) the related Federal Circuit Court Rules.

**64C Parenting orders may be made in favour of parents or other persons**

A parenting order in relation to a child may be made in favour of a parent of the child or some other person.

**64D Parenting orders subject to later parenting plans**

- (1) Subject to subsection (2), a parenting order in relation to a child is taken to include a provision that the order is subject to a parenting plan that is:
  - (a) entered into subsequently by the child's parents; and
  - (b) agreed to, in writing, by any other person (other than the child) to whom the parenting order applies.
- (2) The court may, in exceptional circumstances, include in a parenting order a provision that the parenting order, or a specified provision of the parenting order, may only be varied by a subsequent order of the court (and not by a parenting plan).
- (3) Without limiting subsection (2), exceptional circumstances for the purposes of that subsection include the following:



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

## **Division 6—Parenting orders other than child maintenance orders**

### **Subdivision A—Introductory**

#### **65A What this Division does**

- (1) This Division deals with:
- (a) applying for and making parenting orders, other than child maintenance orders (Subdivision B); and
  - (b) the general obligations created by parenting orders, other than child maintenance orders (Subdivision C); and
  - (c) dealing with people who have been arrested (Subdivision D); and
  - (d) the obligations under parenting orders, other than child maintenance orders, relating to taking or sending children from Australia (Subdivision E).

Note: Paragraph (a)—section 60I provides that people with disputes about matters that may be dealt with in a Part VII order (which includes a parenting order) should generally make use of family dispute resolution before applying for the order.

- (2) Measures designed to improve communication between separated parents and to educate parents about their respective responsibilities in relation to their children are contained in this Division (see section 65DA).

Note: Division 13A provides for the compliance regime for dealing with contraventions, and alleged contraventions, of parenting orders.

#### **65AA Child’s best interests paramount consideration in making a parenting order**

Section 60CA provides that in deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

### **65B Division does not apply to child maintenance orders**

This Division does not apply to parenting orders to the extent that they consist of child maintenance orders. Child maintenance orders are dealt with in Division 7.

### **Subdivision B—Applying for and making parenting orders**

#### **65C Who may apply for a parenting order**

A parenting order in relation to a child may be applied for by:

- (a) either or both of the child's parents; or
- (b) the child; or
- (ba) a grandparent of the child; or
- (c) any other person concerned with the care, welfare or development of the child.

#### **65D Court's power to make parenting order**

(1) In proceedings for a parenting order, the court may, subject to sections 61DA (presumption of equal shared parental responsibility when making parenting orders) and 65DAB (parenting plans) and this Division, make such parenting order as it thinks proper.

**Note:** Division 4 of Part XIII AA (International protection of children) may affect the jurisdiction of a court to make a parenting order.

- (2) Without limiting the generality of subsection (1) and subject to section 61DA (presumption of equal shared parental responsibility when making parenting orders) and 65DAB (parenting plans) and this Division, a court may make a parenting order that discharges, varies, suspends or revives some or all of an earlier parenting order.
- (3) If the application for the parenting order was made as a result of the adjournment under paragraph 70NEB(1)(c) of proceedings under Subdivision E of Division 13A of Part VII:
  - (a) the court must hear and determine the application as soon as practicable; and

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- (b) if the court makes a parenting order on the application, the court may, if it thinks it is appropriate to do so, dismiss the proceedings under that Subdivision.

Note: The applicant may apply to the Family Court or to the Federal Circuit Court of Australia for the application for the parenting order or for the proceedings under Subdivision E of Division 13A of Part VII, or both, to be transferred to the Federal Circuit Court of Australia or to the Family Court, as the case requires (see section 33B of this Act and section 39 of the *Federal Circuit Court of Australia Act 1999*).

**65DAA Court to consider child spending equal time or substantial and significant time with each parent in certain circumstances**

*Equal time*

- (1) Subject to subsection (6), if a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child, the court must:
- (a) consider whether the child spending equal time with each of the parents would be in the best interests of the child; and
  - (b) consider whether the child spending equal time with each of the parents is reasonably practicable; and
  - (c) if it is, consider making an order to provide (or including a provision in the order) for the child to spend equal time with each of the parents.

Note 1: The effect of section 60CA is that in deciding whether to go on to make a parenting order for the child to spend equal time with each of the parents, the court will regard the best interests of the child as the paramount consideration.

Note 2: See subsection (5) for the factors the court takes into account in determining what is reasonably practicable.

*Substantial and significant time*

- (2) Subject to subsection (6), if:

- (a) a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child; and
- (b) the court does not make an order (or include a provision in the order) for the child to spend equal time with each of the parents;

the court must:

- (c) consider whether the child spending substantial and significant time with each of the parents would be in the best interests of the child; and
- (d) consider whether the child spending substantial and significant time with each of the parents is reasonably practicable; and
- (e) if it is, consider making an order to provide (or including a provision in the order) for the child to spend substantial and significant time with each of the parents.

Note 1: The effect of section 60CA is that in deciding whether to go on to make a parenting order for the child to spend substantial time with each of the parents, the court will regard the best interests of the child as the paramount consideration.

Note 2: See subsection (5) for the factors the court takes into account in determining what is reasonably practicable.

- (3) For the purposes of subsection (2), a child will be taken to spend ***substantial and significant time*** with a parent only if:
  - (a) the time the child spends with the parent includes both:
    - (i) days that fall on weekends and holidays; and
    - (ii) days that do not fall on weekends or holidays; and
  - (b) the time the child spends with the parent allows the parent to be involved in:
    - (i) the child's daily routine; and
    - (ii) occasions and events that are of particular significance to the child; and
  - (c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.

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- (4) Subsection (3) does not limit the other matters to which a court can have regard in determining whether the time a child spends with a parent would be substantial and significant.

*Reasonable practicality*

- (5) In determining for the purposes of subsections (1) and (2) whether it is reasonably practicable for a child to spend equal time, or substantial and significant time, with each of the child's parents, the court must have regard to:
- (a) how far apart the parents live from each other; and
  - (b) the parents' current and future capacity to implement an arrangement for the child spending equal time, or substantial and significant time, with each of the parents; and
  - (c) the parents' current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind; and
  - (d) the impact that an arrangement of that kind would have on the child; and
  - (e) such other matters as the court considers relevant.

Note: Paragraph (c) reference to future capacity—the court has power under section 13C to make orders for parties to attend family counselling or family dispute resolution or participate in courses, programs or services.

*Consent orders*

- (6) If:
- (a) the court is considering whether to make a parenting order with the consent of all the parties to the proceedings; and
  - (b) the order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child;
- the court may, but is not required to, consider the matters referred to in paragraphs (1)(a) to (c) or (if applicable) the matters referred to in paragraphs (2)(c) to (e).
- (7) To avoid doubt, subsection (6) does not affect the application of section 60CA in relation to a parenting order.

Note: Section 60CA requires the best interests of the child to be the paramount consideration in a decision whether to make a particular parenting order.

### **65DAB Court to have regard to parenting plans**

When making a parenting order in relation to a child, the court is to have regard to the terms of the most recent parenting plan (if any) that has been entered into between the child's parents (to the extent to which that plan relates to the child) if doing so would be in the best interests of the child.

### **65DAC Effect of parenting order that provides for shared parental responsibility**

- (1) This section applies if, under a parenting order:
  - (a) 2 or more persons are to share parental responsibility for a child; and
  - (b) the exercise of that parental responsibility involves making a decision about a major long-term issue in relation to the child.

- (2) The order is taken to require the decision to be made jointly by those persons.

Note: Subject to any court orders, decisions about issues that are not major long-term issues are made by the person with whom the child is spending time without a need to consult the other person (see section 65DAE).

- (3) The order is taken to require each of those persons:
  - (a) to consult the other person in relation to the decision to be made about that issue; and
  - (b) to make a genuine effort to come to a joint decision about that issue.
- (4) To avoid doubt, this section does not require any other person to establish, before acting on a decision about the child communicated by one of those persons, that the decision has been made jointly.

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**65DAE No need to consult on issues that are not major long-term issues**

- (1) If a child is spending time with a person at a particular time under a parenting order, the order is taken not to require the person to consult a person who:

- (a) has parental responsibility for the child; or
- (b) shares parental responsibility for the child with another person;

about decisions that are made in relation to the child during that time on issues that are not major-long term issues.

Note: This will mean that the person with whom the child is spending time will usually not need to consult on decisions about such things as what the child eats or wears because these are usually not major long-term issues.

- (2) Subsection (1) applies subject to any provision to the contrary made by a parenting order.

**65DA Parenting orders**

- (1) This section applies when a court makes a parenting order.
- (2) It is the duty of the court to include in the order particulars of:
- (a) the obligations that the order creates; and
  - (b) the consequences that may follow if a person contravenes the order.
- (3) If any of the persons to whom the order is directed is not represented by a legal practitioner, it is also the duty of the court to explain to the person, or to each of the persons:
- (a) the availability of programs to help people to understand their responsibilities under parenting orders; and
  - (b) the availability and use of location and recovery orders to ensure that parenting orders are complied with.
- (4) The court may cause to be prepared, and given to persons to whom a parenting order is directed, a document setting out particulars of the matters mentioned in paragraphs (3)(a) and (b).



- (5) If a person to whom the order is directed is represented by a legal practitioner, the court may request the practitioner:
  - (a) to assist in explaining to the person the matters mentioned in paragraphs (2)(a) and (b); and
  - (b) to explain to the person the matters mentioned in paragraphs (3)(a) and (b).
- (6) If a request is made by the court to a legal practitioner under paragraph (5)(a) or (b), it is the duty of the practitioner to comply with the request.
- (7) Failure to comply with a requirement of, or with a request made under, this section does not affect the validity of a parenting order.
- (8) Any matter that is required by this section to be included in a parenting order or any explanation that is required by this section to be given to a person is to be expressed in language that is likely to be readily understood by the person to whom the order is directed or the explanation is given.

**65F General requirements for counselling before parenting order made**

- (2) Subject to subsection (3), a court must not make a parenting order in relation to a child unless:
  - (a) the parties to the proceedings have attended family counselling to discuss the matter to which the proceedings relate; or
  - (b) the court is satisfied that there is an urgent need for the parenting order, or there is some other special circumstance (such as family violence), that makes it appropriate to make the order even though the parties to the proceedings have not attended a conference as mentioned in paragraph (a); or
  - (c) the court is satisfied that it is not practicable to require the parties to the proceedings to attend a conference as mentioned in paragraph (a).
- (3) Subsection (2) does not apply to the making of a parenting order if:

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- (a) it is made with the consent of all the parties to the proceedings; or
- (b) it is an order until further order.

**65G Special conditions for making parenting order about whom a child lives with or the allocation of parental responsibility by consent in favour of non-parent**

- (1) This section applies if:
  - (a) a court proposes to make a parenting order that deals with whom a child is to live with; and
  - (b) under the order, the child would not live with a parent, grandparent or other relative of the child; and
  - (c) the court proposes to make that order with the consent of all the parties to the proceedings.
- (1A) This section also applies if:
  - (a) a court proposes to make a parenting order that deals with the allocation of parental responsibility for a child; and
  - (b) under the order, no parent, grandparent or other relative of the child would be allocated parental responsibility for the child; and
  - (c) the court proposes to make that order with the consent of all the parties to the proceedings.
- (2) The court must not make the proposed order unless:
  - (a) the parties to the proceedings have attended a conference with a family consultant to discuss the matter to be determined by the proposed order; or
  - (b) the court is satisfied that there are circumstances that make it appropriate to make the proposed order even though the conditions in paragraph (a) are not satisfied.

**65H Children who are 18 or over or who have married or entered de facto relationships**

- (1) A parenting order must not be made in relation to a child who:

- (a) is 18 or over; or
  - (b) is or has been married; or
  - (c) is in a de facto relationship.
- (2) A parenting order in relation to a child stops being in force if the child turns 18, marries or enters into a de facto relationship.
- (3) A court having jurisdiction under this Part may make a declaration to the effect that the child is in, or has entered into, a de facto relationship.
- (4) A declaration under subsection (3) has effect for the purposes of this Act but does not have effect for any other purpose (including, for example, other laws of the Commonwealth or laws of the States and Territories).

### **65J Effect of adoption on parenting order**

- (1) This section applies if:
- (a) a child is adopted; and
  - (b) immediately before the adoption, a parenting order was in force in relation to the child.
- (2) The parenting order stops being in force on the adoption of the child, unless the adoption is by a prescribed adopting parent and leave was not granted under section 60G for the adoption proceedings to be commenced.

### **65K What happens when parenting order that deals with whom a child lives with does not make provision in relation to death of parent with whom child lives**

- (1) This section applies if:
- (a) a parenting order is in force that provides that a child is to live with one of the child's parents; and
  - (b) that parent dies; and
  - (c) the parenting order does not provide for what is to happen on that parent's death.

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- (2) The surviving parent cannot require the child to live with him or her.
- (3) The surviving parent, or another person (subject to section 65C), may apply for a parenting order that deals with the person or persons with whom the child is to live.
- (4) In an application under subsection (3) by a person who does not, at the time of the application, have any parental responsibility for the child, any person who, at that time, has any parental responsibility for the child is entitled to be a party to the proceedings.

**65L Family consultants may be required to supervise or assist compliance with parenting orders**

- (1) If a court makes a parenting order in relation to a child, the court may also, subject to subsection (2), make either or both of the following orders:
  - (a) an order requiring compliance with the parenting order, as far as practicable, to be supervised by a family consultant;
  - (b) an order requiring a family consultant to give any party to the parenting order such assistance as is reasonably requested by that party in relation to compliance with, and the carrying out of, the parenting order.
- (2) In deciding whether to make a particular order under subsection (1) in relation to a child, a court must regard the best interests of the child as the paramount consideration.

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

**65LA Court may order attendance at a post-separation parenting program**

- (1) In proceedings for a parenting order, the court may make an order directing a party to the proceedings to attend a post-separation parenting program.

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

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

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

- (3) In this section:

*proceedings for a parenting order* includes:

- (a) proceedings for the enforcement of a parenting order; and
- (b) any other proceedings in which a contravention of a parenting order is alleged.

### **65LB Conditions for providers of post-separation parenting programs**

- (1) An organisation meets the conditions in this section if:
- (a) it is a recipient organisation (see subsection (2)); or
  - (b) there is a recipient organisation in relation to the organisation (see subsection (3)).
- (2) An organisation is a recipient organisation for the purposes of paragraph (1)(a) if it receives, or has been approved to receive, funding under a program or a part of a program designated by the Minister under subsection (4) in order to provide services that include post-separation parenting programs.
- (3) An organisation is a recipient organisation in relation to another organisation for the purposes of paragraph (1)(b) if:
- (a) both:
    - (i) the other organisation is a member of the organisation; and
    - (ii) the organisation receives, or has been approved to receive, funding under a program or a part of a program designated by the Minister under subsection (4) in order

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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.

**Subdivision C—General obligations created by certain parenting orders**

**65M General obligations created by parenting order that deals with whom a child lives with**

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order deals with whom the child is to live with.
- (2) A person must not, contrary to the order:
  - (a) remove the child from the care of a person; or
  - (b) refuse or fail to deliver or return the child to a person; or

- (c) interfere with the exercise or performance of any of the powers, duties or responsibilities that a person has under the order.

**65N General obligations created by parenting order that deals with whom a child spends time with**

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order deals with whom the child is to spend time with.
- (2) A person must not:
  - (a) hinder or prevent a person and the child from spending time together in accordance with the order; or
  - (b) interfere with a person and the child benefiting from spending time with each other under the order.

**65NA General obligations created by parenting order that deals with whom a child communicates with**

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order deals with whom the child is to communicate with.
- (2) A person must not:
  - (a) hinder or prevent a person and the child from communicating with each other in accordance with the order; or
  - (b) interfere with the communication that a person and the child are supposed to have with each other under the order.

**65P General obligations created by parenting order that allocates parental responsibility**

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order allocates parental responsibility for the child to a person (the *carer*).

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- (2) A person must not hinder the carer in, or prevent the carer from, discharging that responsibility.

**65Q Court may issue warrant for arrest of alleged offender**

- (1) This section applies if:
- (a) a parenting order provides that:
    - (i) a child is to live with a person; or
    - (ii) a child is to spend time with a person; or
    - (iii) a child is to communicate with a person; and
  - (b) a court having jurisdiction under this Part is satisfied, on application by the person referred to in paragraph (1)(a), that there are reasonable grounds for believing that a person (the *alleged offender*) has contravened section 65M, 65N or 65NA in relation to the order; and
  - (c) there is an application before the court for the alleged offender to be dealt with under Division 13A for the alleged contravention; and
  - (d) the court is satisfied that the issue of a warrant is necessary to ensure that the alleged offender will attend before a court to be dealt with under Division 13A for the alleged contravention.
- (2) The court may issue a warrant authorising a person to whom it is addressed to arrest the alleged offender.
- (3) A warrant stops being in force:
- (a) if a date not later than 6 months after the issue of the warrant is specified in the warrant as the date when it stops being in force—on that date; or
  - (b) otherwise—6 months after the issue of the warrant.

**Subdivision D—Dealing with people who have been arrested**

**65R Situation to which Subdivision applies**

This Subdivision applies if a person:



- (a) is arrested under a warrant issued under subsection 65Q(2);  
or
- (b) is arrested without warrant under a recovery order.

**65S Arrested person to be brought before a court**

- (1) The arresting person must:
  - (a) ensure that the alleged offender is brought before a court having jurisdiction under this Part before the end of the holding period applicable under subsection (4); and
  - (b) take all reasonable steps to ensure that, before the alleged offender is brought before a court, the person who applied for 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.

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**65T Obligation of court—where application before it to deal with contravention**

- (1) This section applies if:
  - (a) the alleged offender is brought before a court under section 65S; and
  - (b) there is an application before the court for the alleged offender to be dealt with under Division 13A for the alleged contravention.
- (2) The court must, without delay, proceed to hear and determine the application.

**65U Obligation of court—where no application before it, but application before another court, to deal with contravention**

- (1) This section applies if:
  - (a) the alleged offender is brought before a court under section 65S; and
  - (b) there is no application, or no longer any application, before the court for the alleged offender to be dealt with under Division 13A for the alleged contravention; and
  - (c) the court is aware that there is an application before another court for the alleged offender to be dealt with under Division 13A for the alleged contravention.
- (2) The court must, without delay:
  - (a) order that the alleged offender is to be released from custody on his or her entering into a recognisance (with or without surety or security) that he or she will attend before the other court on a date, at a time and at a place specified by the court; or
  - (b) order the arresting person to arrange for the alleged offender to be brought before the other court on such date and at such time as the court specifies, being a date and time such that the alleged offender is to be brought before the other court as

soon as practicable, and in any event not more than 72 hours, after the order is made.

- (3) If a court makes an order under paragraph (2)(b) for the alleged offender to be brought before another court:
  - (a) subject to paragraph (c), the alleged offender may be kept in custody until he or she is brought before the other court; and
  - (b) if the alleged offender is brought before the other court as required by the order, the other court must, without delay, proceed to hear and determine the application mentioned in paragraph (1)(c); and
  - (c) if the alleged offender is not brought before the other court as required by the order, he or she must be released without delay.

**65V Obligation of court—where no application before any court to deal with contravention**

- (1) This section applies if:
  - (a) the alleged offender is brought before a court under section 65S; and
  - (b) there is no application, or no longer any application, before the court for the alleged offender to be dealt with under Division 13A for the alleged contravention; and
  - (c) so far as the court is aware, there is no application, or no longer any application, before any other court for the alleged offender to be dealt with under Division 13A for the alleged contravention.
- (2) The court must, without delay, order the release of the alleged offender.

**65W Applications heard as required by subsection 65T(2) or paragraph 65U(3)(b)**

- (1) If a court hearing an application as required by subsection 65T(2) or paragraph 65U(3)(b) adjourns the hearing, the court must:

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- (a) order the alleged offender to be kept in such custody as the court considers appropriate during the adjournment; or
  - (b) order that the alleged offender is to be released from custody, either on his or her entering into a recognisance (with or without surety or security) that he or she will attend before the court on the resumption of the hearing or otherwise.
- (2) This section does not authorise the holding in custody of the alleged offender during an adjournment of proceedings that:
- (a) is expressed to be for a period of more than 24 hours; or
  - (b) continues for more than 24 hours.

**Subdivision E—Obligations under parenting orders relating to taking or sending children from Australia**

**65X Interpretation**

- (1) In this Subdivision:

*parenting order to which this Subdivision applies* means a parenting order to the extent to which it provides, or would provide, that:

- (a) a child is to live with a person; or
  - (b) a child is to spend time with a person; or
  - (c) a child is to communicate with a person; or
  - (d) a person is to have parental responsibility for a child.
- (2) For the purposes of this Subdivision, if an appeal against a decision of a court in proceedings has been instituted and is pending, the proceedings are taken to be pending and sections 65Z and 65ZB (rather than sections 65Y and 65ZA) apply.

**65Y Obligations if certain parenting orders have been made**

- (1) If a parenting order to which this Subdivision applies is in force, a person who was a party to the proceedings in which the order was made, or a person who is acting on behalf of, or at the request of, a

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party, must not take or send the child concerned from Australia to a place outside Australia except as permitted by subsection (2).

Penalty: Imprisonment for 3 years.

Note: The ancillary offence provisions of the *Criminal Code*, including section 11.1 (attempts), apply in relation to the offence created by subsection (1).

- (2) Subsection (1) does not prohibit taking or sending the child from Australia to a place outside Australia if:
- (a) it is done with the consent in writing (authenticated as prescribed) of each person in whose favour the order referred to in subsection (1) was made; or
  - (b) it is done in accordance with an order of a court made, under this Part or under a law of a State or Territory, at the time of, or after, the making of the order referred to in subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

**65Z Obligations if proceedings for the making of certain parenting orders are pending**

- (1) If proceedings (the *Part VII proceedings*) for the making of a parenting order to which this Subdivision applies are pending, a person who is a party to the proceedings, or who is acting on behalf of, or at the request of, a party, must not take or send the child concerned from Australia to a place outside Australia except as mentioned in subsection (2).

Penalty: Imprisonment for 3 years.

Note: The ancillary offence provisions of the *Criminal Code*, including section 11.1 (attempts), apply in relation to the offence created by subsection (1).

- (2) Subsection (1) does not prohibit taking or sending the child from Australia to a place outside Australia if:
- (a) it is done with the consent in writing (authenticated as prescribed) of each other party to the Part VII proceedings; or

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- (b) it is done in accordance with an order of a court made, under this Part or under a law of a State or Territory, after the institution of the Part VII proceedings.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

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

- (1) This section applies if:
- (a) a parenting order to which this Subdivision applies is in force; and
  - (b) a person in whose favour the order was made has served on the captain, owner or charterer of an aircraft or vessel a statutory declaration made by the person not earlier than 7 days before the date of service that:
    - (i) relates to the order; and
    - (ii) complies with subsection (4).
- (2) The person on whom the declaration is served must not permit the child identified in the declaration to leave a port or place in Australia in the aircraft or vessel for a destination outside Australia except as permitted by subsection (3).

Penalty: 60 penalty units.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (2) does not prohibit permitting the child to leave Australia in the aircraft or vessel if:
- (a) the child leaves in the company, or with the consent in writing (authenticated as prescribed), of the person who made the statutory declaration; or

- (b) the child leaves in accordance with an order of a court made, under this Part or under a law of a State or Territory, at the time of, or after, the making of the order.

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

- (4) The statutory declaration must contain:
- (a) full particulars of the order, including:
    - (i) the full name and the date of birth of the child to whom the order relates; and
    - (ii) the full names of the parties to the proceedings in which the order was made; and
    - (iii) the terms of the order; and
  - (b) such other matters (if any) as are prescribed.

**65ZB Obligations of owners etc. of aircraft and vessels if proceedings for the making of certain parenting orders are pending**

- (1) This section applies if:
- (a) proceedings (the *Part VII proceedings*) for the making of a parenting order to which this Subdivision applies are pending; and
  - (b) a party to the proceedings has served on the captain, owner or charterer of a vessel a statutory declaration made by the party not earlier than 7 days before the date of service that:
    - (i) relates to the proceedings; and
    - (ii) complies with subsection (4).
- (2) The person on whom the declaration is served must not permit the child identified in the declaration to leave a port or place in Australia in the aircraft or vessel for a destination outside Australia except as permitted by subsection (3).

Penalty: 60 penalty units.

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

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Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (2) does not prohibit permitting the child to leave Australia in the aircraft or vessel if:
- (a) the child leaves in the company, or with the consent in writing (authenticated as prescribed), of the party who made the statutory declaration; or
  - (b) the child leaves in accordance with an order of a court made, under this Part or under a law of a State or Territory, after the institution of the Part VII proceedings.

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

- (4) The statutory declaration must contain:
- (a) full particulars of the Part VII proceedings, including:
    - (i) the full name and the date of birth of the child to whom the proceedings relate; and
    - (ii) the full names of the parties to the proceedings; and
    - (iii) the name of the court, the nature of the proceedings and the date of institution of the proceedings; and
    - (iv) if an appeal has been instituted in the proceedings—the name of the court in which the appeal was instituted and the date on which it was instituted; and
  - (b) a statement that the Part VII proceedings are pending at the date of the declaration; and
  - (c) such other matters (if any) as are prescribed.

**65ZC General provisions applicable to sections 65ZA and 65ZB**

- (1) A declaration under section 65ZA or 65ZB may be served on the owner or charterer of an aircraft or vessel, or on the agent of the owner of an aircraft or vessel, by sending the declaration by registered post addressed to the owner, charterer or agent at the principal place of business of the owner, charterer or agent.



- (2) The captain, owner or charterer of an aircraft or vessel, or the agent of the owner of an aircraft or vessel, is not liable in any civil or criminal proceedings in respect of anything done in good faith for the purpose of complying with section 65ZA or 65ZB.
- (3) If an act or omission by a person that constitutes an offence against subsection 65ZA(2) or 65ZB(2) is also an offence against any other law, the person may be prosecuted and convicted under that other law, but nothing in this subsection makes a person liable to be punished twice in respect of the same act or omission.

**65ZD State or Territory laws stopping children leaving Australia not affected**

Nothing in this Subdivision prevents or restricts the operation of any law of a State or Territory under which:

- (a) action may be taken to prevent a child from leaving Australia or being taken or sent outside Australia; or
- (b) a person may be punished in respect of the taking or sending of a child outside Australia.

## Division 7—Child maintenance orders

### Subdivision A—What this Division does

#### 66A What this Division does

This Division:

- (a) contains statements of objects and principles relevant to the making of child maintenance orders (Subdivision B); and
- (b) deals with the relationship between this Division and the *Child Support (Assessment) Act 1989* (Subdivision C); and
- (c) deals with applying for and making child maintenance orders (Subdivision D); and
- (d) deals with other aspects of courts' powers in relation to child maintenance orders (Subdivision E); and
- (da) deals with varying the maintenance of certain children (Subdivision EA); and
- (e) deals with when child maintenance orders stop being in force (Subdivision F); and
- (f) deals with the recovery of amounts paid under maintenance orders (Subdivision G).

### Subdivision B—Objects and principles

#### 66B Objects

- (1) The principal object of this Division is to ensure that children receive a proper level of financial support from their parents.
- (2) Particular objects of this Division include ensuring:
  - (a) that children have their proper needs met from reasonable and adequate shares in the income, earning capacity, property and financial resources of both of their parents; and
  - (b) that parents share equitably in the support of their children.

**66C Principles—parents have primary duty to maintain**

- (1) The parents of a child have, subject to this Division, the primary duty to maintain the child.
- (2) Without limiting the generality of subsection (1), the duty of a parent to maintain a child:
  - (a) is not of lower priority than the duty of the parent to maintain any other child or another person; and
  - (b) has priority over all commitments of the parent other than commitments necessary to enable the parent to support:
    - (i) himself or herself; or
    - (ii) any other child or another person that the parent has a duty to maintain; and
  - (c) is not affected by:
    - (i) the duty of any other person to maintain the child; or
    - (ii) any entitlement of the child or another person to an income tested pension, allowance or benefit.

**66D Principles—when step-parents have a duty to maintain**

- (1) The step-parent of a child has, subject to this Division, the duty of maintaining a child if, and only if, a court, by order under section 66M, determines that it is proper for the step-parent to have that duty.
- (2) Any duty of a step-parent to maintain a step-child:
  - (a) is a secondary duty subject to the primary duty of the parents of the child to maintain the child; and
  - (b) does not derogate from the primary duty of the parents to maintain the child.

**Subdivision C—Relationship with Child Support (Assessment) Act**

**66E Child maintenance order not to be made etc. if application for administrative assessment of child support could be made**

- (1) A court having jurisdiction under this Part must not, at any time, make, revive or vary a child maintenance order in relation to a child on the application of a person (the *applicant*) against, or in favour of, a person (the *respondent*) if an application could properly be made, at that time, by the applicant under the *Child Support (Assessment) Act 1989* for the respondent to be assessed in respect of the costs of the child, or vice versa.
- (2) Subsection (1) has effect whether or not an application for administrative assessment of child support for the child has in fact been made (whether by the applicant, the respondent or another person).
- (3) This section does not apply to proceedings under regulations made for the purposes of section 110 or 111A.

**Subdivision D—Applying for and making child maintenance orders**

**66F Who may apply for a child maintenance order**

- (1) Unless subsection (2) applies, a child maintenance order in relation to a child may be applied for by:
  - (a) either or both of the child's parents; or
  - (b) the child; or
  - (ba) a grandparent of the child; or
  - (c) any other person concerned with the care, welfare or development of the child.
- (2) A child maintenance order in relation to a child who is under the guardianship, or in the care (however described), of a person under a child welfare law may only be applied for by:

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

### **66G Court's power to make child maintenance order**

In proceedings for a child maintenance order, the court may, subject to this Division and to section 111AA, make such child maintenance order as it thinks proper.

### **66H Approach to be taken in proceedings for child maintenance order**

In proceedings for the making of a child maintenance order in relation to a child, the court must:

- (a) consider the financial support necessary for the maintenance of the child (this is expanded on in section 66J); and
- (b) determine the financial contribution, or respective financial contributions, towards the financial support necessary for the maintenance of the child, that should be made by a party, or by parties, to the proceedings (this is expanded on in section 66K).

### **66J Matters to be taken into account in considering financial support necessary for maintenance of child**

- (1) In considering the financial support necessary for the maintenance of a child, the court must take into account these (and no other) matters:
  - (a) the matters mentioned in section 66B; and
  - (b) the proper needs of the child (this is expanded on in subsection (2)); and
  - (c) the income, earning capacity, property and financial resources of the child (this is expanded on in subsection (3)).
- (2) In taking into account the proper needs of the child the court:

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- (a) must have regard to:
    - (i) the age of the child; and
    - (ii) the manner in which the child is being, and in which the parents expected the child to be, educated or trained; and
    - (iii) any special needs of the child; and
  - (b) may have regard, to the extent to which the court considers appropriate in the circumstances of the case, to any relevant findings of published research in relation to the maintenance of children.
- (3) In taking into account the income, earning capacity, property and financial resources of the child, the court must:
- (a) have regard to the capacity of the child to earn or derive income, including any assets of, under the control of or held for the benefit of the child that do not produce, but are capable of producing, income; and
  - (b) disregard:
    - (i) the income, earning capacity, property and financial resources of any other person unless, in the special circumstances of the case, the court considers it appropriate to have regard to them; and
    - (ii) any entitlement of the child or any other person to an income tested pension, allowance or benefit.
- (4) Subsections (2) and (3) do not limit, by implication, the matters to which the court may have regard in taking into account the matters referred to in subsection (1).

**66K Matters to be taken into account in determining contribution that should be made by party etc.**

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

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- (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

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proceedings, unless, in the special circumstances of the case, the court considers it appropriate to have regard to them.

- (5) In determining the financial contribution, or respective financial contributions, that should be made by a party, or by parties, to the proceedings, the court must consider the capacity of the party, or each of those parties, to provide maintenance by way of periodic payments before considering the capacity of the party, or each of those parties, to provide maintenance:
- (a) by way of lump sum payment; or
  - (b) by way of transfer or settlement of property; or
  - (c) in any other way.
- (6) Subsections (2) to (5) do not limit, by implication, the matters to which the court may have regard in taking into account the matters referred to in subsection (1).

**66L Children who are 18 or over**

- (1) A court must not make a child maintenance order in relation to a child who is 18 or over unless the court is satisfied that the provision of the maintenance is necessary:
- (a) to enable the child to complete his or her education; or
  - (b) because of a mental or physical disability of the child.
- The court may make such a child maintenance order, in relation to a child who is 17, to take effect when or after the child turns 18.
- (2) A court must not make a child maintenance order in relation to a child that extends beyond the day on which the child will turn 18 unless the court is satisfied that the provision of the maintenance beyond that day is necessary:
- (a) to enable the child to complete his or her education; or
  - (b) because of a mental or physical disability of the child.
- (3) A child maintenance order in relation to a child stops being in force when the child turns 18 unless the order is expressed to continue in force after then.



**66M When step-parents have a duty to maintain**

- (1) As stated in section 66D, a step-parent of a child has a duty of maintaining a child if, and only if, there is an order in force under this section.
- (2) A court having jurisdiction under this Part may, by order, determine that it is proper for a step-parent to have a duty of maintaining a step-child.
- (3) In making an order under subsection (2), the court must have regard to these (and no other) matters:
  - (a) the matters referred to in sections 60F, 66B and 66C; and
  - (b) the length and circumstances of the marriage to, or relationship with, the relevant parent of the child; and
  - (c) the relationship that has existed between the step-parent and the child; and
  - (d) the arrangements that have existed for the maintenance of the child; and
  - (e) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

**66N Determining financial contribution of step-parent**

In determining the financial contribution towards the financial support necessary for the maintenance of the child that should be made by a party to the proceedings who is a step-parent of the child, the court must take into account:

- (a) the matters referred to in sections 60F, 66B, 66C, 66D and 66K; and
- (b) the extent to which the primary duty of the parents to maintain the child is being, and can be fulfilled.

## **Subdivision E—Other aspects of courts’ powers**

### **66P General powers of court**

- (1) In proceedings for a child maintenance order, a court may do all or any of the following:
  - (a) order payment of a lump sum, whether in one amount or by instalments;
  - (b) order payment of a weekly, monthly, yearly or other periodic amount;
  - (c) order that a specified transfer or settlement of property be made by way of maintenance for a child;
  - (d) order that payment of an amount ordered to be paid be wholly or partly secured as the court specifies;
  - (e) order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
  - (f) order that payment be made to a specified person or public authority or into court;
  - (g) make a permanent order, an order pending the disposal of proceedings, an order for a fixed period, an order until a child attains a specified age or an order until further order;
  - (h) make an order imposing terms and conditions;
  - (i) make an order by consent;
  - (j) make any other order (whether or not of the same nature as those referred to in paragraphs (a) to (i)) that it considers appropriate;
  - (k) make an order under this Division at any time.
- (2) The making of an order of a kind referred to in paragraph (1)(c), or of any other order under this Division, in relation to the maintenance of a child does not prevent a court from making a subsequent order in relation to the maintenance of the child.

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- (3) The applicable Rules of Court may make provision with respect to the making of orders under this Division (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.

**66Q Urgent child maintenance orders**

If, in proceedings for a child maintenance order in relation to a child:

- (a) the court considers that the child is in immediate need of financial assistance; but
- (b) it is not practicable in the circumstances to determine immediately what order (if any) should be made;

the court may order the payment, pending the disposal of the proceedings, of such periodic or other amount as the court considers appropriate.

**66R Specification in orders of payments etc. for child maintenance purposes**

(1) If:

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

the court must:

- (c) express the order to be an order to which this section applies; and
- (d) specify:

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- (i) the child or children for whose maintenance provision is made by the payment, transfer or settlement; and
  - (ii) the portion of the payment, or the value of the portion of the property, attributable to the provision of maintenance for the child or each child, as the case may be.
- (2) If:
- (a) a court makes an order of a kind referred to in paragraph (1)(a); and
  - (b) the order:
    - (i) is not expressed to be an order to which this section applies; or
    - (ii) is expressed to be an order to which this section applies, but does not comply with paragraph (1)(d);
- any payment, transfer or settlement of a kind referred to in paragraph (1)(a), that the order has the effect of requiring, is to be taken not to make provision for the maintenance of a child.

**66S Modification of child maintenance orders**

- (1) This section applies if:
- (a) there is in force an order (the *first order*), for the maintenance of a child (whether or not made under this Act and whether made before or after the commencement of this section):
    - (i) made by a court; or
    - (ii) registered in a court; and
  - (b) a person (being someone who could apply for a child maintenance order in relation to the child) or persons (each of whom could do that) apply to the court for an order under this section in relation to the first order.
- (1A) With the consent of all the parties to the first order, the court may, subject to section 111AA, make an order:
- (a) discharging the first order; or

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- (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

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- (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.

### **Subdivision EA—Varying the maintenance of certain children**

#### **66SA Varying the maintenance of certain children**

- (1) This section applies to persons who:
  - (a) are parties to an agreement (the *original agreement*) dealing with the maintenance of a child; or
  - (b) are entitled to receive, or required to pay, maintenance in respect of a child under a court order;and cannot properly make an application under the *Child Support (Assessment) Act 1989* for the other person to be assessed in respect of the costs of the child.
- (2) The persons may, by registering a written agreement in a court having jurisdiction under this Part, vary or revoke the original agreement or order to the extent that it deals with maintenance of the child.

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

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

- (4) If the original agreement or order is varied under subsection (2), it:
- (a) continues to operate despite the death of a party to the agreement or of a person entitled to receive, or required to pay, maintenance under the order; and
  - (b) operates in favour of, and is binding on, the legal representative of that party or person;
- unless the agreement or order provides otherwise.
- (5) However, despite anything in the agreement or order, it does not continue to operate, to the extent that it requires the periodic payment of maintenance, after the death of the person entitled to receive those payments.
- (6) This section applies despite anything in Division 4.

**Subdivision F—When child maintenance orders stop being in force**

**66T Effect of child turning 18**

As stated in subsection 66L(3), a child maintenance order in relation to a child stops being in force when the child turns 18, unless the order is expressed to continue in force after then.

**66U Effect of death of child, person liable to pay or person entitled to receive**

- (1) A child maintenance order in relation to a child stops being in force on the death of the child.
- (2) A child maintenance order in relation to a child stops being in force on the death of the person liable to make payments under the order.



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- (3) Subsection (2) does not apply to an order made before the commencement of section 38 of the *Family Law Amendment Act 1983* if the order was expressed to continue in force throughout the life of the person for whose benefit the order was made or for a period that had not expired at the death of the person liable to make payments under the order and, in that case, the order is binding on the legal personal representative of the deceased person.
- (4) A child maintenance order in relation to a child stops being in force on the death of the person entitled to receive payments under the order.
- (5) Subsection (4) does not apply to an order if:
  - (a) the order is expressed to continue in force after the death of the person first entitled to receive payments under the order; and
  - (b) the order specifies the person who is to receive the payments after that death.

**66V Effect of adoption, marriage or entering into a de facto relationship**

- (1) A child maintenance order in relation to a child stops being in force if the child is adopted, marries or enters into a de facto relationship.
- (2) If a child to whom a child maintenance order applies dies, is adopted, marries or enters into a de facto relationship, the person entitled to receive payments under the order must, without delay, inform the person liable to make payments under the order.
- (3) Any amounts paid under a child maintenance order in relation to a period after the child dies, is adopted, marries or enters into a de facto relationship may be recovered in a court having jurisdiction under this Part.
- (4) A court having jurisdiction under this Part may make a declaration to the effect that a child is in, or has entered into, a de facto relationship.

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- (5) A declaration under subsection (4) has effect for the purposes of this Act but does not have effect for any other purpose (including, for example, other laws of the Commonwealth or laws of the States and Territories).

**66VA Children who are 18 or over: change of circumstances**

- (1) A child maintenance order made under section 66L:
- (a) to enable the child to complete his or her education; or
  - (b) because of a mental or physical disability of the child;
- stops being in force if the child ceases that education or ceases to have that disability.
- (2) The person to whom the maintenance is payable must, as soon as practicable, inform the person required to pay it of that change in circumstances.
- (3) Any amounts of maintenance paid under the child maintenance order after it stops being in force may be recovered in a court having jurisdiction under this Part.

**66W Recovery of arrears**

- (1) Nothing in subsection 66L(3), or in this Subdivision (apart from subsection (2) of this section), affects the recovery of arrears due under a child maintenance order in relation to a child when the order ceases to be in force.
- (2) If arrears are due under such an order when the order ceases to be in force, the court may, by order, retrospectively:
- (a) discharge the order if there is just cause for doing so; or
  - (b) vary the order so as to increase or decrease the arrears to be paid under the order if the court is satisfied that:
    - (i) the circumstances of the person liable to pay the arrears are such as to justify the variation; or
    - (ii) the circumstances of the person entitled to receive the arrears are such as to justify the variation; or

- (iii) in the case of an order that operated in favour of, or that was binding on, a legal personal representative—the circumstances of the estate are such as to justify the variation.

### **Subdivision G—Recovery of amounts paid under maintenance orders**

#### **66X Recovery of amounts paid, and property transferred or settled, under maintenance orders**

- (1) This section applies if:
  - (a) a court has at any time purported to make an order (the *purported order*) of a kind referred to in paragraph 66P(1)(a), (b) or (c) requiring a person (the *maintenance provider*) to pay an amount, or to transfer or settle property, by way of maintenance for a child; and
  - (b) the maintenance provider has:
    - (i) paid another person an amount or amounts; or
    - (ii) transferred or settled property;in compliance, or partial compliance, with the purported order; and
  - (c) a court has determined that the maintenance provider is not a parent or step-parent of the child.
- (2) If the maintenance provider applies to a court having jurisdiction under this Part for an order under this subsection, the court must make such order as it considers just and equitable in the circumstances, for:
  - (a) if the purported order was of a kind referred to in paragraph 66P(1)(a) or (b)—the repayment to the 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

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- (b) if the purported order was of the kind referred to in paragraph 66P(1)(c)—the return to the maintenance provider of:
- (i) the property referred to in subparagraph (1)(b)(ii) of this section; or
  - (ii) an amount up to, or equal to, the value of that property.
- The court may only order the repayment of an amount that is less than the amount, or the sum of the amounts, referred to in subparagraph (1)(b)(i) of this section, or the return of an amount that is less than the value of the property referred to in subparagraph (1)(b)(ii) of this section, in exceptional circumstances.
- (3) If the purported order was of the kind referred to in paragraph 66P(1)(c) and the court that made the order did so:
- (a) in part by way of providing maintenance for the child; and
  - (b) in part for some other purpose;
- the reference in paragraph (2)(b) to the property, or the value of the property, referred to in subparagraph (1)(b)(ii) is taken to be a reference to that property, or the value of that property, only to the extent to which that property was transferred or settled by way of providing maintenance for the child.
- (4) Without limiting paragraph (2)(b), the orders that the court may make under that paragraph include the following:
- (a) an order that a specified payment be made;
  - (b) an order that a specified transfer or settlement of property be made;
  - (c) an order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order.
- (5) An amount paid to the Commonwealth under section 30 of the *Child Support (Registration and Collection) Act 1988* is to be taken, for the purposes of this section, to have been paid to the

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

## **Division 8—Other matters relating to children**

### **Subdivision A—What this Division does**

#### **67A What this Division does**

This Division deals with:

- (a) the liability of a father to contribute towards child bearing expenses if he is not married to the child's mother (Subdivision B); and
- (b) orders for the location and recovery of children (Subdivision C); and
- (c) the reporting of allegations of child abuse and family violence (Subdivision D); and
- (d) other orders about children (Subdivision E).

### **Subdivision B—Father's liability to contribute towards child bearing expenses if not married to mother**

#### **67B Father liable to contribute towards maintenance and expenses of mother**

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

- (a) the maintenance of the mother for the childbirth maintenance period in relation to the birth of the child; and
- (b) the mother's reasonable medical expenses in relation to the pregnancy and birth; and
- (c) if the mother dies and the death is as a result of the pregnancy or birth, the reasonable expenses of the mother's funeral; and
- (d) if the child is stillborn, or dies and the death is related to the birth, the reasonable expenses of the child's funeral.

**67C Matters to be taken into account in proceedings under Subdivision**

- (1) In proceedings under this Subdivision in relation to the birth of a child, the court must, in determining the contribution that should be made by the father of the child, take into account the following matters only:
  - (a) the income, earning capacity, property and financial resources of the mother and the father of the child;
  - (b) commitments of each of those persons that are necessary to enable the person to support:
    - (i) himself or herself; or
    - (ii) any other child or another person that the person has a duty to maintain;
  - (c) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.
- (2) In taking into account the income, earning capacity, property and financial resources of a person, the court must have regard to the capacity of the person to earn and derive income, including any assets of, under the control of or held for the benefit of the person that do not produce, but are capable of producing, income.
- (3) In taking into account the income, earning capacity, property and financial resources of the mother, the court must disregard any entitlement of the mother to an income tested pension, allowance or benefit.
- (4) Subsections (2) and (3) do not limit the matters to which the court may have regard in taking into account matters referred to in subsection (1).

**67D Powers of court in proceedings under Subdivision**

- (1) In proceedings under this Subdivision in relation to the birth of a child, the court may make such order as it thinks proper.

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- (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.

**67E Urgent orders**

If, in proceedings under this Subdivision in relation to the birth of a child:

- (a) the court is of the opinion that the applicant is in immediate need of financial assistance; but



- (b) it is not practicable in the circumstances to determine immediately what order (if any) should be made (whether because the applicant has not yet given birth to the child or otherwise);

the court may order the payment, pending the disposal of the proceedings, of such periodic or other amount as the court considers appropriate.

### **67F Who may institute proceedings**

Proceedings under this Subdivision in relation to the birth of a child may be instituted by the mother or by the mother's legal personal representative.

### **67G Time limit for institution of proceedings**

- (1) Proceedings under this Subdivision in relation to the birth of a child may be instituted:
- (a) at any time during the pregnancy of the mother; or
  - (b) after the birth of the child, but not later than 12 months after the birth except by leave of the court.
- (2) The court must not grant leave under paragraph (1)(b) unless it is satisfied that refusal to grant leave would cause hardship to the applicant, the child or another person.

## **Subdivision C—Location and recovery of children**

### **67J Meaning of *location order* and *Commonwealth information order***

- (1) A *location order* is an order made by a court requiring:
- (a) a person to provide the Registry Manager of the court with information that the person has or obtains about the child's location; or
  - (b) the Secretary of a Department, or an appropriate authority of a Commonwealth instrumentality, to provide the Registry Manager of the court with information about the child's

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location that is contained in or comes into the records of the Department or instrumentality.

- (2) A *Commonwealth information order* is a location order described in paragraph (1)(b).

**67K Who may apply for a location order**

- (1) A location order in relation to a child may be applied for by:
- (a) a person with whom the child is to live under a parenting order; or
  - (b) a person with whom the child is to spend time under a parenting order; or
  - (c) a person with whom the child is to communicate under a parenting order; or
  - (caa) a person who has parental responsibility for the child under a parenting order; or
  - (ca) a grandparent of the child; or
  - (d) any other person concerned with the care, welfare or development of the child.
- (2) For the purposes of the Child Protection Convention, a person (including the Commonwealth central authority) may apply to a court for a location order.

- (3) In subsection (2):

*Child Protection Convention* has the same meaning as in section 111CA.

*Commonwealth central authority* has the same meaning as in section 111CA.

**67L Child's best interests paramount consideration in making a location order**

In deciding whether to make a location order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

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

**67M Provisions about location orders, other than Commonwealth information orders**

- (1) This section applies to location orders other than Commonwealth information orders.
- (2) Subject to section 67L, a court having jurisdiction under this Part or section 111CX, or exercising jurisdiction in proceedings arising under regulations made for the purposes of Part XIII AA, may make a location order if it is satisfied that the person to whom the order applies is likely to have information about the child's location.
- (3) If the person to whom a location order applies holds an office or position in, or in relation to, a Department or a Commonwealth instrumentality, the order does not apply to information that the person has or obtains because of holding that office or position.
- (4) A location order stays in force for 12 months or such longer period as the court considers appropriate.
- (5) While a location order is in force, the person to whom it applies must provide the information sought by the order as soon as practicable, or as soon as practicable after the person obtains it.
- (6) The person to whom a location order applies must comply with the order in spite of anything in any other law.

**67N Provisions about Commonwealth information orders**

- (1) This section applies to Commonwealth information orders.
- (2) Subject to section 67L, a court having jurisdiction under this Part or section 111CX, or exercising jurisdiction in proceedings arising under regulations made for the purposes of Part XIII AA, may make a Commonwealth information order if it is satisfied that information about the child's location is likely to be contained in,

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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.
- (5) A court may state that a Commonwealth information order only applies to records of a particular kind if the court considers that:
  - (a) the information sought by the order is only likely to be contained in records of that kind; and
  - (b) to apply the order to all records of the Department or Commonwealth instrumentality concerned would place an unreasonable burden on its resources.
- (6) A Commonwealth information order stays in force for 12 months.
- (7) While a Commonwealth information order is in force, the person to whom the order applies must, subject to subsection (9), provide the information sought by the order as soon as practicable, or as soon as practicable after it comes into the records of the Department or Commonwealth instrumentality concerned.

- (8) If the person (the *official*) to whom a Commonwealth information order applies provides another person (in accordance with the order) with information sought by the order, the official must, at the same time, provide the other person with any information about actual or threatened violence to the child concerned, to a parent of the child, or to another person with whom the child lives, that is in the records of the Department or Commonwealth instrumentality concerned.
- (9) A Commonwealth information order does not require the records of the Department or Commonwealth instrumentality concerned to be searched for the information sought by the order more often than once every 3 months unless specifically so ordered by the court.
- (10) The person to whom a Commonwealth information order applies must comply with the order in spite of anything in any other law.

**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

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

(f) with the leave of the court that made the location order:

(i) the Commonwealth central authority; or

(ii) a central authority or a competent authority of a Convention country.

Penalty: 120 penalty units.

Note: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

(2) Nothing in paragraphs (1)(a) to (e) authorises the disclosure of information to the applicant for the location order.

(3) In paragraph (1)(f):

*central authority* has the same meaning as in section 111CA.

*Commonwealth central authority* has the same meaning as in section 111CA.

*competent authority* has the same meaning as in section 111CA.

*Convention country* has the same meaning as in section 111CA.

### 67Q Meaning of *recovery order*

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

(a) requiring the return of a child to:

(i) a parent of the child; or

(ii) a person with whom the child is to live under a parenting order; or

(iii) a person with whom the child is to spend time under a parenting order; or

(iv) a person with whom the child is to communicate under a parenting order; or

(v) a person who has parental responsibility for the child;

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- (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 D of Division 6 deals with what is to happen to a person arrested without warrant under a recovery order.

Note 2: If a recovery order authorises a person to recover a child, the person is authorised to recover the child on each occasion that it is necessary to do so while the order remains in force: see subsection 67W(3).

**67R How recovery orders authorise or direct people**

- (1) An authorisation or direction described in paragraph 67Q(b), (c) or (d) may be addressed to:
  - (a) a named person; or
  - (b) every person from time to time holding or acting in a specified office of the Commonwealth or of a State or Territory.

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- (2) Without limiting the generality of subsection (1), an authorisation or direction described in paragraph 67Q(b), (c) or (d) may be addressed to:
- (a) a named person who holds an appointment as a child recovery officer under subsection (3); or
  - (b) every person from time to time holding or acting in an office of child recovery officer.
- (3) The Attorney-General may appoint persons to be child recovery officers for the purposes of this Subdivision.
- (4) An appointment under subsection (3) may be of:
- (a) a named person only; or
  - (b) every person from time to time holding or acting in a specified office of the Commonwealth or of a State or Territory.

**67S How recovery orders to stop and search etc. name or describe vehicles, places etc.**

An authorisation or direction described in paragraph 67Q(b) may be expressed to apply to:

- (a) a vehicle, vessel, aircraft, premises or place named or described either specifically or in general terms; or
- (b) any vehicle, vessel, aircraft, premises or place in which there is, at any time, reasonable cause to believe that the child concerned may be found.

**67T Who may apply for a recovery order**

A recovery order in relation to a child may be applied for by:

- (a) a person with whom the child is to live under a parenting order; or
- (b) a person with whom the child is to spend time under a parenting order; or
- (c) a person with whom the child is to communicate under a parenting order; or



- (caa) a person who has parental responsibility for the child under a parenting order; or
- (ca) a grandparent of the child; or
- (d) any other person concerned with the care, welfare or development of the child.

### **67U Court's power to make recovery order**

In proceedings for a recovery order, the court may, subject to section 67V, make such recovery order as it thinks proper.

### **67V Child's best interests paramount consideration in making a recovery order**

In deciding whether to make a recovery order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

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

### **67W How long recovery order remains in force**

- (1) A recovery order remains in force for the period specified in the order or 12 months, whichever is the shorter period.
- (3) To avoid doubt, unless a recovery order specifically provides to the contrary, each term of the order continues to have effect until the end of the period for which it remains in force regardless of whether anything has previously been done in accordance with the order.

### **67X Persons not to prevent or hinder taking of action under recovery order**

- (1) This section applies to a recovery order that authorises or directs a person or persons to take action as described in paragraph 67Q(b), (c) or (d).

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- (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).

**67Y Obligation to notify persons of child's return**

- (1) This section applies if:
- (a) a recovery order that consists of or includes provisions described in paragraph 67Q(a), (b), (c) or (d) is in force in relation to a child; and
  - (b) the child returns, or is returned, to the person who applied for the order.
- (2) The person must, as soon as practicable after the child's return, give notice of the child's return to:
- (a) the Registry Manager of the court that issued the recovery order; and
  - (b) if a location order in relation to the child is in force and was applied for by the person—the person to whom the location order applies.

## **Subdivision D—Allegations of child abuse and family violence**

### **67Z Where interested person makes allegation of child abuse**

- (1) This section applies if an interested person in proceedings under this Act alleges that a child to whom the proceedings relate has been abused or is at risk of being abused.
- (2) The interested person must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.
- (3) If a notice under subsection (2) is filed in a court, the Registry Manager must, as soon as practicable, notify a prescribed child welfare authority.

- (4) In this section:

*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.

*prescribed form* means the form prescribed by the applicable Rules of Court.

### **67ZA Where member of the Court personnel, family counsellor, family dispute resolution practitioner or arbitrator suspects child abuse etc.**

- (1) This section applies to a person in the course of performing duties or functions, or exercising powers, as:
  - (a) the Registrar or a Deputy Registrar of a Registry of the Family Court of Australia; or

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- (b) the Registrar or a Deputy Registrar of the Family Court of Western Australia; or
  - (c) a Registrar of the Federal Circuit Court of Australia; or
  - (d) a family consultant; or
  - (e) a family counsellor; or
  - (f) a family dispute resolution practitioner; or
  - (g) an arbitrator; or
  - (h) a lawyer independently representing a child's interests.
- (2) If the person has reasonable grounds for suspecting that a child has been abused, or is at risk of being abused, the person must, as soon as practicable, notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.
- (3) If the person has reasonable grounds for suspecting that a child:
- (a) has been ill treated, or is at risk of being ill treated; or
  - (b) has been exposed or subjected, or is at risk of being exposed or subjected, to behaviour which psychologically harms the child;
- the person may notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.
- 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.

**67ZB No liability for notification under section 67Z or 67ZA**

- (1) A person:
- (a) must give notice under subsection 67Z(3) or 67ZA(2); or
  - (b) may give notice under subsection 67ZA(3) or (4); or
  - (c) may disclose other information under subsection 67ZA(6);
- in spite of any obligation of confidentiality imposed on the person by this Act, another Act, another law or anything else (including a contract or professional ethics).
- (2) A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of a notification under subsection 67Z(3) or 67ZA(2).
- (3) A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of a notification under subsection 67ZA(3) or (4), or a disclosure under subsection 67ZA(6), if the notification or disclosure is made in good faith.
- (4) Evidence of a notification under subsection 67Z(3) or subsection 67ZA(2), (3) or (4), or a disclosure under subsection 67ZA(6), is not admissible in any court except where that evidence is given by the person who made the notification or disclosure.
- (5) In this section:
- court*** means a court (whether or not exercising jurisdiction under this Act) and includes a tribunal or other body concerned with professional ethics.

**67ZBA Where interested person makes allegation of family violence**

- (1) This section applies if an interested person in proceedings for an order under this Part in relation to a child alleges, as a consideration that is relevant to whether the court should make or refuse to make the order, that:
  - (a) there has been family violence by one of the parties to the proceedings; or
  - (b) there is a risk of family violence by one of the parties to the proceedings.
- (2) The interested person must file a notice in the prescribed 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:

*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.

*prescribed form* means the form prescribed by the applicable Rules of Court.

**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

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**Division 8** Other matters relating to children

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- (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 69ZW to obtain documents or information from State and Territory agencies in relation to the allegation.
- (5) Without limiting subparagraph (2)(a)(ii), the court must consider whether orders should be made, or an injunction granted, under section 68B.
- (6) A failure to comply with a provision of this section does not affect the validity of any order made in the proceedings for the order.

**Subdivision E—Other orders about children**

**67ZC Orders relating to welfare of children**

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

**Note:** Division 4 of Part XIII AA (International protection of children) may affect the jurisdiction of a court to make an order relating to the welfare of a child.

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

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

**67ZD Orders for delivery of travel documents**

If a court having jurisdiction under this Part considers that there is a possibility or threat that a child may be removed from Australia, it may order that the following documents be ordered up to the court on such conditions as the court considers appropriate:



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

## **Division 9—Injunctions**

### **68A What this Division does**

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

### **68B Injunctions**

- (1) If proceedings are instituted in a court having jurisdiction under this Part for an injunction in relation to a child, the court may make such order or grant such injunction as it considers appropriate for the welfare of the child, including:
  - (a) an injunction for the personal protection of the child; or
  - (b) an injunction for the personal protection of:
    - (i) a parent of the child; or
    - (ii) a person with whom the child is to live under a parenting order; or
    - (iii) a person with whom the child is to spend time under a parenting order; or
    - (iv) a person with whom the child is to communicate under a parenting order; or
    - (v) a person who has parental responsibility for the child; or
  - (c) an injunction restraining a person from entering or remaining in:
    - (i) a place of residence, employment or education of the child; or
    - (ii) a specified area that contains a place of a kind referred to in subparagraph (i); or
  - (d) an injunction restraining a person from entering or remaining in:
    - (i) a place of residence, employment or education of a person referred to in paragraph (b); or
    - (ii) a specified area that contains a place of a kind referred to in subparagraph (i).

- (2) A court exercising jurisdiction under this Act (other than in proceedings to which subsection (1) applies) may grant an injunction in relation to a child, by interlocutory order or otherwise, in any case in which it appears to the court to be just or convenient to do so.
- (3) An injunction under this section may be granted unconditionally or on such terms and conditions as the court considers appropriate.

### **68C Powers of arrest**

- (1) If:
  - (a) an injunction is in force under section 68B for the personal protection of a person (the *protected person*); and
  - (b) a police officer believes, on reasonable grounds, that the person (the *respondent*) against whom the injunction is directed has breached the injunction by:
    - (i) causing, or threatening to cause, bodily harm to the protected person; or
    - (ii) harassing, molesting or stalking that person;the police officer may arrest the respondent without warrant.

Note: Section 122AA authorises the use of reasonable force in making an arrest.

- (2) For the purposes of subsection (1), an injunction granted under section 68B is an injunction for the personal protection of a person if, and only if, it is expressed to be for the personal protection of the person.
- (3) Subsections 114AA(3), (4), (5) and (7) apply in relation to a person arrested under this section as if:
  - (a) the person had been arrested under subsection 114AA(1) because he or she was believed to have breached an injunction granted under section 114; and
  - (b) the person on whose application the injunction was granted under section 68B were the person on whose application the injunction under section 114 had been granted.

## **Division 10—Independent representation of child's interests**

### **68L Court order for independent representation of child's interests**

- (1) This section applies to proceedings under this Act in which a child's best interests are, or a child's welfare is, the paramount, or a relevant, consideration.
  - (2) If it appears to the court that the child's interests in the proceedings ought to be independently represented by a lawyer, the court:
    - (a) may order that the child's interests in the proceedings are to be independently represented by a lawyer; and
    - (b) may make such other orders as it considers necessary to secure that independent representation of the child's interests.
  - (3) However, if the proceedings arise under regulations made for the purposes of section 111B, the court:
    - (a) may order that the child's interests in the proceedings be independently represented by a lawyer only if the court considers there are exceptional circumstances that justify doing so; and
    - (b) must specify those circumstances in making the order.
- Note: Section 111B is about the Convention on the Civil Aspects of International Child Abduction.
- (4) A court may make an order for the independent representation of the child's interests in the proceedings by a lawyer:
    - (a) on its own initiative; or
    - (b) on the application of:
      - (i) the child; or
      - (ii) an organisation concerned with the welfare of children; or
      - (iii) any other person.

- (5) Without limiting paragraph (2)(b), the court may make an order under that paragraph for the purpose of allowing the lawyer who is to represent the child's interests to find out what the child's views are on the matters to which the proceedings relate.

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

- (6) Subsection (5) does not apply if complying with that subsection would be inappropriate because of:
- (a) the child's age or maturity; or
  - (b) some other special circumstance.

### **68LA Role of independent children's lawyer**

#### *When section applies*

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

#### *General nature of role of independent children's lawyer*

- (2) The independent children's lawyer must:
- (a) form an independent view, based on the evidence available to the independent children's lawyer, of what is in the best interests of the child; and
  - (b) act in relation to the proceedings in what the independent children's lawyer believes to be the best interests of the child.
- (3) The independent children's lawyer must, if satisfied that the adoption of a particular course of action is in the best interests of the child, make a submission to the court suggesting the adoption of that course of action.
- (4) The independent children's lawyer:
- (a) is not the child's legal representative; and
  - (b) is not obliged to act on the child's instructions in relation to the proceedings.

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*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.

*Disclosure of information*

- (6) Subject to subsection (7), the independent children's lawyer:
- (a) is not under an obligation to disclose to the court; and
  - (b) cannot be required to disclose to the court;
- any information that the child communicates to the independent children's lawyer.
- (7) The independent children's lawyer may disclose to the court any information that the child communicates to the independent children's lawyer if the independent children's lawyer considers the disclosure to be in the best interests of the child.
- (8) Subsection (7) applies even if the disclosure is made against the wishes of the child.

**68M Order that child be made available for examination**

- (1) This section applies if an independent children's lawyer is appointed to independently represent a child's interests in relation to proceedings under this Act.
- (2) The court may, on application by the independent children's lawyer, order a person mentioned in subsection (3) to make the child available, as specified in the order, for an examination to be made for the purpose of preparing a report about the child for use by the independent children's lawyer in connection with the proceedings.
- (3) The order may be directed to:
  - (a) a parent of the child; or
  - (b) a person with whom the child is to live under a parenting order; or
  - (c) a person with whom the child is to spend time under a parenting order; or
  - (d) a person with whom the child is to communicate under a parenting order; or
  - (e) a person who has parental responsibility for the child.

## Division 11—Family violence

### 68N Purposes of this Division

The purposes of this Division are:

- (a) to resolve inconsistencies between:
  - (i) family violence orders; and
  - (ii) certain orders, injunctions and arrangements made under this Act that provide for a child to spend time with a person or require or authorise a person to spend time with a child; and
- (aa) to ensure that orders, injunctions and arrangements of the kind referred to in subparagraph (a)(ii) do not expose people to family violence; and
- (b) to achieve the objects and principles in section 60B.

### 68P Obligations of court making an order or granting an injunction under this Act that is inconsistent with an existing family violence order

- (1) This section applies if:
  - (a) a court:
    - (i) makes a parenting order that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; or
    - (ii) makes a recovery order (as defined in section 67Q) or any other order under this Act that expressly or impliedly requires or authorises a person to spend time with a child; or
    - (iii) grants an injunction under section 68B or 114 that expressly or impliedly requires or authorises a person to spend time with a child; and
  - (b) the order made or injunction granted is inconsistent with an existing family violence order.



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- (2) The court must, to the extent to which the order or injunction provides for the child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with the child:
- (a) specify in the order or injunction that it is inconsistent with an existing family violence order; and
  - (b) give a detailed explanation in the order or injunction of how the contact that it provides for is to take place; and
  - (c) explain (or arrange for someone else to explain) the order or injunction to:
    - (i) the applicant and respondent in the proceedings for the order or injunction; and
    - (ii) the person against whom the family violence order is directed (if that person is not the applicant or respondent); and
    - (iii) the person protected by the family violence order (if that person is not the applicant or respondent); and
  - (d) include (or arrange to be included) in the explanation, in language those persons are likely to readily understand:
    - (i) the purpose of the order or injunction; and
    - (ii) the obligations created by the order or injunction, including how the contact that it provides for is to take place; and
    - (iii) the consequences that may follow if a person fails to comply with the order or injunction; and
    - (iv) the court's reasons for making an order or granting an injunction that is inconsistent with a family violence order; and
    - (v) the circumstances in which a person may apply for variation or revocation of the order or injunction.
- (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

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

- (2C) In determining whether it is satisfied as described in subsection (2A) or (2B), the court:
- (a) must have regard to all or any of the matters set out in subsection 60CC(2); and
  - (b) despite section 60CC, may have regard to all or any of the matters set out in subsection 60CC(3).
- (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.
- (4) Failure to comply with this section does not affect the validity of the order or injunction.

**68Q Relationship of order or injunction made under this Act with existing inconsistent family violence order**

- (1) To the extent to which:

- (a) an order or injunction mentioned in paragraph 68P(1)(a) is made or granted that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; and
  - (b) the order or injunction is inconsistent with an existing family violence order;
- the family violence order is invalid.
- (2) An application for a declaration that the order or injunction is inconsistent with the family violence order may be made, to a court that has jurisdiction under this Part, by:
    - (a) the applicant or respondent in the proceedings for the order or injunction mentioned in paragraph 68P(1)(a); or
    - (b) the person against whom the family violence order is directed (if that person is not the applicant or respondent); or
    - (c) the person protected by the family violence order (if that person is not the applicant or respondent).
  - (3) The court must hear and determine the application and make such declarations as it considers appropriate.

**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

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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

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- (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.

**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.

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- (2) If a court is exercising the power under section 68R in proceedings to make an interim family violence order or an interim variation of a family violence order:
  - (a) the court has a discretion about whether to apply paragraph 60CC(3)(a) (about taking into account a child's views etc.); and
  - (b) any provisions of this Act or the applicable Rules of Court specified in the regulations do not apply.
- (3) A court exercising the power under section 68R may, as it thinks appropriate, dispense with any otherwise applicable Rules of Court.

**68T Special provisions relating to proceedings to make an interim (or interim variation of) family violence order**

- (1) If, in proceedings to make an interim family violence order or an interim variation of a family violence order, the court revives, varies or suspends an order, injunction or arrangement under section 68R, that revival, variation or suspension ceases to have effect at the earliest of:
  - (a) the time the interim order stops being in force; and
  - (b) the time specified in the interim order as the time at which the revival, variation or suspension ceases to have effect; and
  - (c) the time the order, injunction or arrangement is affected by an order (however described) made by a court, under section 68R or otherwise, after the revival, variation or suspension.
- (2) No appeal lies in relation to the revival, variation or suspension.

## **Division 12—Proceedings and jurisdiction**

### **Subdivision A—What this Division does**

#### **69A What this Division does**

This Division deals with:

- (a) the institution of proceedings and procedure (Subdivision B);  
and
- (b) jurisdiction of courts (Subdivision C); and
- (c) presumptions of parentage (Subdivision D); and
- (d) parentage evidence (Subdivision E); and
- (e) the places and people to which this Part extends and applies  
(Subdivision F).

### **Subdivision B—Institution of proceedings and procedure**

#### **69B Certain proceedings to be instituted only under this Part**

- (1) Proceedings that may be instituted under this Part must not, after the commencement of this section, be instituted otherwise than under this Part.
- (2) Subsection (1) does not apply in relation to the institution of proceedings under the *Child Support (Assessment) Act 1989* or the *Child Support (Registration and Collection) Act 1988*.

#### **69C Who may institute proceedings**

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

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- (b) the child; or
- (c) a grandparent of the child; or
- (d) any other person concerned with the care, welfare or development of the child.

**69D Institution of maintenance proceedings by authorised authority or person**

- (1) The regulations may make provision with respect to authorising:
  - (a) a specified authority of the Commonwealth or of a State or Territory; or
  - (b) the person from time to time holding or acting in a specified office established under a law of the Commonwealth or of a State or Territory;to institute and conduct, on behalf of a child, in the authority's or person's discretion, proceedings with respect to the maintenance of the child.
- (2) Proceedings instituted on behalf of a child under regulations covered by subsection (1) are taken, for the purposes of section 69C and the provisions referred to in it, to have been instituted by the child.

**69E Child or parent to be present in Australia etc.**

- (1) Proceedings may be instituted under this Act in relation to a child only if:
  - (a) the child is present in Australia on the relevant day (as defined in subsection (2)); or
  - (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<sup>AAA</sup> (International protection of children) has effect despite this section.

### **69F Applicant may be in contempt**

A court may proceed with the hearing of proceedings in relation to a child even though the person who instituted the proceedings has failed to comply with an order of the court or of another court having jurisdiction under this Act.

### **Subdivision C—Jurisdiction of courts**

#### **69G Interpretation**

In this Subdivision:

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

#### **69GA Operation of this Subdivision in relation to prescribed courts**

(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).

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*Prescribed State and Territory courts*

- (2) This Subdivision applies in relation to proceedings (the *section 69GA proceedings*) that are:
- (a) heard in a court prescribed for the purposes of subsection (1); and
  - (b) if the regulations specify classes of proceedings in relation to the court—proceedings in that class;
- in the same way as this Subdivision would apply if those proceedings were heard in a court of summary jurisdiction.

*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 heard in a particular court if:
- (a) the regulations do not prescribe rules of court in relation to that court; or
  - (b) both of the following apply:
    - (i) the rules of court prescribed by the regulations in relation to that court do not deal with a matter arising in the proceedings;
    - (ii) the Rules of Court made under section 123 deal with that matter.

*Consultation with State and Territories*

- (5) Before the Governor-General makes regulations for the purposes of subsection (1) or (3) in relation to a particular court or courts in a State or Territory, the Minister must be satisfied that the Minister with responsibility for courts in that State or Territory has been consulted.

- (6) Subsection (5) does not limit section 17 of the *Legislation Act 2003* (rule-makers should consult before making legislative instrument).

**69H Jurisdiction of Family Court, State Family Courts, Northern Territory Supreme Court and Federal Circuit Court**

- (1) Jurisdiction is conferred on the Family Court in relation to matters arising under this Part.
- (2) Each Family Court of a State is invested with federal jurisdiction in relation to matters arising under this Part.
- (3) Subject to section 69K, jurisdiction is conferred on the Supreme Court of the Northern Territory in relation to matters arising under this Part.
- (4) Jurisdiction is conferred on the Federal Circuit Court of Australia in relation to matters arising under this Part (other than proceedings for leave under section 60G).

**69J Jurisdiction of courts of summary jurisdiction**

- (1) Subject to subsection (5), each court of summary jurisdiction of each State is invested with federal jurisdiction in relation to matters arising under this Part (other than proceedings for leave under section 60G).

Note: This section may apply to proceedings heard in a court prescribed by the regulations for the purposes of section 69GA in the same way as this section would apply if those proceedings were heard in a court of summary jurisdiction.

- (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.

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- (4) Without limiting the generality of subsection (3), a Proclamation under that subsection may be expressed to apply only in relation to one or more of the following:
  - (a) proceedings of specified classes;
  - (b) the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction in a specified part of a State or Territory;
  - (c) the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction constituted in a specified way.
- (5) A court of summary jurisdiction must not hear and determine proceedings under this Part otherwise than in accordance with any Proclamation in force under subsection (3).
- (6) The Governor-General may, by Proclamation, declare that a Proclamation under subsection (3) is revoked on and from a specified day.
- (7) If, under subsection (6), the Governor-General declares that a Proclamation under subsection (3) is revoked:
  - (a) this Part (including subsection (3)) has effect as if the revoked Proclamation had not been made; but
  - (b) the effect of the revoked Proclamation on the jurisdiction of courts before the specified day is not affected.

**69K Territory court does not have jurisdiction unless a party is ordinarily resident in the Territory**

A court of a Territory must not hear or determine proceedings under this Part unless at least one of the parties to the proceedings is ordinarily resident in the Territory when the proceedings are instituted or are transferred to the court.

**69L Jurisdiction in relation to transferred matters under other Commonwealth laws**

If proceedings in relation to a matter arising under a law of the Commonwealth are transferred under this Act to a court that has jurisdiction conferred on or invested in it by this Division, the jurisdiction so conferred on or invested in the court includes jurisdiction in relation to that matter.

**69M Jurisdiction is additional to other jurisdiction**

The jurisdiction conferred on or invested in a court by this Division is in addition to any jurisdiction conferred on or invested in the court apart from this Division.

**69N Transfer of proceedings from courts of summary jurisdiction in certain cases**

- (1) This section applies if:
- (a) proceedings for a parenting order (other than a child maintenance order) are instituted in 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.

Note: This section may apply to proceedings heard in a court prescribed by the regulations for the purposes of section 69GA in the same way as this section would apply if those proceedings were heard in a court of summary jurisdiction.

- (2) The court must, before going on to hear and determine the proceedings, inform the parties that, unless each of them consents to the court hearing and determining the proceedings, the court is required to transfer the proceedings to:
- (a) the Family Court; or
  - (b) a Family Court of a State; or

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- (c) the Supreme Court of the Northern Territory; or
  - (d) the Federal Circuit Court of Australia.
- (3) If the parties do not consent to the court hearing and determining the proceedings, the court must transfer the proceedings to:
  - (a) the Family Court; or
  - (b) a Family Court of a State; or
  - (c) the Supreme Court of the Northern Territory; or
  - (d) the Federal Circuit Court of Australia.
- (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 Family Court; or
    - (ii) a Family Court of a State; or
    - (iii) the Supreme Court of the Northern Territory; or
    - (iv) the Federal Circuit Court of Australia.
- (6) If the court subsequently gives leave to a party to object to the proceedings being heard and determined by the court, the court must transfer the proceedings to:
  - (a) the Family Court; or
  - (b) a Family Court of a State; or
  - (c) the Supreme Court of the Northern Territory; or
  - (d) the Federal Circuit Court of Australia.
- (7) A court to which proceedings are transferred must deal with the proceedings as if they had been instituted in the court.

- (8) Failure by a court of summary jurisdiction to comply with this section in relation to proceedings does not invalidate any order made by the court in the proceedings.
- (9) Subsection (8) does not affect the duty of a court of summary jurisdiction to comply with this section.

### **Subdivision D—Presumptions of parentage**

#### **69P Presumptions of parentage arising from marriage**

- (1) If a child is born to a woman while she is married, the child is presumed to be a child of the woman and her husband.
- (2) If:
  - (a) at a particular time:
    - (i) a marriage to which a woman is a party is ended by death; or
    - (ii) a purported marriage to which a woman is a party is annulled; and
  - (b) a child is born to the woman within 44 weeks after that time; the child is presumed to be a child of the woman and the husband or purported husband.
- (3) If:
  - (a) the parties to a marriage separated at any time; and
  - (b) after the separation, they resumed cohabitation on one occasion; and
  - (c) within 3 months after the resumption of cohabitation, they separated again and lived separately and apart; and
  - (d) a child is born to the woman within 44 weeks after the end of the cohabitation, but after the divorce of the parties; the child is presumed to be a child of the woman and the husband.

#### **69Q Presumption of paternity arising from cohabitation**

If:

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- (a) a child is born to a woman; and
- (b) at any time during the period beginning not earlier than 44 weeks and ending not less than 20 weeks before the birth, the woman cohabited with a man to whom she was not married; the child is presumed to be a child of the man.

**69R Presumption of parentage arising from registration of birth**

If a person's name is entered as a parent of a child in a register of births or parentage information kept under a law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction, the person is presumed to be a parent of the child.

**69S Presumptions of parentage arising from findings of courts**

(1) If:

- (a) during the lifetime of a particular person, a prescribed court (other than a court of a prescribed overseas jurisdiction) has:
  - (i) found expressly that the person is a parent of a particular child; or
  - (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.



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(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.

**69T Presumption of paternity arising from acknowledgments**

If:

(a) under the law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction, a man has executed an instrument acknowledging that he is the father of a specified child; and

(b) the instrument has not been annulled or otherwise set aside; the man is presumed to be the father of the child.

**69U Rebuttal of presumptions etc.**

(1) A presumption arising under this Subdivision is rebuttable by proof on a balance of probabilities.

(2) Where:

(a) 2 or more presumptions arising under this Subdivision are relevant in any proceedings; and

(b) those presumptions, or some of those presumptions, conflict with each other and are not rebutted in the proceedings;

the presumption that appears to the court to be the more or most likely to be correct prevails.

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- (3) This section does not apply to a presumption arising under subsection 69S(1).

### **Subdivision E—Parentage evidence**

#### **69V Evidence of parentage**

If the parentage of a child is a question in issue in proceedings under this Act, the court may make an order requiring any person to give such evidence as is material to the question.

#### **69VA Declarations of parentage**

As well as deciding, after receiving evidence, the issue of the parentage of a child for the purposes of proceedings, the court may also issue a declaration of parentage that is conclusive evidence of parentage for the purposes of all laws of the Commonwealth.

#### **69W Orders for carrying out of parentage testing procedures**

- (1) If the parentage of a child is a question in issue in proceedings under this Act, the court may make an order (a *parentage testing order*) requiring a parentage testing procedure to be carried out on a person mentioned in subsection (3) for the purpose of obtaining information to assist in determining the parentage of the child.
- (2) A court may make a parentage testing order:
- (a) on its own initiative; or
  - (b) on the application of:
    - (i) a party to the proceedings; or
    - (ii) an independent children's lawyer representing the child's interests under an order made under section 68L.
- (3) A parentage testing order may be made in relation to:
- (a) the child; or
  - (b) a person known to be the mother of the child; or
  - (c) any other person, if the court is of the opinion that, if the parentage testing procedure were to be carried out in relation

to the person, the information that could be obtained might assist in determining the parentage of the child.

- (4) A parentage testing order may be made subject to terms and conditions.
- (5) This section does not affect the generality of section 69V.

### **69X Orders associated with parentage testing orders**

- (1) If a court makes a parentage testing order, it may also make orders under subsection (2) or (4).
- (2) The court may make such orders as it considers necessary or desirable:
  - (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.

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**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.

**69Y Orders directed to persons 18 or over**

- (1) If a person who is 18 or over contravenes a parentage testing order or an order under section 69X, the person is not liable to any penalty in relation to the contravention.
- (2) The court may draw such inferences from the contravention as appear just in the circumstances.

**69Z Orders directed to children under 18**

- (1) This section applies if a parentage testing order, or an order under section 69X, requires a medical procedure or other act to be carried out in relation to a child who is under 18.
- (2) The procedure or act must not be carried out in relation to the child under the order without the consent of:
  - (a) a parent of the child; or
  - (b) a guardian of the child; or
  - (c) a person who, under a parenting order, has responsibility for the child's long-term or day-to-day care, welfare and development.
- (3) The court may draw such inferences from a failure or refusal to consent as mentioned in subsection (2) as appear just in the circumstances.

**69ZA No liability if parent etc. consents**

- (1) A person who carries out, or who assists in the carrying out of, a medical procedure or other act in relation to a child under a parentage testing order is not liable to any civil or criminal action in relation to the proper carrying out of the procedure or act if it is carried out with the consent of:
  - (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.

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**69ZB Regulations about carrying out, and reporting on, parentage testing procedures**

The regulations may make provision relating to:

- (a) the carrying out of parentage testing procedures under parentage testing orders; and
- (b) the preparation of reports relating to the information obtained as the result of carrying out such procedures.

**69ZC Reports of information obtained may be received in evidence**

- (1) A report made in accordance with regulations covered by paragraph 69ZB(b) may be received in evidence in any proceedings under this Act.
- (2) If, under subsection (1), a report is received in evidence in proceedings under this Act, the court may make an order requiring the person who made the report, or any person whose evidence may be relevant in relation to the report, to appear before the court and give evidence in relation to the report.
- (3) A court may make an order under subsection (2):
  - (a) on its own initiative; or
  - (b) on the application of:
    - (i) a party to the proceedings; or
    - (ii) an independent children's lawyer representing the relevant child's interests under an order made under section 68L.

**69ZD Parentage testing for purposes of international maintenance agreements**

For the purpose of the carrying out of any of Australia's obligations under:

- (a) an arrangement with a reciprocating jurisdiction, or with a jurisdiction with restricted reciprocity, within the meaning of section 110; or
- (b) the Convention referred to in section 111; or

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- (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.

**Subdivision F—Extension, application and additional operation of Part**

**69ZE Extension of Part to the States**

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

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- (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.

**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:



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- (a) subsection 66F(2) were omitted; and
  - (b) subsections 69ZE(1) and (2) were amended by omitting “and section 69ZF”; and
  - (c) section 69ZF were omitted; and
  - (d) paragraph 69ZK(1)(b) were omitted; and
  - (e) subsection 69ZK(2) were amended by adding at the end the following word and paragraphs:
    - “; or (d) the jurisdiction of a court under a child welfare law to make an order in relation to the maintenance of the child; or
    - (e) an order of the kind referred to in paragraph (d).”.
- (3) A Proclamation that was in force in relation to a State under subsection 60E(6) of this Act as in force before the commencement of this section has effect, after that commencement, as if it were a Proclamation under subsection (1) of this section.

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

**69ZG Application of Part in, and in relation to, Territories**

This Part applies in and in relation to the Territories.

**69ZH Additional application of Part**

- (1) Without prejudice to its effect apart from this section, this Part also has effect as provided by this section.
- (2) By virtue of this subsection, Subdivisions BA and BB of Division 1, Divisions 2 to 7 (inclusive) (other than Subdivisions C, D and E of Division 6 and sections 66D, 66M and 66N), Subdivisions C and E of Division 8, Divisions 9, 10 and 11 and Subdivisions B and C of Division 12 (other than section 69D) have the effect, subject to subsection (3), that they would have if:

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- (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, Subdivisions C, D and E of Division 6, section 69D, Subdivisions D and E of Division 12 and Divisions 13 and 14 and this Subdivision, have effect according to their tenor.

### **69ZJ Additional jurisdiction of courts**

In addition to the jurisdiction that, apart from this section, is invested in or conferred on a court under this Part, the court is invested with jurisdiction or jurisdiction is conferred on the court, as the case requires, in matters between residents of different States, being matters with respect to:

- (a) the maintenance of children and the payment of expenses in relation to children or child bearing; or
- (b) parental responsibility in relation to children.

### **69ZK Child welfare laws not affected**

- (1) A court having jurisdiction under this Act must not make an order under this Act (other than an order under Division 7) in relation to a child who is under the care (however described) of a person under a child welfare law unless:
  - (a) the order is expressed to come into effect when the child ceases to be under that care; or
  - (b) the order is made in proceedings relating to the child in respect of the institution or continuation of which the written consent of a child welfare officer of the relevant State or Territory has been obtained.

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- (2) Nothing in this Act, and no decree under this Act, affects:
- (a) the jurisdiction of a court, or the power of an authority, under a child welfare law to make an order, or to take any other action, by which a child is placed under the care (however described) of a person under a child welfare law; or
  - (b) any such order made or action taken; or
  - (c) the operation of a child welfare law in relation to a child.
- (3) If it appears to a court having jurisdiction under this Act that another court or an authority proposes to make an order, or to take any other action, of the kind referred to in paragraph (2)(a) in relation to a child, the first-mentioned court may adjourn any proceedings before it that relate to the child.

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

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

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

## **Division 12A—Principles for conducting child-related proceedings**

### **Subdivision A—Proceedings to which this Division applies**

#### **69ZM Proceedings to which this Division applies**

- (1) This Division applies to proceedings that are wholly under this Part.
- (2) This Division also applies to proceedings that are partly under this Part:
  - (a) to the extent that they are proceedings under this Part; and
  - (b) if the parties to the proceedings consent—to the extent that they are not proceedings under this Part.
- (3) This Division also applies to other proceedings between the parties that involve the court exercising jurisdiction under this Act if:
  - (a) the proceedings:
    - (i) arise from the breakdown of the parties' marital relationship; or
    - (ii) are a de facto financial cause; and
  - (b) the parties to the proceedings consent.
- (4) Proceedings to which this Division applies are *child-related proceedings*.
- (5) Consent given for the purposes of paragraph (2)(b) or subsection (3) must be:
  - (a) free from coercion; and
  - (b) given in the form prescribed by the applicable Rules of Court.
- (6) A party to proceedings may, with the leave of the court, revoke a consent given for the purposes of paragraph (2)(b) or subsection (3).

## **Subdivision B—Principles for conducting child-related proceedings**

### **69ZN Principles for conducting child-related proceedings**

#### *Application of the principles*

- (1) The court must give effect to the principles in this section:
  - (a) in performing duties and exercising powers (whether under this Division or otherwise) in relation to child-related proceedings; and
  - (b) in making other decisions about the conduct of child-related proceedings.

Failure to do so does not invalidate the proceedings or any order made in them.

- (2) Regard is to be had to the principles in interpreting this Division.

#### *Principle 1*

- (3) The first principle is that the court is to consider the needs of the child concerned and the impact that the conduct of the proceedings may have on the child in determining the conduct of the proceedings.

#### *Principle 2*

- (4) The second principle is that the court is to actively direct, control and manage the conduct of the proceedings.

#### *Principle 3*

- (5) The third principle is that the proceedings are to be conducted in a way that will safeguard:
  - (a) the child concerned 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.

**69ZO This Division also applies to proceedings in Chambers**

A judge, Judicial Registrar, Registrar or magistrate, who is hearing child-related proceedings in Chambers, has all of the duties and powers that a court has under this Division.

Note: An order made in Chambers has the same effect as an order made in open court.

**69ZP Powers under this Division may be exercised on court's own initiative**

The court may exercise a power under this Division:

- (a) on the court's own initiative; or
- (b) at the request of one or more of the parties to the proceedings.

**Subdivision C—Duties and powers related to giving effect to the principles**

**69ZQ General duties**

- (1) In giving effect to the principles in section 69ZN, the court must:
- (aa) ask each party to the proceedings:
    - (i) 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

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- (ii) whether the party considers that he or she, or another party to the proceedings, has been, or is at risk of being, subjected to family violence; and
  - (a) decide which of the issues in the proceedings require full investigation and hearing and which may be disposed of summarily; and
  - (b) decide the order in which the issues are to be decided; and
  - (c) give directions or make orders about the timing of steps that are to be taken in the proceedings; and
  - (d) in deciding whether a particular step is to be taken—consider whether the likely benefits of taking the step justify the costs of taking it; and
  - (e) make appropriate use of technology; and
  - (f) if the court considers it appropriate—encourage the parties to use family dispute resolution or family counselling; and
  - (g) deal with as many aspects of the matter as it can on a single occasion; and
  - (h) deal with the matter, where appropriate, without requiring the parties' physical attendance at court.
- (2) Subsection (1) does not limit subsection 69ZN(1).
- (3) A failure to comply with subsection (1) does not invalidate an order.

**69ZR Power to make determinations, findings and orders at any stage of proceedings**

- (1) If, at any time after the commencement of child-related proceedings and before making final orders, the court considers that it may assist in the determination of the dispute between the parties, the court may do any or all of the following:
- (a) make a finding of fact in relation to the proceedings;
  - (b) determine a matter arising out of the proceedings;
  - (c) make an order in relation to an issue arising out of the proceedings.



Note: For example, the court may choose to use this power if the court considers that making a finding of fact at a particular point in the proceedings will help to focus the proceedings.

- (2) Subsection (1) does not prevent the court doing something mentioned in paragraph (1)(a), (b) or (c) at the same time as making final orders.
- (3) To avoid doubt, a judge, Judicial Registrar, Registrar or magistrate who exercises a power under subsection (1) in relation to proceedings is not, merely because of having exercised the power, required to disqualify himself or herself from a further hearing of the proceedings.

### **69ZS Use of family consultants**

At any time during child-related proceedings, the court may designate a family consultant as the family consultant in relation to 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.

### **Subdivision D—Matters relating to evidence**

#### **69ZT Rules of evidence not to apply unless court decides**

- (1) These provisions of the *Evidence Act 1995* do not apply to child-related proceedings:
  - (a) Divisions 3, 4 and 5 of Part 2.1 (which deal with general rules about giving evidence, examination in chief, re-examination and cross-examination), other than sections 26, 30, 36 and 41;

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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.

### **69ZV Evidence of children**

- (1) This section applies if the court applies the law against hearsay under subsection 69ZT(2) to child-related proceedings.
- (2) Evidence of a representation made by a child about a matter that is relevant to the welfare of the child or another child, which would not otherwise be admissible as evidence because of the law against hearsay, is not inadmissible in the proceedings solely because of the law against hearsay.
- (3) The court may give such weight (if any) as it thinks fit to evidence admitted under subsection (2).
- (4) This section applies despite any other Act or rule of law.
- (5) In this section:

*child* means a person under 18.

*representation* includes an express or implied representation, whether oral or in writing, and a representation inferred from conduct.

### **69ZW Evidence relating to child abuse or family violence**

- (1) The court may make an order in child-related proceedings requiring a prescribed State or Territory agency to provide the court with the documents or information specified in the order.
- (2) The documents or information specified in the order must be documents recording, or information about, one or more of these:
  - (a) any notifications to the agency of suspected abuse of a child to whom the proceedings relate or of suspected family violence affecting the child;

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- (b) any assessments by the agency of investigations into a notification of that kind or the findings or outcomes of those investigations;
  - (c) any reports commissioned by the agency in the course of investigating a notification.
- (3) Nothing in the order is to be taken to require the agency to provide the court with:
  - (a) documents or information not in the possession or control of the agency; or
  - (b) documents or information that include the identity of the person who made a notification.
- (4) A law of a State or Territory has no effect to the extent that it would, apart from this subsection, hinder or prevent an agency complying with the order.
- (5) The court must admit into evidence any documents or information, provided in response to the order, on which the court intends to rely.
- (6) Despite subsection (5), the court must not disclose the identity of the person who made a notification, or information that could identify that person, unless:
  - (a) the person consents to the disclosure; or
  - (b) the court is satisfied that the identity or information is critically important to the proceedings and that failure to make the disclosure would prejudice the proper administration of justice.
- (7) Before making a disclosure for the reasons in paragraph (6)(b), the court must ensure that the agency that provided the identity or information:
  - (a) is notified about the intended disclosure; and
  - (b) is given an opportunity to respond.

**69ZX Court's general duties and powers relating to evidence**

- (1) In giving effect to the principles in section 69ZN, the court may:
- (a) give directions or make orders about the matters in relation to which the parties are to present evidence; and
  - (b) give directions or make orders about who is to give evidence in relation to each remaining issue; and
  - (c) give directions or make orders about how particular evidence is to be given; and
  - (d) if the court considers that expert evidence is required—give directions or make orders about:
    - (i) the matters in relation to which an expert is to provide evidence; and
    - (ii) the number of experts who may provide evidence in relation to a matter; and
    - (iii) how an expert is to provide the expert's evidence; and
  - (e) ask questions of, and seek evidence or the production of documents or other things from, parties, witnesses and experts on matters relevant to the proceedings.
- (2) Without limiting subsection (1) or section 69ZR, the court may give directions or make orders:
- (a) about the use of written submissions; or
  - (b) about the length of written submissions; or
  - (c) limiting the time for oral argument; or
  - (d) limiting the time for the giving of evidence; or
  - (e) that particular evidence is to be given orally; or
  - (f) that particular evidence is to be given by affidavit; or
  - (g) that evidence in relation to a particular matter not be presented by a party; or
  - (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.

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- (3) The court may, in child-related proceedings:
- (a) receive into evidence the transcript of evidence in any other proceedings before:
    - (i) the court; or
    - (ii) another court; or
    - (iii) a tribunal;and draw any conclusions of fact from that transcript that it thinks proper; and
  - (b) adopt any recommendation, finding, decision or judgment of any court, person or body of a kind mentioned in any of subparagraphs (a)(i) to (iii).

Note: This subsection may be particularly relevant for Aboriginal or Torres Strait Islander children.

- (4) In proceedings under this Part 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.

## **Division 13—State, Territory and overseas orders**

### **Subdivision A—What this Division does**

#### **70A What this Division does**

This Division provides for:

- (a) the registration of State and Territory orders dealing with children (Subdivision B); and
- (b) the registration of overseas orders dealing with children (Subdivision C); and
- (c) the transmission of Australian orders to overseas jurisdictions (Subdivision D).

### **Subdivision B—Registration of State and Territory orders**

#### **70C General registration of orders made under law of prescribed State**

The applicable Rules of Court may make provision for and in relation to the registration in a court having jurisdiction under this Part of State child orders made under a law of a prescribed State.

#### **70D Registration of orders in a particular State**

The applicable Rules of Court may make provision for and in relation to the registration in a State in a court having jurisdiction under this Act of State child orders made by a court in another State.

#### **70E Effect of registration**

A State child order registered in a court under section 70C or 70D has the same force and effect as if it were an order made by that court under this Part.

**Subdivision C—Registration of overseas orders**

**70G Registration of orders**

The regulations may make provision for and in relation to the registration in courts in Australia of overseas child orders, other than excluded orders.

**70H Effect of registration—general**

An overseas child order registered in a court under section 70G has the same force and effect as if it were an order made by that court under this Part.

Note: Division 4 of Part XIII A A (International protection of children) may affect the operation of a registered overseas child order.

**70J Effect of registration on exercise of jurisdiction**

- (1) A court in Australia that is aware that an overseas child order is registered under section 70G must not exercise jurisdiction in proceedings for the making of a Subdivision C parenting order in relation to the child concerned unless:
  - (a) each person:
    - (i) with whom the child is supposed to live; or
    - (ii) who is to spend time with the child; or
    - (iii) who is to have contact with the child; or
    - (iv) who has rights of custody or access in relation to the child;under the overseas order consents to the exercise of jurisdiction by the court in the proceedings; or
  - (b) the court is satisfied that there are substantial grounds for believing that the child's welfare requires that the court exercise jurisdiction in the proceedings.
- (2) If a court exercises jurisdiction in proceedings for a Subdivision C parenting order in relation to a child who is the subject of an



overseas child order, the court must not make a Subdivision C parenting order in relation to the child unless it is satisfied:

- (a) that the welfare of the child is likely to be adversely affected if the order is not made; or
- (b) that there has been such a change in the circumstances of the child since the making of the overseas child order that the Subdivision C parenting order ought to be made.

**70K Cancellation of registration if Subdivision C parenting order made**

If a court:

- (a) is aware that an overseas child order is registered under section 70G; and
- (b) makes a Subdivision C parenting order in relation to the child concerned;

the court must cancel the registration of the overseas child order.

**70L Relationship between Australian orders and registered overseas child orders**

(1) In this section:

***Australian child order*** means:

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

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

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

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- (c) who has a right to custody of, or access to, the child under the order.
- (2) This section applies if:
- (a) an Australian child order, whether made under this Part or another law, is in force under this Part in relation to a child; and
  - (b) an overseas child order, other than an excluded order, that relates to the child but that has a different effect from the Australian order has been registered under section 70G (whether before or after the making of the Australian child order) and its registration has not been cancelled.
- (3) A responsible person under the overseas child order may apply to a court having jurisdiction under this Part for the discharge of the Australian child order.
- (4) A responsible person under the Australian child order may apply to a court having jurisdiction under this Part for the cancellation of the registration of the overseas child order.
- (5) If an application is made under subsection (3) or (4), the court must:
- (a) if a condition specified in subsection (6) is satisfied—cancel the registration of the overseas child order; or
  - (b) in any other case—discharge the Australian child order.
- (6) For the purposes of paragraph (5)(a), the conditions are:
- (a) each responsible person under the overseas child order consents to the cancellation of the registration of the order; or
  - (b) the court is satisfied that there are substantial grounds for believing that the child's welfare will be adversely affected if the overseas child order continues to operate in relation to the child; or
  - (c) the court is satisfied that there has been a change in the circumstances of the child since the overseas child order was made that makes it inappropriate for the order to continue to operate in relation to the child.

**Subdivision D—Transmission of Australian orders to overseas jurisdictions**

**70M Registrar to send documents etc. to overseas jurisdiction**

- (1) This section applies if:
- (a) a court in Australia makes, in relation to a child who is under 18:
    - (i) a parenting order, other than a child maintenance order;  
or
    - (ii) a State child order; and
  - (b) the order is enforceable in a prescribed overseas 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.

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- (4) The Registry Manager of the court must comply with a request under subsection (2).

**70N Regulations may deal with sending Australian orders etc. to overseas jurisdiction**

- (1) The regulations may make provision for and in relation to the sending to a prescribed overseas jurisdiction of copies of, and documents relating to:
- (a) a parenting order, other than a child maintenance order; or
  - (b) a State child order;
- that relates to a child to whom an overseas child order relates.
- (2) The regulations may make provision for and in relation to the sending to a convention country (within the meaning of the regulations made for the purposes of section 111B) of copies of, and documents relating to, an order under regulations made for the purposes of that section, that relates to a child to whom an overseas child order relates.

## **Division 13A—Consequences of failure to comply with orders, and other obligations, that affect children**

### **Subdivision A—Preliminary**

#### **70NAA Simplified outline of Division**

- (1) This Division deals with the powers that a court with jurisdiction under this Act has to make orders to enforce compliance with orders under this Act affecting children.
- (2) The court always has the power to vary the order under Subdivision B. In doing so, the court will have regard to any parenting plan that has been entered into since the order was made (see section 70NBB).
- (3) The other orders that the court can make depend on whether:
  - (a) a contravention is alleged to have occurred but is not established (Subdivision C); or
  - (b) the court finds that a contravention has occurred but there is a reasonable excuse for the contravention (Subdivision D); or
  - (c) the court finds that there was a contravention and there is no reasonable excuse for the contravention (Subdivision E for less serious contraventions and Subdivision F for more serious contraventions).

#### **70NAB Application of Division**

Despite anything contained in any other provision of this Division, this Division does not apply in respect of a contravention, committed before this Division commences, of an order under this Act affecting children if a court made an order, in respect of that contravention before this Division commences, under this Act as previously in force.

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**70NAC** Meaning of *contravened* an order

A person is taken for the purposes of this Division to have *contravened* an order under this Act affecting children if, and only if:

- (a) where the person is bound by the order—he or she has:
  - (i) intentionally failed to comply with the order; or
  - (ii) made no reasonable attempt to comply with the order;or
- (b) otherwise—he or she has:
  - (i) intentionally prevented compliance with the order by a person who is bound by it; or
  - (ii) aided or abetted a contravention of the order by a person who is bound by it.

Note: Parenting orders may be subject to any subsequent parenting plan (see section 64D). This means that an action that would otherwise contravene a parenting order may not be a contravention, because of a subsequent inconsistent parenting plan. Whether this is the case or not depends on the terms of the parenting order.

**70NAD** Requirements taken to be included in certain orders

For the purposes of this Division:

- (a) a parenting order that deals with whom a child is to live with is taken to include a requirement that people act in accordance with section 65M in relation to the order; and
- (b) a parenting order that deals with whom a child is to spend time with is taken to include a requirement that people act in accordance with section 65N in relation to the order; and
- (c) a parenting order that deals with whom a child is to communicate with is taken to include a requirement that people act in accordance with section 65NA in relation to the order; and
- (d) a parenting order to which section 65P applies is taken to include a requirement that people act in accordance with that section in relation to the order.

**70NAE Meaning of *reasonable excuse for contravening an order***

- (1) The circumstances in which a person may be taken to have had, for the purposes of this Division, a ***reasonable excuse for contravening*** an order under this Act affecting children include, but are not limited to, the circumstances set out in subsections (2), (4), (5), (6) and (7).
- (2) A person (the ***respondent***) is taken to have had a ***reasonable excuse for contravening*** an order under this Act affecting children if:
  - (a) the respondent contravened the order because, or substantially because, he or she did not, at the time of the contravention, understand the obligations imposed by the order on the person who was bound by it; and
  - (b) the court is satisfied that the respondent ought to be excused in respect of the contravention.
- (3) If a court decides that a person had a reasonable excuse for contravening an order under this Act for the reason referred to in paragraph (2)(a), it is the duty of the court to explain to the person, in language likely to be readily understood by the person, the obligations imposed on him or her by the order and the consequences that may follow if he or she again contravenes the order.
- (4) A person (the ***respondent***) is taken to have had a reasonable excuse for contravening a parenting order to the extent to which it deals with whom a child is to live with in a way that resulted in the child not living with a person in whose favour the order was made if:
  - (a) the respondent believed on reasonable grounds that the actions constituting the contravention were necessary to protect the health or safety of a person (including the respondent or the child); and
  - (b) the period during which, because of the contravention, the child did not live with the person in whose favour the order was made was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).

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- (5) A person (the *respondent*) is taken to have had a reasonable excuse for contravening a parenting order to the extent to which it deals with whom a child is to spend time with in a way that resulted in a person and a child not spending time together as provided for in the order if:
- (a) the respondent believed on reasonable grounds that not allowing the child and the person to spend time together was necessary to protect the health or safety of a person (including the respondent or the child); and
  - (b) the period during which, because of the contravention, the child and the person did not spend time together was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).
- (6) A person (the *respondent*) is taken to have had a reasonable excuse for contravening a parenting order to the extent to which it deals with whom a child is to communicate with in a way that resulted in a person and a child not having the communication provided for under the order if:
- (a) the respondent believed on reasonable grounds that not allowing the child and the person to communicate together was necessary to protect the health or safety of a person (including the respondent or the child); and
  - (b) the period during which, because of the contravention, the child and the person did not communicate was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).
- (7) A person (the *respondent*) is taken to have had a reasonable excuse for contravening a parenting order to which section 65P applies by acting contrary to section 65P if:
- (a) the respondent believed on reasonable grounds that the action constituting the contravention was necessary to protect the health or safety of a person (including the respondent or the child); and
  - (b) the period during which, because of that action, a person in whose favour the order was made was hindered in or



prevented from discharging responsibilities under the order was not for longer than was necessary to protect the health or safety of the person referred to in paragraph (a).

### **70NAF Standard of proof**

- (1) Subject to subsection (3), the standard of proof to be applied in determining matters in proceedings under this Division is proof on the balance of probabilities.
- (2) Without limiting subsection (1), that subsection applies to the determination of whether a person who contravened an order under this Act affecting children had a reasonable excuse for the contravention.
- (3) The court may only make an order under:
  - (aa) paragraph 70NEB(1)(da); or
  - (ab) paragraph 70NECA(3)(a); or
  - (a) paragraph 70NFB(2)(a), (d) or (e); or
  - (b) paragraph 70NFF(3)(a);if the court is satisfied beyond reasonable doubt that the grounds for making the order exist.

### **Subdivision B—Court’s power to vary parenting order**

#### **70NBA Variation of parenting order**

- (1) A court having jurisdiction under this Act may make an order varying a primary order if:
  - (a) proceedings in relation to the primary order are brought before a court having jurisdiction under this Act; and
  - (b) it is alleged in those proceedings that a person committed a contravention of the primary order and either:
    - (i) the court does not find that the person committed a contravention of the primary order; or
    - (ii) the court finds that the person committed a contravention of the primary order.

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- (2) If Subdivision F applies to the contravention, when making an order under subsection (1) varying a primary order, the court, in addition to regarding, under section 60CA, the best interests of the child as the paramount consideration, must, if any of the following considerations is relevant, take that consideration into account:
- (a) the person who contravened the primary order did so after having attended, after having refused or failed to attend, or after having been found to be unsuitable to take any further part in, a post-separation parenting program or a part of such a program;
  - (b) there was no post-separation parenting program that the person who contravened the primary order could attend;
  - (c) because of the behaviour of the person who contravened the primary order, it was not appropriate, in the court's opinion, for the person to attend a post-separation parenting program, or a part of such a program;
  - (d) the primary order was a compensatory parenting order made under paragraph 70NEB(1)(b) or 70NFB(2)(c) after the person had contravened a previous order under this Act affecting children.
- (3) This section does not limit the circumstances in which a court having jurisdiction under this Act may vary a primary order.

#### **70NBB Effect of parenting plan**

- (1) This section applies if:
- (a) a parenting order has been made in relation to a child (whether before or after the commencement of this section); and
  - (b) after the parenting order was made, the parents of the child made a parenting plan that dealt with a matter (the ***relevant matter***) that was dealt with in the parenting order.
- (2) If:
- (a) section 70NBA applies to proceedings brought in relation to the parenting order in relation to the relevant matter; and

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- (b) the parenting plan was in force when the contravention of the parenting order:
- (i) is alleged to have been committed; or
  - (ii) occurred;
- the court must, in exercising its powers under section 70NBA:
- (c) have regard to the terms of the parenting plan; and
  - (d) consider whether to exercise its powers under section 70NBA to make an order varying the parenting order to include (with or without modification) some or all of the provisions of the parenting plan.

Note: An action that would otherwise contravene a parenting order may not be a contravention because of a subsequent inconsistent parenting plan. Whether this is the case or not depends on the terms of the parenting order (see section 64D).

### **Subdivision C—Contravention alleged but not established**

#### **70NCA Application of Subdivision**

This Subdivision applies if:

- (a) a primary order has been made, whether before or after the commencement of this Subdivision; and
- (b) proceedings in relation to the primary order are brought before a court having jurisdiction under this Act; and
- (c) it is alleged in those proceedings that a person (the *respondent*) committed a contravention of the primary order; and
- (d) the court does not find that the respondent committed a contravention of the primary order.

Note: The court may also vary the primary order under Subdivision B.

#### **70NCB Costs**

- (1) The court may make an order that the person who brought the proceedings (the *applicant*) pay some or all of the costs of another party, or other parties, to the proceedings.

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- (2) The court must consider making an order under subsection (1) if:
- (a) the applicant has previously brought proceedings in relation to the primary order or another primary order in which the applicant alleged that the respondent committed a contravention of the primary order or that other primary order; and
  - (b) on the most recent occasion on which the applicant brought proceedings of the kind referred to in paragraph (a), the court before which the proceedings were brought:
    - (i) was not satisfied that the respondent had committed a contravention of the primary order or that other primary order; or
    - (ii) was satisfied that the respondent had committed a contravention of the primary order or that other primary order but did not make an order under section 70NBA, 70NDB, 70NDC, 70NEB or 70NFB in relation to the contravention.

**Subdivision D—Contravention established but reasonable excuse for contravention**

**70NDA Application of Subdivision**

This Subdivision applies if:

- (a) a primary order has been made, whether before or after the commencement of this Subdivision; and
- (b) a court having jurisdiction under this Act is satisfied that a person (the *respondent*) has, whether before or after the commencement, committed a contravention (the *current contravention*) of the primary order; and
- (c) the respondent proves that he or she had a reasonable excuse for the current contravention.

Note: The court may also vary the primary order under Subdivision B.

### **70NDB Order compensating person for time lost**

- (1) If:
- (a) the primary order is a parenting order in relation to a child;  
and
  - (b) the current contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period);
- the court:
- (c) may make a further parenting order that compensates the person for time the person did not spend with the child (or the time the child did not live with the person) as a result of the current contravention; and
  - (d) must consider making that kind of order.
- Note:        If the person does not have a reasonable excuse for a contravention, the court has the power to make an order compensating a person for time lost under paragraph 70NEB(1)(b) or 70NFB(2)(c).
- (2) The court must not make an order under paragraph (1)(c) if it would not be in the best interests of the child for the court to do so.

### **70NDC Costs**

- (1) If the court does not make an order under section 70NDB in relation to the current contravention, the court may make an order that the person who brought the proceedings (the *applicant*) pay some or all of the costs of another party, or other parties, to the proceedings.
- (2) The court must consider making an order under subsection (1) if:
- (a) the applicant has previously brought proceedings in relation to the primary order or another primary order in which the applicant alleged that the respondent committed a contravention of the primary order or that other primary order; and
  - (b) on the most recent occasion on which the applicant brought proceedings of the kind referred to in paragraph (a), the court before which the proceedings were brought:

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- (i) was not satisfied that the respondent had committed a contravention of the primary order or that other primary order; or
- (ii) was satisfied that the respondent had committed a contravention of the primary order or that other primary order but did not make an order under section 70NBA, 70NDB, 70NEB or 70NFB in relation to the contravention.

**Subdivision E—Contravention without reasonable excuse (less serious contravention)**

**70NEA Application of Subdivision**

- (1) Subject to subsection (4), this Subdivision applies if:
  - (a) a primary order has been made, whether before or after the commencement of this Division; and
  - (b) a court having jurisdiction under this Act is satisfied that a person has, whether before or after that commencement, committed a contravention (the *current contravention*) of the primary order; and
  - (c) the person does not prove that he or she had a reasonable excuse for the current contravention; and
  - (d) either subsection (2) or (3) applies;and, if the primary order is an order for the maintenance of a child, this Subdivision applies irrespective of the period since the current contravention occurred.
- (2) For the purposes of paragraph (1)(d), this subsection applies if no court has previously:
  - (a) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
  - (b) under paragraph 70NEB(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order.
- (3) For the purposes of paragraph (1)(d), this subsection applies if:

- (a) a court has previously:
    - (i) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
    - (ii) under paragraph 70NEB(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order; and
  - (b) the court, in dealing with the current contravention, is satisfied that it is more appropriate for that contravention to be dealt with under this Subdivision.
- (4) This Subdivision does not apply if, in circumstances mentioned in subsection (2), the court dealing with the current contravention is satisfied that the person who contravened the primary order has behaved in a way that showed a serious disregard for his or her obligations under the primary order.

#### **70NEB Powers of court**

- (1) If this Subdivision applies, the court may do any or all of the following:
- (a) make an order directing:
    - (i) the person who committed the current contravention; or
    - (ii) that person and another specified person;to attend a post-separation parenting program;
  - (b) if the current contravention is a contravention of a parenting order in relation to a child—make a further parenting order that compensates a person for time the person did not spend with the child (or time the child did not live with the person) as a result of the current contravention;
  - (c) adjourn the proceedings to allow either or both of the parties to the primary order to apply for a further parenting order under Division 6 of Part VII that discharges, varies or suspends the primary order or revives some or all of an earlier parenting order;

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- (d) make an order requiring the person who committed the current contravention to enter into a bond in accordance with section 70NEC;
- (da) if the person who committed the current contravention fails, without reasonable excuse, to enter into a bond as required by an order under paragraph (d)—impose a fine not exceeding 10 penalty units on the person;
- (e) if:
  - (i) the current contravention is a contravention of a parenting order in relation to a child; and
  - (ii) the current contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period); and
  - (iii) the person referred to in subparagraph (ii) reasonably incurs expenses as a result of the contravention;make an order requiring the person who committed the current contravention to compensate the person referred to in subparagraph (ii) for some or all of the expenses referred to in subparagraph (iii);
- (f) make an order that the person who committed the current contravention pay some or all of the costs of another party, or other parties, to the proceedings under this Division; and
- (g) if the court makes no other orders in relation to the current contravention—order that the person who brought the proceedings in relation to the current contravention pay some or all of the costs of the person who committed the current contravention.

Note 1: The court may also vary the primary order under Subdivision B.

Note 2: Paragraph (1)(a)—before making an order under this paragraph, the court must consider seeking the advice of a family consultant about the services appropriate to the person’s needs (see section 11E).

- (2) The court must not make an order under paragraph (1)(a) directed to a person other than the person who committed the current contravention unless:



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- (a) the person brought the proceedings before the court in relation to the current contravention or is otherwise a party to those proceedings; and
  - (b) the court is satisfied that it is appropriate to direct the order to the person because of the connection between the current contravention and the carrying out by the person of his or her parental responsibilities in relation to the child or children to whom the primary order relates.
- (3) If the court makes an order under paragraph (1)(a), the principal executive officer of the court must ensure that the provider of the program concerned is notified of the making of the order.
- (4) If:
- (a) the current contravention is a contravention of a parenting order in relation to a child; and
  - (b) the contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period);
- the court must consider making an order under paragraph (1)(b) to compensate the person for the time the person did not spend with the child (or the time the child did not live with the person) as a result of the contravention.
- (5) The court must not make an order under paragraph (1)(b) if it would not be in the best interests of the child for the court to do so.
- (6) In deciding whether to adjourn the proceedings as mentioned in paragraph (1)(c), the court must have regard to the following:
- (a) whether the primary order was made by consent;
  - (b) whether either or both of the parties to the proceedings in which the primary order was made were represented in those proceedings by a legal practitioner;
  - (c) the length of the period between the making of the primary order and the occurrence of the current contravention;
  - (d) any other matters that the court thinks relevant.
- (7) The court must consider making an order under paragraph (1)(g) if:

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- (a) the person (the *applicant*) who brought the proceedings in relation to the current contravention has previously brought proceedings in relation to the primary order or another primary order in which the applicant alleged that the person (the *respondent*) who committed the current contravention committed a contravention of the primary order or that other primary order; and
- (b) on the most recent occasion on which the applicant brought proceedings of the kind referred to in paragraph (a), the court before which the proceedings were brought:
  - (i) was not satisfied that the respondent had committed a contravention of the primary order or that other primary order; or
  - (ii) was satisfied that the respondent had committed a contravention of the primary order or that other primary order but did not make an order under section 70NDB, 70NDC, 70NEB, 70NFB or 70NBA in relation to the contravention.

**70NEC Bonds**

- (1) This section provides for bonds that a court may require a person to enter into under paragraph 70NEB(1)(d).
- (2) A bond is to be for a specified period of up to 2 years.
- (3) A bond may be:
  - (a) with or without surety; and
  - (b) with or without security.
- (4) The conditions that may be imposed on a person by a bond include (without limitation) conditions that require the person:
  - (a) to attend an appointment (or a series of appointments) with a family consultant; or
  - (b) to attend family counselling; or
  - (c) to attend family dispute resolution; or
  - (d) to be of good behaviour.

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- (5) If a court proposes to require a person to enter into a bond, it must, before making the requirement, explain to the person, in language likely to be readily understood by the person:
- (a) the purpose and effect of the proposed requirement; and
  - (b) the consequences that may follow if the person:
    - (i) fails to enter into the bond; or
    - (ii) having entered into the bond—fails to act in accordance with the bond.

**70NECA Procedure for enforcing bonds**

- (1) If a court has made an order under paragraph 70NEB(1)(d) requiring a person to enter into a bond in accordance with section 70NEC, the following provisions have effect.
- (2) If the court (whether or not constituted by the judge or magistrate who required the bond to be entered into in accordance with section 70NEC) is satisfied that the person has, without reasonable excuse, failed to comply with the bond, the court may take action under subsection (3).
- (3) The court may:
- (a) without prejudice to the continuance of the bond entered into in accordance with section 70NEC, impose a fine not exceeding 10 penalty units on the person; or
  - (b) revoke the bond entered into in accordance with section 70NEC and, subject to subsection (4), deal with the person, for the contravention in respect of which the bond was entered into, in any manner in which the person could have been dealt with for the contravention if:
    - (i) the bond had not been entered into; and
    - (ii) the person was before the court under section 70NEB in respect of the contravention.
- (4) In dealing with the person as mentioned in paragraph (3)(b), the court must, in addition to any other matters that it considers should be taken into account, take into account:

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- (a) the fact that the bond was entered into; and
- (b) anything done pursuant to the bond; and
- (c) any fine imposed, and any other order made, for or in respect of the contravention.

**70NED Duties of provider of post-separation parenting program**

The provider of a post-separation parenting program must inform the court if:

- (a) the provider considers that a person ordered to attend the program under paragraph 70NEB(1)(a) is unsuitable to attend the program, or to continue attending the program; or
- (b) a person ordered to attend the program under paragraph 70NEB(1)(a) fails to attend the program, or a part of it.

**70NEF Evidence**

- (1) Evidence of anything said, or of any admission made, by a person attending a post-separation parenting program is not admissible:
  - (a) in any court (whether exercising federal jurisdiction or not); or
  - (b) in any proceedings before a person authorised by a law of the Commonwealth, of a State or of a Territory, or by the consent of the parties, to hear evidence.
- (2) Subsection (1) does not apply to the following:
  - (a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse;
  - (b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse;unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

**70NEG Court may make further orders in relation to attendance at program**

The court may make such orders as it considers appropriate, other than the orders referred to in subsection 70NFB(2), in respect of a person, if:

- (a) it appears to the court that the person has not attended a post-separation parenting program that the person was ordered to attend; or
- (b) the person was assessed as unsuitable to attend a program.

**Subdivision F—Contravention without reasonable excuse (more serious contravention)**

**70NFA Application of Subdivision**

- (1) Subject to subsection (2), this Subdivision applies if:
  - (a) a primary order has been made, whether before or after the commencement of this Division; and
  - (b) a court having jurisdiction under this Act is satisfied that a person has, whether before or after that commencement, committed a contravention (the *current contravention*) of the primary order; and
  - (c) the person does not prove that he or she had a reasonable excuse for the current contravention; and
  - (d) either subsection (2) or (3) applies.

Note: For the standard of proof to be applied in determining whether a contravention of the primary order has been committed, see section 70NAF.

- (2) For the purposes of paragraph (1)(d), this subsection applies if:
  - (a) no court has previously:
    - (i) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or

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- (ii) under paragraph 70NEB(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order; and
  - (b) the court dealing with the current contravention is satisfied that the person has behaved in a way that showed a serious disregard of his or her obligations under the primary order.
- (3) For the purposes of paragraph (1)(d), this subsection applies if a court has previously:
  - (a) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
  - (b) under paragraph 70NEB(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order.
- (4) This Subdivision does not apply if the court dealing with the current contravention is satisfied that it is more appropriate for that contravention to be dealt with under Subdivision E.
- (5) This Subdivision applies whether the primary order was made, and whether the current contravention occurred, before or after the commencement of this Division.

**70NFB Powers of court**

- (1) If this Subdivision applies, the court must, in relation to the person who committed the current contravention:
  - (a) make an order under paragraph (2)(g), unless the court is satisfied that it would not be in the best interests of the child concerned to make that order; and
  - (b) if the court makes an order under paragraph (2)(g)—consider making another order (or other orders) under subsection (2) that the court considers to be the most appropriate of the orders under subsection (2) in the circumstances; and
  - (c) if the court does not make an order under paragraph (2)(g)—make at least one order under subsection (2), being the order (or orders) that the court considers to be the most appropriate of the orders under subsection (2) in the circumstances.

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- (2) The orders that are available to be made by the court are:
- (a) if the court is empowered under section 70NFC to make a community service order—to make such an order; or
  - (b) to make an order requiring the person to enter into a bond in accordance with section 70NFE; or
  - (c) if the current contravention is a contravention of a parenting order in relation to a child—to make a further parenting order that compensates a person for time the person did not spend with the child (or the time the child did not live with the person) as a result of the current contravention, unless it would not be in the best interests of the child concerned to make that order; or
  - (d) to fine the person not more than 60 penalty units; or
  - (e) subject to subsection (7), to impose a sentence of imprisonment on the person in accordance with section 70NFG; or
  - (f) if:
    - (i) the current contravention is a contravention of a parenting order in relation to a child; and
    - (ii) the current contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period); and
    - (iii) the person referred to in subparagraph (ii) reasonably incurs expenses as a result of the contravention;to make an order requiring the person who committed the current contravention to compensate the person referred to in subparagraph (ii) for some or all of the expenses referred to in subparagraph (iii); or
  - (g) to make an order that the person who committed the current contravention pay all of the costs of another party, or other parties, to the proceedings under this Division; or
  - (h) to make an order that the person who committed the current contravention pay some of the costs of another party, or other parties, to the proceedings under this Division.

Note: The court may also vary the primary order under Subdivision B.

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- (3) If a court varies or discharges under section 70NFD a community service order made under paragraph (2)(a), the court may give any directions as to the effect of the variation or discharge that the court considers appropriate.
- (4) The court must not make an order imposing a sentence of imprisonment on a person under this section in respect of a contravention of a child maintenance order made under this Act unless the court is satisfied that the contravention was intentional or fraudulent.
- (5) The court must not make an order imposing a sentence of imprisonment on a person under this section in respect of:
  - (a) a contravention of an administrative assessment of child support made under the *Child Support (Assessment) Act 1989*; or
  - (b) a breach of a child support agreement made under that Act; or
  - (c) a contravention of an order made by a court under Division 4 of Part 7 of that Act for a departure from such an assessment (including such an order that contains matters mentioned in section 141 of that Act).
- (6) An order under this section may be expressed to take effect immediately, at the end of a specified period or on the occurrence of a specified event.
- (7) When a court makes an order under this section, the court may make any other orders that the court considers necessary to ensure compliance with the order that was contravened.

**70NFC When court is empowered to make a community service order**

- (1) Subject to this section, if, under the law of a participating State or a participating Territory, a court is empowered (whether generally or in particular cases) to make a community service order in respect of a person convicted of an offence against the law of the State or



Territory, a court exercising jurisdiction in the State or Territory may, under paragraph 70NFB(2)(a) make a community service order.

- (2) A community service order made under paragraph 70NFB(2)(a):
  - (a) is to be such that the total number of hours during which the order regulates the conduct of the person in respect of whom it is made does not exceed the maximum period in relation to the State or Territory in which the order is made; and
  - (b) ceases to have effect 2 years after it was made, or after such lesser period as is specified in the order.
- (3) A community service order may be an order of any of the following kinds:
  - (a) an order known as:
    - (i) a community service order; or
    - (ii) a work order; or
    - (iii) an attendance centre order; or
    - (iv) an attendance order; or
    - (v) a community based order;
  - (b) an order that is similar to an order referred to in paragraph (a);
  - (c) an order prescribed for the purposes of this paragraph.
- (4) If a court exercising jurisdiction under section 70NFB in a particular State or Territory makes a community service order under paragraph 70NFB(2)(a), the provisions of the laws of the State or Territory with respect to a community service order that is made under those laws are, to the extent provided by the regulations and subject to such modifications as are specified in the regulations, to apply in relation to the order.
- (5) If a court proposes to make a community service order under paragraph 70NFB(2)(a), it must, before doing so, explain to the person in respect of whom it is made, in language likely to be readily understood by the person:
  - (a) the purpose and effect of the proposed order; and

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- (b) the consequences that may follow if the person fails to comply with the proposed order or with any requirements made in relation to the order by or under the applied provisions; and
  - (c) if the proposed order may be revoked or varied under the applied provisions—that the proposed order may be so revoked or varied.
- (6) In this section:

*maximum period*, in relation to a State or Territory, means 500 hours or such lesser period as is prescribed in relation to the State or Territory.

*participating State* means a State in relation to which an agreement under section 70NFI is in force.

*participating Territory* means a Territory in relation to which an agreement under section 70NFI is in force.

**70NFD Variation and discharge of community service orders**

A community service order made under paragraph 70NFB(2)(a) may be varied or discharged:

- (a) if the court that made the order is the Family Court or the Federal Circuit Court of Australia—by either of those Courts; or
- (b) otherwise—by the court that made the order or the Family Court.

**70NFE Bonds**

- (1) This section provides for bonds that a court may require a person to enter into under paragraph 70NFB(2)(b).
- (2) A bond is to be for a specified period of up to 2 years.
- (3) A bond may be:
  - (a) with or without surety; and

- (b) with or without security.
- (4) The conditions that may be imposed on a person by a bond include (without limitation) conditions that require the person:
- (a) to attend an appointment (or a series of appointments) with a family consultant; or
  - (b) to attend family counselling; or
  - (c) to attend family dispute resolution; or
  - (d) to be of good behaviour.

Note: Before imposing a condition under this subsection, the court must consider seeking the advice of a family consultant about the services appropriate to the person's needs (see section 11E).

- (5) If a court proposes to require a person to enter into a bond, it must, before making the requirement, explain to the person, in language likely to be readily understood by the person:
- (a) the purpose and effect of the proposed requirement; and
  - (b) the consequences that may follow if the person:
    - (i) fails to enter into the bond; or
    - (ii) having entered into the bond—fails to act in accordance with the bond.

### **70NFF Procedure for enforcing community service orders or bonds**

- (1) If a court makes a community service order under paragraph 70NFB(2)(a) in respect of a person, or an order under paragraph 70NFB(2)(b) requiring a person to enter into a bond in accordance with section 70NFE, the following provisions have effect.
- (2) If the court (whether or not constituted by the judge or magistrate who made the community service order or required the bond to be entered into in accordance with section 70NFE) is satisfied that the person has, without reasonable excuse, failed to comply with the order or bond, the court may take action under subsection (3).

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- (3) The court may:
- (a) without prejudice to the continuance of the community service order or the bond entered into in accordance with section 70NFE, impose a fine not exceeding 10 penalty units on the person; or
  - (b) revoke the community service order or the bond entered into in accordance with section 70NFE and, subject to subsection (4), deal with the person, for the contravention in respect of which the community service order was made or the bond was entered into, in any manner in which the person could have been dealt with for the contravention if:
    - (i) the community service order had not been made or the bond had not been entered into; and
    - (ii) the person was before the court under section 70NFB in respect of the contravention.
- (4) In dealing with the person as mentioned in paragraph (3)(b), the court must, in addition to any other matters that it considers should be taken into account, take into account:
- (a) the fact that the community service order was made or the bond was entered into; and
  - (b) anything done under the community service order or pursuant to the bond; and
  - (c) any fine imposed, and any other order made, for or in respect of the contravention.

**70NFG Sentences of imprisonment**

- (1) A sentence of imprisonment imposed on a person under paragraph 70NFB(2)(e) is to be expressed to be:
- (a) for a specified period of 12 months or less; or
  - (b) for a period ending when the person:
    - (i) complies with the order concerned; or
    - (ii) has been imprisoned under the sentence for 12 months or such lesser period as is specified by the court;whichever happens first.

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- (2) A court must not sentence a person to imprisonment under paragraph 70NFB(2)(e) unless the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention under any of the other paragraphs of subsection 70NFB(2).
- (3) If a court sentences a person to imprisonment under paragraph 70NFB(2)(e), the court must:
  - (a) state the reasons why it is satisfied as mentioned in subsection (2); and
  - (b) cause those reasons to be entered in the records of the court.
- (4) The failure of a court to comply with subsection (3) does not invalidate a sentence.
- (5) A court that sentences a person to imprisonment under paragraph 70NFB(2)(e) may:
  - (a) suspend the sentence upon the terms and conditions determined by the court; and
  - (b) terminate a suspension made under paragraph (a).
- (6) A court, when sentencing a person to imprisonment under paragraph 70NFB(2)(e), may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a bond described in subsection (7) after he or she has served a specified part of the term of imprisonment.
- (7) A bond for the purposes of subsection (6) is a bond (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.
- (8) A court that has sentenced a person to imprisonment for a period expressed as provided by paragraph (1)(b) may order the release of the person if it is satisfied that the person will, if he or she is released, comply with the order concerned.
- (9) To avoid doubt, the serving by a person of a period of imprisonment under a sentence imposed on the person under paragraph 70NFB(2)(e) for failure to make a payment under a child

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maintenance order does not affect the person's liability to make the payment.

**70NFH Relationship between Subdivision and other laws**

- (1) This section applies where an act or omission by a person:
  - (a) constitutes a contravention of an order under this Act affecting children; and
  - (b) is also an offence against any law.
- (2) If the person is prosecuted in respect of the offence, a court in which proceedings have been brought under section 70NFB in respect of the contravention of the order must:
  - (a) adjourn those proceedings until the prosecution has been completed; or
  - (b) dismiss those proceedings.
- (3) The person may be prosecuted for, and convicted of, the offence.
- (4) Nothing in this section renders the person liable to be punished twice in respect of the same act or omission.

**70NFI Arrangements with States and Territories for carrying out of sentences and orders**

An arrangement made under section 112AN for or in relation to the carrying out of sentences imposed, or orders made, under Division 2 of Part XIII A is taken to extend to the carrying out of sentences imposed, or orders made, under this Subdivision.

**70NFJ Subdivision does not limit operation of section 105**

Nothing in this Subdivision is intended to limit the operation of section 105.

## **Division 14—Miscellaneous**

### **70P What this Division does**

This Division deals with miscellaneous matters relating to children.

### **70Q Certain instruments not liable to duty**

- (1) The following instruments are not subject to any duty or charge under any law of a State or Territory or any law of the Commonwealth that applies only in relation to a Territory:
  - (a) an instrument executed under, or for the purposes of, an order made under this Part;
  - (b) an eligible parenting plan that confers a benefit in relation to a child, to the extent to which it confers the benefit;
  - (c) an instrument executed under, or for the purposes of, an eligible parenting plan and that confers a benefit in relation to a child, to the extent to which it confers the benefit.
- (2) An *eligible parenting plan* is a parenting plan:
  - (a) that is a registered parenting plan within the meaning of subsection 63C(6); and
  - (b) that is not a maintenance agreement, or, if it is a maintenance agreement, it relates to a child who is not a child of the marriage to which the maintenance agreement relates; and
  - (c) that:
    - (i) is made by the parties to a de facto relationship in connection with the breakdown of that relationship; or
    - (ii) relates to a child whose parents (being parties to the plan) were neither married to each other, nor living with each other in a de facto relationship, at the time of the child's conception.

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



## **Part VIII—Property, spousal maintenance and maintenance agreements**

### **71 Interpretation**

In this Part:

*marriage* includes a void marriage.

*re-marriage*, in relation to a person who was a party to a purported marriage that is void, means marriage.

### **71A This Part does not apply to certain matters covered by binding financial agreements**

- (1) This Part does not apply to:
  - (a) financial matters to which a financial agreement that is binding on the parties to the agreement applies; or
  - (b) financial resources to which a financial agreement that is binding on the parties to the agreement applies.
- (2) Subsection (1) does not apply in relation to proceedings of a kind referred to in paragraph (caa) or (cb) of the definition of *matrimonial cause* in subsection 4(1).

### **72 Right of spouse to maintenance**

- (1) A party to a marriage is liable to maintain the other party, to the extent that the first-mentioned party is reasonably able to do so, if, and only if, that other party is unable to support herself or himself adequately whether:
  - (a) by reason of having the care and control of a child of the marriage who has not attained the age of 18 years;
  - (b) by reason of age or physical or mental incapacity for appropriate gainful employment; or

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- (c) for any other adequate reason;  
having regard to any relevant matter referred to in  
subsection 75(2).
- (2) The liability under subsection (1) of a bankrupt party to a marriage  
to maintain the other party may be satisfied, in whole or in part, by  
way of the transfer of vested bankruptcy property in relation to the  
bankrupt party if the court makes an order under this Part for the  
transfer.

**74 Power of court in spousal maintenance proceedings**

- (1) In proceedings with respect to the maintenance of a party to a  
marriage, the court may make such order as it considers proper for  
the provision of maintenance in accordance with this Part.
- (2) If:
  - (a) an application is made for an order under this section in  
proceedings between the parties to a marriage with respect to  
the maintenance of a party to the marriage; and
  - (b) either of the following subparagraphs apply to a party to the  
marriage:
    - (i) when the application was made, the party was a  
bankrupt;
    - (ii) after the application was made but before the  
proceedings are finally determined, the party became a  
bankrupt; and
  - (c) the bankruptcy trustee applies to the court to be joined as a  
party to the proceedings; and
  - (d) the court is satisfied that the interests of the bankrupt's  
creditors may be affected by the making of an order under  
this section in the proceedings;the court must join the bankruptcy trustee as a party to the  
proceedings.
- (3) If a bankruptcy trustee is a party to proceedings with respect to the  
maintenance of a party to a marriage, then, except with the leave of  
the court, the bankrupt party to the marriage is not entitled to make

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

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

**75 Matters to be taken into consideration in relation to spousal maintenance**

- (1) In exercising jurisdiction under section 74, the court shall take into account only the matters referred to in subsection (2).
- (2) The matters to be so taken into account are:
  - (a) the age and state of health of each of the parties; and
  - (b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment; and
  - (c) whether either party has the care or control of a child of the marriage who has not attained the age of 18 years; and
  - (d) commitments of each of the parties that are necessary to enable the party to support:
    - (i) himself or herself; and
    - (ii) a child or another person that the party has a duty to maintain; and
  - (e) the responsibilities of either party to support any other person; and
  - (f) subject to subsection (3), the eligibility of either party for a pension, allowance or benefit under:
    - (i) any law of the Commonwealth, of a State or Territory or of another country; or
    - (ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia;  
and the rate of any such pension, allowance or benefit being paid to either party; and
  - (g) where the parties have separated or divorced, a standard of living that in all the circumstances is reasonable; and
  - (h) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the

- earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income; and
- (ha) the effect of any proposed order on the ability of a creditor of a party to recover the creditor's debt, so far as that effect is relevant; and
  - (j) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party; and
  - (k) the duration of the marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration; and
  - (l) the need to protect a party who wishes to continue that party's role as a parent; and
  - (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,

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- or might be liable to provide in the future, for a child of the marriage; and
- (o) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; and
  - (p) the terms of any financial agreement that is binding on the parties to the marriage; and
  - (q) the terms of any Part VIIIAB financial agreement that is binding on a party to the marriage.
- (3) In exercising its jurisdiction under section 74, a court shall disregard any entitlement of the party whose maintenance is under consideration to an income tested pension, allowance or benefit.
- (4) In this section:
- party* means a party to the marriage concerned.

**77 Urgent spousal maintenance cases**

Where, in proceedings with respect to the maintenance of a party to a marriage, it appears to the court that the party is in immediate need of financial assistance, but it is not practicable in the circumstances to determine immediately what order, if any, should be made, the court may order the payment, pending the disposal of the proceedings, of such periodic sum or other sums as the court considers reasonable.

**77A Specification in orders of payments etc. for spouse maintenance purposes**

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

- (b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a party to a marriage;
- the court shall:
- (c) express the order to be an order to which this section applies; and
  - (d) specify the portion of the payment, or the value of the portion of the property, attributable to the provision of maintenance for the party.
- (2) Where:
- (a) a court makes an order of a kind referred to in paragraph (1)(a); and
  - (b) the order:
    - (i) is not expressed to be an order to which this section applies; or
    - (ii) is expressed to be an order to which this section applies, but does not comply with paragraph (1)(d);
- any payment, transfer or settlement of a kind referred to in paragraph (1)(a), that the order has the effect of requiring, shall be taken not to make provision for the maintenance of a party to the relevant marriage.

## **78 Declaration of interests in property**

- (1) In proceedings between the parties to a marriage with respect to existing title or rights in respect of property, the court may declare the title or rights, if any, that a party has in respect of the property.
- (2) Where a court makes a declaration under subsection (1), it may make consequential orders to give effect to the declaration, including orders as to sale or partition and interim or permanent orders as to possession.

## **79 Alteration of property interests**

- (1) In property settlement proceedings, the court may make such order as it considers appropriate:

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- (a) in the case of proceedings with respect to the property of the parties to the marriage or either of them—altering the interests of the parties to the marriage in the property; or
  - (b) in the case of proceedings with respect to the vested bankruptcy property in relation to a bankrupt party to the marriage—altering the interests of the bankruptcy trustee in the vested bankruptcy property;
- including:
- (c) an order for a settlement of property in substitution for any interest in the property; and
  - (d) an order requiring:
    - (i) either or both of the parties to the marriage; or
    - (ii) the relevant bankruptcy trustee (if any);to make, for the benefit of either or both of the parties to the marriage or a child of the marriage, such settlement or transfer of property as the court determines.
- (1A) An order made under subsection (1) in property settlement proceedings may, after the death of a party to the marriage, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (1B) The court may adjourn property settlement proceedings, except where the parties to the marriage are:
- (a) parties to concurrent, pending or completed divorce or validity of marriage proceedings; or
  - (ba) parties to a marriage who have divorced under the law of an overseas country, where that divorce is recognised as valid in Australia under section 104; or
  - (bb) parties to a marriage that has been annulled under the law of an overseas country, where that annulment is recognised as valid in Australia under section 104; or
  - (c) parties to a marriage who have been granted a legal separation under the law of an overseas country, where that legal separation is recognised as valid in Australia under section 104;



on such terms and conditions as it considers appropriate, for such period as it considers necessary to enable the parties to the marriage to consider the likely effects (if any) of an order under this section on the marriage or the children of the marriage, but nothing in this subsection shall be taken to limit any other power of the court to adjourn such proceedings.

- (1C) Where the period for which a court has adjourned property settlement proceedings as provided by subsection (1B) has not expired and:
- (a) divorce or validity of marriage proceedings are instituted by one or both of the parties to the marriage; or
  - (ba) the parties to the marriage have divorced under the law of an overseas country and the divorce is recognised as valid in Australia under section 104; or
  - (bb) the marriage is annulled under the law of an overseas country and the annulment is recognised as valid in Australia under section 104; or
  - (c) the parties to the marriage are granted a legal separation under the law of an overseas country and the legal separation is recognised as valid in Australia under section 104;
- a party to the first-mentioned proceedings may apply to the court for the hearing of those proceedings to be continued.
- (2) The court shall not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.
- (4) In considering what order (if any) should be made under this section in property settlement proceedings, the court shall take into account:
- (a) the financial contribution made directly or indirectly by or 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

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- making of the contribution, ceased to be the property of the parties to the marriage or either of them; and
- (b) the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them; and
  - (c) the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of homemaker or parent; and
  - (d) the effect of any proposed order upon the earning capacity of either party to the marriage; and
  - (e) the matters referred to in subsection 75(2) so far as they are relevant; and
  - (f) any other order made under this Act affecting a party to the marriage or a child of the marriage; and
  - (g) any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage.
- (5) Without limiting the power of any court to grant an adjournment in proceedings under this Act, where, in property settlement proceedings, a court is of the opinion:
- (a) that there is likely to be a significant change in the financial circumstances of the parties to the marriage or either of them and that, having regard to the time when that change is likely to take place, it is reasonable to adjourn the proceedings; and
  - (b) that an order that the court could make with respect to:
    - (i) the property of the parties to the marriage or either of them; or

- (ii) the vested bankruptcy property in relation to a bankrupt party to the marriage;

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

- (iii) the property of the parties to the marriage or either of them; or
- (iv) the vested bankruptcy property in relation to a bankrupt party to the marriage;

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

- (6) Where a court proposes to adjourn proceedings as provided by subsection (5), the court may, before so adjourning the proceedings, make such interim order or orders or such other order or orders (if any) as it considers appropriate with respect to:
  - (a) any of the property of the parties to the marriage or of either of them; or
  - (b) any of the vested bankruptcy property in relation to a bankrupt party to the marriage.
- (7) The court may, in forming an opinion for the purposes of subsection (5) as to whether there is likely to be a significant change in the financial circumstances of either or both of the parties to the marriage, have regard to any change in the financial circumstances of a party to the marriage that may occur by reason that the party to the marriage:
  - (a) is a contributor to a superannuation fund or scheme, or participates in any scheme or arrangement that is in the nature of a superannuation scheme; or

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- (b) may become entitled to property as the result of the exercise in his or her favour, by the trustee of a discretionary trust, of a power to distribute trust property;
- but nothing in this subsection shall be taken to limit the circumstances in which the court may form the opinion that there is likely to be a significant change in the financial circumstances of a party to the marriage.
- (8) Where, before property settlement proceedings are completed, a party to the marriage dies:
- (a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings;
- (b) if the court is of the opinion:
- (i) that it would have made an order with respect to property if the deceased party had not died; and
- (ii) that it is still appropriate to make an order with respect to property;
- the court may make such order as it considers appropriate with respect to:
- (iii) any of the property of the parties to the marriage or either of them; or
- (iv) any of the vested bankruptcy property in relation to a bankrupt party to the marriage; and
- (c) an order made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (9) The Family Court, or a Family Court of a State, shall not make an order under this section in property settlement proceedings (other than an order until further order or an order made with the consent of all the parties to the proceedings) unless:
- (a) the parties to the proceedings have attended a conference in relation to the matter to which the proceedings relate with a Registrar or Deputy Registrar of the Family Court, or a

Registrar or Deputy Registrar of the Family Court of that State, as the case may be;

- (b) the court is satisfied that, having regard to the need to make an order urgently, or to any other special circumstance, it is appropriate to make the order notwithstanding that the parties to the proceedings have not attended a conference as mentioned in paragraph (a); or
  - (c) the court is satisfied that it is not practicable to require the parties to the proceedings to attend a conference as mentioned in paragraph (a).
- (10) The following are entitled to become a party to proceedings in which an application is made for an order under this section by a party to a marriage (the *subject marriage*):
- (a) a creditor of a party to the proceedings if the creditor may not be able to recover his or her debt if the order were made;
  - (aa) a person:
    - (i) who is a party to a de facto relationship with a party to the subject marriage; and
    - (ii) who could apply, or has an application pending, for an order under section 90SM, or a declaration under section 90SL, in relation to the de facto relationship;
  - (ab) a person who is a party to a Part VIIIAB financial agreement (that is binding on the person) with a party to the subject marriage;
  - (b) any other person whose interests would be affected by the making of the order.
- (10A) Subsection (10) does not apply to a creditor of a party to the proceedings:
- (a) if the party is a bankrupt—to the extent to which the debt is a provable debt (within the meaning of the *Bankruptcy Act 1966*); or
  - (b) if the party is a debtor subject to a personal insolvency agreement—to the extent to which the debt is covered by the personal insolvency agreement.

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- (10B) If a person becomes a party to proceedings under this section because of paragraph (10)(aa), the person may, in the proceedings, apply for:
- (a) an order under section 90SM; or
  - (b) a declaration under section 90SL;
- in relation to the de facto relationship described in that paragraph.
- (11) If:
- (a) an application is made for an order under this section in proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either of them; and
  - (b) either of the following subparagraphs apply to a party to the marriage:
    - (i) when the application was made, the party was a bankrupt;
    - (ii) after the application was made but before it is finally determined, the party became a bankrupt; and
  - (c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and
  - (d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings;
- the court must join the bankruptcy trustee as a party to the proceedings.
- (12) If a bankruptcy trustee is a party to property settlement proceedings, then, except with the leave of the court, the bankrupt party to the marriage is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.
- (13) The court must not grant leave under subsection (12) unless the court is satisfied that there are exceptional circumstances.
- (14) If:

- (a) an application is made for an order under this section in proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either of them; and
  - (b) either of the following subparagraphs apply to a party to the marriage (the *debtor party*):
    - (i) when the application was made, the party was a debtor subject to a personal insolvency agreement; or
    - (ii) after the application was made but before it is finally determined, the party becomes a debtor subject to a personal insolvency agreement; and
  - (c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and
  - (d) the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings;
- the court must join the trustee of the agreement as a party to the proceedings.
- (15) If the trustee of a personal insolvency agreement is a party to property settlement proceedings, then, except with the leave of the court, the party to the marriage who is the debtor subject to the agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.
  - (16) The court must not grant leave under subsection (15) unless the court is satisfied that there are exceptional circumstances.
  - (17) For the purposes of subsections (11) and (14), an application for an order under this section is taken to be finally determined when:
    - (a) the application is withdrawn or dismissed; or
    - (b) an order (other than an interim order) is made as a result of the application.

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**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.

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- (3) In this section, a reference to an order made by a court under section 79 includes a reference to an order made by a court under section 86 of the repealed Act.
- (4) For the purposes of this section, a creditor of a party to the proceedings in which the order under section 79 was made is taken to be a person whose interests are affected by the order if the creditor may not be able to recover his or her debt because the order has been made.
- (5) For the purposes of this section, if:
- (a) an order is made by a court under section 79 in proceedings with respect to the property of the parties to a marriage or either of them; and
  - (b) either of the following subparagraphs apply to a party to the marriage:
    - (i) when the order was made, the party was a bankrupt;
    - (ii) after the order was made, the party became a bankrupt;the bankruptcy trustee is taken to be a person whose interests are affected by the order.
- (6) For the purposes of this section, if:
- (a) a party to a marriage is a bankrupt; and
  - (b) an order is made by a court under section 79 in proceedings with respect to the vested bankruptcy property in relation to the bankrupt party;
- the bankruptcy trustee is taken to be a person whose interests are affected by the order.
- (7) For the purposes of this section, if:
- (a) an order is made by a court under section 79 in proceedings with respect to the property of the parties to a marriage or either of them; and
  - (b) either of the following subparagraphs apply to a party to the marriage:
    - (i) when the order was made, the party was a debtor subject to a personal insolvency agreement;

(ii) after the order was made, the party became a debtor subject to a personal insolvency agreement; the trustee of the agreement is taken to be a person whose interests are affected by the order.

**79B Notification of proceeds of crime orders etc.**

- (1) If:
- (a) a person makes an application for an order, under this Part, with respect to:
    - (i) the property of the parties to a marriage or either of them; or
    - (ii) the maintenance of a party to a marriage; and
  - (b) the person knows that the property of the parties to the marriage or either of them is covered by:
    - (i) a proceeds of crime order; or
    - (ii) a forfeiture application;
- the person must:
- (c) disclose in the application the proceeds of crime order or forfeiture application; and
  - (d) give to the court a sealed copy of that order or application.
- (2) A person who does not comply with subsection (1) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.
- (3) If:
- (a) a person is a party to property settlement or spousal maintenance proceedings under this Part; and
  - (b) the person is notified by the proceeds of crime authority that the property of the parties to the marriage or either of them is covered by:
    - (i) a proceeds of crime order; or
    - (iii) a forfeiture application;
- the person must:

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- (c) notify the Registry Manager in writing of the proceeds of crime order or forfeiture application; and
  - (d) give the Registry Manager:
    - (i) a copy of the notification referred to in paragraph (b) (if the notification is in writing); and
    - (ii) a copy of the proceeds of crime order or forfeiture application (if the notification is accompanied by a copy of the order or application).
- (4) A person who does not comply with subsection (3) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

**79C Court to stay property or spousal maintenance proceedings affected by proceeds of crime orders etc.**

- (1) A court in which property settlement or spousal maintenance proceedings are pending must stay those proceedings if notified under section 79B in relation to the proceedings.
- (1A) The court may, before staying proceedings under subsection (1), invite or require the proceeds of crime authority to make submissions relating to staying the proceedings.
- (2) A court must, on the application of the proceeds of crime authority, stay property settlement or spousal maintenance proceedings under this Part if the property of the parties to the marriage or either of them is covered by:
  - (a) a proceeds of crime order; or
  - (b) a forfeiture application.
- (3) A court must notify the proceeds of crime authority if the court stays property settlement or spousal maintenance proceedings under subsection (1) or (2).
- (4) The proceeds of crime authority must notify the Registry Manager if:
  - (a) a proceeds of crime order ceases to be in force; or

- (b) a forfeiture application is finally determined.
- (5) For the purposes of subsection (4), a forfeiture application is taken to be finally determined when:
  - (a) the application is withdrawn; or
  - (b) if the application is successful—the resulting forfeiture order comes into force; or
  - (c) if the application is unsuccessful—the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.

### **79D Lifting a stay**

- (1) A court that stayed the property settlement or spousal maintenance proceedings under section 79C must wholly or partially lift the stay if:
  - (a) either party to the proceedings makes an application for the stay to be lifted and the proceeds of crime authority consents to such an application; or
  - (b) the proceeds of crime authority makes an application for the stay to be lifted.
- (2) A court that stayed the property settlement or spousal maintenance proceedings under section 79C may, on its own motion, wholly or partially lift the stay if the proceeds of crime authority consents to such a motion.
- (3) Giving the Registry Manager written notice of the proceeds of crime authority's consent under this section is taken to be the giving of that consent, unless the court requires the authority to appear in the proceedings. The notice may be given by the authority or by a party to the proceedings.

### **79E Intervention by proceeds of crime authority**

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

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

- (2) If the proceeds of crime authority intervenes, the authority is taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

### **79F Notifying third parties about application**

The applicable Rules of Court may specify the circumstances in which a person who:

- (a) applies for an order under this Part; or
- (b) is a party to proceedings for an order under this Part;

is to give notice of the application to a person who is not a party to the proceedings.

Note: The applicable Rules of Court may, for example, require notice to be given to persons referred to in subsection 79(10) whose interests could be affected by proceedings for an order under section 79.

### **79G Notifying bankruptcy trustee etc. about application under section 74, 78, 79 or 79A**

- (1) The applicable Rules of Court may make provision for a bankrupt who becomes a party to a proceeding for an application under section 74, 78, 79 or 79A to give notice of the application to the bankruptcy trustee.
- (2) The applicable Rules of Court may make provision for a debtor subject to a personal insolvency agreement who becomes a party to a proceeding for an application under section 74, 78, 79 or 79A to give notice of the application to the trustee of the agreement.

### **79H Notifying court about bankruptcy etc.**

#### *Bankruptcy*

- (1) The applicable Rules of Court may make provision for a person who:

- (a) is a party to a marriage; and
- (b) is a party to a proceeding for an application under section 74, 78, 79 or 79A; and
- (c) before that application is finally determined, becomes a bankrupt;

to notify a court exercising jurisdiction under this Act that the person has become a bankrupt.

*Debtor subject to a personal insolvency agreement*

- (2) The applicable Rules of Court may make provision for a person who:
  - (a) is a party to a marriage; and
  - (b) is a party to a proceeding for an application under section 74, 78, 79 or 79A; and
  - (c) before that application is finally determined, becomes a debtor subject to a personal insolvency agreement;

to notify a court exercising jurisdiction under this Act that the person has become a debtor subject to a personal insolvency agreement.

*Institution of proceeding under the Bankruptcy Act 1966*

- (3) The applicable Rules of Court may make provision for a person who:
  - (a) is a party to a marriage; and
  - (b) is a party to a proceeding for an application under section 74, 78, 79 or 79A; and
  - (c) before that application is finally determined, becomes a party to a proceeding before the Federal Court or the Federal Circuit Court of Australia 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*.

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- (4) The applicable Rules of Court may make provision for a person who:
- (a) is the bankruptcy trustee of a bankrupt party to a marriage; and
  - (b) applies under section 139A of the *Bankruptcy Act 1966* for an order under Division 4A of Part VI of that Act;
- to notify a court exercising jurisdiction under this Act of the making of the application.

*When application finally determined*

- (5) For the purposes of this section, an application for an order under section 74, 79 or 79A is taken to be finally determined when:
- (a) the application is withdrawn or dismissed; or
  - (b) an order (other than an interim order) is made as a result of the application.
- (6) For the purposes of this section, an application for a declaration under section 78 is taken to be finally determined when:
- (a) the application is withdrawn or dismissed; or
  - (b) a declaration is made as a result of the application.

**79J Notifying non-bankrupt spouse about application under section 139A of the *Bankruptcy Act 1966***

The applicable Rules of Court may make provision for a person who:

- (a) is the bankruptcy trustee of a bankrupt party to a marriage; and
  - (b) applies under section 139A of the *Bankruptcy Act 1966* for an order under Division 4A of Part VI of that Act in relation to an entity (other than the other party to the marriage);
- to notify the other party to the marriage of the making of the application.



**80 General powers of court**

- (1) The court, in exercising its powers under this Part, may do any or all of the following:
- (a) order payment of a lump sum, whether in one amount or by instalments;
  - (b) order payment of a weekly, monthly, yearly or other periodic sum;
  - (ba) order that a specified transfer or settlement of property be made by way of maintenance for a party to a marriage;
  - (c) order that payment of any sum ordered to be paid be wholly or partly secured in such manner as the court directs;
  - (d) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
  - (e) appoint or remove trustees;
  - (f) order that payments be made direct to a party to the marriage, to a trustee to be appointed or into court or to a public authority for the benefit of a party to the marriage;
  - (h) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for a life or during joint lives or until further order;
  - (i) impose terms and conditions;
  - (j) make an order by consent;
  - (k) make any other order (whether or not of the same nature as those mentioned in the preceding paragraphs of this section), which it thinks it is necessary to make to do justice; and
  - (l) subject to this Act and the applicable Rules of Court, make an order under this Part at any time before or after the making of a decree under another Part.
- (2) The making of an order of a kind referred to in paragraph (1)(ba), or of any other order under this Part, in relation to the maintenance of a party to a marriage does not prevent a court from making a subsequent order in relation to the maintenance of the party.

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- (3) The applicable Rules of Court may make provision with respect to the making of orders under this Part in relation to the maintenance of parties to marriages (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.
- (4) If a bankruptcy trustee is a party to a proceeding before the court, the court may make an order under paragraph (1)(d) directed to the bankrupt.
- (5) If the trustee of a personal insolvency agreement is a party to a proceeding before the court, the court may make an order under paragraph (1)(d) directed to the debtor subject to the agreement.
- (6) Subsections (4) and (5) do not limit paragraph (1)(d).

### **81 Duty of court to end financial relations**

In proceedings under this Part, other than proceedings under section 78 or proceedings with respect to maintenance payable during the subsistence of a marriage, the court shall, as far as practicable, make such orders as will finally determine the financial relationships between the parties to the marriage and avoid further proceedings between them.

### **82 Cessation of spousal maintenance orders**

- (1) An order with respect to the maintenance of a party to a marriage ceases to have effect upon the death of the party.
- (2) Subject to subsection (3), an order with respect to the maintenance of a party to a marriage ceases to have effect upon the death of the person liable to make payments under the order.
- (3) Subsection (2) does not apply in relation to an order made before the date of commencement of section 38 of the *Family Law Amendment Act 1983* if the order is expressed to continue in force throughout the life of the person for whose benefit the order was made or for a period that had not expired at the time of the death of the person liable to make payments under the order and, in that

case, the order is binding upon the legal personal representative of the deceased person.

- (4) An order with respect to the maintenance of a party to a marriage ceases to have effect upon the re-marriage of the party unless in special circumstances a court having jurisdiction under this Act otherwise orders.
- (6) Where a re-marriage referred to in subsection (4) takes place, it is the duty of the person for whose benefit the order was made to inform without delay the person liable to make payments under the order of the date of the re-marriage.
- (7) Any moneys paid in respect of a period after the event referred to in subsection (4) may be recovered in a court having jurisdiction under this Act.
- (8) Nothing in this section affects the recovery of arrears due under an order at the time when the order ceased to have effect.

### **83 Modification of spousal maintenance orders**

- (1) If there is in force an order (whether made before or after the commencement of this Act) with respect to the maintenance of a party to a marriage:
  - (a) made by the court; or
  - (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.

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- (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.

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**85A Ante-nuptial and post-nuptial settlements**

- (1) The court may, in proceedings under this Act, make such order as the court considers just and equitable with respect to the application, for the benefit of all or any of the parties to, and the children of, the marriage, of the whole or part of property dealt with by ante-nuptial or post-nuptial settlements made in relation to the marriage.
- (2) In considering what order (if any) should be made under subsection (1), the court shall take into account the matters referred to in subsection 79(4) so far as they are relevant.
- (3) A court cannot make an order under this section in respect of matters that are included in a financial agreement.

**86A Certain maintenance agreements ineffective**

A maintenance agreement made after the commencement of this section that is not a financial agreement does not have any effect and is not enforceable in any way.

**86 Registered maintenance agreements**

- (1) A maintenance agreement other than an agreement to which section 87 applies may be registered, as prescribed by the applicable Rules of Court, in any court having jurisdiction under this Act.
- (1A) A maintenance agreement made after the commencement of this subsection cannot be registered.
- (2) Section 66S applies in relation to the variation of a maintenance agreement registered under subsection (1), in so far as the agreement makes provision for the maintenance of a child of the relevant marriage, as if the agreement were an order made by consent under Part VII by the court in which the agreement is registered.

- (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

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the agreement for the other party to the agreement to be assessed in respect of the costs of the child (whether or not such an application has in fact been made by the party or by another person);

the maintenance agreement, so far as it makes provision for the maintenance of the child, has no effect and is not enforceable in any way.

- (4) Subject to section 89, this section does not apply to overseas maintenance agreements.

**87 Operation of maintenance agreements entered into in substitution for rights under Act**

- (1) Subject to this section, a maintenance agreement may make provision to the effect that the agreement shall operate, in relation to the financial matters dealt within the agreement, in substitution for any rights of the parties to the agreement under this Part.

- (1A) Subsection (1) does not apply to a maintenance agreement made after the commencement of this subsection.

- (2) Where a maintenance agreement makes provision as mentioned in subsection (1), the maintenance agreement has no effect, and is not enforceable in any way, unless it has been approved by the court.

- (3) In proceedings for the approval of a maintenance agreement, if the court is satisfied that the provisions of the agreement with respect to financial matters are proper, the court shall, by order, approve the agreement, but if the court is not so satisfied, it shall, by order, refuse to approve the agreement.

- (4) Where a maintenance agreement that makes provision as mentioned in subsection (1) is approved by the court:
- (a) any order having effect under this Part or any order made under Part VIII of the repealed Act and continued in effect by virtue of paragraph 3(2)(c) ceases to have effect in so far as it relates to the financial matters dealt with in the agreement



and, whether or not the approval of the agreement is revoked, has no further effect; and

- (b) subject to subsections (4A) to (4C) (inclusive), no court having jurisdiction under this Act may make an order (other than an order under this section or an order in connection with the enforcement of the agreement) with respect to those financial matters unless the approval of the agreement is revoked.
- (4A) The approval, after the commencement of this subsection, of a maintenance agreement under this section does not exclude or limit the power of a court having jurisdiction under this Act to make an order in relation to the maintenance of a party to the relevant marriage if the court is satisfied that, at the time the agreement was approved, the circumstances of the party were such that, taking into account the terms and effect of the agreement, the party would have been unable to support himself or herself without an income tested pension, allowance or benefit.
- (4B) Where subsection (4A) applies in relation to an approved maintenance agreement, section 83 applies in relation to the variation of the agreement, in so far as the agreement makes provision for the maintenance of a party to the marriage, as if the agreement were an order made by consent under this Act by a court in which the agreement is registered or deemed to be registered.
- (4C) The approval, whether before or after the commencement of this subsection, of a maintenance agreement under this section does not exclude or limit the power of a court having jurisdiction under Part VII to make any order under that Part in relation to a child of the relevant marriage and, where the agreement makes provision for the maintenance of a child of the marriage, section 66S applies in relation to the variation of the agreement, in so far as it makes that provision, as if the agreement were an order made by consent under that Part by a court in which the agreement is registered or deemed to be registered.
- (4D) Where:

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- (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

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to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts, and, in proceedings of the kind referred to in subparagraph (ea)(iii) of the definition of *matrimonial cause* in subsection 4(1), being proceedings instituted in a court in which the approved maintenance agreement is registered or deemed to be registered, the court:

- (a) subject to paragraph (b), has the same powers, may grant the same remedies and shall have the same regard to the rights of third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction;
  - (b) has power to make an order for the payment, by a party to the agreement to another party to the agreement, of interest on an amount payable pursuant to the agreement, from the time when the amount became or becomes due and payable, at a rate not exceeding the rate prescribed by the Rules of the Court; and
  - (c) in addition to, or instead of, making an order or orders pursuant to paragraph (a) or (b), may order that the agreement, or a specified part of the agreement, be enforced as if it were an order of the court.
- (12) Where the approval of a maintenance agreement under this section has been revoked, a court shall, in considering whether, and if so, how, to exercise any powers under this Part, have regard to:
- (a) anything done or omitted to be done by a party to the agreement pursuant to the agreement;
  - (b) any change in the circumstances of a party to the agreement arising out of the doing of any act by a person, or the failure of a person to do an act, pursuant to the agreement;
  - (c) any order made by that court or another court exercising jurisdiction under this Act in connection with the agreement while the agreement was in force; and
  - (d) any order made under paragraph (9)(b) in connection with the revocation of the approval of the agreement.

- (15) In this section, ***approved maintenance agreement*** means a maintenance agreement that has been approved under this section and the approval of which has not been revoked.
- (16) Nothing in this Act affects the operation of an agreement sanctioned under paragraph 87(1)(k) of the repealed Act or the rights and obligations of a person under such an agreement.
- (17) Subject to section 89, this section does not apply to overseas maintenance agreements.

**87A Specification in maintenance agreements of payments etc. for maintenance purposes**

- (1) Where:
  - (a) a maintenance agreement (whether or not registered under section 86 or approved under section 87) has the effect of requiring:
    - (i) payment of a lump sum, whether in one amount or by instalments; or
    - (ii) the transfer or settlement of property; and
  - (b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a party to a marriage or a child or children of a marriage;the agreement shall:
  - (c) state that the agreement is an agreement to which this section applies; and
  - (d) specify:
    - (i) the person or persons for whose maintenance provision is made by the payment, transfer or settlement; and
    - (ii) the portion of the payment, or the value of the portion of the property, attributable to the provision of maintenance for that person or each of those persons, as the case may be.
- (2) Where a maintenance agreement of a kind referred to in paragraph (1)(a):

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- (a) does not state that the agreement is an agreement to which this section applies; or
- (b) states that the agreement is an agreement to which this section applies, but does not comply with paragraph (1)(d); any payment, transfer or settlement of a kind referred to in paragraph (1)(a), that the agreement has the effect of requiring, shall be taken not to make provision for the maintenance of a party to the relevant marriage or of a child of the relevant marriage.

### **88 Enforcement of maintenance agreements**

- (1) A maintenance agreement that has been registered, or is deemed to have been registered, in a court may be enforced as if it were an order of that court.
- (2) Subsection (1) does not apply in relation to maintenance agreements that have been approved under section 87.

### **89 Overseas maintenance agreements**

The regulations may make provision for and in relation to:

- (a) the application of sections 86 and 87, with such additions, exceptions and modifications as are prescribed, to overseas maintenance agreements; and
- (b) the transmission to appropriate courts or authorities of prescribed overseas jurisdictions of, or of copies of, maintenance agreements and of agreements for maintenance of ex-nuptial children for the purpose of securing the enforcement of those agreements in those jurisdictions.

### **89A Institution of spousal maintenance proceedings by authority or person**

The regulations may make provision for and in relation to the authorising of a prescribed authority of the Commonwealth, of a State or of a Territory, or the person for the time being holding a prescribed office under a law of the Commonwealth, of a State or of a Territory, in the discretion of the authority or person, to

institute and prosecute proceedings with respect to the maintenance of a party to a marriage, on behalf of that party.

### **90 Certain instruments not liable to duty**

- (1) The following agreements, deeds and other instruments are not subject to any duty or charge under any law of a State or Territory or any law of the Commonwealth that applies only to or in relation to a Territory:
  - (a) a deed or other instrument executed by a person for the purposes of, or in accordance with, an order made under this Part;
  - (b) a relevant maintenance agreement that confers a benefit upon a party to, or a child of, the marriage to which the maintenance agreement relates, to the extent that the maintenance agreement confers that benefit;
  - (c) a deed or other instrument executed by a person for the purposes of, or in accordance with, a relevant maintenance agreement, being a deed or other instrument that confers a benefit upon a party to, or a child of, the marriage to which the maintenance agreement relates, to the extent that the deed or other instrument confers that benefit.
- (2) The following maintenance agreements are relevant maintenance agreements for the purposes of this section:
  - (a) a registered maintenance agreement made in connection with the termination of the marriage to which the maintenance agreement relates by divorce or the annulment of the marriage to which the maintenance agreement relates;
  - (b) a registered maintenance agreement (other than a maintenance agreement referred to in paragraph (a)) made in contemplation of the termination of the marriage to which the maintenance agreement relates by divorce or the annulment of the marriage to which the maintenance agreement relates;
  - (c) a registered maintenance agreement (other than a maintenance agreement referred to in paragraph (a) or (b))

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- 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.