Family Law Act 1975

Act No. 53 of 1975 as amended

This compilation was prepared on 1 January 2003
taking into account amendments up to Act No. 121 of 2002

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

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

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An Act relating to Marriage and to Divorce and Matrimonial Causes and, in relation thereto and otherwise, Parental Responsibility for Children, and certain other Matters

Part I—Preliminary

1 Short title [*see* Note 1]

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

2 Commencement [*see* Note 1]

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

3 Repeal and saving

(1) The *Matrimonial Causes Act 1959*, the *Matrimonial Causes Act 1965* and the *Matrimonial Causes Act 1966* are repealed.

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

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

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

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

(i) made before the commencement of this Act in the exercise of jurisdiction invested or conferred by the repealed Act, or in a matrimonial cause or proceedings for a separation order instituted under the law of that State or Territory, being a decree that was in force immediately before the commencement of this Act; or

(ii) made after the commencement of this Act in proceedings to which subsection 9(1) applied;

shall have, or continue to have, effect throughout Australia, and, except in the case of:

(iii) a decree of nullity of marriage made on the ground that the marriage was voidable;

(iv) a decree of judicial separation;

(v) a decree of restitution of conjugal rights;

(vi) a decree of jactitation of marriage; or

(vii) a separation order;

this Act applies to and in relation to the decree as if the decree had been made under this Act.

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

4 Interpretation

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

appeal includes an application for a re-hearing.

Appeal Division means the Appeal Division of the Family Court.

applicable Rules of Court:

(a) in relation to the Federal Magistrates Court—means the related Federal Magistrates Rules; and

(b) in relation to any other court—means the standard Rules of Court.

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

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

(a) the Chief Executive Officer of the Family Court; or

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

approved counselling organisation has the meaning given by subsection 12(1).

approved mediation organisation has the meaning given by subsection 12(2).

arbitrator means a person who meets the prescribed requirements for an arbitrator.

Australia includes Norfolk Island.

child counselling means counselling to:

(a) discuss the care, welfare or development of a child; or

(b) discuss, and try to resolve, differences between persons that affect the care, welfare or development of a child.

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

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

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

community mediator means a person referred to in paragraph (b) of the definition of ***family and child mediator***.

contact order has the meaning given by subsection 64B(4).

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

court counsellor means:

(a) the Principal Director of Court Counselling, a Director of Court Counselling or another court counsellor appointed under section 38N; or

(b) a person appointed under a law of a State as a counsellor in relation to a Family Court of that State.

court mediator means a person referred to in paragraph (a) of the definition of ***family and child mediator***.

decree means decree, judgment or order, and includes a decree *nisi* and an order dismissing an application or refusing to make a decree or order.

DPP means the Director of Public Prosecutions.

family and child counselling means any of the following kinds of counselling:

(a) marriage counselling;

(b) child counselling;

(c) counselling about any matter that arises out of proceedings under this Act and that involves:

(i) a parent or adoptive parent of a child; or

(ii) a child; or

(iii) a party to a marriage.

family and child counsellor means:

(a) a court counsellor; or

(b) a person authorised by an approved counselling organisation to offer family and child counselling on behalf of the organisation; or

(c) a person authorised under the regulations to offer family and child counselling.

family and child mediation means mediation, conducted in accordance with the regulations, of any dispute that could be the

subject of proceedings (other than prescribed proceedings) under this Act and that involves:

(a) a parent or adoptive parent of a child; or

(b) a child; or

(c) a party to a marriage.

family and child mediator means:

(a) a person employed or engaged by the Family Court or a Family Court of a State to provide family and child mediation services; or

(b) a person authorised by an approved mediation organisation to offer family and child mediation on behalf of the organisation; or

(c) a person, other than a person mentioned in paragraph (a) or (b), who offers family and child mediation.

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, in relation to the parties to a marriage, means matters with respect to:

(a) the maintenance of one of the parties;

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

(c) the maintenance of children of the marriage.

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

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

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

Full Court means:

(a) 3 or more Judges of the Family Court sitting together, where a majority of those Judges are members of the Appeal Division; or

(b) in relation to particular proceedings:

(i) 3 or more Judges of the Family Court sitting together, where, at the commencement of the hearing of the proceedings, a majority of those Judges were members of the Appeal Division; or

(ii) 2 Judges of the Family Court sitting together, where those Judges are permitted, by subsection 28(4), to complete the hearing and determination, or the determination, of those proceedings.

General Division means the General Division of the Family Court.

has, in relation to a residence order, a contact order or a specific issues order, has the meaning given by subsection 64B(8).

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.

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

made in favour, in relation to a residence order, a contact order or a specific issues order, has the meaning given by subsection 64B(7).

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.

marriage counselling includes the counselling of a person in relation to:

(a) entering into marriage;

(b) reconciliation of the parties to a marriage;

(c) separation of the parties to a marriage;

(d) the dissolution or annulment of a marriage; or

(e) adjusting to the dissolution or annulment of a marriage;

whether that counselling is provided in relation to the proposed marriage, marriage or former marriage of that person or in relation to the proposed marriage, marriage or former marriage of another person or other persons, and whether that counselling is provided to that person individually or as a member of a group of persons.

matrimonial cause means:

(a) proceedings between the parties to a marriage, or by the parties to a marriage, for a decree of:

(i) dissolution of marriage; or

(ii) nullity of marriage; or

(b) proceedings for a declaration as to the validity of a marriage or of the dissolution or 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

(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 proceedings between those parties for principal relief; or

(iii) in relation to the dissolution or annulment of that marriage or the legal separation of the parties to that marriage, being a dissolution, annulment or legal separation effected in accordance with the law of an overseas jurisdiction, where that dissolution, annulment or legal separation is recognized 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 between the parties to a marriage with respect to a financial agreement made by them; 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.

ordinarily resident includes habitually resident.

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.

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

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

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.

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.

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) proceedings for principal relief; or

(b) proceedings in relation to concurrent, pending or completed proceedings for principal relief.

private arbitration means arbitration other than arbitration carried out as a result of an order made under section 19D.

private mediator means a person referred to in paragraph (c) of the definition of ***family and child mediator***.

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

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

proceeds of crime order means:

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

(b) a forfeiture order under the *Proceeds of Crime Act 2002*.

property, 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.

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

(b) the maintenance of a party to a marriage.

Registrar, in relation to a court, means the principal officer of the court or any other appropriate officer of the court.

Registry Manager means:

(a) in relation to the Family Court—the Registry Manager of a Registry of the Court; and

(b) in relation to a court other than the Family Court—the principal officer of the court or any other appropriate officer of the court.

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

repealed Act means the *Matrimonial Causes Act 1959*.

residence order has the meaning given by subsection 64B(3).

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.

specific issues order has the meaning given by subsection 64B(6).

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

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.

this Act includes the regulations.

voluntary organization includes a branch or section of such an organization, being a branch or section that is identified by a distinct name and in respect of which separate financial accounts are maintained.

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

welfare officer means:

(a) a person appointed under a law of a State as a welfare officer in relation to a Family Court of that State;

(b) a person engaged under the *Public Service Act 1999* performing duties in the Australian Public Service as a welfare officer;

(ba) a person who is permanently or temporarily employed as a welfare officer in the Public Service of a Territory;

(c) a person who is permanently or temporarily employed as a welfare officer in the Public Service of a State and whose services have been made available for the purposes of this Act in pursuance of an arrangement between the Government of the Commonwealth and the Government of the State;

(d) a person nominated by an organization concerned with the welfare of children, being an organization that has been approved by the Attorney-General; or

(e) a person appointed as a welfare officer in accordance with the regulations.

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

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

(b) a reference to a Family Court of a State is a reference to a court to which section 41 applies.

(2) A reference in this Act, the standard Rules of Court or the related Federal Magistrates Rules to a party to a marriage includes a reference to a person who was a party to a marriage that has been dissolved or annulled, in Australia or elsewhere, or that has been terminated by the death of one party to the marriage.

(3) To avoid doubt, for all purposes:

(a) jurisdiction under the standard Rules of Court is taken to be jurisdiction under this Act; and

(b) jurisdiction under the related Federal Magistrates Rules is taken to be jurisdiction under this Act; and

(c) proceedings under the standard Rules of Court are taken to be proceedings under this Act; and

(d) proceedings under the related Federal Magistrates Rules are taken to be proceedings under this Act; and

(e) an order (however described) made by a court under the standard Rules of Court is taken to be an order made by the court under this Act; and

(f) an order (however described) made by a court under the related Federal Magistrates Rules is taken to be an order made by the court under this Act.

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.

(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 II—Counselling organisations and mediation organisations

Division 1—What this Part does

11 What this Part does

This Part provides for:

(a) the approval of counselling organisations and mediation organisations (Division 2); and

(b) reporting by approved counselling organisations and approved mediation organisations (Division 3); and

(c) funding of approved counselling organisations and approved mediation organisations (Division 4).

Division 2—Approval of counselling organisations and mediation organisations

12 Meaning of *approved counselling organisation* and *approved mediation organisation*

(1) An ***approved counselling organisation*** is an organisation in relation to which an approval under section 13A is in force.

(2) An ***approved mediation organisation*** is an organisation in relation to which an approval under section 13B is in force.

13 Organisation may be approved as an approved counselling organisation, an approved mediation organisation or both

Subject to sections 13A and 13B, an organisation may be approved as:

(a) an approved counselling organisation; or

(b) an approved mediation organisation; or

(c) both an approved counselling organisation and an approved mediation organisation.

13A Approval of counselling organisations

(1) A voluntary organisation may apply to the Minister for approval as a counselling organisation.

(2) The Minister may, in writing, approve the organisation as a counselling organisation if, and only if, the Minister is satisfied that:

(a) the organisation is willing and able to engage in family and child counselling; and

(b) the whole, or a substantial part, of the organisation's activities consist, or will consist, of family and child counselling.

(3) If the Minister decides to refuse to approve the organisation, the Minister must give written notice of that decision to the organisation.

13B Approval of mediation organisations

(1) A voluntary organisation may apply to the Minister for approval as a mediation organisation.

(2) The Minister may, in writing, approve the organisation as a mediation organisation if, and only if, the Minister is satisfied that:
   (a) the organisation is willing and able to engage in family and child mediation; and
   (b) the whole, or a substantial part, of the organisation's activities consist, or will consist, of family and child mediation.

(3) If the Minister decides to refuse to approve the organisation, the Minister must give written notice of that decision to the organisation.

13C Approvals subject to conditions

(1) An approval under section 13A is subject to such conditions (if any) as are specified in the instrument of approval.

(2) An approval under section 13B is subject to:
   (a) a condition that the organisation must comply with the requirements of the regulations when it engages in family and child mediation; and
   (b) such other conditions (if any) as are specified in the instrument of approval.

(3) If an approval is subject to conditions specified in the instrument of approval, the Minister may, from time to time, revoke or vary all or any of those conditions or add further conditions.

(4) The Minister's power to revoke, vary or add conditions must be exercised by notice in writing to the organisation concerned.

13D Revocation of approvals

(1) The Minister may, at any time, revoke the approval of an organisation under section 13A if:

(a) the organisation has failed to comply with a condition of the approval; or

(b) the organisation has failed to comply with its obligations as an approved counselling organisation under section 13F; or

(c) a person authorised by the organisation to offer family and child counselling on behalf of the organisation has failed to comply with a requirement of this Act or a direction made by a court under this Act; or

(d) the Minister is no longer satisfied as mentioned in paragraph 13A(2)(b) in relation to the organisation; or

(e) the Minister is satisfied that the organisation is not adequately carrying out family and child counselling.

(2) The Minister may, at any time, revoke the approval of an organisation under section 13B if:

(a) the organisation has failed to comply with a condition of the approval; or

(b) the organisation has failed to comply with its obligations as an approved mediation organisation under section 13F; or

(c) a person authorised by the organisation to offer family and child mediation on behalf of the organisation has failed to comply with a requirement of this Act or a direction made by a court under this Act; or

(d) the Minister is no longer satisfied as mentioned in paragraph 13B(2)(b) in relation to the organisation; or

(e) the Minister is satisfied that the organisation is not adequately carrying out family and child mediation.

(3) The Minister's power to revoke an approval must be exercised by notice in writing to the organisation concerned.

(4) In this section:

this Act includes:

(a) the standard Rules of Court; and

(b) the related Federal Magistrates Rules.

13E Minister to publish lists of approved counselling organisations and approved mediation organisations

The Minister must publish annually, in such manner as the Minister thinks appropriate:

(a) a list of all approved counselling organisations; and

(b) a list of all approved mediation organisations.

Division 3—Reporting by approved counselling organisations and approved mediation organisations

13F Reports and financial statements of approved organisations

(1) An approved counselling organisation must, in respect of each financial year, give the Minister:

(a) an audited financial statement of the receipts and payments of the organisation, in which receipts and payments in respect of its family and child counselling activities are shown separately from other receipts and payments; and

(b) a report on its family and child counselling activities, including information about the number of cases dealt with by the organisation during the year.

(2) An approved mediation organisation must, in respect of each financial year, give the Minister:

(a) an audited financial statement of the receipts and payments of the organisation, in which receipts and payments in respect of its family and child mediation activities are shown separately from other receipts and payments; and

(b) a report on its family and child mediation activities, including information about the number of cases dealt with by the organisation during the year.

(3) A report under subsection (1) or (2) in relation to a financial year must be given to the Minister by 30 September in the next financial year.

13G Minister may exempt organisation from requirements of section 13F

(1) The Minister may, in writing, exempt an organisation from complying with some or all of the requirements of section 13F if the Minister is satisfied that:

(a) it would be impracticable for the organisation to comply with those requirements; or

(b) it would be unduly onerous to require the organisation to comply with those requirements.

(2) An exemption under subsection (1) has effect accordingly.

Division 4—Funding of approved counselling organisations and approved mediation organisations

13H Grants to approved counselling organisations and approved mediation organisations

(1) The Minister may, from time to time, out of money appropriated by the Parliament for the purposes of this Part, grant to an approved counselling organisation or an approved mediation organisation such sums by way of financial assistance as the Minister determines.

(2) A grant may be made on terms and conditions (if any) that the Minister thinks appropriate.

Part III—Primary dispute resolution

Division 1—Object and outline

14 Object of Part

The object of this Part is:

(a) to encourage people to use primary dispute resolution mechanisms (such as counselling, mediation, arbitration or other means of conciliation or reconciliation) 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

(b) to ensure that people have access to counselling:

(i) to improve relationships covered by this Act; and

(ii) to help them adjust to court orders under this Act.

14A Outline of Part

An outline of this Part is set out below.

OUTLINE OF PART	
Item	**Divisions and coverage**
1	**Division 1—Object and outline** • object of this Part • outline of this Part
2	**Division 2—Obligations to consider the possibility of reconciliation** • duty of judges and of legal practitioners to consider the possibility of a reconciliation of the parties
3	**Division 3—Obligations to consider advising people about primary dispute resolution methods** • duty of courts and of legal practitioners to consider advising people about primary dispute resolution methods

4	**Division 4—Counselling** • parties to a marriage seeking counselling • courts advising or directing people to attend counselling • other matters related to counselling
5	**Division 5—Mediation and arbitration** • requests for mediation and courts advising or directing parties to attend mediation • private arbitration, courts referring proceedings to arbitration and review of awards of arbitration • provision of information about mediation and arbitration services and other matters relating to mediators and arbitrators
6	**Division 6—Miscellaneous** • miscellaneous matters

Division 2—Obligations to consider the possibility of reconciliation

14B Interpretation

In this Division:

Division 2 proceedings means:

(a) proceedings for a dissolution of marriage; or

(b) financial or Part VII proceedings instituted by a party to a subsisting marriage.

judge includes a Federal Magistrate, magistrate, Judicial Registrar or Registrar.

14C Duty of judges

(1) A judge constituting the court in which Division 2 proceedings are being heard must consider, from time to time, the possibility of a reconciliation of the parties.

(2) If, during the proceedings, the judge considers, from the evidence in the proceedings or the attitude of the parties, that there is a reasonable possibility of a reconciliation of the parties, the judge may:

(a) adjourn the proceedings to give the parties the opportunity to consider a reconciliation; or

(b) with the consent of the parties, interview them in chambers, with or without counsel, as the judge thinks proper, to assist in a possible reconciliation.

(3) If the judge adjourns the proceedings under paragraph (2)(a), the judge may advise the parties:

(a) to make use of the services of a family and child counsellor to assist in a possible reconciliation; or

(b) to request the Principal Director of Court Counselling of the Family Court, or an appropriate officer of a Family Court of a State, to nominate some other suitable person or organisation to assist in considering a possible reconciliation.

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

14D Duty of legal practitioners

A legal practitioner representing a party to Division 2 proceedings must consider, from time to time, the possibility of a reconciliation of the parties.

Division 3—Obligations to consider advising people about primary dispute resolution methods

14E Interpretation

In this Division:

primary dispute resolution methods means procedures and services for the resolution of disputes out of court, including:

(a) counselling services provided by family and child counsellors; and

(b) mediation services provided by family and child mediators; and

(c) arbitration services provided by arbitrators.

14F Duty of courts

A court exercising jurisdiction in proceedings under this Act must consider whether or not to advise the parties to the proceedings about the primary dispute resolution methods that could be used to resolve any matter in dispute.

14G Duty of legal practitioners

A legal practitioner acting in proceedings under this Act, or consulted by a person considering instituting such proceedings, must consider whether or not to advise the parties to the proceedings, or the person considering instituting proceedings, about the primary dispute resolution methods that could be used to resolve any matter in dispute.

Division 4—Counselling

14H Division 3 of Part VII deals with counselling in matters affecting children

Division 3 of Part VII contains provisions that deal with counselling in matters affecting children.

15 Notice seeking counselling

(1) A party to a marriage may file in the Family Court or in a Family Court of a State a notice stating that the party wishes to have the assistance of the counselling facilities of that Court.

(2) Where such a notice is filed, the Principal Director of Court Counselling of the Family Court or an appropriate officer of the Family Court of that State, as the case may be, shall arrange for the parties to the marriage to be interviewed by a family and child counsellor for the purpose of assisting the parties with a view to a reconciliation or the improvement of their relationship to each other or to any of their children.

15A Request for assistance of a family and child counsellor—Federal Magistrates Court

(1) A person who is:

(a) a party to a marriage; or

(b) a party to proceedings under this Act in the Federal Magistrates Court;

may ask a designated officer of the Federal Magistrates Court for the assistance of a family and child counsellor.

(2) If a request is made under subsection (1), a designated officer of the Federal Magistrates Court must, as far as practicable, arrange for the parties to the marriage, or the parties to the proceedings, as the case may be, to be interviewed by a family and child counsellor for any or all of the following purposes (to the extent that the purposes are relevant):

(a) assisting the parties with a view to a reconciliation;

(b) improving the parties' relationship to each other or to any of their children;

(c) assisting the parties and their children to adjust to the consequences of the breakdown of the marriage;

(d) undertaking any other family and child counselling in order to assist the parties to resolve any matter in dispute between them.

(3) For the purposes of this section, a member of the staff of the Federal Magistrates Court is taken to be an officer of the Federal Magistrates Court.

(4) For the purposes of this section, a ***designated officer*** of the Federal Magistrates Court is an officer of the Federal Magistrates Court specified in writing by the Chief Executive Officer of the Federal Magistrates Court for the purposes of this subsection.

(5) In this section:

dispute means a dispute about a matter with respect to which proceedings (other than prescribed proceedings) could be instituted under this Act.

Note: See also section 62CA, which deals with counselling in matters relating to children.

16 Advice as to counselling

(1) The Principal Director of Court Counselling of the Family Court may advertise the existence and availability of the counselling and welfare facilities of the Family Court and of other courts having jurisdiction under this Act.

(2) A party to a marriage, or to proceedings under this Act, may seek the assistance of the counselling facilities of the Family Court or of a Family Court of a State, and the Principal Director of Court Counselling of the Family Court or an appropriate officer of the Family Court of that State, as the case may be, shall, as far as practicable, make those facilities available.

16A Courts to direct or advise people to attend counselling

(1) If a court makes an order or grants an injunction under section 114, the court must, if the court considers that it is in the interests of the parties or their children to do so, direct or advise either or both of the parties to attend upon a family and child counsellor.

(2) Failure to comply with a direction or advice referred to in subsection (1) does not constitute a contempt of the court.

16B Courts may advise people to attend counselling if it may improve their relationship etc.

(1) If a court having jurisdiction under this Act considers that counselling may assist the parties to a marriage to improve their relationship to each other or to any of their children, it may advise the parties to attend upon a family and child counsellor or an approved counselling organisation.

(2) If the court does so advise the parties, it may, if it considers it desirable to do so, adjourn any proceedings before it to enable attendance at counselling.

16C Obligations to consider advising people about counselling for marital breakdown

(1) In this section, ***counselling for marital breakdown*** is counselling to assist the parties to a marriage and their children to adjust to the consequences of marital breakdown.

(2) A court exercising jurisdiction in proceedings under this Act, other than Part VII, must consider whether or not to advise parties to the proceedings about counselling for marital breakdown available through courts exercising jurisdiction under this Act and through approved counselling organisations.

(3) A legal practitioner acting in proceedings under this Act, other than Part VII, or consulted by a person considering instituting such proceedings, must consider whether or not to advise the parties to the proceedings, or the person considering instituting proceedings, about counselling for marital breakdown available through courts

exercising jurisdiction under this Act and through approved counselling organisations.

17 Provision of certain documents

The applicable Rules of Court shall provide for the furnishing to persons proposing to institute proceedings under this Act (other than under Part VII), and in appropriate cases to their spouses, of documents setting out:

(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 counselling and welfare facilities available within the Family Court and elsewhere.

19 Oath or affirmation of secrecy

(1) A family and child counsellor shall, before entering upon the performance of the functions as such a counsellor, make before a person authorized under the law of the Commonwealth or of a State or a Territory to take affidavits, an oath or affirmation of secrecy in accordance with the prescribed form.

(2) A family and child counsellor who has made an oath or affirmation of secrecy under the repealed Act shall be deemed to have made an oath or affirmation under this section.

Division 5—Mediation and arbitration

Subdivision A—Mediation

19A Request for mediation—request made through a Family Court

(1) A person who is:

(a) the parent or adoptive parent of a child; or

(b) a child; or

(c) a party to a marriage;

and who is not a party to proceedings under this Act, may file in the Family Court, or in a Family Court of a State, a notice asking for the help of a mediator in settling a dispute to which the person is a party.

(2) Where a notice is filed in a court:

(a) the notice must be dealt with in accordance with the standard Rules of Court; and

(b) if a mediation service is available at the Registry of the court and the dispute is one that, under the standard Rules of Court, may be mediated, the appropriate officer of the court must make arrangements for a court mediator to mediate the dispute in accordance with the standard Rules of Court.

(3) In this section:

dispute means a dispute about a matter with respect to which proceedings (other than prescribed proceedings) could be instituted under this Act.

19AAA Request for mediation—Federal Magistrates Court

(1) A person who is:

(a) the parent or adoptive parent of a child; or

(b) a child; or

(c) a party to a marriage; or

(d) a party to proceedings in the Federal Magistrates Court under this Act;

may ask a designated officer of the Federal Magistrates Court for the help of a family and child mediator in settling a dispute to which the person is a party.

(2) If a request is made under subsection (1), a designated officer of the Federal Magistrates Court must, as far as practicable, arrange for a family and child mediator to mediate the dispute.

(3) For the purposes of this section, a member of the staff of the Federal Magistrates Court is taken to be an officer of the Federal Magistrates Court.

(4) For the purposes of this section, a ***designated officer*** of the Federal Magistrates Court is an officer of the Federal Magistrates Court specified in writing by the Chief Executive Officer of the Federal Magistrates Court for the purposes of this subsection.

(5) In this section:

dispute means a dispute about a matter with respect to which proceedings (other than prescribed proceedings) could be instituted under this Act.

19AA Request for mediation—where made direct to a family and child mediator

A person may at any time request a family and child mediator to mediate a dispute.

19B Family Court may refer matters for mediation

(1) Subject to the standard Rules of Court, the Family Court or a Family Court of a State, may, with the consent of the parties to any proceedings before it under this Act (other than prescribed proceedings), make an order referring any or all of the matters in dispute in the proceedings for mediation by a court mediator.

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

(3) Where a court makes an order under subsection (1), the appropriate officer of the court must make arrangements for a court mediator to mediate the relevant disputed matter in accordance with the standard Rules of Court.

(4) Where:

(a) a court makes an order under subsection (1) in relation to any matter in dispute in proceedings before it; and

(b) a party to the proceedings files a notice in the court that the mediation of the matter has ended;

the court may make such orders, or give such directions, as it thinks appropriate in relation to the proceedings.

19BAA Federal Magistrates Court may refer matters for mediation

(1) The Federal Magistrates Court may, with the consent of the parties to any proceedings before it under this Act (other than prescribed proceedings), make an order referring any or all of the matters in dispute in the proceedings for mediation by a family and child mediator.

(2) Subsection (1) has effect subject to the related Federal Magistrates Rules.

(3) If the Federal Magistrates Court makes an order under subsection (1), it may, if necessary, adjourn the proceedings and may make such additional orders as it thinks appropriate to facilitate the effective conduct of the mediation.

(4) If the Federal Magistrates Court makes an order under subsection (1), a designated officer of the Federal Magistrates Court must make arrangements for a family and child mediator to mediate the relevant disputed matter or matters in accordance with the related Federal Magistrates Rules.

(5) If:

(a) the Federal Magistrates Court or a Federal Magistrate makes an order under subsection (1) in relation to any matter in dispute in proceedings before it; and

(b) a party to the proceedings files a notice in the Federal Magistrates Court that the mediation of the matter has ended;

the Federal Magistrates Court may make such orders, or give such directions, as it thinks appropriate in relation to the proceedings.

(6) For the purposes of this section, a member of the staff of the Federal Magistrates Court is taken to be an officer of the Federal Magistrates Court.

(7) For the purposes of this section, a ***designated officer*** of the Federal Magistrates Court is an officer of the Federal Magistrates Court specified in writing by the Chief Executive Officer of the Federal Magistrates Court for the purposes of this subsection.

19BA Court to advise people to attend mediation

(1) Subject to the regulations (if any), a court having jurisdiction under this Act must, if it considers it may help the parties to a dispute before it to resolve that dispute, advise the parties to seek the help of a family and child mediator.

(2) If the court does so advise the parties, it may, if it considers it desirable to do so, adjourn any proceedings before it to enable attendance at mediation.

Subdivision B—Arbitration

19D Court may refer proceedings to arbitration

(1) In any Part VIII proceedings the court may, subject to the applicable Rules of Court, make an order referring the proceedings, or any part of them, or any matter arising in them, to an arbitrator for arbitration in accordance with the applicable Rules of Court.

(2) However, a court may only make an order under subsection (1) with the consent of all the parties to the proceedings.

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

(4) Where a court makes an order under subsection (1), the arbitration must be carried out by the arbitrator in accordance with the applicable Rules of Court.

(5) A party to an award in an arbitration carried out as a result of an order under this section may register the award, in accordance with the regulations, in the court that made that order and the award, when so registered, has effect as if it were a decree made by that court.

19E Private arbitration

(1) A court having jurisdiction under this Act may, on application by a party to the private arbitration of a dispute, make such orders as the court thinks appropriate to facilitate the effective conduct of the arbitration.

(2) A party to an award made in a private arbitration of a dispute may register the award, in accordance with the regulations, in a court having jurisdiction under this Act and the award, when so registered, has effect as if it were a decree made by that court.

(3) In this section:

dispute means:

(a) Part VIII proceedings; or

(b) any part of such proceedings; or

(c) any matter arising in such proceedings; or

(d) a dispute about a matter with respect to which such proceedings could be instituted.

19EA Referral by arbitrator of questions of law to a Family Court

(1) At any time before making an award in section 19D arbitration or private arbitration, the arbitrator may refer for determination by a single Judge of the Family Court, or of a Family Court of a State, a question of law arising in relation to the arbitration.

(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 has either:

(a) determined the question of law; or

(b) remitted the matter to the arbitrator having found that no question of law arises.

19EB Referral by arbitrator of questions of law to the Federal Magistrates Court

(1) At any time before making an award in section 19D arbitration or private arbitration, the arbitrator may refer for determination by the Federal Magistrates Court a question of law arising in relation to the arbitration.

(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 Federal Magistrates Court has either:

(a) determined the question of law; or

(b) remitted the matter to the arbitrator having found that no question of law arises.

19F Review of awards by a Family Court

(1) A party to a registered award made in section 19D arbitration or private arbitration may apply to a single Judge of the Family Court, or of a Family Court of a State, for review of the award on questions of law.

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

(2) On a review of an award under this section, the Judge may:

(a) determine all questions of law arising in relation to the arbitration; and

(b) make such decrees as he or she thinks appropriate, including a decree affirming, reversing or varying the award.

19FA Review of awards by the Federal Magistrates Court

(1) A party to a registered award made in section 19D arbitration or private arbitration may apply to the Federal Magistrates Court for review of the award on questions of law.

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

19G Setting aside awards—Family Courts

If an award made in section 19D arbitration or private arbitration, or an agreement made as a result of such arbitration, is registered in the Family Court or a Family Court of a State, the court may make a decree affirming, reversing or varying the award or agreement 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.

19GA Setting aside awards—Federal Magistrates Court

If an award made in section 19D arbitration or private arbitration, or an agreement made as a result of such arbitration, is registered in the Federal Magistrates Court, the Federal Magistrates Court

may make a decree affirming, reversing or varying the award or agreement if it 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.

19H Fees for arbitration

(1) An arbitrator conducting section 19D arbitration or private arbitration may charge the parties to the arbitration fees for conducting it.

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

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

Subdivision C—Miscellaneous

19J Advice about mediation and arbitration

(1) The appropriate officer of the Family Court or of a Family Court of a State must, as far as practicable, on request by a party to a marriage or to proceedings under this Act, advise the party about:

(a) the mediation or arbitration facilities (if any) available in the court and how those facilities are made available; and

(b) the mediation services provided by approved mediation organisations.

(2) The standard Rules of Court must provide for persons who propose to institute proceedings under this Act, and (in appropriate cases) their spouses, and other interested persons, to be given a document

setting out particulars of any mediation and arbitration facilities available in the Family Court and elsewhere.

19K Oath or affirmation by court mediator or community mediator

A court mediator or a community mediator must, before starting to perform the functions of such a mediator, make an oath or affirmation of secrecy in accordance with the prescribed form before a person authorised under a law of the Commonwealth, or of a State or Territory, to take affidavits.

19L Oath or affirmation by arbitrator

An arbitrator must, before starting to perform the functions of such an arbitrator, make an oath or affirmation in accordance with the prescribed form before a person authorised under a law of the Commonwealth, or of a State or Territory, to take affidavits.

19M Protection of mediators and arbitrators

A family and child mediator or an arbitrator has, in performing the functions of such a mediator or arbitrator, the same protection and immunity as a Judge of the Family Court has in performing the functions of such a Judge.

Division 6—Miscellaneous

19N Admissions made to counsellors, mediators etc.

(1) This section applies to:

(a) a family and child counsellor; or

(b) a court mediator; or

(c) subject to the regulations, a community mediator or a private mediator; or

(d) a person nominated, or acting on behalf of an organisation nominated, for the purposes of paragraph 14C(3)(b) or subparagraph 44(1B)(a)(ii); or

(e) a person to whom a party to a marriage has been referred, for medical or other professional consultation, by a person referred to in paragraph (a), (b), (c) or (d).

(2) Evidence of anything said, or any admission made, at a meeting or conference conducted by a person to whom this section applies while the person is acting as such a person 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 or of a State or Territory, or by the consent of the parties, to hear evidence.

19P Regulations to be complied with by family and child mediators

(1) The regulations may prescribe requirements to be complied with by family and child mediators in relation to the family and child mediation 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).

19Q Advertising in Family Court registries of counselling, mediation and arbitration services

(1) Subject to the regulations (if any), a family and child counsellor, or an approved counselling organisation, may advertise, at a Registry of the Family Court, the counselling services the counsellor or organisation provides.

(2) Subject to the regulations (if any), a family and child mediator, or an approved mediation organisation, may advertise, at a Registry of the Family Court, the mediation services the mediator or organisation provides.

(3) Subject to the regulations (if any), an arbitrator may advertise, at a Registry of the Family Court, the arbitration services the arbitrator provides.

Part IV—The Family Court of Australia

Division 1—Interpretation

20 Interpretation

In this Part, unless the contrary intention appears:

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

Court means the Family Court of Australia.

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

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

Judge Administrator means a Judge Administrator of the Court.

Division 2—The Family Court of Australia

21 Creation of Court

(1) A Court, to be known as the Family Court of Australia, is created by this Act.

(2) The Court is a superior court of record.

(3) The Court consists of:

(a) a Chief Judge, who shall be called the Chief Justice of the Court;

(b) a Deputy Chief Judge, who shall be called the Deputy Chief Justice of the Court; and

(c) Judge Administrators, Senior Judges and other Judges, not exceeding, in total, such number as is prescribed.

(4) Regulations made pursuant to subsection (3) shall take effect at the expiration of 7 sitting days after the regulations have been laid before each House of the Parliament.

21A Divisions of Court

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

21B Arrangement of business of Court

(1) The Chief Judge is responsible for ensuring the orderly and expeditious discharge of the business of the Court and accordingly may, subject to this Act and to such consultation with the Judges as is appropriate and practicable, make arrangements as to the Judge or Judges who is or are to constitute the Court, or the Full Court, in particular matters or classes of matters.

(2) The Deputy Chief Judge shall assist the Chief Judge in the exercise of the functions conferred on the Chief Judge by subsection (1).

(3) A Judge Administrator shall, in relation to such part of Australia as is from time to time assigned by the Chief Judge, assist the Chief Judge and the Deputy Chief Judge in the exercise of such of the functions conferred on the Chief Judge by subsection (1) as are from time to time so assigned.

Division 3—Judges

22 Appointment, removal and resignation of Judges

(1) A Judge:

(a) shall be appointed by the Governor-General; and

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

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

(a) the person is or has been a Judge of another court created by the Parliament or of a court of a State or has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory for not less than 5 years; and

(b) by reason of training, experience and personality, the person is a suitable person to deal with matters of family law.

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

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

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

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

(2AFA) Where a person holding office as a Senior Judge or Judge of the Court is appointed Deputy Chief Judge or a Judge Administrator, the person retains that office as Senior Judge or Judge, as the case

may be, and may resign the office of Deputy Chief Judge or Judge Administrator without resigning that first-mentioned office.

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

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

(a) a court (other than the Court) created by the Parliament; or

(b) the Supreme Court of the Northern Territory.

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

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

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

(3A) The resignation takes effect on:

(a) the day on which it is received by the Governor-General; or

(b) a later day specified in the resignation document.

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

23 Seniority

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

(2) The Deputy Chief Judge is senior to all other Judges of the Court other than the Chief Judge.

(3) Judges appointed as Judge Administrators or assigned to the Appeal Division before, or not later than 3 months after, the commencement of section 13 of the *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988* have seniority next to the Deputy Chief Judge, and have such seniority in relation to each other as they had immediately before that commencement.

(4) The remaining Judge Administrators and Judges assigned to the Appeal Division have seniority next to the Judges to whom subsection (3) applies according to the days on which their appointments as Judge Administrators and their assignments to the Appeal Division (whichever first occurred) took effect.

(5) Where, because 2 or more appointments as Judge Administrator and assignments to the Appeal Division took effect on the same day, subsection (4) does not determine priority between the Judges concerned, those Judges have such seniority in relation to each other as is assigned to them by the Governor-General.

(6) The Senior Judges not assigned to the Appeal Division have seniority next to the Judges to whom subsection (4) applies according to the days on which their appointments as Senior Judges took effect.

(7) Where, because 2 or more commissions of appointment as Senior Judge took effect on the same day, subsection (6) does not determine seniority between the Senior Judges concerned, those Judges have such seniority in relation to each other as is assigned to them by the Governor-General.

(8) The Judges who are not Judge Administrators or Senior Judges and are not assigned to the Appeal Division have seniority next to the Senior Judges to whom subsection (6) applies according to the days on which their appointments as Judges took effect.

(9) Where, because 2 or more commissions of appointment as Judge took effect on the same day on or after the commencement of this subsection, subsection (8) does not determine seniority between the

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

(10) If:

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

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

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

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

24 Absence or illness of Chief Judge

(1) Whenever:

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

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

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

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

25 Salary and Allowances

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

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

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

26 Oath or affirmation of allegiance and office

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

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

or

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

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 19G.

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

(a) a residence order; or

(b) a contact order; or

(c) a specific issues order conferring responsibility for the long-term or day-to-day care, welfare and development of a child; or

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

other than:

(e) a parenting order made under paragraph 70NG(1)(b) or an order made under paragraph 70NJ(3)(c) that has the same effect as such a parenting order; or

(f) an order until further order; or

(g) an order made in undefended proceedings; or

(h) 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.

(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 Rules of Court disallowable etc.

Sections 48, 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to Rules of Court made under sections 26B and 26C as if references to regulations were references to the Rules of Court.

26F Independence of Judicial Registrars

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

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

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

26H Qualifications for appointment etc.

(1) A person shall not be appointed as a Judicial Registrar unless:

(a) the person is or has been a Judge of a court created by the Parliament or of a court of a State or the Northern Territory or has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory for not less than 5 years; and

(b) the person is, by reason of training, experience and personality, a suitable person to deal with matters of family law.

26I Term of office

(1) A Judicial Registrar:

(a) shall be appointed with effect from the day specified in the instrument of appointment; and

(b) holds office, subject to this Act:

(i) for such term (not exceeding 7 years) as is specified in the instrument of appointment, but is eligible for re-appointment; or

(ii) if the instrument of appointment so provides, until attaining 65 years of age, but is eligible for re-appointment.

26J Remuneration and allowances

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

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

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

26JA Leave of absence

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

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

26K Resignation

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

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

26L Termination of appointment

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

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

26M Oath or affirmation of office

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

"I, , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law and that I will well and truly

serve Her in the office of Judicial Registrar of the Family Court of Australia, So help me God."

or

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

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

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

Division 5—Jurisdiction and exercise of jurisdiction

27 Place of sitting

Sittings of the Court shall be held from time to time as required at the places at which the Registries of the Court are established, but the Court may sit at any place in Australia.

28 Exercise of jurisdiction

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

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

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

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

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

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

(a) if only 2 Judges remain and one of those Judges is assigned to the Appeal Division, or if more than 2 Judges remain and a majority of those Judges are assigned to the Appeal

Division—by the Court constituted by the remaining Judges; or

(b) with the consent of the parties—by the Court constituted by the remaining Judge or Judges and an additional Judge or Judges, where a majority of the Judges constituting the Court are assigned to the Appeal Division.

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

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

30 Court divided in opinion

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

(a) in the case of an appeal from a judgment of the Family Court constituted by a single Judge, or of a Family Court of a State or the Supreme Court of a State or Territory—the judgment appealed from shall be affirmed; and

(b) in any other case—the opinion of the Chief Judge or, if he 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;

(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;

(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 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 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.

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 Magistrates Court

(1) Proceedings must not be instituted in the Family Court in respect of a matter if:

(a) the Federal Magistrates Court has jurisdiction in that matter; and

(b) proceedings in respect of an associated matter are pending in the Federal Magistrates Court.

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

(a) proceedings for a decree of dissolution of marriage; or

(b) proceedings instituted in the Family Court under Division 13A of Part VII or under Part XIII or XIIIA.

(3) If:

(a) proceedings are instituted in the Family Court in contravention of subsection (1); and

(b) the proceedings are subsequently transferred to the Federal Magistrates Court;

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

33B Discretionary transfer of proceedings to the Federal Magistrates Court

(1) If a proceeding is pending in the Family Court, the Family Court may, by order, transfer the proceeding from the Family Court to the Federal Magistrates Court.

(2) The Family Court may transfer a proceeding under subsection (1):

(a) on the application of a party to the proceeding; or

(b) on its own initiative.

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

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

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

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

(a) any standard Rules of Court made for the purposes of subsection (4); and

(b) whether proceedings in respect of an associated matter are pending in the Federal Magistrates Court; and

(c) whether the resources of the Federal Magistrates Court are sufficient to hear and determine the proceeding; and

(d) the interests of the administration of justice.

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

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

(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 Magistrates Court

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

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

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

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

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

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

(7) If neither House passes such a resolution, the transfer regulations take effect on the day immediately after the last day upon which such a resolution could have been passed.

(8) Subsections (5), (6) and (7) have effect despite anything in:
  (a) the *Acts Interpretation Act 1901*; or
  (b) the *Legislative Instruments Act 1999*.

34 Issue of certain writs etc.

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

(2) Without limiting the generality of subsection (1), the Court may issue, or direct the issue of, writs and orders of such kinds as are prescribed by the standard Rules of Court.

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

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

(2) Unless and until the regulations otherwise provide, the Principal Registry shall be located in Sydney.

37 Officers of Court

(1) In relation to a proceeding under this Act, the officers of the Court have such duties, powers and functions as are given by this Act or the standard Rules of Court or by the Chief Judge.

(2) The Principal Registrar of the Court may, subject to this Act, the regulations, the standard Rules of Court and any directions of the Chief Judge, give directions to the officers of the Court (other than the court counsellors) 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 direct the parties to proceedings under this Act to attend conferences conducted by court counsellors or welfare officers;

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

(i) an order under section 66Q, 67E or 77; or

(ii) an order for the payment of maintenance pending the disposal of the proceedings;

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

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

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

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

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

(a) a decree of dissolution of marriage in proceedings that are defended; or

(b) a decree of nullity of marriage; or

(c) a declaration as to the validity of a marriage or the dissolution or 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 19G.

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

(a) a residence order; or

(b) a contact order; or

(c) a specific issues order conferring responsibility for the long-term or day-to-day care, welfare and development of a child; or

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

other than an order until further order, an order made in undefended proceedings or an order made with the consent of all the parties to the proceedings.

(3) A power delegated by 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 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, Rules of Court made by the Judges or a majority of them for the purposes of this subsection, apply to the Court to review that exercise of power.

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

(11) Where:

(a) an application for the exercise of a power delegated under subsection (1) is to be, or is being, heard by a Registrar; and

(b) the Registrar considers that it is not appropriate for the application to be determined by a Registrar acting under the delegation;

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

(12) Where:

(a) a power delegated under subsection (1) is proposed to be exercised in a particular case by a Registrar; but

(b) the Registrar has not commenced to exercise the power in that case;

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

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

(14) Sections 48, 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to Rules of Court made under this section as if references in those sections of that Act to regulations were references to such Rules of Court.

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

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

37B Independence of Registrars

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

(a) the Principal Registrar is subject to the direction and control of the Chief Judge and is not subject to the direction or control of any other person or body;

(b) a Registrar is subject to the direction and control of:

(i) the Chief Judge;

(ii) any other Judge authorized by the Chief Judge to direct and control that Registrar; and

(iii) the Principal Registrar;

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

(c) a Deputy Registrar is subject to the direction and control of:

(i) the Chief Judge;

(ii) any other Judge authorized by the Chief Judge to direct and control that Deputy Registrar;

(iii) the Principal Registrar; and

(iv) the Registrars;

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

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

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

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

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

37C Oath or affirmation of office

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

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

or

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

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 Judge and the Chief Executive Officer

38A Management of administrative affairs of Court

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

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

(a) entering into contracts; and

(b) acquiring or disposing of personal property.

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

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

(a) acquire any interest or right that would constitute an interest in land for the purposes of the *Lands Acquisition Act 1989*; or

(b) enter into a contract under which the Commonwealth is to pay or receive an amount exceeding $250,000 or, if a higher amount is prescribed, that higher amount, except with the approval of the Attorney-General.

38B Chief Executive Officer

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

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

38C Appointment of Chief Executive Officer

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

38D Powers of Chief Executive Officer

(1) The Chief Executive Officer has power to do all things necessary or convenient to be done for the purpose of assisting the Chief Judge under section 38B.

(2) In particular, the Chief Executive Officer may act on behalf of the Chief Judge in relation to the administrative affairs of the Court.

(3) The Chief Judge may give the Chief Executive Officer directions regarding the exercise of his or her powers.

38E Remuneration of Chief Executive Officer

(1) The Chief Executive Officer is to be paid the remuneration and allowances determined by the Remuneration Tribunal.

(2) If there is no determination in force, the Chief Executive Officer is to be paid such remuneration as is prescribed.

(3) The Chief Executive Officer is to be paid such other allowances as are prescribed.

(4) Remuneration and allowances payable to the Chief Executive Officer under this section are to be paid out of money appropriated by the Parliament for the purposes of the Court.

38F Terms and conditions of appointment of Chief Executive Officer

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

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

38G Leave of absence

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

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

38H Resignation

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

38J Outside employment of Chief Executive Officer

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

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

38K Termination of appointment

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

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

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or

(b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) engages in paid employment contrary to section 38J; or

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

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

(a) an eligible employee for the purposes of the *Superannuation Act 1976*; or

(b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;

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

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

(a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and

(b) has not reached his or her maximum retiring age within the meaning of that Act;

he or she is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.

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

(a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and

(b) is under 60 years of age;

he or she is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

38L Disclosure of interests by Chief Executive Officer

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

38M Acting Chief Executive Officer

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

(a) during a vacancy in the office (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

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

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

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion for the person to act had not arisen or had ceased.

Division 3—Other officers and staff of Registries

38N Personnel other than the Chief Executive Officer

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

(a) a Principal Registrar of the Court;

(b) such Registrars and Deputy Registrars of the Court as are necessary;

(c) a Principal Director of Court Counselling;

(d) such Directors of Court Counselling and other court counsellors as are necessary;

(da) a Principal Director of Mediation;

(db) such Directors of Mediation and other mediators as are necessary;

(e) the Marshal of the Court;

(f) such Deputy Marshals of the Court as are necessary.

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

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

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

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

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

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

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

38P Marshal

(1) The Marshal of the Court is responsible for the service and execution of all process of the Court directed to the Marshal.

(2) The Marshal is also responsible for:

(a) dealing, on behalf of the Court, with the Australian Federal Police and the police forces of the States and Territories in relation to the service and execution of process of the Court directed to members of any of those police forces; and

(b) the security of the Court and the personal security of the Judges and officers of the Court; and

(c) taking, receiving and detaining all persons committed to his or her custody by the Court; and

(d) discharging such persons when so directed by the Court or otherwise required by law.

(3) A Deputy Marshal may, subject to any directions of the Marshal, exercise or perform any of the powers and functions of the Marshal.

(4) The Marshal or a Deputy Marshal may authorise persons to assist him or her in the exercise of any of his or her powers or the performance of any of his or her functions.

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

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

(a) the Chief Executive Officer and the APS employees assisting the Chief Executive Officer together constitute a Statutory Agency; and

(b) the Chief Executive Officer is the Head of that Statutory Agency.

38R Engagement of consultants etc.

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

(2) An engagement under subsection (1) is to be made:
  (a) on behalf of the Commonwealth; and
  (b) by written agreement.

Division 4—Miscellaneous administrative matters

38S Annual report

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

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

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

38W Delegation of administrative powers of Chief Judge

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

38X Proceedings arising out of administration of Court

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

Part V—Jurisdiction in matrimonial causes

39 Jurisdiction in matrimonial causes

(1) Subject to this Part, a matrimonial cause may be instituted under this Act:

(a) in the Family Court; or

(b) in the Supreme Court of a State or a Territory.

(1A) Subject to this Part, a matrimonial cause (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of ***matrimonial cause*** in subsection 4(1)) may be instituted under this Act in the Federal Magistrates Court.

(2) Subject to this Part, a matrimonial cause (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of ***matrimonial cause*** in subsection 4(1)) may be instituted under this Act in a Court of summary jurisdiction of a State or Territory.

(3) Proceedings for a decree of dissolution of marriage may be instituted under this Act if, at the date on which the application for the decree 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 decree of dissolution of marriage 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, 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;

(b) matrimonial causes are continued in accordance with section 9;

(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

(e) proceedings are instituted under section 117A.

(5AA) Subject to this Part, the Federal Magistrates Court has, and is taken always to have had, jurisdiction with respect to matters arising under this Act in respect of which matrimonial causes (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of ***matrimonial cause*** in subsection 4(1)) are instituted under this Act.

(5A) Subject to this Part, the Federal Magistrates Court has jurisdiction with respect to matters arising under this Act in respect of which proceedings are instituted under:

(a) regulations made for the purposes of section 109, 110, 111, 111A or 111B; or

(b) regulations made for the purposes of paragraph 125(1)(f) or (g); or

(c) section 117A.

(6) Subject to this Part, 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;

(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;

(d) proceedings are instituted under:

(i) regulations made for the purposes of section 109, 110, 111, 111A or 111B; or

(ii) regulations made for the purposes of paragraph 125(1)(f) or (g); or

(iii) standard Rules of Court made for the purposes of paragraph 123(1)(r); or

(iv) Rules of Court made for the purposes of paragraph 87(1)(j) of the *Federal Magistrates Act 1999*; or

(e) proceedings are instituted under section 117A.

(7) 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 (6) may not be instituted in or transferred to a court of summary jurisdiction in a State or Territory specified in the Proclamation, 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 court of summary jurisdiction in a part of a State or Territory specified in the Proclamation.

(7AA) A court of summary jurisdiction in a State or Territory shall not hear or determine proceedings under this Act instituted in or transferred to that court otherwise than in accordance with any Proclamation in force under subsection (7).

(7A) The Governor-General may, by Proclamation, declare that a Proclamation made under subsection (7) is revoked on and from a specified date and, on and after the specified date, this Act (including subsection (7)) has effect as if the revoked Proclamation

had not been made, but without prejudice to the effect of the revoked Proclamation in respect of the jurisdiction of courts before the specified date.

(8) Jurisdiction with respect to a matter arising under this Act in respect of which a matrimonial cause is instituted under this Act is not conferred on a court of a Territory unless at least one of the parties to the proceedings is, at the date of the institution of the proceedings or the date of the transfer of the proceedings to the court of the Territory, ordinarily resident in the Territory.

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

40 Jurisdiction of Family Court

(1) The jurisdiction of the Family Court under this Act shall not be exercised except in accordance with Proclamations under this section.

(2) The Governor-General may, by Proclamation, fix a date as the date on and after which the jurisdiction of the Family Court under this Act may be exercised in respect of all proceedings, or a class of proceedings, in such States and Territories as are specified in the Proclamation.

(3) The Governor-General may, by Proclamation, fix a date as the date on and after which matrimonial causes, and other proceedings, referred to in subsection 39(5) may not be instituted in or transferred to the Supreme Court of a State or Territory specified in the Proclamation, or may be so instituted or transferred only where specified conditions are complied with, and such a Proclamation may be expressed to apply only to proceedings of a specified class or specified classes and may be expressed to apply only to the institution of proceedings in, or the transfer of proceedings to, a particular Registry or Registries of a Supreme Court referred to in the Proclamation.

(4) The Supreme Court of a State or Territory shall not hear and determine proceedings under this Act instituted in or transferred to

that Court otherwise than in accordance with any Proclamation in force under subsection (3), but nothing in this section invalidates a decree made by such a Supreme Court.

(4A) The Governor-General may, by Proclamation, declare that a Proclamation made under subsection (3) is revoked on and from a specified date and, on and after the specified date, this Act (including subsection (3)) has effect as if the revoked Proclamation had not been made, but without prejudice to the effect of the revoked Proclamation in respect of the jurisdiction of courts before the specified date.

(5) Proclamations under subsections (2) and (3) may be made from time to time.

(6) A party to proceedings instituted or continued under this Act that are at any time pending in the Supreme Court of a State or Territory, being proceedings that could, at the date of the application under this subsection, have been instituted in the Family Court, may apply to the Family Court for an order transferring the proceedings to the Family Court, and the Court may order accordingly.

(7) The standard Rules of Court may make provision in relation to matters arising in or in connexion with the transfer of proceedings in accordance with an order under subsection (6).

(8) This section does not apply in relation to proceedings under Part VII or in relation to jurisdiction conferred on a federal court or a court of a Territory, or invested in a court of a State, by regulations made for the purposes of section 111C.

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

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

41 Establishment of State Family Courts

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

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

(3) Where, by virtue of a Proclamation under subsection (2), this section applies to a court, this Act has effect in relation to the institution of proceedings on or after the date fixed by the Proclamation, and in relation to proceedings so instituted and proceedings transferred to that court in accordance with this Act, as if references in sections 39, 46, 94 and 96 to the Supreme Court of a State were, in relation to the State in which the court referred to in the Proclamation is established, references to that court, and that court is invested with federal jurisdiction accordingly.

(3A) Notwithstanding the issue of a Proclamation under subsection (2) and the provisions of subsection (3):

(a) proceedings by way of cross-proceedings in relation to proceedings for principal relief that were pending in the Supreme Court of the State concerned immediately before the date fixed by the Proclamation; or

(b) proceedings of a kind referred to in any of paragraphs (c) to (f) of the definition of ***matrimonial cause*** in subsection 4(1) that:

(i) relate to proceedings for principal relief that were pending in the Supreme Court of the State concerned immediately before the date fixed by the Proclamation; or

(ii) are between parties between whom proceedings of a kind referred to in any of paragraphs (c) to (f) of that definition were so pending immediately before that date;

may be instituted, heard and determined in that Supreme Court on or after the date fixed by the Proclamation.

(4) The Governor-General shall not make a Proclamation under this section in respect of a court unless the Governor-General is satisfied that:

(a) arrangements have been made under which Judges will not be appointed to that court except with the approval of the Attorney-General of the Commonwealth;

(b) Judges appointed to that court are by reason of training, experience and personality, suitable persons to deal with matters of family law and cannot hold office beyond the age of 70 years; and

(c) counselling facilities 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 jurisidiction 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.

43 Principles to be applied by courts

The Family Court shall, in the exercise of its jurisdiction under this Act, and any other court exercising jurisdiction under this Act shall, in the exercise of that jurisdiction, have regard to:

(a) the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life;

(b) the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children;

(c) the need to protect the rights of children and to promote their welfare;

(ca) the need to ensure safety from family violence; and

(d) the means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationship to each other and to their children.

44 Institution of proceedings

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

(1A) Proceedings under this Act for a decree of dissolution of marriage or nullity of marriage may be instituted by either party to the marriage or jointly by both parties to the marriage.

(1B) An application for dissolution of 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 in the form prescribed by the applicable Rules of Court:

(a) stating that the parties to the marriage have considered a reconciliation, with the assistance of a specified person or organization, being:

(i) a family and child counsellor or an approved counselling organisation; or

(ii) another suitable person or organisation nominated by the Principal Director of Court Counselling of the Family Court or by an appropriate officer of a Family Court of a State; 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 dissolution of a marriage should proceed notwithstanding that the parties have not considered a reconciliation with assistance of the kind referred to in subsection (1B), the court may:

(a) if the application has not been filed—give leave for the application to be filed; or

(b) if the application has been filed—at any time before or during the hearing of the application, declare that it is so satisfied;

and, where the court makes a declaration under paragraph (b), the application shall be deemed to have been duly filed and everything done pursuant to that application shall be as valid and effectual as if the court had, before the application was filed, given leave under paragraph (a) for the application to be filed.

(2) Notwithstanding subsections (3) and (3A), a respondent may, in an answer to an application, include an application for any decree or declaration under this Act.

(3) Where, whether before or after the commencement of section 21 of the *Family Law Amendment Act 1983*:

(a) a decree *nisi* of dissolution of marriage has become absolute; or

(b) a decree of nullity of marriage has been made;

proceedings of a kind referred to in paragraph (c) or (ca) 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 decree *nisi* became absolute; 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 decree *nisi* of dissolution of marriage has become absolute or a decree of nullity of marriage has been made; and

(b) the approval under section 87 of a maintenance agreement between the parties to the marriage has been revoked;

proceedings of a kind referred to in paragraph (c) or (ca) 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 decree *nisi* became absolute 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 decree nisi of dissolution of marriage has become absolute 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) or (ca) 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 decree nisi became absolute 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.

44A Proceedings for decree of dissolution of marriage

The regulations may provide that proceedings for a decree of dissolution of marriage 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.

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

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

(b) the first-mentioned court is the Federal Magistrates Court and the other court is the Family Court.

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

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

(3) A transfer under subsection (2) may be made on the application of any party to the proceedings.

(4) A transfer under subsection (2) may be made on the transferring court's own initiative if the transfer is:

(a) from a Family Court of a State to a court of summary jurisdiction prescribed in regulations made for the purposes of section 44A; or

(b) from a court of summary jurisdiction prescribed in those regulations to a Family Court of a State.

45A Transfer of property proceedings from the Federal Magistrates Court—value exceeds $300,000

(1) If:

(a) proceedings are instituted in the Federal Magistrates Court in relation to property of a total value exceeding:

(i) $300,000; or

(ii) if another amount is specified in the regulations—that other amount; and

(b) the respondent, in answer to the application by which the proceedings are instituted, seeks an order different from that sought in the application;

the Federal Magistrates Court must, before going on to hear and determine the proceedings, inform the parties that, unless each of them consents to the Federal Magistrates Court hearing and determining the proceedings, the Federal Magistrates Court is required to transfer the proceedings to the Family Court.

(2) If the parties do not consent to the Federal Magistrates Court hearing and determining the proceedings, the Federal Magistrates Court must transfer the proceedings accordingly.

(3) If the parties consent to the Federal Magistrates Court hearing and determining the proceedings, a party is not entitled subsequently to object to the proceedings being heard and determined by the Federal Magistrates Court.

(4) A reference in subsection (1) to proceedings in relation to property does not include a reference to proceedings with respect to arrears of maintenance.

(5) 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.

(6) Before transferring proceedings under this section, the Federal Magistrates Court may make such orders as it considers necessary pending the disposal of the proceedings by the Family Court.

(7) Failure by the Federal Magistrates Court to comply with this section does not invalidate any order of the Federal Magistrates Court in the proceedings.

(8) This section does not apply to proceedings under Part XIII or XIIIA.

46 Transfer of proceedings from court of summary jurisdiction in certain cases

(1) Where proceedings are instituted in a court of summary jurisdiction in relation to property of a total value exceeding $20,000 and the respondent, in answer to the application by which the proceedings are instituted, seeks an order different from that sought in the application:

(a) the court shall, 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 the Family Court or to the Supreme Court of a State or Territory; and

(b) unless the parties consent to the court hearing and determining the proceedings—the court must transfer the proceedings to the Family Court or to the Supreme Court of a State or Territory.

(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) Where proceedings referred to in subsection (1) are instituted in a court of summary jurisdiction and the parties consent to the proceedings being heard and determined by that court, a party is not entitled, without the leave of the court, subsequently to object

to the proceedings being so heard and determined, but, where the court subsequently gives leave to a party to object to the proceedings being so heard and determined, the court shall transfer the proceedings to the Family Court or to the Supreme Court of a State or Territory.

(2) Where proceedings referred to in subsection (1) are before it, the court may transfer the proceedings of its own motion, notwithstanding that the parties would be willing for the court to hear and determine the proceedings.

(2A) Where:

(a) proceedings for a decree of dissolution of a marriage 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 the Family Court or the Supreme Court of a State or Territory.

(3) Before transferring proceedings under subsection (1) or (2A), the court may make such orders as it considers necessary pending the disposal of the proceedings by the court to which they are to be transferred.

(3A) Where proceedings instituted under this Act, or continued under section 9, are pending in a court of summary jurisdiction, the Family Court or the Supreme Court of a State or Territory may, on the application of a party or of its own motion, order that the proceedings be removed to the Family Court or the Supreme Court, as the case may be.

(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.

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—Dissolution and nullity of marriage

48 Dissolution of marriage

(1) An application under this Act for a decree of dissolution of 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 a decree of dissolution of the marriage 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 dissolution of marriage.

(3) A decree of dissolution of marriage 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 decree of dissolution of marriage, 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 decree of dissolution 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 decree of dissolution of that marriage are before a court, the court shall not make a decree of dissolution of 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.

54 Decree *nisi* in first instance

A decree of dissolution of marriage under this Act shall, in the first instance, be a decree *nisi*.

55 When decree becomes absolute

(1) Subject to this section, a decree *nisi* made under this Act becomes absolute by force of this section at the expiration of a period of

1 month from the making of the decree or from the making of an order under section 55A, whichever is the later.

(2) Where a decree *nisi* has been made in any proceedings, the court of first instance (whether or not it made the decree), 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) having regard to the possibility of an appeal or further appeal, make an order extending the period at the expiration of which the decree *nisi* will become absolute; or

(b) if it is satisfied that there are special circumstances that justify its so doing, make an order reducing the period at the expiration of which the decree *nisi* will become absolute.

(3) Where an appeal is instituted (whether or not it is the first appeal) before a decree *nisi* has become absolute, 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 decree *nisi*, unless reversed or rescinded, becomes absolute 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 decree would have become absolute under subsection (1) if no appeal had been instituted;

whichever is the later.

(4) A decree *nisi* shall not become absolute by force of this section where either of the parties to the marriage has died.

(5) In this section, ***appeal***, in relation to a decree *nisi*, means:

(a) an appeal or application for leave to appeal against, or an intervention or application for a re-hearing relating to:

(i) the decree *nisi*; or

(ii) an order under section 55A in relation to the proceedings in which the decree *nisi* was made; or

(b) an application under section 57 or 58 for rescission of the decree or an appeal or application for leave to appeal arising out of such an application.

(6) For the purposes of this section, where an application for leave to appeal, or for a re-hearing, is granted, the application shall be deemed not to have been determined or discontinued so long as:

(a) the leave granted remains capable of being exercised; or

(b) an appeal or re-hearing instituted in pursuance of the leave is pending.

55A Decree absolute where children

(1) A decree *nisi* of dissolution of marriage does not become absolute 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 decree *nisi* should become absolute even though the court is not satisfied that such arrangements have been made.

(2) Where, in proceedings for a decree of dissolution of 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 and child counsellor or welfare officer regarding those arrangements.

(3) For the purposes of this section, a child (including an ex-nuptial child of either the husband or the wife, a child adopted by either of them or a child who is not a child of either of them) is a child of the marriage if the child was treated by the husband and wife as a child of their family at the relevant time.

(4) For the purposes of subsection (3), the relevant time is the time immediately before the time when the husband and wife separated or, if they have separated on more than one occasion, the time immediately before the time when they last separated before the

institution of the proceedings in which the decree *nisi* of dissolution of marriage was made.

56 Certificate as to decree absolute

(1) Where a decree *nisi* becomes absolute, the Registrar of the court by which the decree was made shall prepare and file a memorandum of the fact and of the date upon which the decree became absolute.

(2) Where a decree *nisi* has become absolute, any person is entitled, on application to the Registrar of the court by which the decree was made, to receive a certificate signed by the Registrar that the decree *nisi* has become absolute.

(3) A certificate given under subsection (2) is, in all courts (whether exercising federal jurisdiction or not) and for all purposes, evidence of the matters specified in the certificate.

(4) The regulations may provide for the establishment of central records of decrees made under this Act and for the notification of decrees to the appropriate marriage registering authorities of the States and Territories.

57 Rescission of decree *nisi* where parties reconciled

Notwithstanding anything contained in this Part, where a decree *nisi* has been made in proceedings for a decree of dissolution of marriage, the court may, at any time before the decree becomes absolute, upon the application of the parties to the marriage, rescind the decree on the ground that the parties have become reconciled.

58 Rescission of decree *nisi* on ground of miscarriage of justice

Where a decree *nisi* has been made but has not become absolute, the court by which the decree 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 decree and, if it thinks fit, order that the proceedings be re-heard.

59 Re-marriage

Where a decree of dissolution of marriage under this Act has become absolute, 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

(b) provisions relevant to the interpretation and application of this Part (Subdivision C); and

(c) provisions relevant to how this Act applies to certain children (Subdivision D).

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

Subdivision B—Object, principles and outline

60B Object of Part and principles underlying it

(1) The object of this Part is to ensure that children receive adequate and proper parenting to help them achieve their full potential, and to ensure 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 of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development; and

(c) parents 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.

60C Outline of Part

An outline of this Part is set out below.

OUTLINE OF PART	
Item	**Divisions and coverage**
1	**Division 1—Introductory** • object of Part and principles underlying it, and outline of Part • interpretation and application of this Part • how this Act applies to certain children Note: The extension and application of this Part is also dealt with in Subdivision F of Division 12.
2	**Division 2—Parental responsibility** the concept of parental responsibility
3	**Division 3—Counselling etc.** • counselling of people in relation to matters affecting children • preparation of reports for use in proceedings relating to children under 18 • provision of documents about counselling and welfare
4	**Division 4—Parenting plans** • what parenting plans are and their registration in courts
5	**Division 5—Parenting orders—what they are** • what parenting orders are

OUTLINE OF PART	
Item	**Divisions and coverage**
6	Division 6—Parenting orders other than child maintenance orders • applying for and making parenting orders, other than child maintenance orders • general obligations created by residence orders, contact orders and specific issues orders • measures to promote the exercise of parental responsibility—stage 1 of parenting compliance regime • dealing with people who have been arrested • obligations under parenting orders, other than child maintenance orders, relating to taking or sending children from Australia
7	**Division 7—Child maintenance orders** • objects and principles relevant to the making of child maintenance orders • the relationship between Division 7 and the *Child Support (Assessment) Act 1989* • applying for and making child maintenance orders • other aspects of courts' powers in relation to child maintenance orders • when child maintenance orders stop being in force
8	**Division 8—Other matters relating to children** • liability of a father to contribute towards child bearing expenses if he is not married to the child's mother • orders for the location and recovery of children • reporting of allegations of child abuse • other orders about children
9	**Division 9—Injunctions** • proceedings for injunctions in relation to children
10	**Division 10—The best interests of children and the representation of children** • determining what is in a child's best interests (including in situations of family violence) • separate representation of children

OUTLINE OF PART	
Item	**Divisions and coverage**
11	**Division 11—Family violence** • the relationship between certain contact orders etc. and family violence orders
12	**Division 12—Proceedings and jurisdiction** • institution of proceedings and procedure • jurisdiction of courts • presumptions of parentage • parentage evidence • places and people to which this Part extends and applies
13	**Division 13—State, Territory and overseas orders** • registration of State and Territory orders dealing with children • registration of overseas orders dealing with children • transmission of Australian orders to overseas jurisdictions

OUTLINE OF PART	
Item	**Divisions and coverage**
13A	**Division** 13A—Enforcement of orders affecting children • court may do any or all of the following: (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; (b) make a further parenting order that compensates for contact forgone as a result of the contravention; (c) adjourn the proceedings to enable an application to be made for a further parenting order; —stage 2 of parenting compliance regime • court must take other action in respect of a person who contravenes an order affecting children if the court is satisfied: (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 (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; —stage 3 of parenting compliance regime
14	**Division 14—Miscellaneous** • miscellaneous matters relating to children

Subdivision C—Interpretation and application of Part

60D Defined expressions

(1) In this Part:

abuse, in relation to a child, means:

(a) an assault, including a sexual assault, of the child which is an offence under a law, written or unwritten, in force in the State or Territory in which the act constituting the assault occurs; or

(b) a person involving the child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned person or the other person, and where there is unequal power in the relationship between the child and the first-mentioned person.

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.

artificial conception procedure includes:

(a) artificial insemination; and

(b) the implantation of an embryo in the body of a woman.

birth includes stillbirth.

child includes an adopted child and a stillborn child.

childbirth maintenance period, in relation to the birth of a child, means the period:

(a) commencing:

(i) in a case where the mother:

(A) works in paid employment; and

(B) is advised by a medical practitioner to stop working for medical reasons related to her pregnancy; and

(C) stops working after being so advised and more than 2 months before the child is due to be born;

on the day on which she stops working; or

(ii) in any other case—2 months before the child is due to be born; and

(b) ending 3 months after the child's birth.

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 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 this Part.

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

contact order has the meaning given by subsection 64B(4).

de facto relationship means the relationship between a man and a woman who live with each other as spouses on a genuine domestic basis although not legally married to each other.

education includes apprenticeship or vocational training.

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

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

guardian, 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.

has, in relation to a residence order, a contact order or a specific issues order, has the meaning given by subsection 64B(8).

interests, in relation to a child, includes matters related to the care, welfare or development of the child.

made in favour, in relation to a residence order, a contact order or a specific issues order, has the meaning given by subsection 64B(7).

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 Court personnel means:

(a) a court counsellor; or

(b) a court mediator; or

(d) a welfare officer; or

(e) the Registrar or a Deputy Registrar of a Registry of the Family Court of Australia; or

(f) the Registrar or a Deputy Registrar of the Family Court of Western Australia; or

(g) a Registrar of the Federal Magistrates Court.

member of the family, in relation to a person, has, for the purposes of this section, paragraphs 68F(2)(i) and (j) and section 68J, the meaning given by subsection (2).

parent, in relation to a child who has been adopted, means an adoptive parent of the child.

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

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

parental responsibility 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).

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

(a) a parent of the child; or

(b) the spouse of, or a person in a de facto relationship with, a parent of the child; or

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

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

(a) if the child is the subject of proceedings under this Part 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 this Part—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.

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.

residence order has the meaning given by subsection 64B(3).

specific issues order has the meaning given by subsection 64B(6).

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 a parent of the child; and

(c) treats, or at any time during the marriage treated, the child as a member of the family formed with the parent.

(2) For the purposes of this section, paragraphs 68F(2)(i) and (j) and section 68J, a person (the ***first person***) is a ***member of the family*** of another person (the ***second person***) if:

(a) the first person is or has been married to, or in a de facto relationship with, the second person; or

(b) the first person is or has been a relative of the second person (as defined in subsection (3)); or

(c) an order under this Act described in subparagraph (i) or (ii) is or was (at any time) in force:

(i) a residence order, contact order or specific issues 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

(d) 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

(e) 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

(f) the first person is or has been a member of the family of a child of the second person.

(3) For the purposes of this section, a ***relative*** of a person is:

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

(b) a son, daughter, grandson, grand-daughter, step-son or step-daughter of the person; or

(c) a brother, sister, half-brother, half-sister, step-brother or step-sister of the person; or

(d) an uncle or aunt of the person; or

(e) a nephew or niece of the person; or

(f) a cousin of the person; or

(g) if the person is or was married—in addition to paragraphs (a) to (f), a person who is or was a relative, of the kind described in any of those paragraphs, of the person's spouse; or

(h) if the person is or was in a de facto relationship with another person—in addition to paragraphs (a) to (f), a person who would be a relative of a kind described in any of those paragraphs if the persons in that de facto relationship were or had been married to each other.

60E Application of Part to void marriages

This Part applies in relation to a purported marriage that is void as if:

(a) the purported marriage were a marriage; and

(b) the parties to the purported marriage were husband and wife.

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

60F Certain children are children of marriage etc.

(1) A reference in this Act to a child of a marriage includes, subject to subsection (3), a reference to each of the following children:

(a) a child adopted since the marriage by the husband and wife or by either of them with the consent of the other;

(b) a child of the husband and wife born before the marriage;

(c) a child who is, under subsection 60H(1), the child of the husband and wife.

(2) A reference in this Act to a child of a marriage includes a reference to a child of:

(a) a marriage that has been dissolved 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 Magistrates Rules.

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

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

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

Note: Division 10 deals 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 a man; and

(b) either of the following paragraphs apply:

(i) the procedure was carried out with their consent;

(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 man;

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

(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.

(4) If a person lives with another person as the husband or wife of the first-mentioned person on a genuine domestic basis although not legally married to that person, subsection (1) applies in relation to them as if:

(a) they were married to each other; and

(b) neither person were married to any other person.

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

(6) In this section:

this Act includes:

(a) the standard Rules of Court; and

(b) the related Federal Magistrates Rules.

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.

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

(3) Subsection (1) has effect subject to any order of a court for the time being in force (whether or not made under this Act and whether made before or after the commencement of this section).

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.

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.

Division 3—Counselling etc.

62A What this Division does

This Division deals with:

(a) the counselling of people in relation to matters affecting children; and

(b) the preparation of reports for use in proceedings relating to children who are under 18; and

(c) the provision of documents about counselling and welfare.

62B Obligations to consider advising people about counselling for Part VII orders

(1) In this section, ***counselling for Part VII orders*** is counselling to assist children and parties to proceedings under this Part to adjust to the consequences of orders under this Part.

(2) A court exercising jurisdiction in proceedings under this Part must consider whether or not to advise parties to the proceedings about counselling for Part VII orders available through courts exercising jurisdiction under this Part and through approved counselling organisations.

(3) A legal practitioner acting in proceedings under this Part, or consulted by a person considering commencing such proceedings, must consider whether or not to advise the parties to the proceedings, or the person considering commencing proceedings, about counselling for Part VII orders available through courts exercising jurisdiction under this Part and through approved counselling organisations.

62C Request for counselling—request made through a Family Court

(1) A party to proceedings under this Part, or a person representing a child under an order made under section 68L, may file in the Family Court or a Family Court of a State a notice stating that he or she wishes to have the assistance of the counselling facilities of that Court.

(2) On the filing of the notice, the Principal Director of Court Counselling of the Family Court or an appropriate officer of the Family Court of the State, as the case may be, must arrange for parties to the proceedings (with or without the child) to be interviewed by a family and child counsellor or welfare officer to assess whether counselling is appropriate in all the circumstances, and if it is:

(a) to discuss the care, welfare and development of the child; and

(b) if there are differences between the parties in relation to matters affecting the care, welfare and development of the child, to try to resolve those differences.

62CA Request for counselling—request made through Federal Magistrates Court

(1) A person who is:

(a) a party to proceedings under this Part in the Federal Magistrates Court; or

(b) a person representing a child in the Federal Magistrates Court under an order made under section 68L; or

(c) the parent of a child; or

(d) a child;

may ask a designated officer of the Federal Magistrates Court for the assistance of a family and child counsellor.

(2) If a request is made under subsection (1), a designated officer of the Federal Magistrates Court must, as far as practicable, arrange for any or all of the following:

(a) the parties to the proceedings;

(b) the parents of the child;

(c) such other persons as the designated officer thinks appropriate;

to be interviewed (with or without the child) by a family and child counsellor or welfare officer to assess whether counselling is appropriate in all the circumstances, and if it is:

(d) to discuss the care, welfare and development of the child; and

(e) if there are differences between persons in relation to matters affecting the care, welfare and development of the child, to try to resolve those differences.

(3) For the purposes of this section, a member of the staff of the Federal Magistrates Court is taken to be an officer of the Federal Magistrates Court.

(4) For the purposes of this section, a ***designated officer*** of the Federal Magistrates Court is an officer of the Federal Magistrates Court specified in writing by the Chief Executive Officer of the Federal Magistrates Court for the purposes of this subsection.

62D Request for counselling—where made direct to a family and child counsellor

A person may at any time request a family and child counsellor to provide counselling about a matter relating to a child.

62E Court counselling facilities to be made available

(1) A parent of a child, a child or a party to proceedings under this Part may seek the assistance of the counselling facilities of the Family Court or a Family Court of a State.

(2) The Principal Director of Court Counselling of the Family Court or an appropriate officer of the Family Court of the State, as the case may be, must, as far as practicable, make those facilities available.

62F Conferences with family and child counsellors or welfare officers

(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, at any stage of the proceedings, make an order directing the parties to the proceedings to attend a conference with a family and child counsellor or welfare officer:
   (a) to discuss the care, welfare and development of the child; and
   (b) if there are differences between the parties in relation to matters affecting the care, welfare and development of the child—to try to resolve those differences.

(3) The 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) a person representing the child under an order made under section 68L.

(4) The court may, in an order under subsection (2):

(a) fix a place and time for the conference to take place; or

(b) direct that the conference is to take place at a place and time to be fixed by a family and child counsellor or welfare officer.

(5) If a person fails to attend a conference in respect of which the court has made an order under subsection (2), the counsellor or welfare officer must report the failure to the court.

(6) On receiving a report under subsection (5), the court may give such further directions in relation to the conference as it considers appropriate.

(7) The court may make further directions under subsection (6):

(a) on its own initiative; or

(b) on the application of:

(i) a party to the proceedings; or

(ii) a person representing the child under an order made under section 68L.

(8) Evidence of anything said, or of any admission made, at a conference that takes place pursuant to an order under subsection (2) 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 or of a State or Territory, or by consent of the parties, to hear evidence.

62G Reports by family and child counsellors and welfare officers

(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 and child counsellor or welfare officer 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.

(4) A counsellor or welfare officer may include in a report prepared pursuant to a direction under subsection (2), 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 purpose of the preparation of a report pursuant to a direction under subsection (2), the court may make such orders, or give such further directions, as it considers appropriate, including orders or directions for the attendance on the counsellor or welfare officer of a party to the proceedings or of the child.

(6) If a person fails to comply with an order or direction under subsection (5), the counsellor or welfare officer 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.

62H Provision of certain documents

The applicable Rules of Court must provide for people proposing to institute proceedings under this Part in relation to children, and in appropriate cases to other persons who may be interested in the care, welfare and development of children, to be given documents setting out:

(a) the legal and possible social effects of the proposed proceedings; and

(b) the counselling and welfare facilities available within the Family Court and elsewhere.

Division 4—Parenting plans

63A What this Division does

This Division explains what parenting plans are and provides for their registration in courts.

63B Parents encouraged to reach agreement

The parents of a child are encouraged:

(a) to agree about matters concerning the child rather than seeking an order from a court; and

(b) in reaching their agreement, to regard the best interests of the child as the paramount consideration.

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

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

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

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

(b) contact between a child and another person or other persons;

(c) maintenance of a child;

(d) any other aspect of parental responsibility for a child.

Note: 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 (see subsection 63G(5)). A parenting plan may, however, also operate as a child support agreement (see section 63CAA).

(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 any of the matters mentioned in paragraphs (2)(a), (b) and (d) are ***child welfare provisions***.

(5) Provisions of a parenting plan that deal with the matter mentioned in paragraph (2)(c) are ***child maintenance provisions***.

63CAA Parenting plans may include child support provisions

(1) If a parenting plan includes provisions of a kind referred to in subsection 84(1) of the *Child Support (Assessment) Act 1989*, the provisions do not have effect for the purposes of this Act.

(2) Subsection (1) does not affect the operation of the provisions for any other purpose.

(3) Nothing in this Division is to be taken to prevent the same agreement being both a parenting plan under this Part and a child support agreement under Part 6 of the *Child Support (Assessment) Act 1989*.

63D Parenting plan may not be varied, but may be revoked, by further agreement

(1) An agreement, in whatever form and however expressed, is not effective to vary a parenting plan for the purposes of this Act. An agreement purporting to vary a parenting plan cannot be registered under section 63E.

(2) Subject to subsection (3), a parenting plan may be revoked by agreement in writing between the parties to the plan.

(3) An agreement revoking a registered parenting plan:

(a) may, subject to the applicable Rules of Court, be registered under section 63E as if it were a parenting plan; and

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

63DA Explanation by person advising or assisting in the making of a parenting plan

(1) If a person who is a family and child counsellor, a family and child mediator or a legal practitioner gives advice or assistance to people in connection with the making by them of a parenting plan, the person must explain to them, in language likely to be readily understood by them:

(a) the obligations that the plan creates; and

(b) the consequences that may follow if either of them fails to comply with any of those obligations; and

(c) the availability of programs to help people who experience difficulties in complying with a parenting plan.

63E Registration in a court

(1) Subject to this section, a parenting plan may be registered in a court having jurisdiction under this Part.

(2) To apply for registration of a parenting plan:

(a) an application for registration of the plan must be lodged in accordance with the applicable Rules of Court; and

(b) the application must be accompanied by a copy of the plan, the information required by the applicable Rules of Court, and:

(i) 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 plan and that is signed by the practitioner who provided that advice; or

(ii) a statement to the effect that the plan was developed after consultation with a family and child counsellor (as defined in section 4) and that is signed by the counsellor; or

(iii) a statement to the effect that the plan was developed after family and child mediation and that is signed by the family and child mediator involved.

(2A) However, a reference in subparagraph (2)(b)(i), (ii) or (iii) to the plan does not include a reference to any child maintenance provisions (as defined in subsection 63C(5)) of the plan.

(3) The court may register the plan if it considers it appropriate to do so having regard to the best interests of the child to which the plan relates. In determining whether it is appropriate to register the plan, 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 subsection 68F(2).

(4) The applicable Rules of Court:

(a) must prescribe what information is to accompany an application for registration of a parenting plan; and

(b) may prescribe other matters relating to the procedures for registration.

63F Child welfare provisions of registered parenting plans

(1) This section applies if a parenting plan that contains child welfare provisions is registered in a court under section 63E.

(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:

(a) to the extent they deal with the person or persons with whom the child is to live—a residence order made by the court; and

(b) to the extent they deal with contact between the child and another person or other persons—a contact order made by the court; and

(c) to the extent they deal with any other aspect of parental responsibility for the child—a specific issues order made by the court.

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 residence orders, contact orders and specific issues 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 subsections 64B(7) and (8)) that refer to parenting orders, or to residence orders, contact orders or specific issues 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: Division 10 deals 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 parenting plan that contains child maintenance provisions is registered in a court under section 63E; 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 XIIIA (dealing generally with enforcement of orders and sanctions for contravening orders); and
(b) section 66S (providing for discharge, variation, suspension and revival of child maintenance orders); and
(c) other provisions of this Act that refer to parenting orders, or to child maintenance orders.

(3) Unless the plan provides otherwise, the child maintenance provisions (other than provisions for the periodic payment of maintenance) continue to operate in spite of the death of a party to the plan and operate in favour of, and are binding on, the legal personal representative of that party.

(4) If the child maintenance provisions include provisions (the ***periodic provisions***) for the periodic payment of maintenance:
(a) the periodic provisions continue to operate, if the plan so provides, in spite of the death of a party to the plan who is liable to make the periodic payments, and are binding on the legal personal representative of that party; but
(b) the periodic provisions do not continue to operate, in spite of anything in the plan, after the death of the person entitled to receive the periodic payments.

(5) The child maintenance provisions have no effect, and are not enforceable in any way, at any time when an application could properly be made under the *Child Support (Assessment) Act 1989* by one of the parties to the plan for administrative assessment of child support (within the meaning of that Act) for the child concerned seeking payment of child support by the other party to the plan.

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

(1) The court in which a parenting plan is registered under section 63E may set aside the plan, and its registration, if the court is satisfied:

(a) that the concurrence of a party was obtained by fraud, duress or undue influence; or

(b) that the parties want the plan set aside; or

(c) that it is in the best interests of a child to set aside the plan.

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

Note: Division 10 deals 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).

(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) contact between a child and another person or other persons;
  (c) maintenance of a child;
  (d) any other aspect of parental responsibility for a child.

(3) To the extent (if at all) that a parenting order deals with the matter mentioned in paragraph (2)(a), the order is a ***residence order***.

(4) To the extent (if at all) that a parenting order deals with the matter mentioned in paragraph (2)(b), the order is a ***contact order***.

(5) to the extent (if at all) that a parenting order deals with the matter mentioned in paragraph (2)(c), the order is a ***child maintenance order***.

(6) To the extent (if at all) that a parenting order deals with any other aspect of parental responsibility for a child, the order is a ***specific issues order***. A specific issues order may, for example, confer on a person (whether alone or jointly with another person) responsibility for the long-term care, welfare and development of the child or for the day-to-day care, welfare and development of the child.

(7) For the purposes of this Act:

(a) a residence order is ***made in favour*** of a person, or the person, with whom the child concerned is supposed to live under the order; and

(b) a contact order is ***made in favour*** of a person, or the person, with whom the child concerned is supposed to have contact under the order; and

(c) a specific issues order is ***made in favour*** of a person, or the person, on whom the order confers duties, powers, responsibilities or authority in relation to the child concerned.

(8) For the purposes of this Act:

(a) a person ***has a residence order*** in relation to a child if a residence order made in favour of the person is in force in relation to the child; and

(b) a person ***has a contact order*** in relation to a child if a contact order made in favour of the person is in force in relation to the child; and

(c) a person ***has a specific issues order*** in relation to a child if a specific issues order made in favour of the person is in force in relation to the child.

(9) In this section:

this Act includes:

(a) the standard Rules of Court; and

(b) the related Federal Magistrates Rules.

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

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

Division 6—Parenting orders other than child maintenance orders

Subdivision A—Introductory

65A What this Division does

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 residence orders, contact orders and specific issues 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).

65AA Measures to promote the exercise of parental responsibility

Measures designed, as stage 1 of a parenting compliance regime, 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).

Remedial measures designed, as stage 2 of a parenting compliance regime, to enable parents to resolve issues of conflict about parenting and to help in the negotiation of improved parenting are contained in Subdivision B of Division 13A.

Further measures designed, as stage 3 of a parenting compliance regime, to ensure that, as a last resort, a parent is dealt with for deliberate disregard of an order made by a court are contained in Subdivision C of Division 13A.

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 this Division, make such parenting order as it thinks proper.

(2) Without limiting the generality of subsection (1) and subject to 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 70NG(1)(c) of proceedings under Subdivision B of Division 13A of Part VII:

(a) the court must hear and determine the application as soon as practicable; and

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

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

65DA Parenting orders: stage 1 of parenting compliance regime

(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.

65E 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.

Note: Division 10 deals with how a court determines a child's best interests.

65F General requirements for counselling before parenting order made

(1) In proceedings for a parenting order in relation to a child, the court may order the parties to the proceedings to attend a conference with a family and child counsellor or a welfare officer to discuss the matter to which the proceedings relate.

(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 a conference with a family and child counsellor or a welfare officer to discuss the matter to which the proceedings relate; or

(b) the court is satisfied that there is an urgent need for the parenting order, or there is some other special circumstance (such as family violence), that makes it appropriate to make the order even though the parties to the proceedings have not attended a conference as mentioned in paragraph (a); or

(c) the court is satisfied that it is not practicable to require the parties to the proceedings to attend a conference as mentioned in paragraph (a).

(3) Subsection (2) does not apply to the making of a parenting order if:

(a) it is made with the consent of all the parties to the proceedings; or

(b) it is an order until further order.

65G Special conditions for making residence order or specific issues order by consent in favour of non-parent

(1) This section applies if:

(a) a court proposes to make:

(i) a residence order; or

(ii) a specific issues order under which a person will be responsible for a child's long-term or day-to-day care, welfare and development; and

(b) the court proposes to make that order:

(i) otherwise than in favour of a parent, or of persons who include a parent, of the child concerned; and

(ii) with the consent of all the parties to the proceedings.

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

(a) these conditions are satisfied:

(i) the parties to the proceedings have attended a conference with a family and child counsellor or a welfare officer to discuss the matter to be determined by the proposed order; and

(ii) the court has considered a report prepared by the counsellor or officer about that matter; 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 is or includes residence order does not make provision in relation to death of parent with whom child lives

(1) This section applies if:

(a) a parenting order that is or includes a residence order is in force determining that a child is to live with one of the child's parents; and

(b) that parent dies; and

(c) the parenting order does not provide for what is to happen on that parent's death.

(2) The surviving parent cannot require the child to live with him or her.

(3) The surviving parent, or another person (subject to section 65C), may apply for the making of a residence order in relation to the child.

(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 Counsellors 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 and child counsellor or a welfare officer;

(b) an order requiring a family and child counsellor or a welfare officer 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: Division 10 deals with how a court determines a child's best interests.

Subdivision C—General obligations created by residence orders, contact orders and specific issues orders

65M General obligations created by residence order

(1) This section applies if a residence order is in force in relation to a child.

(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 contact order

(1) This section applies if a contact order is in force in relation to a child.

(2) A person must not:

(a) hinder or prevent a person and the child from having contact in accordance with the order; or

(b) interfere with the contact that a person and the child are supposed to have with each other under the order.

65P General obligations created by specific issues orders that confer responsibility for a child's care, welfare and development

(1) This section applies if a specific issues order:

(a) is in force in relation to a child; and

(b) confers responsibility on a person (the ***carer***) for the child's long-term or day-to-day care, welfare and development.

(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 residence order or a contact order is in force in relation to a child; and

(b) a court having jurisdiction under this Part is satisfied, on application by a person in whose favour the order was made, that there are reasonable grounds for believing that a person (the ***alleged offender***) has contravened section 65M or 65N 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

(1) 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.

(2) In this Subdivision:

alleged contravention means the alleged contravention because of which the alleged offender is arrested.

alleged offender means the person who is arrested.

arresting person means the person who arrests the alleged offender.

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.

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 section 112AD 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 recognizance (with or without surety or security) that he or she will attend before the other court on a date, at a time and at a place specified by the court; or

(b) order the arresting person to arrange for the alleged offender to be brought before the other court on such date and at such time as the court specifies, being a date and time such that the alleged offender is to be brought before the other court as soon as practicable, and in any event not more than 72 hours, after the order is made.

(3) If a court makes an order under paragraph (2)(b) for the alleged offender to be brought before another court:

(a) subject to paragraph (c), the alleged offender may be kept in custody until he or she is brought before the other court; and

(b) if the alleged offender is brought before the other court as required by the order, the other court must, without delay, proceed to hear and determine the application mentioned in paragraph (1)(c); and

(c) if the alleged offender is not brought before the other court as required by the order, he or she must be released without delay.

65V Obligation of court—where no application before any court to deal with contravention

(1) This section applies if:

(a) the alleged offender is brought before a court under section 65S; and

(b) there is no application, or no longer any application, before the court for the alleged offender to be dealt with under Division 13A for the alleged contravention; and

(c) so far as the court is aware, there is no application, or no longer any application, before any other court for the alleged

offender to be dealt with under Division 13A for the alleged contravention.

(2) The court must, without delay, order the release of the alleged offender.

65W Applications heard as required by subsection 65T(2) or paragraph 65U(3)(b)

(1) If a court hearing an application as required by subsection 65T(2) or paragraph 65U(3)(b) adjourns the hearing, the court must:
   (a) order the alleged offender to be kept in such custody as the court considers appropriate during the adjournment; or
   (b) order that the alleged offender is to be released from custody, either on his or her entering into a recognizance (with or without surety or security) that he or she will attend before the court on the resumption of the hearing or otherwise.

(2) This section does not authorise the holding in custody of the alleged offender during an adjournment of proceedings that:
   (a) is expressed to be for a period of more than 24 hours; or
   (b) continues for more than 24 hours.

Subdivision E—Obligations under parenting orders relating to taking or sending children from Australia

65X Interpretation

(1) In this Subdivision:

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

care order means a specific issues order under which a person is responsible for a child's long-term or day-to-day care, welfare and development.

child means a person who is under 18.

pending has a meaning affected by subsection (2).

(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 residence order, contact order or care order has been made

(1) If a residence order, a contact order or a care order (the ***Part VII order***) is in force, a person who was a party to the proceedings in which the order was made, or a person who is acting on behalf of, or at the request of, a party, must not take or send the child concerned from Australia to a place outside Australia except as permitted by subsection (2).

Penalty: Imprisonment for 3 years.

Note: The ancillary offence provisions of the *Criminal Code*, including section 11.1 (attempts), apply in relation to the offence created by subsection (1).

(2) Subsection (1) does not prohibit taking or sending the child from Australia to a place outside Australia if:

(a) it is done with the consent in writing (authenticated as prescribed) of each person in whose favour the Part VII order 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 Part VII order.

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 residence order, contact order or care order are pending

(1) If proceedings (the ***Part VII proceedings***) for the making of a residence order, a contact order or a care order are pending, a person who is a party to the proceedings, or who is acting on behalf of, or at the request of, a party, must not take or send the child concerned from Australia to a place outside Australia except as mentioned in subsection (2).

Penalty: Imprisonment for 3 years.

Note: The ancillary offence provisions of the *Criminal Code*, including section 11.1 (attempts), apply in relation to the offence created by subsection (1).

(2) Subsection (1) does not prohibit taking or sending the child from Australia to a place outside Australia if:

(a) it is done with the consent in writing (authenticated as prescribed) of each other party to the Part VII proceedings; or

(b) it is done in accordance with an order of a court made, under this Part or under a law of a State or Territory, after the institution of the Part VII proceedings.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

65ZA Obligations of owners etc. of aircraft and vessels if residence order, contact order or care order made

(1) This section applies if:

(a) a residence order, a contact order or a care order (the ***Part VII order***) is in force; and

(b) a person in whose favour the Part VII 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 Part VII 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 Part VII 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 residence order, contact order or care order are pending

(1) This section applies if:

(a) proceedings (the ***Part VII proceedings***) for the making of a residence order, a contact order or a care order 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.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

(3) Subsection (2) does not prohibit permitting the child to leave Australia in the aircraft or vessel if:

(a) the child leaves in the company, or with the consent in writing (authenticated as prescribed), of the party who made the statutory declaration; or

(b) in accordance with an order of a court made, under this Part or under a law of a State or Territory, after the institution of the Part VII proceedings.

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

(4) The statutory declaration must contain:

(a) full particulars of the Part VII proceedings, including:

(i) the full name and the date of birth of the child to whom the proceedings relate; and

(ii) the full names of the parties to the proceedings; and

(iii) the name of the court, the nature of the proceedings and the date of institution of the proceedings; and

(iv) if an appeal has been instituted in the proceedings—the name of the court in which the appeal was instituted and the date on which it was instituted; and

(b) a statement that the Part VII proceedings are pending at the date of the declaration; and

(c) such other matters (if any) as are prescribed.

65ZC General provisions applicable to sections 65ZA and 65ZB

(1) A declaration under section 65ZA or 65ZB may be served on the owner or charterer of an aircraft or vessel, or on the agent of the owner of an aircraft or vessel, by sending the declaration by 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).

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, under the *Child Support*

(Assessment) Act 1989 for administrative assessment of child support (within the meaning of that Act):

(a) by the applicant seeking payment of child support for the child from the respondent; or

(b) by the respondent seeking payment of child support for the child from the applicant.

(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, 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:

(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:

(a) the matters mentioned in sections 66B, 66C and 66D; and

(b) the income, earning capacity, property and financial resources of the party or each of those parties (this is expanded on in subsection (2)); and

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

(i) himself or herself; or

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

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

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

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

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

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

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

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

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

(a) by way of lump sum payment; or

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

(c) in any other way.

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

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 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.

(3) The applicable Rules of Court may make provision with respect to the making of orders under this Division (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.

66Q Urgent child maintenance orders

If, in proceedings for a child maintenance order in relation to a child:

(a) the court considers that the child is in immediate need of financial assistance; but

(b) it is not practicable in the circumstances to determine immediately what order (if any) should be made;

the court may order the payment, pending the disposal of the proceedings, of such periodic or other amount as the court considers appropriate.

66R Specification in orders of payments etc. for child maintenance purposes

(1) If:

(a) a court makes an order under this Act (whether or not the order is made in proceedings in relation to the maintenance

of a child, is made by consent or varies an earlier order) that has the effect of requiring:

(i) payment of a lump sum, whether in one amount or by instalments; or

(ii) the transfer or settlement of property; and

(b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a child or children;

the court must:

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

(d) specify:

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

(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 under the applicable Rules of 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 make an order:

(a) discharging the first order; or

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

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

(d) varying the order:

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

(ii) in any other way.

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

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

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

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

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

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

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

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

(ii) in any other way.

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

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

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

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

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

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

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

(c) if the order was made by consent—that the amount ordered to be paid is not proper or adequate (this is expanded on in subsection (6)); or

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

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

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

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

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

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

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

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

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

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 administrative assessment of child support (within the meaning of that Act) for the child seeking payment of child support by the other person.

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

(3) However, the registered agreement is of no effect to the extent that it allows any entitlement of a child or another person to an income

tested pension, allowance or benefit to affect the duty of that child's parents to maintain the child.

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

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

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

(b) operates in favour of, and is binding on, the legal representative of that party or person;

unless the agreement or order provides otherwise.

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

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

Subdivision F—When child maintenance orders stop being in force

66T Effect of child turning 18

As stated in subsection 66L(3), a child maintenance order in relation to a child stops being in force when the child turns 18, unless the order is expressed to continue in force after then.

66U Effect of death of child, person liable to pay or person entitled to receive

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

(2) A child maintenance order in relation to a child stops being in force on the death of the person liable to make payments under the order.

(3) Subsection (2) does not apply to an order made before the commencement of section 38 of the *Family Law Amendment Act 1983* if the order was expressed to continue in force throughout the life of the person for whose benefit the order was made or for a

period that had not expired at the death of the person liable to make payments under the order and, in that case, the order is binding on the legal personal representative of the deceased person.

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

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

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

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

66V Effect of adoption, marriage or entering into a de facto relationship

(1) A child maintenance order in relation to a child stops being in force if the child is adopted, marries or enters into a de facto relationship.

(2) If a child to whom a child maintenance order applies dies, is adopted, marries or enters into a de facto relationship, the person entitled to receive payments under the order must, without delay, inform the person liable to make payments under the order.

(3) Any amounts paid under a child maintenance order in relation to a period after the child dies, is adopted, marries or enters into a de facto relationship may be recovered in a court having jurisdiction under this Part.

(4) A court having jurisdiction under this Part may make a declaration to the effect that a child is in, or has entered into, a de facto relationship.

(5) A declaration under subsection (4) has effect for the purposes of this Act but does not have effect for any other purpose (including, for example, other laws of the Commonwealth or laws of the States and Territories).

66VA Children who are 18 or over: change of circumstances

(1) A child maintenance order made under section 66L:

(a) to enable the child to complete his or her education; or

(b) because of a mental or physical disability of the child;

stops being in force if the child ceases that education or ceases to have that disability.

(2) The person to whom the maintenance is payable must, as soon as practicable, inform the person required to pay it of that change in circumstances.

(3) Any amounts of maintenance paid under the child maintenance order after it stops being in force may be recovered in a court having jurisdiction under this Part.

66W Recovery of arrears

(1) Nothing in subsection 66L(3), or in this Subdivision (apart from subsection (2) of this section), affects the recovery of arrears due under a child maintenance order in relation to a child when the order ceases to be in force.

(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.

Division 8—Other matters relating to children

Subdivision A—What this Division does

67A What this Division does

This Division deals with:

(a) the liability of a father to contribute towards child bearing expenses if he is not married to the child's mother (Subdivision B); and

(b) orders for the location and recovery of children (Subdivision C); and

(c) the reporting of allegations of child abuse (Subdivision D); and

(d) other orders about children (Subdivision E).

Subdivision B—Father's liability to contribute towards child bearing expenses if not married to mother

67B Father liable to contribute towards maintenance and expenses of mother

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

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

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

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

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

67C Matters to be taken into account in proceedings under Subdivision

(1) In proceedings under this Subdivision in relation to the birth of a child, the court must, in determining the contribution that should be made by the father of the child, take into account the following matters only:

(a) the income, earning capacity, property and financial resources of the mother and the father of the child;

(b) commitments of each of those persons that are necessary to enable the person to support:

(i) himself or herself; or

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

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

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

(3) In taking into account the income, earning capacity, property and financial resources of the mother, the court must disregard any entitlement of the mother to an income tested pension, allowance or benefit.

(4) Subsections (2) and (3) do not limit the matters to which the court may have regard in taking into account matters referred to in subsection (1).

67D Powers of court in proceedings under Subdivision

(1) In proceedings under this Subdivision in relation to the birth of a child, the court may make such order as it thinks proper.

(2) In exercising its powers under this Subdivision, a court may do all or any of the following:

(a) order payment of a lump sum, whether in one amount or by instalments;

(b) order payment of a weekly, monthly or other periodic amount;

(c) order that payment of an amount ordered to be paid be wholly or partly secured as the court specifies;

(d) order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;

(e) order that payment be made to a specified person or public authority or into court;

(f) make a permanent order, an order pending the disposal of proceedings, an order for a fixed period or an order until further order;

(g) make an order imposing terms and conditions;

(h) make an order by consent;

(i) make any other order (whether or not of the same nature as those referred to in paragraphs (a) to (h)) that it considers appropriate;

(j) make an order under this Subdivision at any time (whether before or after the birth of the relevant child).

(3) The applicable Rules of Court may make provision with respect to the making of orders under this Subdivision (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of amounts payable under them.

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

67H Interpretation

In this Subdivision:

appropriate authority, 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.

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

Department means a Department of State of the Commonwealth.

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.

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

principal officer, 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.

recovery order has the meaning given by section 67Q.

Registrar means:

(a) in relation to the Family Court, or the Family Court of Western Australia—the Registrar, or a Deputy Registrar, of that court; and

(b) in relation to any other court—the principal officer of that court.

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 Registrar 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 Registrar of the court with information about the child's location that is contained in or comes into the records of the Department or instrumentality.

(2) A ***Commonwealth information order*** is a location order described in paragraph (1)(b).

67K Who may apply for a location order

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

(a) a person who has a residence order in relation to the child; or

(b) a person who has a contact order in relation to the child; or

(c) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development; or

(ca) a grandparent of the child; or

(d) any other person concerned with the care, welfare or development of the child.

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: Division 10 deals 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 exercising jurisdiction in proceedings arising under regulations made for the purposes of Part XIIIAA, may make a location order if it is satisfied that the person to whom the order applies is likely to have information about the child's location.

(3) If the person to whom a location order applies holds an office or position in, or in relation to, a Department or a Commonwealth instrumentality, the order does not apply to information that the person has or obtains because of holding that office or position.

(4) A location order stays in force for 12 months or such longer period as the court considers appropriate.

(5) While a location order is in force, the person to whom it applies must provide the information sought by the order as soon as practicable, or as soon as practicable after the person obtains it.

(6) The person to whom a location order applies must comply with the order in spite of anything in any other law.

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 exercising jurisdiction in proceedings arising under regulations made for the purposes of Part XIIIAA, may make a Commonwealth information order if it is satisfied that information about the child's location is likely to be contained in, or to come into, the records of the Department or Commonwealth instrumentality concerned.

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

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

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

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

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

(4) If an application for a Commonwealth information order relates to more than one Department or Commonwealth instrumentality, the court must not make the order in relation to more than one of them unless the court considers it should do so because of exceptional circumstances.

(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 Registrar of a court under a location order (including a Commonwealth information order) must not be disclosed by the Registrar, 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 Registrar, except to:

(a) the Registrar of another court; or

(b) an officer of the court, or of another court, for the purpose of that officer's responsibilities or duties; or

(c) a process-server engaged by, or by an officer of, the court or another court; or

(d) with the leave of the court that made the location order:

(i) the legal adviser of the applicant for the order; or

(ii) a process-server engaged by that legal adviser; or

(e) if a recovery order that consists of or includes an authorisation or direction described in paragraph 67Q(b) or (c) is in force—a person to whom the authorisation or direction is addressed.

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.

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 who has a residence order or a contact order in relation to the child; or

(iii) a person who has a specific issues order in relation to the child under which the person is responsible for the

child's long-term or day-to-day care, welfare and development;

(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 who has a residence order or a contact order in relation to the child; or

(iii) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development; or

(iv) some other person on behalf of a person described in subparagraph (i), (ii) or (iii);

(e) giving directions about the day-to-day care of a child until the child is returned or delivered to another person;

(f) prohibiting a person from again removing or taking possession of a child;

(g) authorising or directing a person to arrest, without warrant, a person who again removes or takes possession of a child.

Note 1: Section 122AA authorises the use of reasonable force in making an arrest, and Subdivision D of Division 6 deals with what is to happen to a person arrested without warrant under a recovery order.

Note 2: If a recovery order authorises a person to recover a child, the person is authorised to recover the child on each occasion that it is necessary to do so while the order remains in force: see subsection 67W(3).

67R How recovery orders authorise or direct people

(1) An authorisation or direction described in paragraph 67Q(b), (c) or (d) may be addressed to:

(a) a named person; or

(b) every person from time to time holding or acting in a specified office of the Commonwealth or of a State or Territory.

(2) Without limiting the generality of subsection (1), an authorisation or direction described in paragraph 67Q(b), (c) or (d) may be addressed to:

(a) a named person who holds an appointment as a child recovery officer under subsection (3); or

(b) every person from time to time holding or acting in an office of child recovery officer.

(3) The Attorney-General may appoint persons to be child recovery officers for the purposes of this Subdivision.

(4) An appointment under subsection (3) may be of:

(a) a named person only; or

(b) every person from time to time holding or acting in a specified office of the Commonwealth or of a State or Territory.

67S How recovery orders to stop and search etc. name or describe vehicles, places etc.

An authorisation or direction described in paragraph 67Q(b) may be expressed to apply to:

(a) a vehicle, vessel, aircraft, premises or place named or described either specifically or in general terms; or

(b) any vehicle, vessel, aircraft, premises or place in which there is, at any time, reasonable cause to believe that the child concerned may be found.

67T Who may apply for a recovery order

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

(a) a person who has a residence order in relation to the child; or

(b) a person who has a contact order in relation to the child; or

(c) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development; 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: Division 10 deals with how a court determines a child's best interests.

67W How long recovery order remains in force

(1) The applicable Rules of Court may deal with how long recovery orders remain in force.

(2) Subject to the applicable Rules of Court, a recovery order remains in force for the period specified in the order.

(3) To avoid doubt, unless a recovery order specifically provides to the contrary, each term of the order continues to have effect until the end of the period for which it remains in force regardless of whether anything has previously been done in accordance with the order.

67X Persons not to prevent or hinder taking of action under recovery order

(1) This section applies to a recovery order that authorises or directs a person or persons to take action as described in paragraph 67Q(b), (c) or (d).

(2) A person must not prevent or hinder the taking of the action by the person or persons authorised or directed to take the action.

(3) If a court having jurisdiction under this Part is satisfied that a person has intentionally, and without reasonable excuse, contravened subsection (2), the court may:

(a) order the person to pay a fine not exceeding 10 penalty units; or

(b) order the person to enter into a recognizance (with or without surety or security) on conditions specified by the court; or

(c) order the person to be imprisoned until he or she enters into a recognizance (with or without surety or security) on conditions specified by the court, or until the person has been imprisoned for 3 months, whichever happens first.

Note: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

(4) A court that makes an order under subsection (3) may make such other orders as it considers necessary to ensure the person does not again contravene subsection (2).

67Y Obligation to notify persons of child's return

(1) This section applies if:

(a) a recovery order that consists of or includes provisions described in paragraph 67Q(a), (b), (c) or (d) is in force in relation to a child; and

(b) the child returns, or is returned, to the person who applied for the order.

(2) The person must, as soon as practicable after the child's return, give notice of the child's return to:

(a) the Registrar 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

67Z Where party to proceedings makes allegation of child abuse

(1) This section applies if a party to proceedings under this Act alleges that a child to whom the proceedings relate has been abused or is at risk of being abused.

(2) The party must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.

(3) If a notice under subsection (2) is filed in a court, the Registrar must, as soon as practicable, notify a prescribed child welfare authority.

(4) In this section:

prescribed form means the form prescribed by the applicable Rules of Court.

Registrar means:

(a) in relation to the Family Court, or the Family Court of Western Australia—the Registrar, or a Deputy Registrar, of that Court; and

(b) in relation to any other court—the principal officer of that court.

67ZA Where member of the Court personnel, counsellor, mediator or arbitrator suspects child abuse etc.

(1) This section applies to a person in the course of carrying out duties, performing functions or exercising powers as:

(a) a member of the Court personnel; or

(b) a family and child counsellor; or

(c) a family and child mediator; or

(d) an arbitrator.

(2) If the person has reasonable grounds for suspecting that a child has been abused, or is at risk of being abused, the person must, as soon

as practicable, notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.

(3) If the person has reasonable grounds for suspecting that a child:

(a) has been ill treated, or is at risk of being ill treated; or

(b) has been exposed or subjected, or is at risk of being exposed or subjected, to behaviour which psychologically harms the child;

the person may notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.

(4) The person need not notify a prescribed child welfare authority of his or her suspicion that a child has been abused, or is at risk of being abused, if the person knows that the authority has previously been notified about the abuse or risk under subsection (2) or subsection 67Z(3), but the person may notify the authority of his or her suspicion.

(5) If notice under this section is given orally, written notice confirming the oral notice is to be given to the prescribed child welfare authority as soon as practicable after the oral notice.

(6) If the person notifies a prescribed child welfare authority under this section or subsection 67Z(3), the person may make such disclosures of other information as the person reasonably believes are necessary to enable the authority to properly manage the matter the subject of the notification.

67ZB No liability for notification under section 67Z or 67ZA

(1) A person:

(a) must give notice under subsection 67Z(3) or 67ZA(2); or

(b) may give notice under subsection 67ZA(3) or (4); or

(c) may disclose other information under subsection 67ZA(6);

in spite of any obligation of confidentiality imposed on the person by this Act, another Act, another law or anything else (including a contract or professional ethics).

(2) A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of a notification under subsection 67Z(3) or 67ZA(2).

(3) A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of a notification under subsection 67ZA(3) or (4), or a disclosure under subsection 67ZA(6), if the notification or disclosure is made in good faith.

(4) Evidence of a notification under subsection 67Z(3) or subsection 67ZA(2), (3) or (4), or a disclosure under subsection 67ZA(6), is not admissible in any court except where that evidence is given by the person who made the notification or disclosure.

(5) In this section:

court means a court (whether or not exercising jurisdiction under this Act) and includes a tribunal or other body concerned with professional ethics.

Subdivision E—Other orders about children

67ZC Orders relating to welfare of children

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

(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: Division 10 deals with how a court determines a child's best interests.

67ZD Orders for delivery of passports

If a court having jurisdiction under this Part considers that there is a possibility or threat that a child may be removed from Australia, it may order the passport of the child and of any other person concerned to be delivered up to the court upon such conditions as the court considers appropriate.

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 who has a residence order or a contact order in relation to the child; or

(iii) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development; 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—The best interests of children and the representation of children

Subdivision A—What this Division does

68D What this Division does

This Division deals with:

(a) determining what is in a child's best interests (including in situations of family violence) (Subdivision B); and

(b) the separate representation of children (Subdivision C).

Subdivision B—Determining the best interests of a child

68E 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.

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

68F How a court determines what is in a child's best interests

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

(2) The court must consider:

(a) any wishes 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 wishes;

(b) the nature of the relationship of the child with each of the child's parents and with other persons;

(c) 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, with whom he or she has been living;

(d) the practical difficulty and expense of a child having contact 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;

(e) the capacity of each parent, or of any other person, to provide for the needs of the child, including emotional and intellectual needs;

(f) the child's maturity, sex and background (including any need to maintain a connection with the lifestyle, culture and traditions of Aboriginal peoples or Torres Strait Islanders) and any other characteristics of the child that the court thinks are relevant;

(g) the need to protect the child from physical or psychological harm caused, or that may be caused, by:

(i) being subjected or exposed to abuse, ill-treatment, violence or other behaviour; or

(ii) being directly or indirectly exposed to abuse, ill-treatment, violence or other behaviour that is directed towards, or may affect, another person;

(h) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;

(i) any family violence involving the child or a member of the child's family;

(j) any family violence order that applies to the child or a member of the child's family;

(k) 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;

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

(3) 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).

(4) In paragraph (2)(f):

Aboriginal peoples means the peoples of the Aboriginal race of Australia.

Torres Strait Islanders means the descendants of the indigenous inhabitants of the Torres Strait Islands.

68G How the wishes of a child are expressed

(1) Paragraph 68F(2)(a) requires the court to consider any wishes 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 wishes expressed by a child.

(2) The court may inform itself of wishes expressed by a child:
   (a) by having regard to anything contained in a report given to the court under subsection 62G(2); or
   (b) subject to the applicable Rules of Court, by such other means as the court thinks appropriate.

68H Children not required to express wishes

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

68J 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, subject to the applicable Rules of Court, 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.

68K 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.

Subdivision C—Separate representation of children

68L Court orders for separate representation

(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 ought to be separately represented, the court may order that the child is to be separately represented, and may also make such other orders as it considers necessary to secure that separate representation.

(2A) However, if the proceedings arise under regulations made for the purposes of section 111B, the court may order that the child be separately represented only if the court considers there are exceptional circumstances that justify doing so, and must specify those circumstances in making the order.

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

(3) A court may make an order for separate representation:
  (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.

68M Order that child be made available for examination

(1) This section applies if, in proceedings under this Act, a child is separately represented by a person (the ***child's representative***) under an order under section 68L.

(2) The court may, on application by the child's representative, order a person mentioned in subsection (3) to make the child available, as specified in the order, for a psychiatric or psychological examination to be made for the purpose of preparing a report about the child for use by the child's representative in connection with the proceedings.

(3) The order may be directed to:

(a) a parent of the child; or

(b) a person who has a residence order or a contact order in relation to the child; or

(c) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development.

Division 11—Family violence

68N What this Division does

This Division deals with the relationship between Division 11 contact orders (as defined in section 68P) and family violence orders.

Note: Other provisions dealing with family violence and family violence orders are:
(a) section 60D (which contains the relevant definitions); and
(b) paragraphs 65F(2)(b) and 68F(2)(i) and (j); and
(c) sections 68J and 68K.

68P Interpretation

In this Division:

Division 11 contact order means:

(a) a contact order; or

(b) any of the following, to the extent that it requires or authorises (expressly or impliedly) contact between a child and another person or other persons:

(i) a recovery order, a specific issues order or any other order (however described) made under this Act;

(ii) an injunction granted under section 68B or 114;

(iii) an undertaking given to, and accepted by, a court exercising jurisdiction under this Act;

(iv) a parenting plan registered in a court under section 63E;

(v) a recognizance entered into pursuant to an order under this Act.

section 68R contact order means:

(a) a contact order; or

(b) any of the following, to the extent that it requires or authorises (expressly or impliedly) contact between a child and another person or other persons:

(i) a recovery order, a specific issues order or any other order (however described) made under this Act;

(ii) an injunction granted under section 68B or 114.

68Q Purposes of Division

The purposes of this Division are:

(a) to resolve inconsistencies between Division 11 contact orders and family violence orders; and

(b) to ensure that Division 11 contact orders do not expose people to family violence; and

(c) to respect the right of a child to have contact, on a regular basis, with both the child's parents where:

(i) contact is diminished by the making or variation of a family violence order; and

(ii) it is in the best interests of the child to have contact with both parents on a regular basis.

68R Provisions about making an order for contact that is inconsistent with a family violence order

(1) This section applies if a court makes a section 68R contact order that is inconsistent with a family violence order.

(2) The court must explain, or arrange for someone else to explain, the order in accordance with subsection (3) to:

(a) the applicant and the respondent in the proceedings for the section 68R contact order; and

(b) if the person against whom the family violence order is directed is not covered by paragraph (a)—that person; and

(c) if the person protected by the family violence order is not covered by paragraph (a)—that person.

(3) An explanation under subsection (2) must explain, in language likely to be readily understood by the person to whom the explanation is given:

(a) the purpose of the section 68R contact order; and

(b) the obligations that the order creates; and

(c) the consequences that may follow if a person fails to comply with the order; and

(d) the court's reasons for making an order that is inconsistent with a family violence order; and

(e) the circumstances in which a person may apply for the order to be revoked or varied.

(4) In addition to the requirements mentioned in subsection (3), the court must:

(a) include in the section 68R contact order a detailed explanation of how the contact provided for in the order is to take place; and

(b) as soon as practicable, but not later than 14 days after making the section 68R contact order, give a copy of that order to:

(i) the applicant and the respondent in the proceedings for the section 68R contact order; and

(ii) if the person against whom the family violence order is directed is not covered by subparagraph (i)—that person; and

(iii) if the person protected by the family violence order is not covered by subparagraph (i)—that person; and

(iv) the Registrar of the court that made or last varied the family violence order; and

(v) 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.

(5) Failure to comply with a requirement of this section does not affect the validity of a section 68R contact order.

68S Section 68R contact orders prevail over inconsistent family violence orders

(1) If a section 68R contact order is inconsistent with a family violence order, the section 68R contact order prevails and the family violence order is invalid to the extent of the inconsistency.

(2) Any of the following persons may apply to a court having jurisdiction under this Part for a declaration of the extent to which a section 68R contact order is inconsistent with a family violence order:

(a) the applicant and the respondent in the proceedings for the section 68R contact order;

(b) if the person against whom the family violence order is directed is not covered by paragraph (a)—that person;

(c) if the person protected by the family violence order is not covered by paragraph (a)—that person.

(3) The court to which an application for a declaration is made must hear and determine the application and make such declaration as it considers appropriate.

68T Variation etc. of Division 11 contact order by court making etc. family violence order

(1) If proceedings (the ***family violence proceedings***) for the making or variation of a family violence order are before a court of a State or Territory that has jurisdiction in relation to matters arising under this Part, the court may, subject to this section, exercise that jurisdiction, in the course of the family violence proceedings, to make, revive, vary, discharge or suspend a Division 11 contact order.

(2) The court's power to make, revive, vary, suspend or discharge a Division 11 contact order in the family violence proceedings is subject to the following provisions:

(a) the court must not exercise that power unless, whether by interim order or otherwise, it makes or varies a family violence order in those proceedings;

(b) the court must exercise that power having regard to the purposes of this Division (as stated in section 68Q) and to the best interests of any relevant child;

(c) if section 68R applied to the making of a Division 11 contact order—the court must not exercise the power to vary, discharge or suspend the order unless it is satisfied that it is appropriate to do so:

(i) because a person has been exposed, or is likely to be exposed, to family violence as a result of the operation of the order; and

(ii) having regard to the matters mentioned in paragraph (b);

(d) if the court makes an interim family violence order, or an interim order varying a family violence order, the court must

not discharge a Division 11 contact order in those proceedings.

Note: Division 10 deals with how a court determines a child's best interests.

(3) This Part, and the applicable Rules of Court, apply to the making, revival, variation, discharge or suspension of a Division 11 contact order in the family violence proceedings subject to the following qualifications:

(a) the following provisions do not apply:

(i) sections 65C, 68K and 69N and subsection 65F(2);

(ii) any provisions (for example, section 65E) that would otherwise make the best interests of a child the paramount consideration;

(iii) any other prescribed provisions;

(b) if the court makes an interim family violence order, or an interim order varying a family violence order, then, in addition to the effect of paragraph (a):

(i) the court has a discretion whether to apply paragraph 68F(2)(a); and

(ii) any other prescribed provisions do not apply;

(c) the court may dispense with such applicable Rules of Court as it thinks appropriate.

Note: Because of subparagraph (3)(a)(ii), the best interests of a child are not the paramount consideration. They must, however, still be taken into account as required by paragraphs (2)(b) and (c).

(4) The court may (subject to this section) make, revive, vary, discharge or suspend a Division 11 contact order in the family violence proceedings:

(a) on its own initiative; or

(b) on application by any person.

(5) If, in the family violence proceedings:

(a) the court makes an interim family violence order, or an interim order varying a family violence order (the ***interim order***); and

(b) the court makes, revives, varies or suspends a Division 11 contact order;

the following provisions apply:

(c) the Division 11 contact order made, or the revival, variation or suspension of the Division 11 contact order, as the case may be, does not have effect at a time that is after whichever of the following occurs first:

(i) the interim order stops being in force;

(ii) the end of the period of 21 days starting when the interim order was made;

(d) no appeal lies in relation to the making, revival, variation or suspension of the Division 11 contact order.

(6) The regulations may require a copy of the court's decision to make, revive, vary, discharge or suspend a Division 11 contact order to be registered in accordance with the regulations. Failure to comply with such a requirement of the regulations does not affect the validity of the court's decision.

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*.

69C Who may institute proceedings

(1) Sections 65C, 66F, 67F, 67K and 67T and subsection 68T(4) are express provisions dealing with who may institute particular kinds of proceedings in relation to children.

(2) Any other kind of proceedings under this Act in relation to a child may, unless a contrary intention appears, be instituted by:

(a) either or both of the child's parents; or

(b) the child; or

(c) a grandparent of the child; or

(d) any other person concerned with the care, welfare or development of the child.

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.

69F Applicant may be in contempt

A court may proceed with the hearing of proceedings in relation to a child even though the person who instituted the proceedings has failed to comply with an order of the court or of another court having jurisdiction under this Act.

Subdivision C—Jurisdiction of courts

69G Interpretation

In this Subdivision:

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

69H Jurisdiction of Family Court, State Family Courts, Northern Territory Supreme Court and Federal Magistrates Court

(1) Jurisdiction is conferred on the Family Court in relation to matters arising under this Part.

(2) Each Family Court of a State is invested with federal jurisdiction in relation to matters arising under this Part.

(3) Subject to section 69K, jurisdiction is conferred on the Supreme Court of the Northern Territory in relation to matters arising under this Part.

(4) Jurisdiction is conferred on the Federal Magistrates Court in relation to matters arising under this Part (other than proceedings for leave under section 60G).

69J Jurisdiction of courts of summary jurisdiction

(1) Subject to subsection (5), each court of summary jurisdiction of each State is invested with federal jurisdiction in relation to matters arising under this Part (other than proceedings for leave under section 60G).

(2) Subject to subsection (5) and section 69K, jurisdiction is conferred on each court of summary jurisdiction of each Territory in relation to matters arising under this Part (other than proceedings for leave under section 60G).

(3) The Governor-General may, by Proclamation, fix a day as the day on and after which proceedings in relation to matters arising under this Part may not be instituted in, or transferred to, a court of summary jurisdiction in a specified State or Territory.

(4) Without limiting the generality of subsection (3), a Proclamation under that subsection may be expressed to apply only in relation to:
   (a) proceedings of specified classes; or
   (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.

(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 a court of summary jurisdiction; and

(b) the respondent, in answer to the application by which the proceedings were instituted, seeks an order different from that sought in the application.

(2) The court must, before going on to hear and determine the proceedings, inform the parties that, unless each of them consents to the court hearing and determining the proceedings, the court is required to transfer the proceedings to the Family Court, a Family Court of a State or the Supreme Court of the Northern Territory.

(3) If the parties do not consent to the court hearing and determining the proceedings, the court must transfer the proceedings accordingly.

(4) Before transferring the proceedings, the court may make such orders (including an order under subsection 62F(2)) as it considers necessary pending the disposal of the proceedings by the court to which they are transferred.

(5) If the parties consent to the court hearing and determining the proceedings:

(a) a party is not entitled, without leave of the court, subsequently to object to the proceedings being heard and determined by the court; but

(b) the court may, on its own initiative, transfer the proceedings to the Family Court, a Family Court of a State or the Supreme Court of the Northern Territory.

(6) If the court subsequently gives leave to a party to object to the proceedings being heard and determined by the court, the court must transfer the proceedings to the Family Court, a Family Court of a State or the Supreme Court of the Northern Territory.

(7) A court to which proceedings are transferred must deal with the proceedings as if they had been instituted in the court.

(8) Failure by a court of summary jurisdiction to comply with this section in relation to proceedings does not invalidate any order made by the court in the proceedings.

(9) Subsection (8) does not affect the duty of a court of summary jurisdiction to comply with this section.

Subdivision D—Presumptions of parentage

69P Presumptions of parentage arising from marriage

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

(2) If:

(a) at a particular time:

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

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

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

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 dissolution of the marriage;

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

69Q Presumption of paternity arising from cohabitation

If:

(a) a child is born to a woman; and

(b) at any time during the period beginning not earlier than 44 weeks and ending not less than 20 weeks before the birth, the woman cohabited with a man to whom she was not married;

the child is presumed to be a child of the man.

69R Presumption of parentage arising from registration of birth

If a person's name is entered as a parent of a child in a register of births or parentage information kept under a law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction, the person is presumed to be a parent of the child.

69S Presumptions of parentage arising from findings of courts

(1) If:

(a) during the lifetime of a particular person, a prescribed court 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.

(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.

(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) a person representing the child 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.

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 specific issues order, is responsible 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 specific issues order, is responsible for the child's long-term or day-to-day care, welfare and development.

(2) Subsection (1) does not affect any liability of a person for an act done negligently, or negligently omitted to be done, in relation to the carrying out of the medical procedure or act.

69ZB Regulations about carrying out, and reporting on, parentage testing procedures

The regulations may make provision relating to:

(a) the carrying out of parentage testing procedures under parentage testing orders; and

(b) the preparation of reports relating to the information obtained as the result of carrying out such procedures.

69ZC Reports of information obtained may be received in evidence

(1) A report made in accordance with regulations covered by paragraph 69ZB(b) may be received in evidence in any proceedings under this Act.

(2) If, under subsection (1), a report is received in evidence in proceedings under this Act, the court may make an order requiring the person who made the report, or any person whose evidence may be relevant in relation to the report, to appear before the court and give evidence in relation to the report.

(3) A court may make an order under subsection (2):

(a) on its own initiative; or

(b) on the application of:

(i) a party to the proceedings; or

(ii) a person representing the relevant child 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;

the regulations may make provision:

(c) conferring jurisdiction on a court to make an order requiring a parentage testing procedure to be carried out at the request of:

(i) a court or authority in a foreign country; or

(ii) the Secretary to the Department, or a person authorised by the Secretary; or

(d) for the carrying out of a parentage testing procedure, and the preparation of a report in relation to the information obtained as a result of the carrying out of the procedure; or

(e) for the admissibility in legal proceedings of a report, in relation to the information obtained as a result of the carrying out of a parentage testing procedure, received from an authority in a foreign country;

whether or not there is any express provision in the relevant arrangement or in the Convention authorising the carrying out of a parentage testing procedure.

Subdivision F—Extension, application and additional operation of Part

69ZE Extension of Part to the States

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

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

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

(i) the maintenance of children and the payment of expenses in relation to children or child bearing;

(ii) parental responsibility for children; or

(b) Western Australia adopts this Part.

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

(a) an Act of the Parliament of the State by which there is referred to the Parliament of the Commonwealth:
(i) the matters referred to in subparagraphs (2)(a)(i) and (ii); or
(ii) matters that include, or are included in, those matters; or
(b) a law of the State adopting this Part.

(4) This Part extends to a State at any time under subsection (1) or paragraph (2)(a) only in so far as it makes provision with respect to:
(a) the matters that are at that time referred to the Parliament of the Commonwealth by the Parliament of the State; or
(b) matters incidental to the execution of any power vested by the Constitution in the Parliament of the Commonwealth in relation to those matters.

69ZF Unless declaration in force, Part's extension to a State has effect subject to modifications

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

(2) Despite anything in section 69ZE, if no declaration under subsection (1) is in force in relation to a particular State, this Part, as it extends to that State because of section 69ZE, has effect as if:
(a) subsection 66F(2) were omitted; and
(b) subsections 69ZE(1) and (2) were amended by omitting "and section 69ZF"; and
(c) section 69ZF were omitted; and
(d) paragraph 69ZK(1)(b) were omitted; and
(e) subsection 69ZK(2) were amended by adding at the end the following word and paragraphs:
"; or (d) the jurisdiction of a court under a child welfare law to make an order in relation to the maintenance of the child; or
(e) an order of the kind referred to in paragraph (d).".

(3) A Proclamation that was in force in relation to a State under subsection 60E(6) of this Act as in force before the commencement

of this section has effect, after that commencement, as if it were a Proclamation under subsection (1) of this section.

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

69ZG Application of Part in, and in relation to, Territories

This Part applies in and in relation to the Territories.

69ZH Additional application of Part

(1) Without prejudice to its effect apart from this section, this Part also has effect as provided by this section.

(2) By virtue of this subsection, Divisions 2 to 7 (inclusive) (other than Subdivisions C, D and E of Division 6 and sections 66D, 66M and 66N), Subdivisions C and E of Division 8, Divisions 9, 10 and 11 and Subdivisions B and C of Division 12 (other than section 69D) have the effect, subject to subsection (3), that they would have if:

(a) each reference to a child were, by express provision, confined to a child of a marriage; and

(b) each reference to the parents of the child were, by express provision, confined to the parties to the marriage.

(3) The provisions mentioned in subsection (2) only have effect as mentioned in that subsection so far as they make provision with respect to the parental responsibility of the parties to a marriage for a child of the marriage, including (but not being limited to):

(a) the duties, powers, responsibilities and authority of those parties in relation to:

(i) the maintenance of the child and the payment of expenses in relation to the child; or

(ii) the residence of the child, contact between the child and other persons 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 proceedings between those parties for principal relief; or

(iii) in relation to a dissolution or annulment of that marriage, or a legal separation of the parties to the 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.

(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.

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

70B Interpretation

In this Subdivision:

State 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 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.

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

70F Interpretation

In this Subdivision:

care order means a specific issues order under which a person is responsible for a child's day-to-day care, welfare and development.

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.

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 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

(iii) varies or discharges an order of the kind referred to in subparagraph (i) or (ii), 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).

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.

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 residence order, a contact order or a care order in relation to the child concerned unless:

(a) each person with whom the child is supposed to live or have contact under the overseas order, or who has rights of custody or access in relation to the child concerned under the 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 residence order, a contact order or a care order in relation to a child who is the subject of an overseas child order, the court must not make a

residence order, a contact order or a care 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 residence order, contact order or care order ought to be made.

70K Cancellation of registration if residence order, contact order or care order made

If a court:

(a) is aware that an overseas child order is registered under section 70G; and

(b) makes a residence order, a contact order or a care 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 residence order, a contact order or a care order; or

(b) a State child order as defined in section 70B.

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 or have contact under the order; or

(b) who is responsible for the child's day-to-day care, welfare and development under the order; or

(c) who has a right to custody of, or access to, the child under the order.

(2) This section applies if:

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

(b) an overseas child order, other than an excluded order, that relates to the child but that has a different effect from the Australian order has been registered under section 70G (whether before or after the making of the Australian child order) and its registration has not been cancelled.

(3) A responsible person under the overseas child order may apply to a court having jurisdiction under this Part for the discharge of the Australian child order.

(4) A responsible person under the Australian child order may apply to a court having jurisdiction under this Part for the cancellation of the registration of the overseas child order.

(5) If an application is made under subsection (3) or (4), the court must:

(a) if a condition specified in subsection (6) is satisfied—cancel the registration of the overseas child order; or

(b) in any other case—discharge the Australian child order.

(6) For the purposes of paragraph (5)(a), the conditions are:

(a) each responsible person under the overseas child order consents to the cancellation of the registration of the order; or

(b) the court is satisfied that there are substantial grounds for believing that the child's welfare will be adversely affected if the overseas child order continues to operate in relation to the child; or

(c) the court is satisfied that there has been a change in the circumstances of the child since the overseas child order was made that makes it inappropriate for the order to continue to operate in relation to the child.

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, a residence order, a contact order or a specific issues order, or a State child order as defined in section 70B; 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 Registrar 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 or have contact under the order; or

(b) a person who has a right to custody of, or of access to, the child under the order.

(4) The Registrar 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 residence order, a contact order or a specific issues order, or a State child order as defined in section 70B, 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

70NB Definitions

In this Division:

applied provisions, in relation to a community service order made under paragraph 70NJ(3)(a), means the provisions of the laws of a State or Territory (as modified by regulations made under subsection 70NK(3)), that, because of regulations made under that subsection, apply in relation to the order.

appropriate post-separation parenting program or ***appropriate program***, in relation to a person, means a post-separation parenting program that is available within a reasonable distance from the person's place of residence or place of work.

community service order has the meaning given by subsection 70NK(2A).

contravened an order has the meaning given by section 70NC.

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 in proceedings under this Act that relate wholly or partly to, or to the making of, a parenting order; or

(d) a subpoena issued under the applicable Rules of Court in proceedings under this Act that relate wholly or partly to a parenting order, being a subpoena issued to a party to the proceedings; or

(e) a parenting plan registered in a court under section 63E; or

(f) a bond entered into:

(i) under a parenting order; or

(ii) under paragraph 70NJ(3)(b); or

(iii) for the purposes of subsection 70NO(5);

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

(g) is an order under this Act affecting children made by another court because of paragraph (a), (b), (e) or (f); and

(h) has been registered in the first-mentioned court.

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

(a) is designed (including by providing counselling services or by teaching techniques to resolve disputes) to help people to resolve problems that adversely affect the carrying out of their parenting responsibilities; and

(b) is included in a list of programs compiled by the Attorney-General; and

(c) consists of lectures, discussions (including group discussions) or other activities.

primary order has the meaning given by section 70NF or 70NJ.

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

70NBA 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.

70NC 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.

70ND Requirements taken to be included in certain orders

For the purposes of this Division:
(a) a residence order is taken to include a requirement that people act in accordance with section 65M in relation to the order; and
(b) a contact order is taken to include a requirement that people act in accordance with section 65N in relation to the order; and
(c) a specific issues 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.

70NE 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 (1A), (2), (3) and (4).

(1A) 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.

(1B) 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 (1A)(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.

(2) A person (the ***respondent***) is taken to have had a reasonable excuse for contravening a residence order in a way that resulted in a 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).

(3) A person (the ***respondent***) is taken to have had a reasonable excuse for contravening a contact order in a way that resulted in a person and a child being deprived of contact they were supposed to have had under the order if:

(a) the respondent believed on reasonable grounds that the deprivation of contact was necessary to protect the health or safety of a person (including the respondent or the child); and

(b) the deprivation of contact was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).

(4) A person (the ***respondent***) is taken to have had a reasonable excuse for contravening a specific issues order 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).

70NEA Standard of proof of reasonable excuse

The standard of proof to be applied in determining, in proceedings under this Division, whether a person who contravened an order under this Act affecting children had a reasonable excuse for the contravention is proof on the balance of probabilities.

Subdivision B—Powers of court where a person contravenes an order under this Act affecting children: stage 2 of parenting compliance regime

70NF Application of Subdivision

(1) Subject to subsection (2), this Subdivision applies if:

(a) an order under this Act affecting children (the ***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

(ba) the person does not prove that he or she had a reasonable excuse for the current contravention; and

(c) either of the following applies:

(i) no court having jurisdiction under this Act has previously determined that the person has, without reasonable excuse, contravened the primary order;

(ii) a court having jurisdiction under this Act has previously determined that the person has, without reasonable excuse, contravened the primary order but the court dealing with the current contravention is satisfied that it is more appropriate for that contravention to be dealt with under this Subdivision;

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) This Subdivision does not apply if, in circumstances mentioned in subparagraph (1)(c)(i), 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.

70NG Powers of court

(1) If this Subdivision applies, the court may do any or all of the following:

(a) make an order in respect of the person who committed the current contravention, or (subject to subsection (2)) in respect of both that person and another specified person, as follows:

(i) directing the person or each person to attend before the provider of a specified appropriate post-separation parenting program so that the provider can make an initial assessment as to the suitability of the person concerned to attend such a program;

(ii) if a person so attending before a provider is assessed by the provider to be suitable to attend such a program or a part of such a program and the provider nominates a particular appropriate program for the person to attend—directing the person to attend that program or that part of that program;

(b) make a further parenting order that compensates for contact forgone 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.

(1A) 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.

(2) The court must not make an order under paragraph (1)(a) directed to a person other than the person who committed the current contravention unless:

(a) the person brought the proceedings before the court in relation to the current contravention or is otherwise a party to those proceedings; and

(b) the court is satisfied that it is appropriate to direct the order to the person because of the connection between the current contravention and the carrying out by the person of his or her parental responsibilities in relation to the child or children to whom the primary order relates.

(3) If the court makes an order under paragraph (1)(a) that a person is to attend before the provider of a program for assessment, or is to attend a program, the court must cause the provider of the program to be notified, in accordance with the applicable Rules of Court, of the making of the order.

70NH Duties of provider of program

(1) The provider of a program before whom a person attends under an order made under subparagraph 70NG(1)(a)(i) must inform the court, in accordance with the applicable Rules of Court, if the person is unsuitable to attend any program.

(2) If a person is ordered to attend a program or a part of a program, the provider of the program must inform the court, in accordance with the applicable Rules of Court, if:

(a) the person fails to attend the program or the part of the program; or

(b) the provider considers that the person is unsuitable to take any further part in the program or part of the program.

70NI Evidence

Evidence of anything said, or of any admission made, by a person attending before the provider of a program for assessment, or attending a 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.

70NIA Court may make further orders in relation to attendance at program

If it appears to the court that a person has not attended a program or a part of a program that the person was ordered to attend, the court may, by order, give further directions to the person with respect to the person's attending the program.

70NIB List of programs

The Attorney-General:

(a) is to compile, for each calendar year, a list of post-separation parenting programs; and

(b) is to publish the list in such manner as he or she determines; and

(c) if he or she amends the list during the calendar year for which it is compiled—is to publish a revised list in such manner as he or she determines.

Subdivision C—Court to take action in respect of person who contravenes an order: stage 3 of parenting compliance regime

70NJ Powers of court

(1) Subject to subsection (2), this Subdivision applies if:

(a) an order under this Act affecting children (the ***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

(ba) the person does not prove that he or she had a reasonable excuse for the current contravention; and

(c) either of the following applies:

(i) no court having jurisdiction under this Act has previously determined that the person has, without reasonable excuse, contravened the primary order but 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;

(ii) a court having jurisdiction under this Act has previously determined that the person has, without reasonable excuse, contravened the primary order.

Note: For the standard of proof to be applied in determining whether a contravention of the primary order has been committed, see section 140 of the *Evidence Act 1995*.

(2) 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 B.

(2A) If this Subdivision applies, the court must make, in respect of the person who committed the current contravention, the order or orders available to be made under subsection (3) that it considers to be the most appropriate in the circumstances.

(2B) This section applies whether the primary order was made, and whether the current contravention occurred, before or after the commencement of this Division.

(3) The orders that are available to be made by the court are:

(a) if the court is empowered under section 70NK 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 70NM; or

(c) if the person has contravened a parenting order—subject to subsection (5), to make an order varying the order so contravened; or

(d) to fine the person not more than 60 penalty units; or

(e) subject to subsection (6), to impose a sentence of imprisonment on the person in accordance with section 70NO.

(4) If a court varies or discharges under section 70NM a community service order made under paragraph (3)(a), the court may give any directions as to the effect of the variation or discharge that the court considers appropriate.

(5) When making an order under paragraph (3)(c) varying a parenting order, the court, in addition to regarding, under section 65E, 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 parenting 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 appropriate post-separation parenting program that the person who contravened the parenting order could attend;

(c) because of the behaviour of the person who contravened the parenting 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 parenting order was a compensatory parenting order made under paragraph 70NG(1)(b) after the person had contravened a previous order under this Act affecting children.

(6) 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.

(6A) 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).

(7) 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.

(8) 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.

70NK When court is empowered to make a community service order

(1) Subject to this section, if:

(a) 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; and

(b) an arrangement under section 70NQ in respect of the State or Territory makes provision for and in relation to the carrying out of a community service order;

a court exercising jurisdiction in the State or Territory may, under paragraph 70NJ(3)(a) make a community service order.

(2) A community service order made under paragraph 70NJ(3)(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.

(2A) 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.

(3) If a court exercising jurisdiction under section 70NJ in a particular State or Territory makes a community service order under paragraph 70NJ(3)(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.

(4) If a court proposes to make a community service order under paragraph 70NJ(3)(a), it must, before doing so, explain to the person in respect of whom it is made, in language likely to be readily understood by the person:

(a) the purpose and effect of the proposed order; and

(b) the consequences that may follow if the person fails to comply with the proposed order or with any requirements made in relation to the order by or under the applied provisions; and

(c) if the proposed order may be revoked or varied under the applied provisions—that the proposed order may be so revoked or varied.

Note: For ***applied provisions***, see section 70NB.

(5) 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 70NQ is in force.

participating Territory means a Territory in relation to which an agreement under section 70NQ is in force.

70NL Variation and discharge of community service orders

A community service order made under paragraph 70NJ(3)(a) may be varied or discharged:

(a) if the court that made the order is the Family Court or the Federal Magistrates Court—by either of those Courts; or

(b) otherwise—by the court that made the order or the Family Court.

70NM Bonds

(1) This section provides for bonds that a court may require a person to enter into under paragraph 70NJ(3)(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, but are not limited to, conditions of the following kinds:

(a) a condition requiring the person to attend upon a family and child counsellor, or a welfare officer, for counselling;

(b) a condition requiring the person to be of good behaviour.

(5) If a court proposes to require a person to enter into a bond, it must, before making the requirement, explain to the person, in language likely to be readily understood by the person:

(a) the purpose and effect of the proposed requirement; and

(b) the consequences that may follow if the person:

(i) fails to enter into the bond; or

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

70NN Procedure for enforcing community service orders or bonds

(1) If a court makes a community service order under paragraph 70NJ(3)(a) in respect of a person, or an order under paragraph 70NJ(3)(b) requiring a person to enter into a bond in accordance with section 70NM, the following provisions have effect.

(2) If an information is laid before a magistrate, whether before or after the end of the period for which the community service order or the bond is to operate, or operated, alleging that the person has, without reasonable excuse, contravened the order or bond, the magistrate may:

(a) issue a summons directing the person to appear, on a date, at a time and at a place fixed in the summons, before the court; or

(b) if the information is laid on oath or affirmation and the magistrate thinks that proceedings against the person by summons might not be effective—issue a warrant for the arrest of the person.

(3) If:

(a) the person is served with a summons issued under subsection (2); and

(b) the person fails to attend before the court as required by the summons;

the court may, on proof of the service of the summons, issue a warrant for the arrest of the person.

(4) If:

(a) the person is arrested under a warrant issued under subsection (2), (3) or (6); and

(b) the court is not sitting at the time of the arrest;

the person is to be brought before a magistrate.

(5) The magistrate may:

(a) order that the person be released from custody on his or her entering into a bond (with or without surety or security) that he or she will attend before the court on a date, at a time and at a place specified by the magistrate; or

(b) direct that the person be kept in custody in accordance with the warrant.

(6) If:

(a) on entering into a bond under subsection (5), the person is released under an order made by a magistrate under paragraph (5)(a); and

(b) the person fails to attend before the court as required by the bond;

the court may, on proof of the entering into of the bond, issue a warrant for the arrest of the person.

(7) If:

(a) in accordance with this section, the person is brought before the court; and

(b) 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 70NM) is satisfied that the person has, without reasonable excuse, failed to comply with the order or bond;

the court may take action under subsection (8).

(8) The court may:

(a) without prejudice to the continuance of the community service order or the bond entered into in accordance with section 70NM, 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 70NM and, subject to subsection (9), 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 70NJ in respect of the contravention.

(9) In dealing with the person as mentioned in paragraph (8)(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.

(10) A warrant issued under subsection (2), (3) or (6) in relation to the person authorises:

(a) the arrest of the person; and

(b) the bringing of the person before the court as soon as practicable after his or her arrest; and

(c) the detention of the person in custody until he or she is released by order of the court, or in accordance with subsection (5).

70NO Sentences of imprisonment

(1) A sentence of imprisonment imposed on a person under paragraph 70NJ(3)(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.

(2) A court must not sentence a person to imprisonment under paragraph 70NJ(3)(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 70NJ(3).

(3) If a court sentences a person to imprisonment under paragraph 70NJ(3)(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, when sentencing a person to imprisonment under paragraph 70NJ(3)(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 (6) after he or she has served a specified part of the term of imprisonment.

(6) A bond for the purposes of subsection (5) is a bond (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.

(7) A court that has sentenced a person to imprisonment for a period expressed as provided by paragraph (1)(b) may order the release of the person if it is satisfied that the person will, if he or she is released, comply with the order concerned.

(8) To avoid doubt, the serving by a person of a period of imprisonment under a sentence imposed on the person under paragraph 70NJ(3)(e) for failure to make a payment under a child maintenance order does not affect the person's liability to make the payment.

(9) 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 XIIIA is taken to extend to the carrying out of sentences imposed, or orders made, under this Division.

70NP 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 70NJ 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.

70NQ Arrangements with States and Territories for carrying out of sentences and orders

(1) The Governor-General may make arrangements with the relevant authority of a State or a Territory for:
  (a) the exercise of powers, and the performance of functions, by officers of the State or Territory; and
  (b) the making available of facilities of the State or Territory;

for and in relation to the carrying out of orders made, and sentences imposed, under this Subdivision.

(2) In this section:

officer includes the holder of a judicial office.

relevant authority means:
  (a) in relation to a State—the Governor of the State; and
  (b) in relation to the Australian Capital Territory—the Chief Minister for the Australian Capital Territory; and
  (c) in relation to the Northern Territory—the Administrator of the Northern Territory; and
  (d) in relation to Norfolk Island—the Administrator of Norfolk Island.

70NR 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) the registration of which under section 63E is in force; and

(b) that is not a maintenance agreement, or, if it is a maintenance agreement, it relates to a child who is not a child of the marriage to which the maintenance agreement relates; and

(c) that:

(i) is made by the parties to a de facto relationship in connection with the breakdown of that relationship; or

(ii) relates to a child whose parents (being parties to the plan) were neither married to each other, nor living with each other in a de facto relationship, at the time of the child's conception.

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

Part VIII—Property, spousal maintenance and maintenance agreements

71 Interpretation

In this Part:

marriage includes a void marriage.

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

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.

72 Right of spouse to maintenance

A party to a marriage is liable to maintain the other party, to the extent that the first-mentioned party is reasonably able to do so, if, and only if, that other party is unable to support herself or himself adequately whether:

(a) by reason of having the care and control of a child of the marriage who has not attained the age of 18 years;

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

(c) for any other adequate reason;

having regard to any relevant matter referred to in subsection 75(2).

74 Power of court in spousal maintenance proceedings

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.

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;

(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;

(c) whether either party has the care or control of a child of the marriage who has not attained the age of 18 years;

(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;

(e) the responsibilities of either party to support any other person;

(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;

(g) where the parties have separated or the marriage has been dissolved, a standard of living that in all the circumstances is reasonable;

(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;

(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;

(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;

(l) the need to protect a party who wishes to continue that party's role as a parent;

(m) if either party is cohabiting with another person—the financial circumstances relating to the cohabitation;

(n) the terms of any order made or proposed to be made under section 79 in relation to the property of the parties;

(na) any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage; and

(o) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; and

(p) the terms of any financial agreement that is binding on the parties.

(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.

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 proceedings with respect to the property of the parties to a marriage or either of them, the court may make such order as it considers appropriate altering the interests of the parties in the property, including an order for a settlement of property in substitution for any interest in the property and including an order requiring either or both of the parties to make, for the benefit of either or both of the parties or a child of the marriage, such settlement or transfer of property as the court determines.

(1A) An order made under subsection (1) in proceedings with respect to the property of the parties to a marriage or either of them may, after the death of a party to the proceedings, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(1B) The court may adjourn proceedings with respect to the property of the parties to a marriage or either of them, except where the parties to the proceedings are:

(a) parties to concurrent, pending or completed proceedings for principal relief;

(b) parties to a marriage that has been dissolved or annulled under the law of an overseas country, where that dissolution or annulment is recognized as valid in Australia under section 104; or

(c) parties to a marriage who have been granted a legal separation under the law of an overseas country, where that legal separation is recognized as valid in Australia under section 104;

on such terms and conditions as it considers appropriate, for such period as it considers necessary to enable the parties to the proceedings 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 proceedings with respect to the property of the parties to a marriage or either of them as provided by subsection (1B) has not expired and:

(a) proceedings for principal relief are instituted by one or both of those parties;

(b) the marriage is dissolved or annulled under the law of an overseas country and the dissolution or annulment is recognized as valid in Australia under section 104; or

(c) the parties are granted a legal separation under the law of an overseas country and the legal separation is recognized as valid in Australia under section 104;

either 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 proceedings with respect to any property of the parties to a marriage or either of them, 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 making of the contribution, ceased to be the property of the parties to the marriage or either of them;

(b) the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them;

(c) the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the

marriage and any children of the marriage, including any contribution made in the capacity of homemaker or parent;

(d) the effect of any proposed order upon the earning capacity of either party to the marriage;

(e) the matters referred to in subsection 75(2) so far as they are relevant;

(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 proceedings with respect to the property of the parties to a marriage or either of them, 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 the property of the parties to the marriage or either of them 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 the property of the parties to the marriage or either of them;

the court may, if so requested by either party to the marriage, adjourn the proceedings until such time, before the expiration of a period specified by the court, as that party to the marriage 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 any of the property of the parties to the marriage or of either of them.

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

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

(b) may become entitled to property as the result of the exercise in his or her favour, by the trustee of a discretionary trust, of a power to distribute trust property;

but nothing in this subsection shall be taken to limit the circumstances in which the court may form the opinion that there is likely to be a significant change in the financial circumstances of a party to the marriage.

(8) Where, before proceedings with respect to the property of the parties to a marriage or either of them are completed, either party to the proceedings 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 any of the property of the parties to the marriage or either of them; 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 proceedings with respect to the property of the parties to a marriage or either of them (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).

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 proceedings with respect to the property of the parties to a marriage or either of them, 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 proceedings with respect to the property of the parties to a marriage or either of them, 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) the person has a residence order in relation to the child; or

(c) the person has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development.

(1B) An order varied or made under subsection (1) or (1A) may, after the death of a party to the proceedings 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, either party to the proceedings dies:

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

(b) if the court is of the opinion:

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

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

the court may vary the order, set the order aside, or set the order aside and make another order under section 79 in substitution for the order so set aside; and

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

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

(3) In this section, a reference to an order made by a court under section 79 includes a reference to an order made by a court under section 86 of the repealed Act.

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 DPP that the property of the parties to the marriage or either of them is covered by:

(i) a proceeds of crime order; or

(iii) a forfeiture application;

the person must notify the Registry Manager in writing of the proceeds of crime order or forfeiture application.

(4) A person who does not comply with subsection (3) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

79C Court to stay property or spousal maintenance proceedings affected by proceeds of crime orders etc.

(1) A court in which property settlement or spousal maintenance proceedings are pending must stay those proceedings if notified under section 79B in relation to the proceedings.

(1A) The court may, before staying proceedings under subsection (1), invite or require the DPP to make submissions relating to staying the proceedings.

(2) A court must, on the application of the DPP, stay property settlement or spousal maintenance proceedings under this Part if the property of the parties to the marriage or either of them is covered by:

(a) a proceeds of crime order; or

(b) a forfeiture application.

(3) A court must notify the DPP if the court stays property settlement or spousal maintenance proceedings under subsection (1) or (2).

(4) The DPP must notify the Registry Manager if:

(a) a proceeds of crime order ceases to be in force; or

(b) a forfeiture application is finally determined.

(5) For the purposes of subsection (4), a forfeiture application is taken to be finally determined when:

(a) the application is withdrawn; or

(b) if the application is successful—the resulting forfeiture order comes into force; or

(c) if the application is unsuccessful—the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.

79D Lifting a stay

(1) A court that stayed the property settlement or spousal maintenance proceedings under section 79C must wholly or partially lift the stay if:

(a) either party to the proceedings makes an application for the stay to be lifted and the DPP consents to such an application; or

(b) the DPP makes an application for the stay to be lifted.

(2) A court that stayed the property settlement or spousal maintenance proceedings under section 79C may, on its own motion, wholly or partially lift the stay if the DPP consents to such a motion.

(3) Giving the Registry Manager written notice of the DPP's consent under this section is taken to be the giving of that consent, unless the court requires the DPP to appear in the proceedings. The notice may be given by the DPP or by a party to the proceedings.

79E Intervention by DPP

(1) The DPP may intervene in any property settlement or spousal maintenance proceedings in relation to which a court is notified under section 79B, or in any proceedings under section 79C or 79D in which the DPP is not already a party.

(2) If the DPP intervenes, the DPP is taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

80 General powers of court

(1) The court, in exercising its powers under this Part, may do any or all of the following:

(a) order payment of a lump sum, whether in one amount or by instalments;

(b) order payment of a weekly, monthly, yearly or other periodic sum;

(ba) order that a specified transfer or settlement of property be made by way of maintenance for a party to a marriage;

(c) order that payment of any sum ordered to be paid be wholly or partly secured in such manner as the court directs;

(d) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;

(e) appoint or remove trustees;

(f) order that payments be made direct to a party to the marriage, to a trustee to be appointed or into court or to a public authority for the benefit of a party to the marriage;

(h) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for a life or during joint lives or until further order;

(i) impose terms and conditions;

(j) make an order by consent;

(k) make any other order (whether or not of the same nature as those mentioned in the preceding paragraphs of this section), which it thinks it is necessary to make to do justice; and

(l) subject to this Act and the applicable Rules of Court, make an order under this Part at any time before or after the making of a decree under another Part.

(2) The making of an order of a kind referred to in paragraph (1)(ba), or of any other order under this Part, in relation to the maintenance of a party to a marriage does not prevent a court from making a subsequent order in relation to the maintenance of the party.

(3) The applicable Rules of Court may make provision with respect to the making of orders under this Part in relation to the maintenance

of parties to marriages (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.

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) In proceedings with respect to the maintenance of a party to a marriage, if there is in force an order (whether made before or after the commencement of this Act) with respect to the maintenance of that party by the other party to the 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:

(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.

(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;

(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 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.

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 the agreement for administrative assessment of child support (within the meaning of that Act) for the child, seeking payment of the child support by the other party to the agreement (whether or not such an application has in fact been made by the party or by another person);

the maintenance agreement, so far as it makes provision for the 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:

(a) a maintenance agreement that makes provision as mentioned in subsection (1) is, at any time, approved by the court; and

(b) the maintenance agreement makes provision for the maintenance of a child; and

(c) an application could properly be made, at that time, under the *Child Support (Assessment) Act 1989* by one of the parties to the agreement for administrative assessment of child support (within the meaning of that Act) for the child seeking payment of the child support by the other party to the agreement (whether or not such an application has in fact been made by the party or by another person);

the maintenance agreement, so far as it makes provision for the maintenance of the child, has no effect and is not enforceable in any way.

(5) Notwithstanding any rule of law or equity, an approved maintenance agreement shall not be taken to be void, voidable or unenforceable by reason that it makes provision as mentioned in subsection (1).

(6) Where a court has approved a maintenance agreement, the agreement shall be deemed to be registered in that court.

(7) An agreement that is by virtue of subsection (6) deemed to be registered in a court may be registered, as prescribed by the applicable Rules of Court, in another court having jurisdiction under this Act.

(8) A court may, by order, revoke the approval of a maintenance agreement under this section if, and only if, the agreement is registered or deemed to be registered in that court and the court is satisfied that:

(a) the approval was obtained by fraud;

(b) the parties to the agreement desire the revocation of the approval;

(c) the agreement is void, voidable or unenforceable; or

(d) in the circumstances that have arisen since the agreement was approved it is impracticable for the agreement to be carried out or impracticable for a part of the agreement to be carried out.

(9) Where the approval of a maintenance agreement under this section is revoked by a court:

(a) the agreement ceases, for all purposes, to be in force; and

(b) the court may, in proceedings for the revocation of the approval or on application by a party to the agreement or any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of the parties to the agreement and any other interested persons;

and, in exercising its powers under paragraph (b), the court shall have regard to the ground on which it revoked the approval of the agreement.

(10) Where a maintenance agreement has been approved by a court as provided by this section, then:

(a) unless the agreement otherwise provides, the agreement (other than a provision in the agreement providing for the payment by way of maintenance of a periodic sum) continues to operate notwithstanding the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party; and

(b) if the agreement so provides, a provision in the agreement providing for the payment to a person by way of maintenance of a periodic sum continues to operate notwithstanding the death of any party to the agreement who is liable to make payments pursuant to that provision and is binding on the legal personal representative of that party but, notwithstanding any provision in the agreement, does not continue to operate after the death of the person who is entitled to receive those payments.

(11) Apart from the provision made by subsections (2), (4A), (4C), (5), (9) and (10), the validity, enforceability and effect of an approved maintenance agreement shall be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts, and, in proceedings of the kind referred to in subparagraph (ea)(iii) of the definition of ***matrimonial cause*** in subsection 4(1), being proceedings instituted in a court in which the approved maintenance agreement is registered or deemed to be registered, the court:

(a) subject to paragraph (b), has the same powers, may grant the same remedies and shall have the same regard to the rights of third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction;

(b) has power to make an order for the payment, by a party to the agreement to another party to the agreement, of interest on an amount payable pursuant to the agreement, from the time when the amount became or becomes due and payable, at a rate not exceeding the rate prescribed by the Rules of the Court; and

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

(12) Where the approval of a maintenance agreement under this section has been revoked, a court shall, in considering whether, and if so, how, to exercise any powers under this Part, have regard to:

(a) anything done or omitted to be done by a party to the agreement pursuant to the agreement;

(b) any change in the circumstances of a party to the agreement arising out of the doing of any act by a person, or the failure of a person to do an act, pursuant to the agreement;

(c) any order made by that court or another court exercising jurisdiction under this Act in connection with the agreement while the agreement was in force; and

(d) any order made under paragraph (9)(b) in connection with the revocation of the approval of the agreement.

(15) In this section, ***approved maintenance agreement*** means a maintenance agreement that has been approved under this section and the approval of which has not been revoked.

(16) Nothing in this Act affects the operation of an agreement sanctioned under paragraph 87(1)(k) of the repealed Act or the rights and obligations of a person under such an agreement.

(17) Subject to section 89, this section does not apply to overseas maintenance agreements.

87A Specification in maintenance agreements of payments etc. for maintenance purposes

(1) Where:

(a) a maintenance agreement (whether or not registered under section 86 or approved under section 87) has the effect of requiring:

(i) payment of a lump sum, whether in one amount or by instalments; or

(ii) the transfer or settlement of property; and

(b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a party to a marriage or a child or children of a marriage;

the agreement shall:

(c) state that the agreement is an agreement to which this section applies; and

(d) specify:

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

(ii) the portion of the payment, or the value of the portion of the property, attributable to the provision of maintenance for that person or each of those persons, as the case may be.

(2) Where a maintenance agreement of a kind referred to in paragraph (1)(a):

(a) does not state that the agreement is an agreement to which this section applies; or

(b) states that the agreement is an agreement to which this section applies, but does not comply with paragraph (1)(d);

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

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 authorizing of a prescribed authority of the Commonwealth, of a State or of a Territory, or the person for the time being holding a prescribed office under a law of the Commonwealth, of a State or of a Territory, in the discretion of the authority or person, to institute and prosecute proceedings with respect to the maintenance of a party to a marriage, on behalf of that party.

90 Certain instruments not liable to duty

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

(a) a deed or other instrument executed by a person for the purposes of, or in accordance with, an order made under this Part;

(b) a relevant maintenance agreement that confers a benefit upon a party to, or a child of, the marriage to which the maintenance agreement relates, to the extent that the maintenance agreement confers that benefit;

(c) a deed or other instrument executed by a person for the purposes of, or in accordance with, a relevant maintenance agreement, being a deed or other instrument that confers a benefit upon a party to, or a child of, the marriage to which the maintenance agreement relates, to the extent that the deed or other instrument confers that benefit.

(2) The following maintenance agreements are relevant maintenance agreements for the purposes of this section:

(a) a registered maintenance agreement made in connection with the dissolution or 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 dissolution or annulment of the marriage to which the maintenance agreement relates;

(c) a registered maintenance agreement (other than a maintenance agreement referred to in paragraph (a) or (b)) made in connection with the breakdown of the marriage to which the maintenance agreement relates;

(d) an approved maintenance agreement made in connection with the dissolution or 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 dissolution or 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.

Part VIIIA—Financial agreements

90A Definitions

In this Part:

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

marriage includes a void marriage.

90B Financial agreements before marriage

(1) If:

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

(aa) at the time of the making of the agreement, no other agreement (whether made under this section or section 90C or 90D) is in force between the parties with respect to any of those matters; and

(b) the agreement is expressed to be made under this section;

the agreement is a ***financial agreement***.

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

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

(b) the maintenance of either of them:

(i) during the marriage; or

(ii) after the dissolution of the marriage; or

(iii) both during, and after the dissolution of, the marriage.

(3) A financial agreement made as mentioned in subsection (1) may contain matters incidental or ancillary to those mentioned in subsection (2).

(4) A financial agreement made as mentioned in subsection (1) may terminate a previous financial agreement made as mentioned in that subsection between the same parties.

90C Financial agreements during marriage

(1) If:

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

(aa) at the time of the making of the agreement, no other agreement (whether made under this section or section 90B or 90D) is in force between the parties with respect to any of those matters; and

(b) the agreement is expressed to be made under this section;

the agreement is a ***financial agreement***.

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

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

(b) the maintenance of either of them:

(i) during the marriage; or

(ii) after the dissolution of the marriage; or

(iii) both during, and after the dissolution of, the marriage.

(3) A financial agreement made as mentioned in subsection (1) may contain matters incidental or ancillary to those mentioned in subsection (2).

(4) A financial agreement made as mentioned in subsection (1) may terminate a previous financial agreement made as mentioned in that subsection, or a financial agreement made as mentioned in subsection 90B(1), between the same parties.

90D Financial agreements after dissolution of marriage

(1) If:

(a) after a decree nisi dissolving a marriage is made, the parties to the former marriage make a written agreement with respect to any of the matters mentioned in subsection (2); and

(aa) at the time of the making of the agreement, no other agreement (whether made under this section or section 90B or 90C) is in force between the parties with respect to any of those matters; and

(b) the agreement is expressed to be made under this section;

the agreement is a ***financial agreement***.

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

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

(b) the maintenance of either of them.

(3) A financial agreement made as mentioned in subsection (1) may contain matters incidental or ancillary to those mentioned in subsection (2).

(4) A financial agreement made as mentioned in subsection (1) may terminate a previous financial agreement made as mentioned in that subsection, or a financial agreement made as mentioned in subsection 90B(1) or 90C(1), between the same parties.

90E Requirements with respect to provisions in financial agreements relating to the maintenance of a party or a child or children

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

(a) the party, or the child or children, for whose maintenance provision is made; and

(b) the amount provided for, or the value of the portion of the relevant property attributable to, the maintenance of the party, or of the child or each child, as the case may be.

90F Certain provisions in agreements

(1) No provision of a financial agreement (other than a financial agreement made under section 90B or a financial agreement made under section 90C in the event of the breakdown of a marriage) excludes or limits the power of a court having jurisdiction under this Act to make an order in relation to the maintenance of a party to a marriage if the court is satisfied that, when the agreement was made, 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.

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

90G When financial agreements are binding

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

(a) the agreement is signed by both parties; and

(b) the agreement contains, in relation to each party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, as certified in an annexure to the agreement, with independent legal advice from a legal practitioner as to the following matters:

(i) the effect of the agreement on the rights of that party;

(ii) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement;

(iii) whether or not, at that time, it was prudent for that party to make the agreement;

(iv) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably

foreseeable, the provisions of the agreement were fair and reasonable; and

(c) the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and

(d) the agreement has not been terminated and has not been set aside by a court; and

(e) after the agreement is signed, the original agreement is given to one of the parties and a copy is given to the other.

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

(2) A court may make such orders for the enforcement of a financial agreement that is binding on the parties to the agreement as it thinks necessary.

90H Effect of death of party to financial agreement

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

90J Termination of financial agreement

(1) The parties to a financial agreement may terminate the agreement only by:

(a) including a provision to that effect in another financial agreement as mentioned in subsection 90B(4), 90C(4) or 90D(4); or

(b) making a written agreement (a ***termination agreement***) to that effect.

(2) A termination agreement is binding on the parties if, and only if:

(a) the agreement is signed by both parties to the agreement; and

(b) the agreement contains, in relation to each party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, as certified in an annexure to the

agreement, with independent legal advice from a legal practitioner as to the following matters:

(i) the effect of the agreement on the rights of that party;

(ii) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement;

(iii) whether or not, at that time, it was prudent for that party to make the agreement;

(iv) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable; and

(c) the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and

(d) the agreement has not been set aside by a court; and

(e) after the agreement is signed, the original agreement is given to one of the parties and a copy is given to the other.

(3) A court may, on an application by a person who was a party to the financial agreement that has been terminated, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.

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

90K Circumstances in which court may set aside a financial agreement or termination agreement

(1) A court may make an order setting aside a financial agreement or a termination agreement if, and only if, the court is satisfied that:

(a) the agreement was obtained by fraud (including non-disclosure of a material matter); or

(b) the agreement is void, voidable or unenforceable; or

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

(d) since the making of the agreement, a material change in circumstances has occurred (being circumstances relating to the care, welfare and development of a child of the marriage) and, as a result of the change, the child or, if the applicant has caring responsibility for the child (as defined in subsection (2)), a party to the agreement will suffer hardship if the court does not set the agreement aside; or

(e) in respect of the making of a financial agreement—a party to the agreement engaged in conduct that was, in all the circumstances, unconscionable; or

(f) a payment flag is operating under Part VIIIB on a superannuation interest covered by the agreement and there is no reasonable likelihood that the operation of the flag will be terminated by a flag lifting agreement under that Part; or

(g) the agreement covers at least one superannuation interest that is an unsplittable interest for the purposes of Part VIIIB.

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

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

(b) the person has a residence order in relation to the child; or

(c) the person has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development.

90KA Validity, enforceability and effect of financial agreements and termination agreements

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

(a) subject to paragraph (b), has the same powers, may grant the same remedies and must have the same regard to the rights of

third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction; and

(b) has power to make an order for the payment, by a party to the agreement to another party to the agreement, of interest on an amount payable under the agreement, from the time when the amount became or becomes due and payable, at a rate not exceeding the rate prescribed by the applicable Rules of Court; and

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

90L Financial and other agreements etc. not liable to duty

A financial agreement, a termination agreement, or a deed or other instrument executed by a person for the purposes of, or in accordance with, an order made under this Part, is 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.

90M Notification of proceeds of crime orders etc.

(1) If:

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

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

(ii) the maintenance of a party to a marriage; and

(b) the person knows that the property of the parties to the marriage or either of them is covered by:

(i) a proceeds of crime order; or

(ii) a forfeiture application;

the person must:

(c) disclose in the application the proceeds of crime order or forfeiture application; and

(d) give to the court a sealed copy of that order or application.

(2) A person who does not comply with subsection (1) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

(3) If:

(a) a person is a party to property settlement or spousal maintenance proceedings under this Part; and

(b) the person is notified by the DPP that the property of the parties to the marriage or either of them is covered by:

(i) a proceeds of crime order; or

(iii) a forfeiture application;

the person must notify the Registry Manager in writing of the proceeds of crime order or forfeiture application.

(4) A person who does not comply with subsection (3) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

90N Court to stay property or spousal maintenance proceedings affected by proceeds of crime orders etc.

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

(1A) The court may, before staying proceedings under subsection (1), invite or require the DPP to make submissions relating to staying the proceedings.

(2) A court must, on the application of the DPP, stay property settlement or spousal maintenance proceedings under this Part if the property of the parties to the marriage or either of them is covered by:

(a) a proceeds of crime order; or

(b) a forfeiture application.

(3) A court must notify the DPP if the court stays property settlement or spousal maintenance proceedings under subsection (1) or (2).

(4) The DPP must notify the Registry Manager if:

(a) a proceeds of crime order ceases to be in force; or

(b) a forfeiture application is finally determined.

(5) For the purposes of subsection (4), a forfeiture application is taken to be finally determined when:

(a) the application is withdrawn; or

(b) if the application is successful—the resulting forfeiture order comes into force; or

(c) if the application is unsuccessful—the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.

90P Lifting a stay

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

(a) either party to the proceedings makes an application for the stay to be lifted and the DPP consents to such an application; or

(b) the DPP makes an application for the stay to be lifted.

(2) A court that stayed the property settlement or spousal maintenance proceedings under section 90N may, on its own motion, wholly or partially lift the stay if the DPP consents to such a motion.

(3) Giving the Registry Manager written notice of the DPP's consent under this section is taken to be the giving of that consent, unless the court requires the DPP to appear in the proceedings. The notice may be given by the DPP or by a party to the proceedings.

90Q Intervention by DPP

(1) The DPP may intervene in any property settlement or spousal maintenance proceedings in relation to which a court is notified under section 90M, or in any proceedings under section 90N or 90P in which the DPP is not already a party.

(2) If the DPP intervenes, the DPP is taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

Part VIIIB—Superannuation interests

Division 1—Preliminary

Subdivision A—Scope of this Part

90MA Object of this Part

The object of this Part is to allow certain payments (splittable payments) in respect of a superannuation interest to be allocated between the parties to a marriage, either by agreement or by court order.

90MB This Part overrides other laws, trust deeds etc.

(1) Subject to subsection (3), this Part has effect despite anything to the contrary in any of the following instruments (whether made before or after the commencement of this Part):

(a) any other law of the Commonwealth;

(b) any law of a State or Territory;

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

(2) Without limiting subsection (1), nothing done in compliance with this Part by the trustee of an eligible superannuation plan is to be treated as resulting in a contravention of a law or instrument referred to in subsection (1).

(3) This Part has effect subject to the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

90MC Extended meaning of *matrimonial cause*

A superannuation interest is to be treated as property for the purposes of paragraph (ca) of the definition of ***matrimonial cause*** in section 4.

Subdivision B—Interpretation

90MD Definitions

In this Part, unless the contrary intention appears:

approved deposit fund has the same meaning as in the SIS Act.

business day means any day except:

(a) a Saturday or Sunday; or

(b) a day that is a public holiday in the place concerned.

declaration time means the time when the declaration was signed by a spouse (or last signed by a spouse, if both spouses have signed).

eligible superannuation plan means any of the following:

(a) a superannuation fund within the meaning of the SIS Act;

(b) an approved deposit fund;

(c) an RSA;

(d) an account within the meaning of the *Small Superannuation Accounts Act 1995*.

flagging order means an order mentioned in subsection 90MU(1).

flag lifting agreement has the meaning given by section 90MN.

in force, in relation to an agreement, has the meaning given by section 90MG.

interest includes a prospective or contingent interest, and also includes an expectancy.

marriage includes a void marriage.

member, in relation to an eligible superannuation plan, includes a beneficiary (including a contingent or prospective beneficiary).

member spouse, in relation to a superannuation interest, means the spouse who has the superannuation interest.

non-member spouse, in relation to a superannuation interest, means the spouse who is not the member spouse in relation to that interest.

operative time:

(a) in relation to a payment split under a superannuation agreement or flag lifting agreement—has the meaning given by section 90MI; or

(b) in relation to a payment flag under a superannuation agreement—has the meaning given by section 90MK or paragraph 90MLA(2)(c) as appropriate; or

(c) in relation to a payment split under a court order—means the time specified in the order.

payment flag means:

(a) the application of section 90ML in relation to a superannuation interest; or

(b) the application of a flagging order in relation to a superannuation interest.

payment split means:

(a) the application of section 90MJ in relation to a splittable payment; or

(b) the application of a splitting order in relation to a splittable payment.

percentage-only interest means a superannuation interest prescribed by the regulations for the purposes of this definition.

regulated superannuation fund has the same meaning as in the SIS Act.

reversionary beneficiary means a person who becomes entitled to a benefit in respect of a superannuation interest of a spouse, after the spouse dies.

reversionary interest has the meaning given by section 90MF.

RSA means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997*.

secondary government trustee means a trustee that:

(a) is the Commonwealth, a State or Territory; and
(b) is a trustee only because of the operation of section 90MDA.

separation declaration has the meaning given by section 90MP.

SIS Act means the *Superannuation Industry (Supervision) Act 1993*.

splittable payment has the meaning given by section 90ME.

splitting order means an order mentioned in subsection 90MT(1).

spouse means a party to a marriage.

superannuation agreement has the meaning given by section 90MH.

superannuation interest means an interest that a person has as a member of an eligible superannuation plan, but does not include a reversionary interest.

trustee, in relation to an eligible superannuation plan, means:
(a) if the plan is a fund that has a trustee (within the ordinary meaning of that word)—the trustee of the plan; or
(b) if paragraph (a) does not apply and a person is identified in accordance with the regulations as the trustee of the plan for the purposes of this definition—the person identified in accordance with the regulations; or
(c) in any other case—the person who manages the plan.

unflaggable interest means a superannuation interest prescribed by the regulations for the purposes of this definition.

unsplittable interest means a superannuation interest prescribed by the regulations for the purposes of this definition.

90MDA Extended meaning of *trustee*

If a person who is not the trustee of an eligible superannuation plan nevertheless has the power to make payments to members of the plan, then references in this Part to the trustee of the plan include references to that person.

90ME Splittable payments

(1) Each of the following payments in respect of a superannuation interest of a spouse is a ***splittable payment***:

(a) a payment to the spouse;

(b) a payment to another person for the benefit of the spouse;

(c) a payment to the legal personal representative of the spouse, after the death of the spouse;

(d) a payment to a reversionary beneficiary, after the death of the spouse;

(e) a payment to the legal personal representative of a reversionary beneficiary covered by paragraph (d), after the death of the reversionary beneficiary.

(2) A payment is not a splittable payment if it is prescribed by the regulations for the purposes of this subsection. The regulations may prescribe a payment either:

(a) generally (that is, for the purposes of all payment splits in respect of a superannuation interest); or

(b) only for the purposes of applying this Part to a particular payment split in respect of a superannuation interest.

(3) If a payment is made to another person for the benefit of 2 or more persons who include the spouse, then the payment is nevertheless a splittable payment, to the extent to which it is paid for the benefit of the spouse.

90MF Reversionary interest

For the purposes of this Part, a person's interest in an eligible superannuation plan is a ***reversionary interest*** at any time while the person's entitlement to benefits in respect of the interest is conditional on the death of another person who is still living.

90MG Meaning of *in force*

(1) A financial agreement is ***in force*** at any time when it is binding on the parties in accordance with section 90G.

(2) A superannuation agreement is ***in force*** at any time when the relevant financial agreement is in force.

(3) A flag lifting agreement is ***in force*** if, and only if:

(a) it meets the requirements set out in subsection 90MN(3); and

(b) it has not been set aside by a court and has not been terminated.

Division 2—Payment splitting or flagging by agreement

Subdivision A—Superannuation agreements

90MH Superannuation agreement to be included in financial agreement

(1) A financial agreement under Part VIIIA may include an agreement that deals with superannuation interests of either or both of the parties to the agreement as if those interests were property. It does not matter whether or not the superannuation interests are in existence at the time the agreement is made.

(2) The part of the financial agreement that deals with superannuation interests is a ***superannuation agreement*** for the purposes of this Part.

(3) A superannuation agreement has effect only in accordance with this Part. In particular, it cannot be enforced under Part VIIIA.

(4) A superannuation agreement that is included in a financial agreement under section 90B (in contemplation of marriage) has no effect unless and until the parties marry.

(5) In applying sections 90B, 90C and 90D for the purposes of this Division, a superannuation interest of a party to a financial agreement is treated as being acquired at the time when that party first becomes a member of the eligible superannuation plan in respect of that interest.

Subdivision B—Payment splitting

90MI Operative time for payment split

The ***operative time*** for a payment split under a superannuation agreement or flag lifting agreement is the beginning of the fourth business day after the day on which a copy of the agreement is served on the trustee, accompanied by:

(a) either:

(i) a copy of the decree absolute dissolving the marriage; or

(ii) a separation declaration with a declaration time that is not more than 28 days before the service on the trustee; and

(b) if the agreement specifies a method for calculating a base amount—a document setting out the amount calculated using that method; and

(c) if a form of declaration is prescribed for the purposes of this paragraph—a declaration in that form.

Note: The base amount is used to calculate the entitlement of the non-member spouse under the regulations.

90MJ Payment split under superannuation agreement or flag lifting agreement

(1) This section applies to a superannuation interest if:

(a) the interest is identified in a superannuation agreement or flag lifting agreement; and

(b) if the interest is a percentage-only interest—the agreement does one of the following:

(i) it specifies a percentage that is to apply for the purposes of this sub-paragraph;

(ii) it specifies a percentage that is to apply to all splittable payments in respect of the interest; and

(c) if the interest is not a percentage-only interest—the agreement does one of the following:

(i) it specifies an amount as a base amount in relation to the interest for the purposes of this Part;

(ii) it specifies a method by which such a base amount can be calculated at the time when the agreement is served on the trustee under section 90MI;

(iii) it specifies a percentage that is to apply to all splittable payments in respect of the interest; and

(d) the agreement is in force at the operative time; and

(e) the interest is not an unsplittable interest.

Note: The base amount is used to calculate the entitlement of the non-member spouse under the regulations.

(2) The following provisions begin to apply to the interest at the operative time.

(3) Whenever a splittable payment becomes payable in respect of the interest:

(a) the non-member spouse is entitled to be paid the amount (if any) that is calculated under subsection (4); and

(b) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the payment split.

(4) The amount is calculated as follows:

(a) if the agreement specifies a percentage as mentioned in subparagraph (1)(b)(ii) or subparagraph (1)(c)(iii)—the amount is calculated by applying the specified percentage to the splittable payment; or

(b) otherwise—the amount is calculated in accordance with the regulations.

(5) Subject to section 90MV, this section continues to apply to the superannuation interest even if the agreement referred to in subsection (1) later ceases to be in force.

Subdivision C—Payment flagging

90MK Operative time for payment flag

(1) The ***operative time*** for a payment flag under a superannuation agreement is:

(a) the service time, if the eligible superannuation plan is a self-managed superannuation fund; or

(b) otherwise, the beginning of the fourth business day after the day on which the service time occurs.

(2) In this section:

self-managed superannuation fund has the same meaning as in the SIS Act.

service time means the time when a copy of the agreement is served on the trustee, accompanied by:

(a) either:

(i) a copy of the decree absolute dissolving the marriage; or

(ii) a separation declaration with a declaration time that is not more than 28 days before the service on the trustee; and

(b) if a form of declaration is prescribed for the purposes of this paragraph—a declaration in that form.

90ML Payment flag

(1) This section applies to a superannuation interest if:

(a) the interest is identified in a superannuation agreement; and

(b) the agreement provides that the interest is to be subject to a payment flag under this Part; and

(c) the agreement is in force at the operative time; and

(d) the interest is not an unflaggable interest.

(2) A payment flag starts to operate on the superannuation interest at the operative time and continues to operate until either:

(a) a court terminates the operation of the payment flag by an order mentioned in section 90MM; or

(b) a flag lifting agreement is served on the trustee as mentioned in section 90MI in respect of the superannuation interest.

(3) If a payment flag ceases to operate because of paragraph (2)(b), the cessation is not affected by a later termination of the flag lifting agreement.

(4) While a payment flag is operating on a superannuation interest, the trustee must not make any splittable payment to any person in respect of the interest.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

(4A) Subsection (4) does not apply if the splittable payment is made in circumstances in which section 90MLA applies.

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

(5) If a splittable payment becomes payable in respect of a superannuation interest while a payment flag is operating, the

trustee must, within 14 days after it became payable, give written notice to the member spouse and the non-member spouse.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

(6) Subsection (5) does not apply if the trustee has previously given a notice under that subsection, for an earlier splittable payment, in respect of the payment flag.

(7) If either spouse dies while a payment flag is operating:
  (a) the payment flag nevertheless continues to operate; and
  (b) the legal personal representative of the deceased spouse has all the rights the deceased spouse would have had in respect of the payment flag.

Note: The rights of the legal personal representative under paragraph (b) include the right to enter into a flag lifting agreement under section 90MN.

90MLA Some splittable payments payable if payment flag operating

(1) This section applies if:
  (a) a superannuation interest (***original interest***) a person has in an eligible superannuation plan (***old ESP***) is identified in a superannuation agreement; and
  (b) a payment flag under section 90ML is operating on the original interest; and
  (c) a splittable payment is made by the trustee of the old ESP to the trustee of another eligible superannuation plan (***new ESP***) in respect of the original interest as part of a successor fund transfer.

(2) If this section applies, then:
  (a) the new interest in the new ESP is taken to be the original interest identified in the superannuation agreement; and
  (b) the payment flag operates on the new interest; and
  (c) despite section 90MK, the operative time for the payment flag in respect of the new interest is the time that the payment to the trustee of the new ESP is made.

(3) In this section:

successor fund transfer means the transfer of a person's superannuation interest in the old ESP in circumstances where:

(a) the new ESP confers on the person, in relation to the new interest, equivalent rights to the rights the person had in relation to the original interest; and

(b) before the transfer, the trustee of the new ESP had agreed with the trustee of the old ESP to the conferral of such rights.

90MM Payment flag may be terminated by court

If a court makes an order under section 90K setting aside a financial agreement in respect of which a payment flag is operating, the court may also make an order terminating the operation of the flag.

Note: Under section 90MH, a superannuation agreement must be part of a financial agreement. Therefore, setting aside the financial agreement also has the effect of setting aside the superannuation agreement.

90MN Flag lifting agreement etc.

(1) At any time when a payment flag is operating on a superannuation interest, the spouses may make an agreement (a ***flag lifting agreement***) that either:

(a) provides that the flag is to cease operating without any payment split; or

(b) specifies an amount, method or percentage in accordance with subsection 90MJ(1).

(2) If the flag lifting agreement provides for a payment split, the spouses may at any time make an agreement (a ***termination agreement***) that terminates the flag lifting agreement.

(3) A flag lifting agreement or termination agreement has no effect unless it complies with the following requirements:

(a) the agreement must be signed by both spouses;

(b) for each spouse, the agreement must contain a statement that the spouse has been provided with independent legal advice from a legal practitioner as to the legal effect of the agreement;

(c) a certificate must be attached to the agreement, signed by the person who provided the legal advice and stating that the advice was provided;

(d) after the agreement is signed by the spouses, each spouse must be provided with a copy of the agreement.

(4) A court may make an order setting aside a flag lifting agreement or termination agreement if, and only if, the court is satisfied as to any of the grounds set out in subsection 90K(1) (other than paragraph 90K(1)(f)).

(5) An order setting aside a flag lifting agreement also operates to set aside the related financial agreement.

(6) An order under section 90K setting aside a financial agreement also operates to set aside the related flag lifting agreement.

Subdivision D—Miscellaneous

90MO Limitation on section 79 order

(1) A court cannot make an order under section 79 with respect to a superannuation interest if:

(a) the superannuation interest is covered by a superannuation agreement that is in force; or

(b) the non-member spouse has served a waiver notice on the trustee under section 90MZA in respect of the interest; or

(c) a payment flag is operating on the superannuation interest.

Note: Under section 90MM, the court can terminate the operation of a payment flag in certain circumstances.

(2) Subsection (1) does not prevent the court taking superannuation interests into account when making an order with respect to other property of the spouses.

90MP Separation declaration

(1) A ***separation declaration*** is a written declaration that complies with this section.

(2) The declaration must be signed by at least one of the spouses.

(3) If section 90MQ applies to the declaration, then the declaration must state that:

(a) the spouses are married; and

(b) the spouses separated and thereafter lived separately and apart for a continuous period of at least 12 months immediately before the declaration time; and

(c) in the opinion of the spouse (or spouses) making the declaration, there is no reasonable likelihood of cohabitation being resumed.

(4) If section 90MQ does not apply to the declaration, then the declaration must state that the spouses are married, but are separated, at the declaration time.

(5) For the purposes of this section, the question whether spouses lived separately and apart for a continuous period of not less than 12 months before a particular date is to be determined in the same way as it is under section 48.

(6) In this section:

separated has the same meaning as in section 48 (as affected by sections 49 and 50).

90MQ Superannuation interests in excess of ETP threshold

(1) This section applies to a declaration if, at the declaration time, the total withdrawal value for all the superannuation interests of the member spouse is more than the ETP threshold.

(2) This section does not apply in the circumstances (if any) prescribed by the regulations.

(3) In this section:

ETP threshold means the upper limit that applies under section 159SG of the *Income Tax Assessment Act 1936* for the financial year in which the declaration time occurs.

total withdrawal value means the amount determined in accordance with the regulations.

90MR Enforcement by court order

(1) A court may make such orders as it thinks necessary for the enforcement of a payment split or payment flag under this Division.

(2) The question whether a superannuation agreement or flag lifting agreement is valid, enforceable or effective is to be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts.

(3) Without limiting subsection (2), in proceedings relating to a superannuation agreement or flag lifting agreement, the court has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction.

Division 3—Payment splitting or flagging by court order

90MS Order under section 79 may include orders in relation to superannuation interests

(1) In proceedings under section 79 with respect to the property of spouses, the court may, in accordance with this Division, also make orders in relation to superannuation interests of the spouses.

Note 1: Although the orders are made *in accordance with* this Division, they will be made *under* section 79. Therefore they will be generally subject to all the same provisions as other section 79 orders.

Note 2: Sections 71A and 90MO limit the scope of section 79.

(2) A court cannot make an order under section 79 in relation to a superannuation interest except in accordance with this Part.

90MT Splitting order

(1) A court, in accordance with section 90MS, may make the following orders in relation to a superannuation interest (other than an unsplittable interest):

(a) if the interest is not a percentage-only interest—an order to the effect that, whenever a splittable payment becomes payable in respect of the interest:

(i) the non-member spouse is entitled to be paid the amount (if any) calculated in accordance with the regulations; and

(ii) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order;

(b) an order to the effect that, whenever a splittable payment becomes payable in respect of the interest:

(i) the non-member spouse is entitled to be paid a specified percentage of the splittable payment; and

(ii) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order;

(c) if the interest is a percentage-only interest—an order to the effect that, whenever a splittable payment becomes payable in respect of the interest:

(i) the non-member spouse is entitled to be paid the amount (if any) calculated in accordance with the regulations by reference to the percentage specified in the order;

(ii) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order;

(d) such other orders as the court thinks necessary for the enforcement of an order under paragraph (a), (b) or (c).

(2) Before making an order referred to in subsection (1), the court must make a determination under paragraph (a) or (b) as follows:

(a) if the regulations provide for the determination of an amount in relation to the interest, the court must determine the amount in accordance with the regulations;

(b) otherwise, the court must determine the value of the interest by such method as the court considers appropriate.

(2A) The amount determined under paragraph (2)(a) is taken to be the value of the interest.

(3) Regulations for the purposes of paragraph (2)(a) may provide for the amount to be determined wholly or partly by reference to methods or factors that are approved in writing by the Minister for the purposes of the regulations.

(4) Before making an order referred to in paragraph (1)(a), the court must allocate a base amount to the non-member spouse, not exceeding the value determined under subsection (2).

Note: The base amount is used to calculate the entitlement of the non-member spouse under the regulations.

90MU Flagging order

(1) A court, in accordance with section 90MS, may make an order in relation to a superannuation interest (other than an unflaggable interest):

(a) directing the trustee not to make any splittable payment in respect of the interest without the leave of the court; and

(b) requiring the trustee to notify the court, within a period specified in the order, of the next occasion when a splittable payment becomes payable in respect of the interest.

(2) In deciding whether to make an order in accordance with this section, the court may take into account such matters as it considers relevant and, in particular, may take into account the likelihood that a splittable payment will soon become payable in respect of the superannuation interest.

90MUA Some splittable payments may be made without leave of court

(1) A flagging order made under subsection 90MU(1) in relation to a superannuation interest (***original interest***) a person has in an eligible superannuation plan (***old ESP***) does not apply to a splittable payment if the splittable payment is made by the trustee of the old ESP to the trustee of another eligible superannuation plan (***new ESP***) in respect of the original interest as part of a successor fund transfer.

(2) If the splittable payment is made, then the flagging order is taken to be made in relation to the new interest from the time that the payment to the trustee of the new ESP is made.

(3) In this section:

successor fund transfer means the transfer of a person's superannuation interest in the old ESP in circumstances where:

(a) the new ESP confers on the person, in relation to the new interest, equivalent rights to the rights the person had in relation to the original interest; and

(b) before the transfer, the trustee of the new ESP had agreed with the trustee of the old ESP to the conferral of such rights.

Division 4—General provisions about payment splitting

90MV Court may cancel payment split

(1) A court may, under section 79, make an order terminating the operation of a payment split if:

(a) the superannuation agreement in respect of the payment split has ceased to be in force; and

(b) the non-member spouse has not served a waiver notice on the trustee under section 90MZA in respect of the payment split.

(2) The termination has effect for splittable payments that become payable after the date specified in the order.

90MW Deductions from splittable payment before calculating payment split

Any deduction that the trustee is entitled to make from a splittable payment is to be deducted from the splittable payment before calculating any payment split and before applying section 90MX.

90MX Multiple payment splits applying to the same splittable payment

(1) This section applies if 2 or more payment splits apply to the same splittable payment.

(2) The payments splits are to be calculated in order of their operative times, starting with the earliest time.

(3) For the purpose of calculating each of those payment splits (other than the one with the earliest operative time), the amount of the splittable payment is taken to be reduced by the amount to which a person other than the member spouse is entitled under the payment split with the next earlier operative time.

Example: W has a superannuation interest that is subject to 3 payment splits in respect of W's marriages to X, Y and Z (in that order). The operative times of the payment splits are in the same order as the marriages. Assume each payment split provides for a 50% share to the non-member spouse. W becomes entitled to a splittable payment of

$100. The final payment entitlements are as follows: X gets $50. Y gets $25. Z gets $12.50. W gets the remaining $12.50.

90MY Fees payable to trustee

(1) The regulations may:

(a) allow trustees to charge reasonable fees:

(i) in respect of a payment split; or

(ii) otherwise in respect of the operation of this Part in relation to a superannuation interest; and

(b) prescribe the person or persons liable to pay those fees.

(2) If any such fee remains unpaid after the time it is due for payment, then the trustee may recover any unpaid amount by deduction from amounts that would otherwise become payable by the trustee, in respect of the superannuation interest, to the person who is liable to pay the fee.

90MZ Superannuation preservation requirements

(1) If the eligible superannuation plan for a payment split is a regulated superannuation fund or approved deposit fund, then the entitlement of the non-member spouse is subject to any regulations made under the SIS Act that provide for payment of that entitlement to a regulated superannuation fund, approved deposit fund, RSA or exempt public sector superannuation scheme within the meaning of the SIS Act for the benefit of the non-member spouse.

(2) If the eligible superannuation plan for a payment split is an RSA, then the entitlement of the non-member spouse is subject to any regulations made under the *Retirement Savings Accounts Act 1997* that provide for payment of that entitlement to a regulated superannuation fund, approved deposit fund, RSA or exempt public sector superannuation scheme within the meaning of the SIS Act for the benefit of the non-member spouse.

(3) If the eligible superannuation plan for a payment split is a constitutionally protected fund within the meaning of section 267 of the *Income Tax Assessment Act 1936* or an exempt public sector superannuation scheme within the meaning of the SIS Act, then the

entitlement of the non-member spouse is subject to any law or other instrument that provides for payment of that entitlement to a regulated superannuation fund, approved deposit fund, RSA or exempt public sector superannuation scheme within the meaning of the SIS Act for the benefit of the non-member spouse.

90MZA Waiver of rights under payment split

(1) If the non-member spouse serves a waiver notice on the trustee in respect of a payment split, then the following provisions apply for each splittable payment that becomes payable after the date specified in the waiver notice:

(a) the non-member spouse is not entitled to be paid any amount under the payment split in respect of the splittable payment;

(b) the entitlement of the person to whom the splittable payment would have been made but for the payment split continues to be reduced in the same way as it would have been reduced if the entitlement of the non-member spouse had not been terminated.

Example: X has a superannuation interest that is subject to a 50:50 payment split in favour of Y. Y serves a waiver notice on the trustee, in exchange for a lump sum payment made by the trustee to another fund for the benefit of Y. The effect is that X's payments will continue to be reduced by half, but Y will receive no further payments under the payment split.

(2) To be effective for the purposes of this section, a waiver notice must be in the prescribed form and must be accompanied by:

(a) a statement to the effect that the non-member spouse has been provided with independent financial advice from a prescribed financial adviser as to the financial effect of the waiver notice; and

(b) a certificate signed by the person who provided the financial advice, stating that the advice was provided.

90MZB Trustee to provide information

(1) An eligible person may make an application to the trustee of an eligible superannuation plan for information about a superannuation interest of a member of the plan.

(2) The application must be accompanied by:

(a) a declaration, in the prescribed form, stating that the applicant requires the information for either or both of the following purposes:

(i) to assist the applicant to properly negotiate a superannuation agreement;

(ii) to assist the applicant in connection with the operation of this Part in relation to the applicant; and

(b) the fee (if any) payable under regulations made for the purposes of section 90MY.

(3) If the trustee receives an application that complies with this section, the trustee must, in accordance with the regulations, provide information about the superannuation interest to the applicant.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

(4) Regulations for the purposes of subsection (3) may specify circumstances in which the trustee is not required to provide information.

Example: The regulations might provide that a secondary government trustee is not required to provide information where there is another trustee of the eligible superannuation plan who is better able to provide the information.

(5) The trustee must not, in response to an application under this section by a spouse of the member, provide the spouse with any address of the member. For this purpose, ***address*** includes a postal address.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

(6) If the trustee receives an application under this section from a person other than the member, the trustee must not inform the member that the application has been received.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

(7) The regulations may require the trustee of an eligible superannuation plan, after the operative time for a payment split, to provide information to the non-member spouse about the superannuation interest concerned. Such regulations may prescribe penalties for contravention, not exceeding 10 penalty units.

(8) In this section:

eligible person, in relation to a superannuation interest of a member of an eligible superannuation plan, means:

(a) the member; or

(b) a spouse of the member; or

(c) a person who intends to enter into a superannuation agreement with the member.

90MZC Death of non-member spouse

If the non-member spouse dies after the operative time for a payment split:

(a) the payment split nevertheless continues to operate; and

(b) the payment split then operates in favour of the legal personal representative of the deceased spouse and is binding on that legal personal representative; and

(c) the legal personal representative has all the rights the deceased spouse would have had in respect of the payment split, including the right to serve a waiver notice under section 90MZA.

Division 5—Miscellaneous

90MZD Orders binding on trustee

(1) An order under this Part in relation to a superannuation interest may be expressed to bind the person who is the trustee of the eligible superannuation plan at the time when the order takes effect. However:

(a) in the case of a trustee who is not a secondary government trustee—the court cannot make such an order unless the trustee has been accorded procedural fairness in relation to the making of the order; and

(b) in the case of a secondary government trustee:

(i) the court cannot make such an order unless another trustee of the eligible superannuation plan has been accorded procedural fairness in relation to the making of the order; and

(ii) the court may, if it thinks fit, require that the secondary government trustee also be accorded procedural fairness.

(2) If an order is binding on the person who is the trustee of an eligible superannuation plan at the time when the order takes effect, then the order is also binding (by force of this subsection) on:

(a) any person who subsequently becomes the trustee of that eligible superannuation plan; or

(b) in a case where section 90MUA applies—a person who is the trustee, or any person who subsequently becomes the trustee, of the new ESP.

90MZE Protection for trustee

The trustee of an eligible superannuation plan is not liable for loss or damage suffered by any person because of things done (or not done) by the trustee in good faith in reliance on:

(a) any document served on the trustee for the purposes of this Part; or

(b) an order made by a court in accordance with this Part.

90MZF Service of documents on trustee

(1) If a document is required or permitted to be served for the purposes of this Part on the trustee of an eligible superannuation plan, the document may be served in any of the ways in which a document may be served under the Rules of Court.

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

90MZG False declarations

(1) A person is guilty of an offence if:

(a) the person makes a statement in a declaration, knowing that the statement is false or misleading; and

(b) the declaration is served on the trustee of an eligible superannuation plan for the purposes of this Part.

(2) An offence against subsection (1) is punishable by imprisonment for a period of up to 12 months.

(3) Subsection (1) does not apply if the statement is not false or misleading in a material particular.

90MZH Terminating employment because of payment flag etc.

A person must not terminate the employment of an employee on either of the following grounds:

(a) a payment flag is operating in respect of a superannuation interest of the employee;

(b) a superannuation agreement or splitting order is in force in respect of a superannuation interest of the employee.

Penalty: 100 penalty units.

Note: The penalty for a body corporate is 500 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

Part IX—Intervention

91 Intervention by Attorney-General

(1) The Attorney-General may intervene in, and contest or argue any question arising in:

(a) any proceedings under this Act where the court requests the Attorney-General to do so or a matter arises that affects the public interest; or

(b) any proceedings under this Act for or in relation to:

(i) a residence order, a contact order or a specific issues order; or

(ii) an order under section 67ZC.

(1A) At any time after a decree *nisi* has been made in any proceedings and before it has become absolute, the Attorney-General may intervene in the proceedings for the purpose of bringing to the notice of the court matters relevant to the exercise of its powers under section 58.

(2) Where the Attorney-General intervenes in any proceedings, the Attorney-General shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

91A Delegation by Attorney-General

(1) Where, in a State, there is a Family Court of the State, the Attorney-General may, either generally or as otherwise provided by the instrument of delegation, by writing, delegate all or any of his or her powers and functions under section 91 in respect of intervention in proceedings in the Family Court of that State and in other courts of that State to the person occupying from time to time, while the delegation is in force, the office of Attorney-General of that State.

(2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Attorney-General.

(4) Where the Attorney-General of a State intervenes in any proceedings in accordance with a delegation under this section, the Attorney-General of the State shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

91B Intervention by child welfare officer

(1) In any proceedings under this Act that affect, or may affect, the welfare of a child, the court may request the intervention in the proceedings of an officer of a State, of a Territory or of the Commonwealth, being the officer who is responsible for the administration of the laws of the State or Territory in which the proceedings are being heard that relate to child welfare.

(2) Where the court has, under subsection (1), requested an officer to intervene in proceedings:

(a) the officer may intervene in those proceedings; and

(b) where the officer so intervenes, the officer shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

92 Intervention by other persons

(1) In proceedings other than proceedings for principal relief, any person may apply for leave to intervene in the proceedings, and the court may make an order entitling that person to intervene in the proceedings.

(1A) In proceedings for principal relief, a person in relation to whom an order has been made under subsection 69W(1) requiring a parentage testing procedure (within the meaning of Part VII) to be carried out may apply for leave to intervene in the proceedings, and the court may make an order entitling the person to intervene in the proceedings.

(2) An order under this section may be made upon such conditions as the court considers appropriate.

(3) Where a person intervenes in any proceedings by leave of the court the person shall, unless the court otherwise orders, be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

92A Intervention in child abuse cases

(1) This section applies to proceedings under this Act in which it has been alleged that a child has been abused or is at risk of being abused.

(2) Each of the following persons is entitled to intervene in the proceedings:

(a) a guardian of the child;

(b) a parent of the child with whom the child lives;

(ba) a person who has a residence order in relation to the child;

(bb) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development;

(c) any other person responsible for the care, welfare or development of the child;

(d) a prescribed child welfare authority;

(e) a person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.

(3) Where a person intervenes in proceedings pursuant to this section, the person is, unless the court otherwise orders, to be taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

Part X—Appeals

93 No appeal after decree absolute

An appeal does not lie from a decree of dissolution of marriage after the decree has become absolute.

93A Appellate jurisdiction of Family Court

(1) The Family Court has jurisdiction with respect to matters arising under this Act or under any other law made by the Parliament in respect of which:

(a) appeals referred to in section 94 are instituted; or

(aa) appeals referred to in subsection 94AAA(1) are instituted; or

(b) appeals referred to in section 96 are instituted.

(2) Subject to section 96, in an appeal the Family Court shall have regard to the evidence given in the proceedings out of which the appeal arose and has power to draw inferences of fact and, in its discretion, to receive further evidence upon questions of fact, which evidence may be given by affidavit, by oral examination before the Family Court or a Judge or in such other manner as the Family Court may direct.

94 Appeals to Family Court from courts other than the Federal Magistrates Court

(1) Subject to sections 94AAA and 94AA, an appeal lies to a Full Court of the Family Court from:

(a) a decree of the Family Court, constituted otherwise than as a Full Court, exercising original or appellate jurisdiction:

(i) under this Act; or

(ii) under any other law; or

(b) a decree of:

(i) a Family Court of a State; or

(ii) a Supreme Court of a State or Territory constituted by a single Judge;

exercising original or appellate jurisdiction under this Act or in proceedings continued in accordance with any of the provisions of section 9.

(1AA) An appeal lies to a Full Court of the Family Court from a decree or decision of a Judge exercising original or appellate jurisdiction under this Act rejecting an application that he or she disqualify himself or herself from further hearing a matter.

(1A) An appeal under subsection (1) or (1AA) shall be instituted within the time prescribed by the standard Rules of Court or within such further time as is allowed in accordance with the standard Rules of Court.

(2) Upon such an appeal, the Full Court may affirm, reverse or vary the decree or decision the subject of the appeal and may make such decree or decision as, in the opinion of the court, ought to have been made in the first instance, or may, if he considers appropriate, order a re-hearing, on such terms and conditions, if any, as it considers appropriate.

(2A) If, in dismissing an appeal under subsection (1) or (1AA), the Full Court is of the opinion that the appeal does not raise any question of general principle, it may, in accordance with the standard Rules of Court, give reasons for its decision in short form.

Note: Powers to make Rules of Court are also contained in sections 26B, 37A, 109A, 121 and 123.

(2B) A Full Court of the Family Court, or a Judge of the Appeal Division or other Judge if there is no Judge of the Appeal Division available, may:

(a) join or remove a party to an appeal under subsection (1) or (1AA); or

(b) make an order by consent disposing of an appeal under subsection (1) or (1AA) (including an order for costs); or

(c) give directions about the conduct of an appeal under subsection (1) or (1AA), including directions about the use of written submissions and limiting the time for oral argument.

(2C) The standard Rules of Court may make provision enabling matters of the kind mentioned in subsection (2B) to be dealt with, subject

to conditions prescribed by the standard Rules of Court, without an oral hearing.

(2D) Applications:

(a) for an extension of time within which to institute an appeal under subsection (1) or (1AA); or

(b) for leave to amend the grounds of an appeal under subsection (1) or (1AA); or

(c) to reinstate an appeal under subsection (1) or (1AA) that, because of the standard Rules of Court, was taken to have been abandoned; or

(d) to stay an order of a Full Court of the Family Court made in connection with an appeal under subsection (1) or (1AA);

may be heard and determined by a Judge of the Appeal Division or other Judge if there is no Judge of the Appeal Division available, or by a Full Court of the Family Court.

(2E) The standard Rules of Court may make provision enabling applications of a kind mentioned in subsection (2D) to be dealt with, subject to conditions prescribed by the standard Rules of Court, without an oral hearing.

(2F) No appeal lies under this section from an order or decision made under subsection (2B) or (2D).

(3) This section does not apply in relation to a proceeding that is transferred to the Court from the Federal Court of Australia.

94AAA Appeals to Family Court from the Federal Magistrates Court

(1) An appeal lies to the Family Court from:

(a) a decree of the Federal Magistrates Court exercising original jurisdiction under this Act; or

(b) a decree or decision of a Federal Magistrate exercising original jurisdiction under this Act rejecting an application that he or she disqualify himself or herself from further hearing a matter.

(2) Subsection (1) has effect subject to section 94AA.

(3) The jurisdiction of the Family Court in relation to an appeal under subsection (1) is to be exercised by a Full Court unless the Chief Judge considers that it is appropriate for the jurisdiction of the Family Court in relation to the appeal to be exercised by a single Judge.

(4) Subsection (3) has effect subject to subsections (8) and (10).

(5) An appeal under subsection (1) is to be instituted within:
  (a) the time prescribed by the standard Rules of Court; or
  (b) such further time as is allowed in accordance with the standard Rules of Court.

(6) On an appeal under subsection (1), the Family Court may affirm, reverse or vary the decree or decision the subject of the appeal and may make such decree or decision as, in the opinion of the court, ought to have been made in the first instance, or may, if it considers appropriate, order a re-hearing on such terms and conditions, if any, as it considers appropriate.

(7) If, in dismissing an appeal under subsection (1), the Family Court is of the opinion that the appeal does not raise any question of general principle, it may, in accordance with the standard Rules of Court, give reasons for its decision in short form.

(8) A single Judge or a Full Court may:
  (a) join or remove a party to an appeal under subsection (1); or
  (b) make an order by consent disposing of an appeal under subsection (1) (including an order for costs); or
  (c) give directions about the conduct of an appeal under subsection (1), including directions about:
    (i) the use of written submissions; and
    (ii) limiting the time for oral argument.

(9) The standard Rules of Court may make provision enabling matters of the kind mentioned in subsection (8) to be dealt with, subject to conditions prescribed by the standard Rules of Court, without an oral hearing.

(10) Applications:
  (a) for an extension of time within which to institute an appeal under subsection (1); or

(b) for leave to amend the grounds of an appeal under subsection (1); or

(c) to reinstate an appeal under subsection (1) that, because of the standard Rules of Court, was taken to have been abandoned; or

(d) to stay an order of the Family Court made in connection with an appeal under subsection (1);

may be heard and determined by a single Judge or by a Full Court.

(11) The standard Rules of Court may make provision enabling applications of a kind mentioned in subsection (10) to be dealt with, subject to conditions prescribed by the standard Rules of Court, without an oral hearing.

(12) An appeal does not lie to a Full Court from a decision of a single Judge exercising jurisdiction under this section.

(13) The single Judge referred to in subsection (3), (8) or (10) need not be a member of the Appeal Division.

94AA Leave to appeal needed in some cases

(1) An appeal does not lie to a Full Court of the Family Court from a prescribed decree of a court other than the Federal Magistrates Court, except by leave of a Full Court of that Court.

(2) An application for leave under subsection (1) is to be determined by a Full Court of the Family Court.

(2A) An appeal does not lie to the Family Court from a prescribed decree of the Federal Magistrates Court, except by leave of the Family Court.

(2B) An application for leave under subsection (2A) is to be determined by a single Judge or by a Full Court.

(2C) The single Judge referred to in subsection (2B) need not be a member of the Appeal Division.

(3) The standard Rules of Court may make provision for enabling applications for leave to be dealt with, subject to conditions prescribed by the Rules, without an oral hearing.

94A Case stated

(1) If, in proceedings in a court, being proceedings in which a decree or decision to which subsection 94(1) or (1AA) applies could be made, a question of law arises which the Judge and at least one of the parties wish to have determined by a Full Court of the Family Court before the proceedings are further dealt with, the Judge shall state the facts and question in the form of a special case for the opinion of a Full Court, and a Full Court shall hear and determine the question.

(2) The Full Court may draw from the facts and the documents any inference, whether of fact or of law, which could have been drawn from them by the Judge.

(3) If, in proceedings in the Federal Magistrates Court, being proceedings in which a decree or decision to which subsection 94AAA(1) applies could be made, a question of law arises which:

(a) the Federal Magistrate; and

(b) at least one of the parties;

wish to have determined by a Full Court of the Family Court before the proceedings are further dealt with:

(c) the Federal Magistrate must state the facts and question in the form of a special case for the opinion of a Full Court of the Family Court; and

(d) a Full Court of the Family Court must hear and determine the question.

(4) The Full Court may draw from the facts and the documents any inference, whether of fact or of law, which could have been drawn from them by the Federal Magistrate.

95 Appeals to High Court

Notwithstanding anything contained in any other Act, an appeal does not lie to the High Court from a decree of a court exercising jurisdiction under this Act, whether original or appellate, except:

(a) by special leave of the High Court; or

(b) upon a certificate of a Full Court of the Family Court that an important question of law or of public interest is involved.

96 Appeals from courts of summary jurisdiction

(1) An appeal lies from a decree of a court of summary jurisdiction of a State or Territory exercising jurisdiction under this Act to the Family Court or to the Supreme Court of that State or Territory.

(1A) An appeal under subsection (1) shall be instituted within the time prescribed by the standard Rules of Court or within such further time as is allowed in accordance with the standard Rules of Court.

(2) The Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred on the Supreme Court of each Territory, with respect to matters arising under this Act in respect of which appeals are instituted under this section.

(3) The Governor-General may, by Proclamation, fix a date as the date on or after which appeals to the Supreme Court of a specified State or Territory under this section may not be instituted.

(4) The court hearing an appeal under this section:

(a) shall, subject to subsection (5), proceed by way of a hearing *de novo*, but may receive as evidence any record of evidence given, including any affidavit filed or exhibit received, in the court of summary jurisdiction; and

(b) may make such decrees as it considers appropriate, including a decree affirming, reversing or varying the decree the subject of the appeal.

(5) The court hearing an appeal under this section may, on the application of a party or of its own motion, refer the appeal to a Full Court of the Family Court.

(6) Where an appeal is referred to a Full Court of the Family Court under subsection (5), the Full Court may:

(a) proceed by way of a hearing *de novo*, but may receive as evidence any record of evidence given, including any affidavit filed or exhibit received in the court of summary jurisdiction;

(b) order that questions of fact arising in the proceedings be tried by a Judge;

(c) determine questions of law arising in the proceedings and remit the appeal to a Judge for hearing in accordance with directions given by it; and

(d) make such other decrees as it considers appropriate, including a decree affirming, reversing or varying the decree the subject of the appeal.

96A Part does not apply to section 111C jurisdiction

This Part does not apply in relation to jurisdiction conferred on a federal court or a court of a Territory, or invested in a court of a State, by regulations made for the purposes of section 111C.

Note: Those regulations may provide for courts to have jurisdiction in respect of appeals arising from matters dealt with by those regulations: see subsection 111C(5).

Part XI—Procedure and evidence

97 Procedure

(1) Subject to subsections (1A) and (2), to the regulations and to the applicable Rules of Court, all proceedings in the Family Court, in the Federal Magistrates Court, or in a court of a Territory (other than the Northern Territory) when exercising jurisdiction under this Act, shall be heard in open court.

(1A) The regulations and the applicable Rules of Court may authorise proceedings to be heard by a Judge, Federal Magistrate or magistrate sitting in Chambers.

(2) In any proceedings in the Family Court, or in another court when exercising jurisdiction under this Act, the court may, of its own motion or on the application of a party to the proceedings, make one or more of the following orders:

(a) an order that a specified person is not, or specified persons are not, to be present in court during the proceedings or during a specified part of the proceedings;

(b) an order that persons included in a specified class of persons are not to be present in court during the proceedings or during a specified part of the proceedings;

(c) an order that only the parties to the proceedings, their legal representatives and such other persons (if any) as are specified by the court may be present in court during the proceedings or during a specified part of the proceedings.

(3) In proceedings under this Act, the court shall proceed without undue formality and shall endeavour to ensure that the proceedings are not protracted.

98 Evidence by affidavit

(1) The standard Rules of Court may provide for evidence of any material matter to be given on affidavit at the hearing of:

(a) proceedings for principal relief that are undefended at the time of hearing; and

(b) proceedings other than proceedings for principal relief.

(2) This section does not apply to proceedings in the Federal Magistrates Court.

Note: For provisions relating to the Federal Magistrates Court, see the *Federal Magistrates Act 1999*.

98A Proceedings in absence of parties

(1) The applicable Rules of Court may provide that where, at the date fixed for the hearing of proceedings for dissolution of marriage instituted by one party to the marriage:

(a) the proceedings are undefended;

(b) there are no children of the marriage who have not attained the age of 18 years;

(c) the applicant has requested the court to determine the proceedings in the absence of the parties; and

(d) the respondent has not requested the court not to determine the proceedings in the absence of the parties;

the court may, in its discretion, determine the proceedings notwithstanding that neither the parties to the proceedings nor their legal representatives are present in court.

(2) The applicable Rules of Court may provide that where, at the date fixed for the hearing of proceedings for dissolution of marriage instituted jointly by the parties to the marriage:

(a) one of the parties to the marriage has requested the court to determine the proceedings in the absence of the parties and the other party to the marriage has not requested the court not to determine the proceedings in the absence of the parties; or

(b) both parties to the marriage have requested the court to determine the proceedings in the absence of the parties;

the court may, in its discretion, determine the proceedings notwithstanding that neither the parties to the proceedings nor their legal representatives are present in court.

(2A) The court must not determine proceedings for the dissolution of marriage under subsection (2) if:

(a) there are any children of the marriage who are under 18; and

(b) the court is not satisfied that proper arrangements in all the circumstances have been made for the care, welfare and development of those children.

(2B) The court may determine proceedings under subsection (1) or (2) in chambers.

(3) For the purposes of this section, a child (including an ex-nuptial child of either the husband or the wife, a child adopted by either of them or a child who is not a child of either of them) is a child of the marriage if the child was treated by the husband and wife as a child of their family at the relevant time.

(4) For the purposes of subsection (3), the relevant time is the time immediately before the time when the husband and wife separated or, if they have separated on more than one occasion, the time immediately before the time when they last separated before the institution of the proceedings for dissolution of the marriage.

100 Evidence of husbands and wives

(1) The parties to proceedings under this Act are competent and compellable witnesses.

(2) In proceedings under this Act, the parties to a marriage are competent and compellable to disclose communications made between them during the marriage.

(3) Subsection (2) applies to communications made before, as well as to communications made after, the date of commencement of this Act.

100A Evidence of children

(1) 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 solely because of the law against hearsay in any proceedings under Part VII.

(2) A court may give such weight (if any) as it thinks fit to evidence admitted pursuant to subsection (1).

(3) This section applies in spite of any other Act or rule of law.

(4) In this section:

child means a child under 18 years of age.

representation includes an express or implied representation, whether oral or in writing, and a representation inferred from conduct.

100B Children swearing affidavits, being called as witnesses or being present in court

(1) A child, other than a child who is or is seeking to become a party to proceedings, must not swear an affidavit for the purposes of proceedings, unless the court makes an order allowing the child to do so.

(2) A child must not be called as a witness in, or be present during, proceedings in the Family Court, or in another court when exercising jurisdiction under this Act, unless the court makes an order allowing the child to be called as a witness or to be present (as the case may be).

(3) In this section:

child means a child under 18 years of age.

101 Protection of witnesses

(1) The court shall forbid the asking of, or excuse a witness from answering, a question that it regards as offensive, scandalous, insulting, abusive or humiliating, unless the court is satisfied that it is essential in the interests of justice that the question be answered.

(2) The court must forbid an examination of a witness that it regards as oppressive, repetitive or hectoring, or excuse a witness from answering questions asked during such an examination, unless the court is satisfied that it is essential in the interests of justice for the examination to continue or for the questions to be answered.

102 Proof of birth, parentage, death or marriage

In proceedings under this Act, the court may receive as evidence of the facts stated in it a document purporting to be either the original or a certified copy of:

(a) a certificate, entry or record of a birth, death or marriage alleged to have taken place, whether in Australia or elsewhere; or

(b) an entry in a register of parentage information kept under the law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction.

102A Restrictions on examination of children

(1) Subject to this section, where a child is examined without the leave of the court, the evidence resulting from the examination which relates to the abuse of, or the risk of abuse of, the child is not admissible in proceedings under this Act.

(2) Where a person causes a child to be examined for the purpose of deciding:

(a) to bring proceedings under this Act involving an allegation that the child has been abused or is at risk of being abused; or

(b) to make an allegation in proceedings under this Act that the child has been abused or is at risk of being abused;

subsection (1) does not apply in relation to evidence resulting from the first examination which the person caused the child to undergo.

(3) In considering whether to give leave for a child to be examined, the court must have regard to the following matters:

(a) whether the proposed examination is likely to provide relevant information that is unlikely to be obtained otherwise;

(b) the qualifications of the person who proposes to conduct the examination to conduct that examination;

(c) whether any distress likely to be caused to the child by the examination will be outweighed by the value of the information that might be obtained from the examination;

(d) any distress already caused to the child by any previous examination associated with the proceedings or with related proceedings;

(e) any other matter that the court thinks is relevant.

(4) In proceedings under this Act, a court may admit evidence which is otherwise inadmissible under this section where it is satisfied that:

(a) the evidence relates to relevant matters on which the evidence already before the court is inadequate; and

(b) the court will not be able to determine the proceedings properly unless the evidence is admitted; and

(c) the welfare of the child concerned is likely to be served by the admission of the evidence.

(5) In this section:

examined, in relation to a child, means:

(a) subjected to a medical procedure; or

(b) examined or assessed by a psychiatrist or psychologist (other than by a family and child counsellor or welfare officer).

102B Assessors

In any proceedings under this Act (other than prescribed proceedings), the court may, in accordance with the applicable Rules of Court, get an assessor to help it in the hearing and determination of the proceedings, or any part of them or any matter arising under them.

Part XII—Recognition of decrees

103 Decrees under this Act

A decree under this Act has effect throughout Australia and the external Territories.

104 Overseas decrees

(1) In this section:

applicant, in relation to the dissolution or annulment of a marriage or the legal separation of the parties to a marriage, means:

(a) the party at whose instance the dissolution, annulment or legal separation was effected; or

(b) where the dissolution, annulment or legal separation was effected at the instance of both the parties—each of the parties.

marriage includes a purported marriage that is void.

relevant date, in relation to the dissolution or annulment of a marriage or the legal separation of the parties to a marriage, means the date of the institution of the proceedings that resulted in the dissolution, annulment or legal separation.

respondent, in relation to the dissolution or annulment of a marriage or the legal separation of the parties to a marriage, means a party to the marriage, not being a party at whose instance the dissolution, annulment or legal separation was effected.

(2) For the purposes of this section, a person who is a national of a country of which an overseas jurisdiction forms part shall be deemed to be a national of that overseas jurisdiction.

(3) A dissolution or annulment of a marriage, or the legal separation of the parties to a marriage, effected in accordance with the law of an overseas jurisdiction shall be recognized as valid in Australia where:

(a) the respondent was ordinarily resident in the overseas jurisdiction at the relevant date;

(b) the applicant or, in a case referred to in paragraph (b) of the definition of ***applicant*** in subsection (1), one of the applicants, was ordinarily resident in the overseas jurisdiction at the relevant date and either:

(i) the ordinary residence of the applicant or of that applicant, as the case may be, had continued for not less than 1 year immediately before the relevant date; or

(ii) the last place of cohabitation of the parties to the marriage was in that jurisdiction;

(c) the applicant or the respondent or, in a case referred to in paragraph (b) of the definition of ***applicant*** in subsection (1), one of the applicants, was domiciled in the overseas jurisdiction at the relevant date;

(d) the respondent was a national of the overseas jurisdiction at the relevant date;

(e) the applicant or, in a case referred to in paragraph (b) of the definition of ***applicant*** in subsection (1), one of the applicants, was a national of the overseas jurisdiction at the relevant date and either:

(i) the applicant or that applicant, as the case may be, was ordinarily resident in that jurisdiction at that date; or

(ii) the applicant or that applicant, as the case may be, had been ordinarily resident in that jurisdiction for a continuous period of 1 year falling, at least in part, within the period of 2 years immediately before the relevant date; or

(f) the applicant or, in a case referred to in paragraph (b) of the definition of ***applicant*** in subsection (1), one of the applicants, was a national of, and present in, the overseas jurisdiction at the relevant date and the last place of cohabitation of the parties to the marriage was an overseas jurisdiction the law of which, at the relevant date, did not provide for dissolution of marriage, annulment of marriage or the legal separation of the parties to a marriage, as the case may be.

(4) A dissolution or annulment of a marriage, or the legal separation of the parties to a marriage, shall not be recognized as valid by virtue of subsection (3) where:

(a) under the common law rules of private international law, recognition of its validity would be refused on the ground that a party to the marriage had been denied natural justice; or

(b) recognition would manifestly be contrary to public policy.

(5) Any dissolution or annulment of a marriage, or any legal separation of the parties to a marriage, that would be recognized as valid under the common law rules of private international law but to which none of the preceding provisions of this section applies shall be recognized as valid in Australia, and the operation of this subsection shall not be limited by any implication from those provisions.

(6) Notwithstanding anything contained in this section, the annulment in accordance with the law of an overseas jurisdiction of a marriage solemnized under Part V of the *Marriage Act 1961*, being an annulment on the ground only of non-compliance with the formalities prescribed by the law of the jurisdiction in which the marriage was solemnized, shall not be recognized as valid in Australia.

(7) For the purposes of this section, a court in Australia, in considering the validity of a dissolution or annulment of a marriage, or a legal separation of the parties to a marriage, effected under a law of an overseas jurisdiction:

(a) where the respondent appeared in the proceedings for the dissolution, annulment or separation:

(i) is bound by the findings of fact on the basis of which a court of the overseas jurisdiction assumed jurisdiction to grant the dissolution, annulment or separation; and

(ii) may treat as proved any other facts found by a court of the overseas jurisdiction or otherwise established for the purposes of the law of the overseas jurisdiction; or

(b) where the respondent did not appear in the proceedings for the dissolution, annulment or separation—may treat as proved any facts found by a court of the overseas jurisdiction

or otherwise established for the purposes of the law of the overseas jurisdiction.

(8) For the purposes of the preceding provisions of this section but without limiting the operation of those provisions, a dissolution or annulment of a marriage, or the legal separation of the parties to a marriage, shall be deemed to have been effected in accordance with the law of an overseas jurisdiction if it was effected in another overseas jurisdiction in circumstances in which, at the relevant date, it would have been recognized as valid by the law of the first-mentioned overseas jurisdiction.

(9) Where a dissolution or annulment of a marriage is to be recognized as valid in accordance with this section, the capacity of a party to that marriage to re-marry in accordance with the law of Australia is not affected by the fact that the validity of the dissolution or annulment is not recognized under the law of some other jurisdiction.

(10) The preceding provisions of this section apply in relation to dissolutions, annulments and legal separations effected whether by decree, legislation or otherwise, whether before or after the commencement of this Act, and, for the purposes of this section, any decree, legislation or other process by which it is established that a purported marriage was or is to become void shall be deemed to be an annulment of the marriage.

104A Recognition in external Territories

(1) In this section:

external Territory does not include Norfolk Island.

overseas jurisdiction does not include an external Territory.

(2) A dissolution or annulment of a marriage, or the legal separation of the parties to a marriage, effected in accordance with the law of an overseas jurisdiction that is recognised as valid in Australia shall be recognised as valid in every external Territory.

(3) A dissolution or annulment of a marriage, or the legal separation of the parties to a marriage, effected in accordance with the law of an

external Territory that is recognised as valid in Australia shall be recognised as valid in every other external Territory.

Part XIII—Enforcement of decrees

105 Enforcement generally

(1) Subject to this Part, to the regulations and to the applicable Rules of Court, all decrees made under this Act may be enforced by any court having jurisdiction under this Act.

Note: For example, the Federal Magistrates Court can enforce decrees made by the Family Court of Australia.

(2) Except as prescribed, a court shall not entertain a proceeding under this Act for the enforcement of a decree made by another court unless the decree is registered in the first-mentioned court in accordance with the regulations.

(2A) Subsection (2) does not prevent a court from making an order under paragraph 90KA(c).

(3) Where a person bound by a decree made under this Act has died, the decree may, by leave of:

(a) the court by which it was made; or

(b) any court in which the decree has been registered in accordance with the regulations (whether the decree was registered before or after the death of the person);

and on such terms and conditions as the court considers appropriate, be enforced, in respect of liabilities that arose under the decree before the death of that person, against the estate of that person.

106 Maintenance orders—more than 12 months in arrears

In determining whether to make an order enforcing a maintenance order, a court must not require that there be special circumstances that justify enforcing the maintenance order merely because the maintenance payable under it is more than 12 months in arrears.

106A Execution of instruments by order of court

(1) If:

(a) an order under this Act has directed a person to execute a deed or instrument; and

(b) that person has refused or neglected to comply with the direction or, for any other reason, the court considers it necessary to exercise the powers of the court under this subsection;

the court may appoint an officer of the court or other person to execute the deed or instrument in the name of the person to whom the direction was given and to do all acts and things necessary to give validity and operation to the deed or instrument.

(2) If:

(a) a provision of a maintenance agreement that has been registered under section 86 or approved by a court under section 87 requires a person to execute a deed or instrument; and

(b) that person has refused or neglected to comply with that provision of the maintenance agreement or, for any other reason, the court considers it necessary to exercise the powers of the court under this subsection;

the court may appoint an officer of the court or other person to execute the deed or instrument in the name of the person required by that provision of the maintenance agreement to execute the deed or instrument and to do all acts and things necessary to give validity and operation to the deed or instrument.

(3) The execution of a deed or instrument by a person appointed under this section to execute that deed or instrument has the same force and validity as if the deed or instrument had been executed by the person directed by an order referred to in paragraph (1)(a), or required by a provision of a maintenance agreement referred to in paragraph (2)(a), to execute it.

(4) The court may make such order as it considers just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

106B Transactions to defeat claims

(1) In proceedings under this Act, the court may set aside or restrain the making of an instrument or disposition by or on behalf of, or by

direction or in the interest of, a party, which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.

(2) The court may order that any money or real or personal property dealt with by any such instrument or disposition may be taken in execution or charged with the payment of such sums for costs or maintenance as the court directs, or that the proceeds of a sale must be paid into court to abide its order.

(3) The court must have regard to the interests of, and shall make any order proper for the protection of, a bona fide purchaser or other person interested.

(4) A party or a person acting in collusion with a party may be ordered to pay the costs of any other party or of a bona fide purchaser or other person interested of and incidental to any such instrument or disposition and the setting aside or restraining of the instrument or disposition.

(5) In this section:

disposition includes a sale and a gift.

107 People not to be imprisoned for failure to comply with certain orders

(1) A person must not be imprisoned or otherwise placed in custody because of a contravention of an order for the payment of money made in a matrimonial cause.

(2) This section does not affect the operation of Division 13A of Part VII or the operation of Part XIIIA.

109 Inter-State enforcement of child bearing expenses order

(1) This section applies to the following orders made under the law of a State or Territory:

(a) orders of a kind that may be made under section 67D;

(b) orders for the payment of an amount in relation to the maintenance of a child.

(2) The regulations may make provision for and in relation to the enforcement in a State or Territory by a court having jurisdiction under this Act of orders to which this section applies made by a court in another State or Territory.

109A Rules of Court relating to enforcement

(1) The power of the Judges, or a majority of them, under section 123 to make Rules of Court extends to making Rules of Court for or in relation to, or for or in relation to anything incidental to, the enforcement by the court of:

(a) an order under this Act affecting children (within the meaning of Division 13A of Part VII); or

(b) an order under this Act (within the meaning of Part XIIIA); or

(c) the *Child Support (Registration and Collection) Act 1988*; or

(d) the *Child Support (Assessment) Act 1989*;

and, in particular, for or in relation to any of the specific matters mentioned in subsection (2).

(2) The specific matters are as follows:

(a) requiring a person to do any one or more of the following:

(i) to attend before a court or Registrar and answer questions or produce documents;

(ii) to deliver a document or article to, or to a person specified by, a court or Registrar;

(iii) to transfer the ownership of specified property to another person;

(iv) to give another person possession (including exclusive possession) of specified property;

(v) to deliver a specified chattel to another person;

(vi) to do, or abstain from doing, any other act;

(b) prescribing the practice and procedure to be followed for a hearing before a court or Registrar for the purpose of giving effect to a requirement made as mentioned in subparagraph (a)(i);

(c) taking any one or more of the actions mentioned in subsection (3) in respect of a person who:

(i) fails to pay the amount of a fine imposed under Division 13A of Part VII or under Part XIIIA; or

(ii) fails to pay an amount payable under a bond entered into under Division 13A of Part VII or under Part XIIIA; or

(iii) fails to pay under section 66L an amount of maintenance for a person over the age of 18 years; or

(iv) fails to pay an amount payable under a registered maintenance liability under the *Child Support (Registration and Collection) Act 1988* or the *Child Support (Assessment) Act 1989*; or

(v) fails to comply with a requirement made as mentioned in paragraph (a);

(d) delegating to a Registrar all or any of the powers conferred on a court under Rules of Court made under this section.

(3) Subject to subsection (4), the actions in respect of a person the taking of which may be provided for by Rules of Court as mentioned in paragraph (2)(c) are as follows:

(a) the issue of a warrant for the arrest of the person;

(b) the issue of a warrant of execution against property of the person;

(c) the making of an order authorising the taking of possession of property of the person;

(d) the making of an order for the sequestration, and if necessary the sale, of property of the person;

(e) the making of an order for the attachment, by garnishment or attachment of earnings, of debts owed to the person;

(f) the appointment of a receiver of property of the person.

(4) A reference in paragraph (2)(c) to a failure to pay an amount is a reference to any such failure irrespective of the length of the period during which the failure has continued, and includes a reference to a failure to pay part of an amount.

(5) In this section:

property means real or personal property.

Note: Powers to make Rules of Court are also contained in sections 26B and 37A.

109B Rules of Court relating to enforcement—Federal Magistrates Court

(1) Section 109A applies to the making of Rules of Court under section 81 of the *Federal Magistrates Act 1999* in a corresponding way to the way in which it applies to the making of Rules of Court under section 123 of this Act.

(2) For the purposes of the application of section 109A in accordance with subsection (1):

(a) the reference in subsection 109A(1) to the court is to be read as a reference to the Federal Magistrates Court; and

(b) each reference in subsection 109A(2) to a court is to be read as a reference to the Federal Magistrates Court; and

(c) each reference in subsection 109A(2) to a Registrar is to be read as a reference to a Registrar of the Federal Magistrates Court.

(3) Section 109A has no effect in relation to the Federal Magistrates Court except as provided by subsections (1) and (2) of this section.

Part XIIIAA—International conventions, international agreements and international enforcement

110 Overseas enforcement of maintenance orders etc.

(1) In this section:

jurisdiction with restricted reciprocity means a country, or part of a country, outside Australia declared by the regulations to be a jurisdiction with restricted reciprocity for the purposes of this section.

maintenance order means:

(a) an order or determination (however described) with respect to the maintenance of a party to a marriage;

(b) an order or determination (however described) with respect to the maintenance of a child who has not attained the age of 18 years, other than an order or determination of the kind referred to in paragraph (c);

(c) an order or determination (however described) with respect to the maintenance of a child who has not attained the age of 18 years, being an order or determination that is expressed to continue in force until a day that is later than, or for a period that extends beyond, the day on which the child will attain that age, where the provision of maintenance for the child is necessary to enable the child to complete a course of study, vocational training or an apprenticeship or to continue his education in any other way, or because the child is mentally or physically handicapped;

(d) an order or determination (however described) with respect to the maintenance of a child who has attained the age of 18 years, being an order or determination that is expressed to continue in force until a day, or for a period, specified in the order or determination, where the provision of maintenance for the child is necessary to enable the child to complete a course of study, vocational training or an apprenticeship or to

continue his education in any other way, or because the child is mentally or physically handicapped; and

(e) to the extent provided by the regulations, an order made under section 67D, or an order or determination (however described) that deals with matters of a kind in relation to which orders may be made under that section.

reciprocating jurisdiction means a country, or part of a country, outside Australia declared by the regulations to be a reciprocating jurisdiction for the purposes of this section.

(2) The regulations may make provision for and in relation to:

(a) the registration in, and enforcement by, courts having jurisdiction under this Act of maintenance orders made by courts or authorities of reciprocating jurisdictions or of jurisdictions with restricted reciprocity;

(aa) the institution and prosecution, by an officer of a court having jurisdiction under this Act, a prescribed authority of the Commonwealth, of a State or Territory, or of another country or a part of another country, or a person for the time being holding a prescribed office under a law of the Commonwealth, of a State or of a Territory, in his, her or its discretion, of proceedings:

(i) on behalf of the person entitled to moneys payable under a maintenance order made by a court or authority of a reciprocating jurisdiction or of a jurisdiction with restricted reciprocity, for the enforcement by a court having jurisdiction under this Act of that maintenance order; or

(ii) for the making of orders for the confirmation of provisional orders made by courts of reciprocating jurisdictions or of jurisdictions with restricted reciprocity, being provisional orders referred to in paragraph (d);

(ab) the institution and prosecution, by an authority entitled to moneys payable under a maintenance order, in the authority's discretion, of proceedings for the enforcement of that maintenance order by a court having jurisdiction under this Act;

(b) the transmission to appropriate courts or authorities of reciprocating jurisdictions or of jurisdictions with restricted reciprocity of maintenance orders made by courts having jurisdiction under this Act for the purpose of securing the enforcement of those orders in those jurisdictions;

(ba) the making of provisional maintenance orders, and the transmission of such orders to appropriate courts of reciprocating jurisdictions or jurisdictions with restricted reciprocity, for the purposes of obtaining the confirmation, and securing the enforcement, of those orders in those jurisdictions, and the effect in Australia of those orders;

(c) the making of orders (including provisional orders) for the variation, discharge, suspension or revival of maintenance orders registered in accordance with regulations under this section or of maintenance orders or provisional maintenance orders transmitted to other jurisdictions in accordance with regulations under this section, and the effect in Australia of orders under this paragraph;

(d) the making of orders for the confirmation of provisional orders made by courts in reciprocating jurisdictions or in jurisdictions with restricted reciprocity, being provisional maintenance orders or provisional orders varying, discharging, suspending or reviving maintenance orders, and the effect in Australia of orders under this paragraph; and

(e) the making of orders for giving effect to process certified or approved by a court in the United States of America, being process relating to the provision of maintenance, and the effect in Australia of orders under this paragraph.

(3) The regulations may make different provision under this section in relation to reciprocating jurisdictions from the provision made in relation to jurisdictions with restricted reciprocity.

110A Registration and enforcement in Australia of overseas maintenance agreements etc.

The regulations may make provision for and in relation to the registration and enforcement in Australia of:

(a) overseas maintenance agreements; or

(b) overseas administrative assessments of maintenance liabilities.

110B Transmission of agreements etc. to overseas jurisdictions

The regulations may make provision for and in relation to the transmission, to appropriate courts or authorities of prescribed overseas jurisdictions, of:

(a) agreements registered under section 86; or

(b) agreements approved by courts under section 87; or

(c) financial agreements made as mentioned in subsection 90B(1) that contain matters referred to in paragraph 90B(2)(b); or

(d) financial agreements made as mentioned in subsection 90C(1) that contain matters referred to in paragraph 90C(2)(b); or

(e) financial agreements made as mentioned in subsection 90D(1) that contain matters referred to in paragraph 90D(2)(b); or

(f) administrative assessments of maintenance liabilities;

for the purpose of securing the enforcement of those agreements or assessments in those jurisdictions.

111 Convention on Recovery Abroad of Maintenance

The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Recovery Abroad of Maintenance signed at New York on 20 June 1956 but any such regulations shall not come into operation until the day on which that Convention enters into force for Australia.

111A Convention on Recognition and Enforcement of Decisions Relating to Maintenance Obligations

The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under

the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations signed at The Hague on 2 October 1973 but any such regulations shall not come into operation until the day on which that Convention enters into force for Australia.

111B Convention on the Civil Aspects of International Child Abduction

(1) The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980 (the ***Convention***) but any such regulations shall not come into operation until the day on which that Convention enters into force for Australia.

(1A) In relation to proceedings under regulations made for the purposes of subsection (1), the regulations may make provision:

(a) relating to the onus of establishing that a child should not be returned under the Convention; and

(b) establishing rebuttable presumptions in favour of returning a child under the Convention; and

(c) relating to a Central Authority within the meaning of the regulations applying on behalf of another person for a contact order in relation to a child if the outcome of the proceedings is that the child is not to be returned under the Convention.

(1B) The regulations made for the purposes of this section must not allow an objection by a child to return under the Convention to be taken into account in proceedings unless the objection imports a strength of feeling beyond the mere expression of a preference or of ordinary wishes.

(1C) A Central Authority within the meaning of the regulations may arrange to place a child, who has been returned to Australia under the Convention, with an appropriate person, institution or other body to secure the child's welfare until a court exercising jurisdiction under this Act makes an order (including an interim order) for the child's care, welfare or development.

(1D) A Central Authority may do so despite any orders made by a court before the child's return to Australia.

(1E) Any regulations made for the purposes of this section to give effect to Article 21 (rights of access) of the Convention may have effect regardless of:

(a) whether an order or determination (however described) has been made under a law in force in another Convention country (within the meaning of the regulations made for the purposes of this section), with respect to rights of access to the child concerned; or

(b) if the child was removed to Australia—when that happened; or

(c) whether the child has been wrongfully removed to, or retained in, Australia.

(2) Because of amendments of this Act made by the *Family Law Reform Act 1995*:

(a) a parent or guardian of a child is no longer expressly stated to have custody of the child; and

(b) a court can no longer make an order under this Act expressed in terms of granting a person custody of, or access to, a child.

(3) The purpose of subsection (4) is to resolve doubts about the implications of these changes for the Convention. That is the only purpose of the subsection.

(4) For the purposes of the Convention:

(a) each of the parents of a child should be regarded as having rights of custody in respect of the child unless the parent has no parental responsibility for the child because of any order of a court for the time being in force; and

(b) subject to any order of a court for the time being in force, a person who has a parenting order in relation to a child that is to any extent:

(i) a residence order; or

(ii) a specific issues order, under which the person is responsible for the day-to-day or long-term care, welfare and development of the child;

should be regarded as having rights of custody in respect of the child; and

(c) subject to any order of a court for the time being in force, a person who has parental responsibility for a child because of the operation of this Act or another Australian law and is responsible for the day-to-day or long-term care, welfare and development of the child should be regarded as having rights of custody in respect of the child; and

(d) subject to any order of a court for the time being in force, a person who has a contact order in relation to a child should be regarded as having a right of access to the child.

Note: The references in paragraphs (b) and (d) to residence orders, specific issues orders and contact orders also cover provisions of parenting agreements registered under section 63E (see section 63F, in particular subsection (3)).

(5) Subsection (4) is not intended to be a complete statement of the circumstances in which, under the laws of the Commonwealth, the States and the Territories, a person has, for the purposes of the Convention, custody of, or access to, a child, or a right or rights of custody or access in relation to a child.

(5A) Subsections (1A) and (2) to (5) do not, by implication, limit subsection (1).

(6) Expressions used in this section have the same meaning as they have in Part VII.

111C International agreements about adoption etc.

(1) The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption signed at The Hague on 29 May 1993.

(2) The regulations do not come into force until the day on which the Convention enters into force for Australia.

(3) The regulations may make such provision as is necessary or convenient to give effect to any bilateral agreement or arrangement on the adoption of children made between:

(a) Australia, or a State or Territory of Australia; and

(b) a prescribed overseas jurisdiction.

(4) Regulations made for the purposes of subsection (3) may, in particular:

(a) provide for the recognition of adoptions made under a law of the prescribed overseas jurisdiction; and

(b) provide that the regulations do not affect the operation of laws of a State or Territory that relate to adoptions; and

(c) if a State or Territory has made such a bilateral agreement or arrangement on behalf of other States or Territories—give effect to the agreement or arrangement so far as it relates to all of those States or Territories, or to such of them as the regulations specify.

(5) Regulations made for the purposes of this section may:

(a) confer jurisdiction on a federal court (other than the High Court) or a court of a Territory; or

(b) invest a court of a State with federal jurisdiction.

Such jurisdiction is in addition to any other jurisdiction provided for under this Act.

(6) Regulations made for the purposes of subsection (5) may make different provision in respect of matters arising in relation to different States or Territories. (This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.)

(7) Subsections (4), (5) and (6) of this section do not, by implication, limit subsections (1) and (3) of this section.

(7A) The power of the Judges, or a majority of them, under section 123 to make Rules of Court extends to making Rules of Court for or in relation to the making of adoption orders.

(8) In this section, despite subsection 4(1), ***Territory*** includes each external Territory.

111D Regulations may provide for rules of evidence

(1) Regulations made for the purposes of Part XIIIAA may make provision in relation to the rules of evidence that are to apply in proceedings under those regulations.

(2) Such provisions have effect despite any inconsistency with the *Evidence Act 1995* or with any other law about evidence.

Part XIIIA—Sanctions for failure to comply with orders, and other obligations, that do not affect children

Division 1—Interpretation

112AA Interpretation

In this Part:

applicable Rules of Court means:

(a) in the case of the Federal Magistrates Court—Rules of Court made under the *Federal Magistrates Act 1999* to the extent to which those Rules of Court relate to this Act; or

(b) in any other case—Rules of Court made under this Act.

applied provisions, in relation to a sentence passed or an order made pursuant to paragraph 112AD(2)(b), means the provisions of the laws of a State or Territory, as modified by regulations under subsection 112AG(5), that, because of regulations under that subsection, apply in relation to the sentence or order.

court enforceable agreement means:

(b) so much of a maintenance agreement as a court has, pursuant to paragraph 87(11)(c), ordered may be enforced as if it were an order of the court; or

(c) a maintenance agreement registered in a court under subsection 86(1), or deemed, by subsection 87(6), to be registered in a court.

maintenance order, in relation to a court, means an order made by the court under this Act that deals with the maintenance of a person other than a child.

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

(a) an order (however described) made by the court under this Act (other than a parenting order); or

(b) an injunction granted by the court under section 114 except in so far as the injunction is for the protection of a child; or

(c) an undertaking given to, and accepted by, the court in proceedings under this Act other than proceedings that relate wholly or partly to, or to the making of, a parenting order; or

(d) a subpoena issued under the applicable Rules of Court in proceedings under this Act other than a subpoena issued in, and so issued to a party to, proceedings that relate wholly or partly to, or to the making of, a parenting order; or

(e) a court enforceable agreement; or

(f) a bond:

(i) entered into under an order of a court under this Act other than an order under Division 13A of Part VII; or

(ii) entered into for the purposes of subsection 112AE(5);

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

(g) is an order under this Act made by another court because of paragraph (a), (b), (e) or (f); and

(h) has been registered in the first-mentioned court.

112AB Meaning of *contravene an order*

(1) A person shall be taken for the purposes of this Part to have contravened an order under this Act if, and only if:

(a) where the person is bound by the order—he or she has:

(i) intentionally failed to comply with the order; or

(ii) made no reasonable attempt to comply with the order; or

(b) in any other case—he or she has:

(i) intentionally prevented compliance with the order by a person who is bound by it; or

(ii) aided or abetted a contravention of the order by a person who is bound by it.

112AC Meaning of *reasonable excuse for contravening an order*

(1) The circumstances in which a person may be taken to have had, for the purposes of this Part, a reasonable excuse for contravening an

order under this Act include, but are not limited to, the circumstances set out in subsection (2).

(2) A person (in this subsection called the ***respondent***) shall be taken to have had a reasonable excuse for contravening an order under this Act if:

(a) the respondent contravened the order because, or substantially because, he or she did not, at the time of the contravention, understand the obligations imposed by the order on the person who was bound by it; and

(b) the court is satisfied that the respondent ought to be excused in respect of the contravention.

Division 2—Sanctions for failure to comply with orders

112AD Sanctions for failure to comply with orders

(1) If a court having jurisdiction under this Act is satisfied that a person has, without reasonable excuse, contravened an order under this Act, the court may make an order for the imposing, in respect of the person, of one or more of the sanctions available to be imposed under subsection (2), being a sanction or sanctions that the court considers to be the most appropriate in the circumstances.

(1A) The power given to the court under subsection (1) in respect of a contravention of a maintenance order applies even if the order has been complied with before the matter of the contravention comes before the court.

(2) The sanctions that are available to be imposed by the court are:

(a) to require the person to enter into a bond in accordance with section 112AF; or

(b) to impose a sentence on the person, or make an order directed to the person, in accordance with section 112AG; or

(c) to fine the person not more than 60 penalty units; or

(d) subject to subsection (2A), to impose a sentence of imprisonment on the person in accordance with section 112AE.

(2A) The court must not impose a sentence of imprisonment on the person under paragraph (2)(d) in respect of a contravention of a maintenance order unless the court is satisfied that the contravention was intentional or fraudulent.

(3) An order under subsection (1) may be expressed to take effect immediately, or at the end of a specified period or on the occurrence of a specified event.

(4) Where a court makes an order under subsection (1), the court may make such other orders as the court considers necessary to ensure compliance with the order that was contravened.

112AE Sentences of imprisonment

(1) A sentence of imprisonment imposed on a person pursuant to paragraph 112AD(2)(d) shall be expressed to be:

(a) for a specified period of 12 months or less; or

(b) for a period ending when the person:

(i) complies with the order concerned; or

(ii) has been imprisoned pursuant to the sentence for 12 months or such lesser period as is specified by the court;

whichever happens first.

(2) A court shall not sentence a person to imprisonment pursuant to paragraph 112AD(2)(d) unless the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention pursuant to any of the other paragraphs of subsection 112AD(2).

(3) If a court sentences a person to imprisonment pursuant to paragraph 112AD(2)(d), the court shall:

(a) state the reasons why it is satisfied as mentioned in subsection (2); and

(b) cause those reasons to be entered in the records of the court.

(4) The failure of a court to comply with subsection (3) does not invalidate a sentence.

(5) A court, when sentencing a person to imprisonment under paragraph 112AD(2)(d) may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a bond described in subsection (6) after he or she has served a specified part of the term of imprisonment.

(6) A bond for the purposes of subsection (5) is a bond (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.

(7) Without limiting the circumstances in which a court may discharge an order under section 112AK, a court that has sentenced a person to imprisonment for a period expressed as provided by paragraph (1)(b) may order the release of the person if it is satisfied that the

person will, if he or she is released, comply with the order concerned.

(8) To avoid doubt, the serving by a person of a period of imprisonment under a sentence imposed on the person under paragraph 112AD(2)(d) for a failure to make a payment under a maintenance order does not affect the person's liability to make the payment.

112AF Bonds

(1) This section provides for bonds that a court may require a person to enter into under paragraph 112AD(2)(a).

(2) A bond is to be for a specified period of up to 2 years.

(3) A bond may be:
  (a) with or without surety; and
  (b) with or without security.

(4) The conditions that may be imposed on a person by a bond include a condition requiring the person to be of good behaviour.

(5) If a court proposes to require a person to enter into a bond, it must, before making the requirement, explain to the person, in language likely to be readily understood by the person:
  (a) the purpose and effect of the proposed requirement; and
  (b) the consequences that may follow if the person fails:
    (i) to enter into the bond; or
    (ii) having entered into the bond—to act in accordance with the bond.

112AG Additional sentencing alternatives

(1) Subject to this section, where:
  (a) under the law of a participating State or a participating Territory, a court is empowered (whether generally or in particular cases) to impose a sentence or make an order of a kind to which subsection (3) applies in respect of a person convicted of an offence against the law of the State or Territory; and

(b) an arrangement under section 112AN in respect of the State or Territory makes provision for and in relation to the carrying out of sentences imposed, or orders made, of that kind under this Division;

a court exercising jurisdiction in the State or Territory may, pursuant to paragraph 112AD(2)(b), impose a sentence or make an order of that kind.

(2) A sentence imposed on a person, or an order directed to a person, pursuant to paragraph 112AD(2)(b):

(a) shall be such that the total number of hours during which the sentence or order regulates the conduct of the person does not exceed the maximum period in relation to the State or Territory in which the sentence is imposed or the order is made; and

(b) ceases to have effect 2 years after it was made, or after such lesser period as is specified in the order.

(3) This subsection applies to sentences or orders of the following kinds:

(a) a sentence or order known as:

(i) a community service order;

(ii) a work order;

(iii) a sentence of periodic detention;

(iv) an attendance centre order;

(v) a sentence of weekend detention;

(vi) an attendance order; or

(vii) a community based order;

(b) a sentence or order that is similar to a sentence or order referred to in paragraph (a);

(c) a sentence or order prescribed for the purposes of this subsection.

(4) Where a court proposes to impose a sentence on a person, or make an order directed to a person, pursuant to paragraph 112AD(2)(b), it shall, before doing so, explain or cause to be explained to the person, in language likely to be readily understood by the person:

(a) the purpose and effect of the proposed sentence or order;

(b) the consequences that may follow if the person fails to comply with the proposed sentence or order or with any requirements made in relation to the proposed sentence or order by or under the applied provisions; and

(c) if the proposed sentence or order may be revoked or varied under the applied provisions—that the proposed sentence or order may be so revoked or varied.

(5) Where a court exercising jurisdiction under section 112AD in a particular State or Territory imposes a sentence or makes an order pursuant to paragraph 112AD(2)(b), the provisions of the laws of the State or Territory with respect to a sentence or order of that kind that is imposed or made under those laws shall, to the extent provided by the regulations and subject to such modifications as are specified in the regulations, apply in relation to the sentence or order.

(6) In this section:

maximum period, in relation to a State or Territory, means 500 hours or such lesser period as is prescribed in relation to the State or Territory.

participating State means a State in relation to which an agreement under section 112AN is in force.

participating Territory means a Territory in relation to which an agreement under section 112AN is in force.

112AH Failure to comply with sentence passed, or order made, pursuant to paragraph 112AD(2)(b)

(1) This section applies where a court has, pursuant to paragraph 112AD(2)(b):

(a) imposed a sentence on a person; or

(b) made an order directed to a person.

(2) If an information is laid before a magistrate, whether before or after the end of the period for which the sentence or order is to operate, or operated, alleging that the person has, without reasonable excuse, failed to comply with the sentence or order, or

with any requirements made in relation to the sentence or order by or under the applied provisions, the magistrate may:

(a) issue a summons directing the person to appear, on a date, at a time and at a place fixed in the summons, before the court; or

(b) if the information is laid on oath and the magistrate thinks that proceedings against the person by summons might not be effective—issue a warrant for the arrest of the person.

(3) If:

(a) the person is served with a summons issued under subsection (2); and

(b) the person fails to attend before the court as required by the summons;

the court may, on proof of the service of the summons, issue a warrant for the arrest of the person.

(4) If:

(a) the person is arrested pursuant to a warrant issued under subsection (2), (3) or (6); and

(b) the court is not sitting at the time of the arrest;

the person shall be brought before a magistrate who may deal with the person under subsection (5).

(5) The magistrate may:

(a) order that the person is to be released from custody on his or her entering into a bond (with or without surety or security) that he or she will attend before the court on a date, at a time and at a place specified by the magistrate; or

(b) direct that the person be kept in custody in accordance with the warrant.

(6) If:

(a) on entering into a bond, the person is released pursuant to an order made by a magistrate under paragraph (5)(a); and

(b) the person fails to attend before the court as required by the bond;

the court may, on proof of the entering into of the bond, issue a warrant for the arrest of the person.

(7) If:

(a) in accordance with this section, the person is brought before the court; and

(b) the court (whether or not constituted by the judge or magistrate who imposed the sentence or made the order) is satisfied that the person has, without reasonable excuse, failed to comply with the sentence or order or with any requirements made in relation to the sentence or order by or under the applied provisions;

the court may take action under subsection (8).

(8) The court may:

(a) without prejudice to the continuance of the sentence or order, impose a fine not exceeding 10 penalty units on the person; or

(b) revoke the sentence or order and, subject to subsection (9), deal with the person, for the contravention in respect of which the sentence was passed or the order was made, in any manner in which he or she could have been dealt with for that contravention if:

(i) the sentence had not been imposed, or the order had not been made; and

(ii) the person was before the court under section 112AD in respect of the contravention.

Note: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

(9) In dealing with the person as mentioned in paragraph (8)(b), the court shall, in addition to any other matters that it considers should be taken into account, take into account:

(a) the fact that the sentence was imposed or the order was made;

(b) anything done under the sentence or order; and

(c) any fine imposed, and any other order made, for or in respect of the contravention.

(10) A warrant issued under subsection (2), (3) or (6) in relation to the person shall authorise:

(a) the arrest of the person;

(b) the bringing of the person before the court as soon as practicable after his or her arrest; and

(c) the detention of the person in custody until he or she is released by order of the court, or in accordance with subsection (5).

112AK Variation and discharge of orders

(1) Subject to this section, an order made under section 112AD may be varied or discharged:

(a) if the court that made the order is the Family Court—by the Family Court; or

(b) in any other case—by the court that made the order or the Family Court.

(2) A variation of an order under section 112AD shall be such that the order, as varied, is an order that could have been made under that section in respect of the contravention in respect of which the first-mentioned order was made.

(3) If a court discharges an order under section 112AD it may, subject to this Division, make another order under that section in respect of the contravention in respect of which the first-mentioned order was made.

(4) Where a court varies or discharges an order made under section 112AD, the court may give such directions as to the effect of the variation or discharge as the court considers appropriate.

112AM Relationship between Division and other laws

(1) This section applies where an act or omission by a person:

(a) constitutes a contravention of an order under this Act; and

(b) is also an offence against any law.

(2) If the person is prosecuted in respect of the offence, a court in which proceedings have been brought under section 112AD in respect of the contravention of the order shall either:

(a) adjourn those proceedings until the prosecution has been completed; or

(b) dismiss those proceedings.

(3) The person may be prosecuted for, and convicted of, the offence.

(4) Nothing in this section renders the person liable to be punished twice in respect of the same act or omission.

112AN Arrangements with States and Territories for carrying out of sentences and orders

(1) The Governor-General may make arrangements with the relevant authority of a State or a Territory for:

(a) the exercise of powers, and the performance of functions, by officers of the State or Territory; and

(b) the making available of facilities of the State or Territory;

for and in relation to the carrying out of sentences imposed, and orders made, under this Division.

(2) In this section:

relevant authority means:

(a) in relation to a State—the Governor of the State;

(b) in relation to the Australian Capital Territory—the Chief Minister of the Australian Capital Territory;

(c) in relation to the Northern Territory—the Administrator of the Northern Territory; and

(d) in relation to Norfolk Island—the Administrator of Norfolk Island.

112AO Division does not limit operation of section 105

Nothing in this Division is intended to limit the operation of section 105.

Part XIIIB—Contempt of court

112AP Contempt

(1) Subject to subsection (1A), this section applies to a contempt of a court that:

(a) does not constitute a contravention of an order under this Act; or

(b) constitutes a contravention of an order under this Act and involves a flagrant challenge to the authority of the court.

(1A) This section does not apply to a contempt that constitutes a contravention of a maintenance order if the order has been complied with before the matter of the contravention comes before the court.

(2) In spite of any other law, a court having jurisdiction under this Act may punish a person for contempt of that court.

(3) The applicable Rules of Court may provide for practice and procedure as to charging with contempt and the hearing of the charge.

(4) Where a natural person is in contempt, the court may punish the contempt by committal to prison or fine or both.

(5) Where a corporation is in contempt, the court may punish the contempt by sequestration or fine or both.

(6) The court may make an order for:

(a) punishment on terms;

(b) suspension of punishment; or

(c) the giving of security for good behaviour.

(7) Where a person is committed to prison for a term for contempt, the court may order the person's discharge before the expiry of that term.

(8) To avoid doubt, the serving by a person of a period of imprisonment as a result of a contempt of a court arising out of a

failure by the person to make a payment in respect of the maintenance of another person does not affect the first-mentioned person's liability to make the payment.

(9) In this section:

order under this Act means an order under this Act affecting children within the meaning of Division 13A of Part VII or an order under this Act within the meaning of Part XIIIA.

Part XIV—Declarations and injunctions

112A Interpretation

In this Part, ***marriage*** includes a void marriage.

113 Proceedings for declarations

In proceedings of the kind referred to in paragraph (b) of the definition of ***matrimonial cause*** in subsection 4(1), the court may make such declaration as is justified.

114 Injunctions

(1) In proceedings of the kind referred to in paragraph (e) of the definition of ***matrimonial cause*** in subsection 4(1), the court may make such order or grant such injunction as it considers proper with respect to the matter to which the proceedings relate, including:

(a) an injunction for the personal protection of a party to the marriage;

(b) an injunction restraining a party to the marriage from entering or remaining in the matrimonial home or the premises in which the other party to the marriage resides, or restraining a party to the marriage from entering or remaining in a specified area, being an area in which the matrimonial home is, or the premises in which the other party to the marriage resides are, situated;

(c) an injunction restraining a party to the marriage from entering the place of work of the other party to the marriage;

(d) an injunction for the protection of the marital relationship;

(e) an injunction in relation to the property of a party to the marriage; or

(f) an injunction relating to the use or occupancy of the matrimonial home.

(2) In exercising its powers under subsection (1), the court may make an order relieving a party to a marriage from any obligation to perform marital services or render conjugal rights.

(3) A court exercising jurisdiction under this Act in proceedings other than proceedings to which subsection (1) applies may grant an injunction, by interlocutory order or otherwise (including an injunction in aid of the enforcement of a decree), in any case in which it appears to the court to be just or convenient to do so and either unconditionally or upon such terms and conditions as the court considers appropriate.

114AA Powers of arrest

(1) Where:

(a) an injunction is in force under section 114 for the personal protection of a person; and

(b) a police officer believes, on reasonable grounds, that the person against whom the injunction is directed (in this section called the ***respondent***) has, since the injunction was granted, breached the injunction by:

(i) causing, or threatening to cause, bodily harm to the person referred to in paragraph (a); or

(ii) harassing, molesting or stalking that person;

the police officer may arrest the respondent without warrant.

Note: Section 122AA authorises the use of reasonable force in making an arrest.

(3) Where a police officer arrests a person pursuant to subsection (1):

(a) the police officer shall:

(i) ensure that the person is brought before the court that granted the injunction, or another court having jurisdiction under this Act, before the expiration of the relevant period; and

(ii) take all reasonable steps to ensure that, before the person is so brought before a court, the person on whose application the injunction under section 114 was granted is aware that the first-mentioned person has been arrested and of the court before which the person is to be brought; and

(b) the person shall not be released before the expiration of the relevant period except pursuant to an order of the court that granted the injunction or another court having jurisdiction under this Act;

but nothing in this subsection authorizes the keeping of the person in custody after the expiration of the relevant period.

(4) Where a person is brought before a court in accordance with subsection (3), the court shall:

(a) if there is an application before the court for the person to be dealt with for breach of the injunction—forthwith proceed to hear and determine that application; or

(b) if there is no application before the court as mentioned in paragraph (a)—order that the person be released forthwith.

(5) Where:

(a) a person is brought before a court in accordance with subsection (3);

(b) the court proceeds to hear and determine an application for the person to be dealt with for breach of an injunction as mentioned in paragraph (4)(a); and

(c) at the expiration of the relevant period the proceedings have not been determined;

the person may be kept in custody after the expiration of the relevant period until:

(d) the court gives its decision on the proceedings;

(e) the court orders that the person be released; or

(f) the court adjourns the hearing for a period of more than 24 ours;

whichever happens first.

(7) In this section:

relevant period, in relation to a person's arrest, means the period starting when the person is arrested and ending at the close of business on the next day that is not a Saturday, Sunday or public holiday.

114AB Operation of State and Territory laws

(1) Sections 68B, 68C, 114 and 114AA are not intended to exclude or limit the operation of a prescribed law of a State or Territory that is capable of operating concurrently with those sections.

(2) Where a person has instituted a proceeding or taken any other action under a prescribed law of a State or Territory in respect of a matter in respect of which the person would, but for this subsection, have been entitled to institute a proceeding under section 68B or 114, the person is not entitled to institute a proceeding under section 68B or 114 in respect of that matter, unless:

(a) where the person instituted a proceeding:

(i) the proceeding has lapsed, been discontinued, or been dismissed; or

(ii) the orders (if any) made as a result of the institution of the proceeding have been set aside or are no longer in force; and

(b) where the person took other action—neither that person nor any other person is required, at the time that the person institutes a proceeding under section 68B or 114, to do an act, or to refrain from doing an act.

Part XIVA—The Australian Institute of Family Studies

114A Interpretation

In this Part, unless the contrary intention appears:

Board means the Board of Management of the Institute.

Director means the Director of the Institute.

Institute means the Australian Institute of Family Studies established by this Part.

member means a member of the Board, and includes the Director.

114B Establishment of Institute

(1) There is established by this Part an Institute by the name of the Australian Institute of Family Studies.

(2) The functions of the Institute are:

(a) to promote, by the conduct, encouragement and co-ordination of research and other appropriate means, the identification of, and development of understanding of, the factors affecting marital and family stability in Australia, with the object of promoting the protection of the family as the natural and fundamental group unit in society; and

(b) to advise and assist the Minister in relation to the making of grants, and with the approval of the Minister to make grants, out of moneys available under appropriations made by the Parliament, for purposes related to the functions of the Institute and the supervising of the employment of grants so made.

(3) The Minister may:

(a) request the Board to arrange for the Institute to engage in a particular activity (whether research or otherwise) in relation

to a particular matter that is within the functions of the Institute; and

(b) after consultation with the Board, specify the priority that is to be given to the activity.

(4) Each report on the Institute under section 9 of the *Commonwealth Authorities and Companies Act 1997* must specify any requests made by the Minister under this section in the year to which the report relates, the priorities accorded to the matters to which the requests relate and the progress made by the Institute in that year in giving effect to any requests made by the Minister under this section in that year or a previous year.

114BA Institute to be a body corporate

(1) The Institute:

(a) is a body corporate;

(b) shall have a seal; and

(c) may sue and be sued.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the Institute. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

(2) The seal of the Institute shall be kept in such custody as the Board directs and shall not be used except as authorised by the Board.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the Institute appearing on a document and shall presume that the document was duly sealed.

114BB Powers of Institute

The Institute has power to do all things that are necessary or convenient to be done in connection with the performance of its functions and, in particular, has power:

(a) to acquire, hold and dispose of real and personal property;

(b) to enter into contracts; and

(c) to accept gifts, devises and bequests made to the Institute.

114C Director and Board of Management

(1) There shall be a Director of the Institute and a Board of Management of the Institute.

(2) The Board shall consist of the Director and 4 or more other members.

(3) The members shall be appointed by the Governor-General.

(4) The Director shall be appointed as a full-time member and the other members shall be appointed as part-time members.

(5) A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

(6) The performance of the functions or the exercise of the powers of the Board is not affected by reason of there being a vacancy or vacancies in the membership of the Board.

114D Management of Institute

(1) The Board is charged with the general direction of the Institute.

(2) Subject to the general direction of the Board, the Director shall manage the affairs of the Institute.

114E Term of office of members

(1) Subject to this Part, a member holds office for such period, not exceeding 7 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

114F Remuneration and allowances

(1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, the member shall be paid such remuneration as is prescribed.

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

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

114G Leave of absence

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

(2) The Minister may:

(a) grant the Director leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines; and

(b) grant a member other than the Director leave to be absent from a meeting or meetings of the Board.

114H Resignation of members

A member may resign by writing signed and delivered to the Governor-General.

114J Termination of appointments

(1) The Governor-General may terminate the appointment of a member by reason of the misbehaviour, or physical or mental incapacity, of the member.

(2) If a member:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

(b) being the Director:

(i) engages in paid employment outside the duties of his or her office without the approval of the Minister; or

(ii) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) being a member other than the Director—is absent, except on leave of absence, from 3 consecutive meetings of the Board; or

(d) without reasonable excuse contravenes section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*;

the Governor-General shall remove the member from office.

114K Acting Director

(1) The Minister may appoint a person (whether a member or not) to act as Director:

(a) during a vacancy in the office of Director (whether or not the office has previously been filled); or

(b) during any period, or during all periods, when the Director is absent from duty or from Australia or is, for any reason, unable to perform the functions of the office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) The Minister may:

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Director; and

(b) at any time terminate such an appointment.

(3) Where a person is acting as Director in accordance with paragraph (1)(b) and the office of Director becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled, or a period of 12 months from the day on which the vacancy occurred expires, whichever first happens.

(4) The appointment of a person to act as Director ceases to have effect if the person resigns the appointment by writing delivered to the Minister.

(5) While a person is acting as Director, the person has, and may exercise, all the powers and shall perform all the functions of the Director.

114L Meetings etc.

The regulations may prescribe matters that are necessary or convenient to be prescribed in connexion with the conduct of the

affairs of the Institute, including matters relating to the conduct of, and the quorum and voting at, meetings of the Board.

114M Staff

(1) The staff of the Institute are to be persons engaged under the *Public Service Act 1999*.

(2) For the purposes of the *Public Service Act 1999*:
   (a) the Director and the APS employees assisting the Director together constitute a Statutory Agency; and
   (b) the Director is the Head of that Statutory Agency.

(3) The Director may, on behalf of the Institute and with the approval of the Minister, engage persons to assist the Institute as consultants or otherwise.

(4) The terms and conditions of engagement of persons under subsection (3) are as determined by the Director from time to time.

114MA Money payable to Institute

(1) There is payable to the Institute such money as is appropriated by the Parliament for the purposes of the Institute.

(2) The Minister for Finance may give directions as to the amounts in which, and the times at which, money referred to in subsection (1) is to be paid to the Institute.

114MC Contracts

The Institute shall not, except with the approval of the Minister, enter into a contract involving the payment by the Institute of an amount exceeding:
   (a) subject to paragraph (b)—$100,000; or
   (b) if a higher amount is prescribed—that higher amount.

114MD Application of money

(1) The money of the Institute shall be applied only:

(a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Institute in the performance of its functions and the exercise of its powers; and

(b) in payment of remuneration and allowances payable under this Part.

(2) Subsection (1) does not prevent investment of surplus money of the Institute under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

114MF Exemption from taxation

The Institute is not subject to taxation under any law of the Commonwealth, of a State or of a Territory.

Part XV—Miscellaneous

115 Family Law Council

(1) The Attorney-General may establish a Family Law Council consisting of persons appointed by the Attorney-General in accordance with subsection (2).

(2) The Council shall consist of a Judge of the Family Court and such other judges, persons appointed or engaged under the *Public Service Act 1999*, officers of the Public Service of a State, representatives of organisations that provide family and child counselling and other persons as the Attorney-General thinks fit.

(3) It is the function of the Council to advise and make recommendations to the Attorney-General, either of its own motion or upon request made to it by the Attorney-General, concerning:

(a) the working of this Act and other legislation relating to family law;

(b) the working of legal aid in relation to family law; and

(c) any other matters relating to family law.

(4) The Attorney-General shall appoint one of its members to be Chairperson of the Council.

(5) A member of the Council shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, the member shall be paid such remuneration as is prescribed.

(5A) A member of the Council shall be paid such allowances as are prescribed.

(5B) Subsections (5) and (5A) have effect subject to the *Remuneration Tribunal Act 1973*.

(5C) Subject to this section, a member of the Council holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(6) A member (including the Chairperson) may resign by writing signed and delivered to the Attorney-General.

(6A) The Attorney-General may terminate the appointment of a member by reason of the misbehaviour, or physical or mental incapacity, of the member.

(6B) If a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Attorney-General shall terminate the appointment of that member.

(7) Meetings of the Council shall be convened by the Chairperson or the Attorney-General.

(8) The Council shall cause records to be kept of its meetings.

(9) The Council shall, as soon as practicable after 30 June in each year, prepare and furnish to the Attorney-General a report of the operations of the Council during the year that ended on that 30 June.

(10) The Attorney-General shall cause a copy of a report furnished under subsection (9) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.

(11) For the purposes of this section, a Federal Magistrate is taken to be a judge.

116C Payments to legal practitioners by legal aid bodies

(1) The regulations may, in relation to matters included in a class of matters arising under this Act, under the regulations or under the applicable Rules of Court, fix or limit, or provide for the fixing or limiting of, the amounts that may be paid by relevant authorities to legal practitioners acting in such matters.

(2) A relevant authority that pays, to a legal practitioner acting in a matter arising under this Act, an amount that exceeds the amount that the relevant authority is permitted, by regulations made under subsection (1), to pay to that legal practitioner in respect of that

matter is, if the Minister so determines by instrument in writing, liable to pay to the Commonwealth such amount as the Minister specifies in the instrument, not being an amount greater than the amount of the excess.

(3) An amount payable by a relevant authority to the Commonwealth in accordance with a determination of the Minister under subsection (2) is a debt due by the relevant authority to the Commonwealth.

(4) This section, and regulations made under subsection (1), bind the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

(5) In this section:

relevant authority means a person, authority or body (including an authority or body established by or under a law of a State or Territory) that, from time to time, receives relevant funding.

relevant funding, in relation to a person, authority or body, means funding received, whether directly or indirectly, by the person, authority or body from the Commonwealth for the purposes of, or in connection with, the provision of legal assistance by the person, authority or body in connection with matters arising under this Act.

117 Costs

(1) Subject to subsection (2) and sections 117AA and 118, each party to proceedings under this Act shall bear his or her own costs.

(2) If, in proceedings under this Act, the court is of opinion that there are circumstances that justify it in doing so, the court may, subject to subsection (2A) and the applicable Rules of Court, make such order as to costs and security for costs, whether by way of interlocutory order or otherwise, as the court considers just.

(2A) In considering what order (if any) should be made under subsection (2), the court shall have regard to:

(a) the financial circumstances of each of the parties to the proceedings;

(b) whether any party to the proceedings is in receipt of assistance by way of legal aid and, if so, the terms of the grant of that assistance to that party;

(c) the conduct of the parties to the proceedings in relation to the proceedings including, without limiting the generality of the foregoing, the conduct of the parties in relation to pleadings, particulars, discovery, inspection, directions to answer questions, admissions of facts, production of documents and similar matters;

(d) whether the proceedings were necessitated by the failure of a party to the proceedings to comply with previous orders of the court;

(e) whether any party to the proceedings has been wholly unsuccessful in the proceedings;

(f) whether either party to the proceedings has, in accordance with section 117C or otherwise, made an offer in writing to the other party to the proceedings to settle the proceedings and the terms of any such offer; and

(g) such other matters as the court considers relevant.

117AA Costs in proceedings relating to overseas enforcement and international Conventions

(1) In proceedings under regulations made for the purposes of Part XIIIAA, the court can only make an order as to costs (other than orders as to security for costs):

(a) in favour of a party who has been substantially successful in the proceedings; and

(b) against a person or body who holds or held an office or appointment under those regulations and is a party to the proceedings in that capacity.

Note: For another case where the court can also make an order as to costs, see subsection (3).

(2) However, the order can only be made in respect of a part of the proceedings if, during that part, the party against whom the order is to be made asserted a meaning or operation of this Act or those regulations that the court considers:

(a) is not reasonable given the terms of the Act or regulations; or

(b) is not convenient to give effect to Australia's obligations under the Convention concerned, or to obtain for Australia the benefits of that Convention.

(3) In proceedings under regulations made for the purposes of section 111B, the court can also make an order as to costs that is:

(a) against a party who has wrongfully removed or retained a child, or wrongfully prevented the exercise of rights of access (within the meaning of the Convention referred to in that section) to a child; and

(b) in respect of the necessary expenses incurred by the person who made the application, under that Convention, concerning the child.

117A Reparation for certain losses and expenses relating to children

(1) Where:

(a) a court has found, for the purposes of section 112AD, that a person has, by taking a child away from another person or by refusing or failing to deliver a child to another person, contravened:

(i) a residence order; or

(ii) a contact order;

(b) a person has been convicted of an offence against section 65Y or 65Z in respect of a child;

(c) a court has found, for the purposes of section 112AD, that a person has, by taking a child away from another person or by refusing or failing to deliver a child to another person, contravened an injunction granted, or an order made, under section 114; or

(d) a person has been found to be in contempt of a court exercising jurisdiction under this Act by reason of having taken a child away from another person or having refused or failed to deliver a child to another person;

a court having jurisdiction under this Act may, subject to subsection (2):

(e) on the application of the Commonwealth—order the person to make reparation to the Commonwealth or to a Commonwealth instrumentality, by way of money payment or otherwise, in respect of any loss suffered, or any expense

incurred, by the Commonwealth or the Commonwealth instrumentality, as the case may be, in recovering the child and returning the child to a person; or

(f) on the application of any other person—order the first-mentioned person to make reparation to that other person, by way of money payment or otherwise, in respect of any loss suffered, or expense incurred, by that other person in recovering the child and, if applicable, returning the child to a person.

(2) Nothing in subsection (1) empowers a court to order a person to make reparation to the Commonwealth, to a Commonwealth instrumentality or to another person in respect of any loss suffered, or any expense incurred, where a court has, under section 21B of the *Crimes Act 1914*, ordered the first-mentioned person to make reparation to the Commonwealth, to the Commonwealth instrumentality or to that other person, as the case may be, in respect of the same loss suffered or expense incurred.

117B Interest on moneys ordered to be paid

(1) Subject to any order made by the court under subsection (2), where, in proceedings under this Act, a court makes an order for the payment of money (other than an order for the payment by way of maintenance of a periodic sum), interest is payable, at the rate prescribed by the applicable Rules of Court, from:

(a) the date on which the order is made; or

(b) the date on which the order takes effect;

whichever is later, on so much of the money as is from time to time unpaid.

(2) A court that makes an order for the payment of money as mentioned in subsection (1) may order that interest is not payable on the money payable under the first-mentioned order or may order:

(a) that interest is payable at a rate specified in the order, being a rate other than the rate prescribed by the applicable Rules of Court; or

(b) that interest is payable from a date specified in the order, being a date other than the date from which the interest would be payable under subsection (1).

117C Offers of settlement

(1) Where a party to proceedings under this Act (other than proceedings under Part VI or Division 6, 9 or 13 of Part VII or proceedings to enforce a decree or injunction made under Division 6, 9 or 13 of Part VII) has made an offer in the form prescribed by the applicable Rules of Court to the other party to the proceedings to settle the proceedings on terms specified in the offer, the first-mentioned party may file, in the court in which the proceedings are being heard, a copy of the offer.

(2) If a party to proceedings withdraws an offer a copy of which has been filed as mentioned in subsection (1), that party shall file, in the court referred to in subsection (1), notice that the offer has been withdrawn.

(2A) If a party files a copy of an offer and, before any notice of withdrawal is filed, the party to whom the offer is made files a notice that the offer has been accepted, the proceedings end (so far as they concern the party who accepted the offer) when the court makes an order giving effect to the terms of that offer.

(3) The fact that an offer has been made as mentioned in subsection (1), or the terms of such an offer, shall not be disclosed to the court except for the purposes of the consideration by the court of whether it should make an order as to costs under subsection 117(2) and the terms of any such order.

(4) A judge of the court mentioned in subsection (1) is not disqualified from sitting in the proceedings only because the fact that an offer has been made is, contrary to subsection (3), disclosed to the court.

118 Frivolous or vexatious proceedings

(1) The court may, at any stage of proceedings under this Act, if it is satisfied that the proceedings are frivolous or vexatious:

(a) dismiss the proceedings;

(b) make such order as to costs as the court considers just; and

(c) if the court considers appropriate, on the application of a party to the proceedings—order that the person who instituted the proceedings shall not, without leave of a court having jurisdiction under this Act, institute proceedings under this Act of the kind or kinds specified in the order;

and an order made by a court under paragraph (c) has effect notwithstanding any other provision of this Act.

(2) A court may discharge or vary an order made by that court under paragraph (1)(c).

119 Married persons may sue each other

Either party to a marriage may bring proceedings in contract or in tort against the other party.

120 Criminal conversation, adultery and enticement

After the commencement of this Act, no action lies for criminal conversation, damages for adultery, or for enticement of a party to a marriage.

121 Restriction on publication of court proceedings

(1) A person who publishes in a newspaper or periodical publication, by radio broadcast or television or by other electronic means, or otherwise disseminates to the public or to a section of the public by any means, any account of any proceedings, or of any part of any proceedings, under this Act that identifies:

(a) a party to the proceedings;

(b) a person who is related to, or associated with, a party to the proceedings or is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate; or

(c) a witness in the proceedings;

is guilty of an offence punishable, upon conviction by imprisonment for a period not exceeding one year.

(2) A person who, except as permitted by the applicable Rules of Court, publishes in a newspaper or periodical publication, by radio broadcast or television or by other electronic means, or otherwise

disseminates to the public or to a section of the public by any means (otherwise than by the display of a notice in the premises of the court), a list of proceedings under this Act, identified by reference to the names of the parties to the proceedings, that are to be dealt with by a court is guilty of an offence punishable, upon conviction by imprisonment for a period not exceeding one year.

(3) Without limiting the generality of subsection (1), an account of proceedings, or of any part of proceedings, referred to in that subsection shall be taken to identify a person if:

(a) it contains any particulars of:

(i) the name, title, pseudonym or alias of the person;

(ii) the address of any premises at which the person resides or works, or the locality in which any such premises are situated;

(iii) the physical description or the style of dress of the person;

(iv) any employment or occupation engaged in, profession practised or calling pursued, by the person or any official or honorary position held by the person;

(v) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;

(vi) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person; or

(vii) any real or personal property in which the person has an interest or with which the person is otherwise associated;

being particulars that are sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires;

(b) in the case of a written or televised account or an account by other electronic means—it is accompanied by a picture of the person; or

(c) in the case of a broadcast or televised account or an account by other electronic means—it is spoken in whole or in part by the person and the person's voice is sufficient to identify

that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires.

(4) A reference in subsection (1) or (2) to proceedings shall be construed as including a reference to proceedings commenced before the commencement of section 72 of the *Family Law Amendment Act 1983*.

(5) An offence against this section is an indictable offence.

(8) Proceedings for an offence against this section shall not be commenced except by, or with the written consent of, the Director of Public Prosecutions.

(9) The preceding provisions of this section do not apply to or in relation to:

(a) the communication, to persons concerned in proceedings in any court, of any pleading, transcript of evidence or other document for use in connection with those proceedings; or

(b) the communication of any pleading, transcript of evidence or other document to:

(i) a body that is responsible for disciplining members of the legal profession in a State or Territory; or

(ii) persons concerned in disciplinary proceedings against a member of the legal profession of a State or Territory, being proceedings before a body that is responsible for disciplining members of the legal profession in that State or Territory; or

(c) the communication, to a body that grants assistance by way of legal aid, of any pleading, transcript of evidence or other document for the purpose of facilitating the making of a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case; or

(d) the publishing of a notice or report in pursuance of the direction of a court; or

(da) the display of a notice in the premises of a court that lists proceedings under this Act, identified by reference to the names of the parties, that are to be dealt with by the court; or

(e) the publishing of any publication *bona fide* intended primarily for use by the members of any profession, being:

(i) a separate volume or part of a series of law reports; or

(ii) any other publication of a technical character; or

(f) the publication or other dissemination of an account of proceedings or of any part of proceedings:

(i) to a person who is a member of a profession, in connection with the practice by that person of that profession or in the course of any form of professional training in which that person is involved; or

(ia) to an individual who is a party to any proceedings under this Act, in connection with the conduct of those proceedings; or

(ii) to a person who is a student, in connection with the studies of that person.

(10) Applicable Rules of Court made for the purposes of subsection (2) may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.

Note: Powers to make Rules of Court are also contained in sections 26B, 37A, 109A and 123.

(11) In this section:

court includes:

(a) an officer of a court investigating or dealing with a matter in accordance with this Act, the regulations or the Rules of Court; and

(b) a tribunal established by or under a law of the Commonwealth, of a State or of a Territory.

electronic means includes:

(a) in the form of data, text or images by means of guided and/or unguided electromagnetic energy; or

(b) in the form of speech by means of guided and/or unguided electromagnetic energy, where the speech is processed at its destination by an automated voice recognition system.

122 Rights of legal practitioners

A person who is, under Part VIIIA of the *Judiciary Act 1903*, entitled to practise in any federal court as a barrister or solicitor, or

as both, has the like right to practise in any State court exercising jurisdiction under this Act.

122AA Use of reasonable force in arresting persons

A person who is authorised or directed by a provision of this Act, or by a warrant issued under a provision of this Act, to arrest another person may use such reasonable force as is necessary to make the arrest or to prevent the escape of that person after the arrest.

122A Powers of entry and search for purposes of arresting persons

(1) Where:

(a) a person (in this subsection called the ***authorised person***) is, by a provision of this Act, or by a warrant issued under a provision of this Act, authorised to arrest another person; and

(b) the authorised person reasonably believes that the other person is in or on a particular searchable place;

the authorised person may, without warrant, enter and search the searchable place.

(2) Where a person may enter and search a vehicle, vessel or aircraft under subsection (1), the person may, for the purposes of effecting the entry and search, stop and detain the vehicle, vessel or aircraft.

(3) In exercising powers under this section, a person may use such force and assistance as is necessary and reasonable to enable the exercise of the powers.

(4) In this section:

searchable place means:

(a) premises or a place; or

(b) a vehicle, vessel or aircraft.

122B Arrangements with States and Territories

(1) The Governor-General may make an arrangement with the relevant authority of a State or internal Territory for the performance by an officer of the State or Territory of a function under this Act.

(2) In this section:

officer includes the holder of a judicial office.

relevant authority means:

(a) in relation to a State—the Governor of the State; or

(b) in relation to the Australian Capital Territory—the Chief Minister for the Australian Capital Territory; or

(c) in relation to the Northern Territory—the Administrator of the Northern Territory.

123 Rules of Court

(1) The Judges, or a majority of them, may make Rules of Court not inconsistent with this Act, providing for or in relation to the practice and procedure to be followed in the Family Court and any other courts exercising jurisdiction under this Act, and for and in relation to all matters and things incidental to any such practice and procedure, or necessary or convenient to be prescribed for the conduct of any business in those courts and, in particular:

(a) providing for and in relation to the attendance of witnesses; and

(b) providing for and in relation to the manner of service of process of the Family Court or another court exercising jurisdiction under this Act, and for and in relation to dispensing with such service; and

(ba) providing for and in relation to trial management; and

(c) providing for and in relation to the time and manner of institution of appeals in and to the Family Court; and

(d) prescribing the duties of officers of the Family Court; and

(f) prescribing the seals and stamps to be used in the Family Court and in any other court exercising jurisdiction under this Act; and

(g) prescribing matters relating to the costs of proceedings (including solicitor and client costs and party and party costs) and the assessment or taxation of those costs; and

(h) authorizing a court to refer to an officer of the court for investigation, report and recommendation claims or applications for or relating to any matters before the court; and

(j) authorizing an officer making an investigation referred to in paragraph (h) to take evidence on oath or affirmation and to obtain and receive in evidence a report from a family and child counsellor or welfare officer, and enabling the summoning of witnesses before an officer making such an investigation for the purpose of giving evidence or producing books and documents; and

(k) regulating the procedure of a court upon receiving a report of an officer who has made an investigation referred to in paragraph (h); and

(m) providing for and in relation to the procedure of a court exercising its powers under section 112AP to deal with a person for contempt of the court; and

(n) providing for and in relation to the making of applications for dissolution of marriage jointly by both parties to the marriage; and

(o) providing for and in relation to the appointment, by the Attorney-General, of a guardian *ad litem* for a party to proceedings under this Act; and

(q) providing for and in relation to:

(i) the forfeiture of recognizances entered into in pursuance of requirements made under this Act; and

(ii) the recovery of any money that may be due to the Commonwealth under such recognizances or from any person who has become a surety under this Act; and

(r) providing for and in relation to the attachment of moneys payable by the Commonwealth, a State, a Territory or the Administration of a Territory, or by an authority of the Commonwealth, of a State or of a Territory (other than moneys as to which it is provided by any law of the Commonwealth, of a State or of a Territory that they are not liable to attachment); and

(s) providing for and in relation to:

(i) the attendance, by parties to proceedings under this Act, at conferences conducted by family and child counsellors or welfare officers; and

(ii) the use by courts exercising jurisdiction under this Act, and by officers of such courts, for the purposes of such proceedings, of reports prepared by family and child

counsellors or welfare officers in relation to conferences attended by parties to the proceedings pursuant to Rules of Court made under subparagraph (i), being reports relating to the future conduct of the proceedings; and

(sa) prescribing the functions and duties of assessors and of court mediators and arbitrators; and

(sb) providing for and in relation to the making of applications under this Act for mediation or arbitration and for orders under section 19E; and

(sc) prescribing the disputes, proceedings or matters that may or may not be mediated or arbitrated under this Act; and

(sd) providing for and in relation to:

(i) the procedures to be followed by a court mediator or an arbitrator in mediating or arbitrating a dispute, proceeding or matter under this Act; and

(ii) the attendance by persons at conferences conducted by court mediators and arbitrators for the purposes of mediating or arbitrating a dispute, proceeding or matter under this Act; and

(iii) the procedure to be followed when a mediation or arbitration ends, both where it has resulted in an agreement or award and where it has not; and

(se) prescribing matters relating to the costs of mediation and arbitration by court mediators and arbitrators and the assessment or taxation of those costs; and

(sf) providing for and in relation to:

(i) the registration of awards under section 19D or 19E; and

(ii) the time and manner of making applications for review of registered awards under section 19F or for orders setting aside registered awards under section 19G; and

(sg) providing for and in relation to conciliation conferences; and

(t) prescribing matters incidental to the matters specified in the preceding paragraphs; and

(u) prescribing penalties not exceeding 50 penalty units for offences against the standard Rules of Court.

(1A) A reference in subsection (1) to a ***court exercising jurisdiction under this Act*** does not include a reference to the Federal Magistrates Court.

(2) Sections 48, 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to Rules of Court made under this section as if references in those sections of that Act to regulations were references to Rules of Court made under this section.

(3) In this section, ***Judge*** means:

(a) a Judge of the Family Court of Australia; or

(b) where the Governor-General has made an arrangement with the Governor of a State under section 112 in relation to the performance, by a Judge of the Family Court of that State, of functions under this section—that Judge.

Note: The power to make Rules of Court conferred by this section is extended by section 109A and subsection 111C(7A). Powers to make Rules of Court are also contained in sections 26B and 37A.

124 Rules Advisory Committee

(1) There shall be a Rules Advisory Committee consisting of such Judges of the Family Court of Australia, such Judges of Family Courts of States and such other persons as are appointed in accordance with this section.

(2) The function of the Rules Advisory Committee is to provide to the Judges referred to in section 123 such advice in relation to the making of standard Rules of Court as is requested from time to time by those Judges.

(3) Members of the Rules Advisory Committee shall be appointed by the Governor-General on the nomination of the Attorney-General made by the Attorney-General after consultation with the Chief Judge of the Family Court of Australia.

(4) A Judge of a Family Court of a State shall not be appointed as a member of the Rules Advisory Committee unless the Governor-General has made an arrangement with the Governor of the State under section 112 in relation to the performance, by that Judge, of functions as a member of the Rules Advisory Committee.

(5) The members of the Rules Advisory Committee shall be paid such allowances in respect of expenses in connection with their duties as are prescribed.

(6) A member of the Rules Advisory Committee may resign by writing signed and delivered to the Governor-General.

124A Regulations in relation to overseas-related maintenance obligations etc.

(1) The regulations may make provision for, and in relation to, the following matters:

(a) giving effect to an international agreement that relates to maintenance obligations arising from family relationship, parentage or marriage;

(b) maintenance obligations arising from family relationship, parentage or marriage, where:

(i) the maintenance is claimed by or on behalf of a person who is in a reciprocating jurisdiction; or

(ii) the person from whom the maintenance is claimed is in a reciprocating jurisdiction.

(2) Regulations made for the purposes of this section may:

(a) confer jurisdiction on a federal court (other than the High Court) or a court of a Territory; or

(b) invest a court of a State with federal jurisdiction.

(3) Regulations made for the purposes of this section:

(a) may be inconsistent with this Act; and

(b) prevail over this Act (including any other regulations or other instruments made under this Act), to the extent of any inconsistency.

(4) In this section:

international agreement means an agreement whose parties are:

(a) Australia and a foreign country; or

(b) Australia and 2 or more foreign countries.

reciprocating jurisdiction means:

(a) a foreign country; or

(b) a part of a foreign country;

that is prescribed by the regulations to be a reciprocating jurisdiction for the purposes of this section.

125 Regulations

(1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular:

(a) providing for and in relation to the service overseas, pursuant to any convention between Australia and another country, of any documents in proceedings under this Act; and

(b) providing for and in relation to the transcription of proceedings under this Act and the making available of copies of transcripts of those proceedings; and

(ba) providing for and in relation to the approval of persons as court mediators; and

(bb) prescribing requirements for arbitrators; and

(bc) prescribing, or providing for or in relation to, anything that may be dealt with in Rules of Court made under paragraph 123(1)(sa), (sb), (sc), (sd) or (se); and

(c) prescribing court fees to be payable in respect of proceedings under this Act; and

(ca) prescribing fees to be payable in respect of the use of the counselling or mediation facilities of the Family Court in situations other than where a court orders or directs a person to attend the counselling or mediation; and

(d) exempting persons included in particular classes of persons from liability to pay court fees prescribed under paragraph (c) and fees prescribed under paragraph (ca); and

(e) providing for the refund of court fees prescribed under paragraph (c) and fees prescribed under paragraph (ca) that have been paid in particular circumstances; and

(f) providing for an officer of a court exercising jurisdiction under this Act, a prescribed authority of the Commonwealth, of a State or of a Territory or the person for the time being holding a prescribed office under a law of the

Commonwealth, of a State or of a Territory, in his, her or its discretion, to institute and prosecute proceedings, on behalf of the person entitled to moneys payable under a child maintenance order under Part VII or a maintenance order under Part VIII, for the purpose of enforcing payment of those moneys; and

(g) providing for and in relation to priority as between the execution of orders made under the regulations, or under the repealed Act, for the attachment of moneys payable by the Commonwealth, a State, a Territory or the Administration of a Territory, or by an authority of the Commonwealth, of a State or of a Territory (other than moneys as to which it is provided by any law of the Commonwealth, of a State or of a Territory that they are not liable to attachment) and the execution of orders made in accordance with the *Maintenance Orders (Commonwealth Officers) Act 1966*.

(2) Court fees payable in pursuance of regulations made under this section in respect of proceedings in a Family Court of a State are payable to the State.

(3) To the extent of any inconsistency between regulations and Rules of Court, the regulations prevail.

Notes to the *Family Law Act 1975*

Note 1

The *Family Law Act 1975* as shown in this compilation comprises Act No. 53, 1975 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 29 November 2000 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Family Law Act 1975	53, 1975	12 June 1975	5 Jan 1976 (*see Gazette* 1975, No. G35, p. 2)	
Family Law Amendment Act 1976	63, 1976	8 June 1976	Ss. 1, 2, 17, 18 and 39: Royal Assent Ss. 29 and 30: 5 Jan 1976 Remainder: 1 July 1976	S. 19(2)
Family Law Amendment Act (No. 2) 1976	95, 1976	28 Sept 1976	28 Sept 1976	—
Marriage Amendment Act 1976	209, 1976	20 Dec 1976	Ss. 1, 2 and 30: Royal Assent Ss. 14 and 31: 1 July 1976 Remainder: 20 June 1977 (*see Gazette* 1977, No. S93)	—
Family Law Amendment Act 1977	102, 1977	11 Oct 1977	11 Oct 1977	—
Family Law Amendment Act 1979	23, 1979	5 Apr 1979	Ss. 4, 10, 11, 12(a), 17 and 23: 1 Aug 1979 (*see Gazette* 1979, No. S154) Remainder: Royal Assent	Ss. 18(2), 19(2) and 22(2)
Domicile (Consequential Amendments) Act 1982	2, 1982	4 Mar 1982	1 July 1982 (*see* s. 2 and *Gazette* 1982, No. G26, p. 2)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Family Law Amendment (Legal Aid Costs) Act 1983	67, 1983	20 Oct 1983	20 Oct 1983	—
Family Law Amendment Act 1983	72, 1983	28 Oct 1983	Part I (ss. 1, 2): Royal Assent Part II (ss. 3-72): 25 Nov 1983 Part III (ss. 73-76): 2 Jan 1985 (*see Gazette* 1984, No. S532)	Ss. 3(2), 18(2), (3), 19(2), 44(2), (3), 51(2) and 68(2)
Public Service Reform Act 1984	63, 1984	25 June 1984	S. 152(1): 20 July 1984 (*see Gazette* 1984, No. S276) *(a)*	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1984	72, 1984	25 June 1984	S. 3: *(b)*	Ss. 2(24) and 5(1)
Statute Law (Miscellaneous Provisions) Act (No. 2) 1984	165, 1984	25 Oct 1984	S. 3: *(c)*	S. 6(1)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	S. 3: 3 July 1985 *(d)*	—
Public Service and Statutory Authorities Amendment Act 1985	166, 1985	11 Dec 1985	S. 45: 8 Jan 1986 *(e)*	S. 45(2)
Statute Law (Miscellaneous Provisions) Act (No. 2) 1985	193, 1985	16 Dec 1985	S. 3: Royal Assent *(f)*	Ss. 10 and 16
Statute Law (Miscellaneous Provisions) Act (No. 1) 1986	76, 1986	24 June 1986	S. 3: Royal Assent *(g)*	S. 9
Statute Law (Miscellaneous Provisions) Act (No. 2) 1986	168, 1986	18 Dec 1986	S. 3: Royal Assent *(h)*	S. 5(1)
Statute Law (Miscellaneous Provisions) Act 1987	141, 1987	18 Dec 1987	S. 3: Royal Assent *(i)*	S. 5(1)
Family Law Amendment Act 1987	181, 1987	26 Dec 1987	1 Apr 1988 (*see Gazette* 1988, No. S83)	Ss. 64 and 66-68 S. 65 (am. by 8, 1988, s. 45)
as amended by				
Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988	8, 1988	5 Apr 1988	(*see* 8, 1988 below)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988	8, 1988	5 Apr 1988	Ss. 1-11, 12(b), (c), (e), (f), 13-21, 27, 29 and 30: Royal Assent S. 12(a) and (d): 1 Jan 1990 Remainder: 1 July 1988 (*see Gazette* 1988, No. S191)	—
as amended by				
Law and Justice Legislation Amendment Act 1988	120, 1988	14 Dec 1988	Part XI (ss. 34, 35): 5 Apr 1988 *(j)*	—
Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988	99, 1988	2 Dec 1988	2 Dec 1988	—
Law and Justice Legislation Amendment Act 1988	120, 1988	14 Dec 1988	Part XII (ss. 36-39): Royal Assent *(k)*	Ss. 37(2), 38(2) and 39(2)
Child Support (Assessment) Act 1989	124, 1989	21 Sept 1989	1 Oct 1989 (*see Gazette* 1989, No. S314)	—
Courts and Tribunals Administration Amendment Act 1989	157, 1989	5 Dec 1989	Part 1 (ss. 1, 2) and Part 6 (ss. 17, 18): Royal Assent Remainder: 1 Jan 1990 (*see Gazette* 1989, No. S398)	S. 23
Family Law Amendment Act 1989	182, 1989	28 Dec 1989	25 Jan 1990	Ss. 21(2) and 23(2)
Law and Justice Legislation Amendment Act 1990	115, 1990	21 Dec 1990	Ss. 1, 2 and 40-49: Royal Assent Ss. 3, 5, 6, 8, 9, 16, 17, 20-23, 28, 30, 32, 33, 38 and 39: 4 Feb 1991 (*see Gazette* 1991, No. GN3, p. 278) Remainder: 21 June 1991	—
Child Support Legislation Amendment Act 1990	138, 1990	28 Dec 1990	28 Dec 1990	—
Family Law Amendment Act 1991	37, 1991	27 Mar 1991	24 Apr 1991	—
Courts (Mediation and Arbitration) Act 1991	113, 1991	27 June 1991	Ss. 1 and 2: Royal Assent Remainder: 27 Dec 1991	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	Ss. 4(1), 10(b) and 15-20: 1 Dec 1988 Ss. 28(b)-(e), 30 and 31: 10 Dec 1991 (*see Gazette* 1991, No. S332) Remainder: Royal Assent	S. 31(2)
Law and Justice Legislation Amendment Act 1991	136, 1991	12 Sept 1991	Schedule: 10 Oct 1991 *(l)*	—
Family Law Amendment Act (No. 2) 1991	159, 1991	25 Oct 1991	25 Oct 1991	—
Prime Minister and Cabinet Legislation Amendment Act 1991	199, 1991	18 Dec 1991	18 Dec 1991	—
Law and Justice Legislation Amendment Act 1992	22, 1992	13 Apr 1992	S. 3: Royal Assent *(m)*	—
Law and Justice Legislation Amendment Act (No. 2) 1992	23, 1992	6 May 1992	6 May 1992	—
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992	94, 1992	30 June 1992	S. 3: 1 July 1990 Remainder: Royal Assent	—
Territories Law Reform Act 1992	104, 1992	30 June 1992	Ss. 1, 2, 25 and 26: Royal Assent Ss. 9, 10, 19, 21 and 22: 29 June 1993 (*see Gazette* 1993, No. S196) Remainder: 1 July 1992	—
Law and Justice Legislation Amendment Act (No. 4) 1992	143, 1992	7 Dec 1992	S. 3: *(n)*	—
Social Security Legislation Amendment Act (No. 2) 1992	229, 1992	24 Dec 1992	Schedule 4 (Part 1): Royal Assent *(o)*	—
Law and Justice Legislation Amendment Act 1994	84, 1994	23 June 1994	Part 5 (s. 35): *(p)*	—
Family Law Reform Act 1995	167, 1995	16 Dec 1995	Ss. 1, 2 and 54: Royal Assent S. 52: 25 Jan 1996 (*see Gazette* 1996, No. S27) Remainder: 11 June 1996 (*see Gazette* 1996, No. GN5)	Ss. 52(2) and 59

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 4 (items 72-74): Royal Assent *(q)*	—
Family Law Amendment Act 1997	25, 1997	10 Apr 1997	10 Apr 1997	—
Law and Justice Legislation Amendment Act 1997	34, 1997	17 Apr 1997	Schedule 7: Royal Assent *(r)*	—
Child Support Legislation Amendment Act (No. 1) 1997	84, 1997	23 June 1997	Schedule 1 (items 40, 41): 21 July 1997 *(s)*	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Schedule 2 (items 751-759): 1 Jan 1998 (*see Gazette* 1997, No. GN49) *(t)*	—
Family Law Amendment Act (No. 1) 1998	89, 1998	14 July 1998	14 July 1998	—
Statute Stocktake Act 1999	118, 1999	22 Sept 1999	22 Sept 1999	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 439-454): 5 Dec 1999 (*see Gazette* 1999, No. S584) *(u)*	—
Corporate Law Economic Reform Program Act 1999	156, 1999	24 Nov 1999	Schedule 10 (item 83): 13 Mar 2000 (*see Gazette* 2000, No. S114) *(v)*	—
Federal Magistrates (Consequential Amendments) Act 1999	194, 1999	23 Dec 1999	Schedule 11: 23 Dec 1999 *(w)*	—
Child Support Legislation Amendment Act 2000	49, 2000	3 May 2000	3 May 2000	—
Family Law Amendment Act 2000	143, 2000	29 Nov 2000	Schedule 3 (items 31A, 117): Royal Assent Schedule 3 (item 41): *(x)* Remainder: 27 Dec 2000	Sch. 1 (item 31) and Sch. 3 (items 20, 24, 40, 56, 56B, 75, 83) [*see* Table A]
Jurisdiction of Courts (Miscellaneous Amendments) Act 2000	161, 2000	21 Dec 2000	21 Dec 2000	Sch. 1 (item 16) [*see* Table A]
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	S. 4(1), (2) and Schedule 27: *(y)*	S. 4(1) and (2) [*see* Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Family Law Legislation Amendment (Superannuation) Act 2001	61, 2001	28 June 2001	28 Dec 2002	S. 4 S. 5 (as am. by 86, 2002, Sch. 5 [item 10]) [*see* Table A]
as amended by				
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002	86, 2002	11 Oct 2002	(*see* 86, 2002 below)	—
Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001	114, 2001	18 Sept 2001	*(z)*	—
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97) [*see* Table A]
Family Law Amendment (Child Protection Convention) Act 2002	69, 2002	3 Sept 2002	Schedule 1: [*see (za)* and Note 2] Remainder: Royal Assent	—
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002	86, 2002	11 Oct 2002	Ss. 1–3: Royal Assent Remainder: 1 Jan 2003 (*see* s. 2(1) and *Gazette* 2002, No. GN44)	—
Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2002	121, 2002	2 Dec 2002	Schedules 1–4: *(zb)* Remainder: Royal Assent	—

Act Notes

(a) The *Family Law Act 1975* was amended by subsection 152(1) only of the *Public Service Reform Act 1984*, subsection 2(4) of which provides as follows:

(4) The remaining provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.

(b) The *Family Law Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984*, subsection 2(12) of which provides as follows:

(12) The amendments of the *Family Law Act 1975* made by this Act shall:

(a) in the case of the amendment of section 37A of that Act—come into operation, or be deemed to have come into operation, as the case requires, on the commencement of Part III of the *Family Law Amendment Act 1983*; and

Part III commenced on 2 January 1985 (*see Gazette* 1984, No. S532).

(b) in the case of the amendments of sections 44 and 87 of that Act—be deemed to have come into operation on 25 November 1983; and

(c) in the case of the other amendments of that Act—come into operation on a day to be fixed by Proclamation.

The remainder of the amendments commmenced on 2 January 1985 (*see Gazette* 1984, No. S532).

(c) The *Family Law Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2(10) of which provides as follows:

(10) The amendments of the *Family Law Act 1975* made by this Act shall come into operation, or be deemed to have come into operation, as the case requires, on the commencement of Part III of the *Family Law Amendment Act 1983*.

Part III commenced on 2 January 1985 (*see Gazette* 1984, No. S532).

(d) The *Family Law Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

(e) The *Family Law Act 1975* was amended by section 45 only of the *Public Service and Statutory Authorities Amendment Act 1985*, subsection 2(7) of which provides as follows:

(7) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.

(f) The *Family Law Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

(g) The *Family Law Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1986*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

(h) The *Family Law Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1986*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

(i) The *Family Law Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

Act Notes

(j) The *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988* was amended by Part XI (sections 34 and 35) only of the *Law and Justice Legislation Amendment Act 1988*, subsection 2(6) of which provides as follows:

(6) Part XI shall be taken to have commenced on 5 April 1988.

(k) The *Family Law Act 1975* was amended by Part XII (sections 36-39) only of the *Law and Justice Legislation Amendment Act 1988*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(l) The *Family Law Act 1975* was amended by the Schedule only of the *Law and Justice Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.

(m) The *Family Law Act 1975* was amended by section 3 only of the *Law and Justice Legislation Amendment Act 1992*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(n) The *Family Law Act 1975* was amended by section 3 only of the *Law and Justice Legislation Amendment Act (No. 4) 1992*, subsections 2(1) and (3) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(3) The amendments of the *Family Law Act 1975* (other than the amendment inserting a new section 37C of that Act), and the amendments of the *Judges (Long Leave Payments) Act 1979* and the *Judges' Pensions Act 1968*, made by this Act are taken to have commenced on 1 November 1991.

(o) The *Family Law Act 1975* was amended by Schedule 4 (Part 1) only of the *Social Security Legislation Amendment Act (No. 2) 1992*, subsection 2(1)(g) of which provides as follows:

(1) The following provisions commence on the day on which this Act receives the Royal Assent:

(g) Part 1 of Schedule 4;

(p) The *Family Law Act 1975* was amended by Part 5 (section 35) only of the *Law and Justice Legislation Amendment Act 1994*, subsection 2(5) of which provides as follows:

(5) The amendment made by Part 5 is taken to have commenced on 1 November 1991.

(q) The *Family Law Act 1975* was amended by Schedule 4 (items 72-74) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:

(1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

(r) The *Family Law Act 1975* was amended by Schedule 7 only of the *Law and Justice Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(s) The *Family Law Act 1975* was amended by Schedule 1 (items 40 and 41) only of the *Child Support Legislation Amendment Act (No. 1) 1997*, subsection 2(1) of which provides as follows:

(1) Subject to subsection (2), this Act commences on the 28th day after the day on which it receives the Royal Assent.

(t) The *Family Law Act 1975* was amended by Schedule 2 (items 751-759) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:

(2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.

Act Notes

(u) The *Family Law Act 1975* was amended by Schedule 1 (items 439-454) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

(1) In this Act, ***commencing time*** means the time when the *Public Service Act 1999* commences.

(2) Subject to this section, this Act commences at the commencing time.

(v) The *Family Law Act 1975* was amended by Schedule 10 (item 83) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2) of which provides as follows:

(2) The following provisions commence on a day or days to be fixed by Proclamation:

(a) section 3;

(b) the items in Schedules 1 to 7 (other than item 18 of Schedule 7);

(c) the items in Schedules 10, 11 and 12.

(w) The *Family Law Act 1975* was amended by Schedule 11 only of the *Federal Magistrates (Consequential Amendments) Act 1999*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the commencement of the *Federal Magistrates Act 1999*.

(x) Subsection 2(2) of the *Family Law Amendment Act 2000* provides as follows:

(2) Item 41 of Schedule 3 is taken to have commenced immediately after the commencement of section 26 of the *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988*.

Section 26 commenced on 1 July 1988 (*see Gazette* 1988, No. S191).

(y) The *Family Law Act 1975* was amended by Schedule 27 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:

(1) Subject to this section, this Act commences at the later of the following times:

(a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;

Item 15 commenced on 24 May 2001.

(z) Section 2 of the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001* provides as follows:

2 This Act commences immediately after the commencement of the *Family Law Legislation Amendment (Superannuation) Act 2001*.

The *Family Law Legislation Amendment (Superannuation) Act 2001* came into operation on 28 December 2002.

(za) The *Family Law Act 1975* was amended by the *Family Law Amendment (Child Protection Convention) Act 2002*, subsection 2(1) (item 2) of which provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
2. Schedule 1	The day on which the Child Protection Convention enters into force in Australia	[*see* Note 2]

(zb) Subsection 2(1) (item 2) of the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2002* provides as follows:

Act Notes

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
2. Schedules 1 to 4	Immediately after the commencement of the *Family Law Legislation Amendment (Superannuation) Act 2001*	28 December 2002

Table of Amendments

The amendment history of the *Family Law Act 1975* appears in the Table below. For repealed provisions up to and including Act No. 167 of 1995 see the Repeal Table.

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title	am. No. 181, 1987; No. 167, 1995
Part I	
S. 3	am. No. 23, 1979; No. 118, 1999
S. 4	am. No. 63, 1976; No. 23, 1979; No. 2, 1982; No. 72, 1983; Nos. 63 and 72, 1984; No. 181, 1987; Nos. 157 and 182, 1989; No. 113, 1991; No. 104, 1992; No. 167, 1995; Nos. 146 and 194, 1999; No. 143, 2000; No. 86, 2002
S. 7	rs. No. 104, 1992
S. 7A	ad. No. 24, 2001
S. 9	am. No. 63, 1976; No. 23, 1979; No. 181, 1987
Part II	
Part II	ad. No. 167, 1995
Division 1	
S. 11	am. No. 181, 1987; No. 37, 1991 rs. No. 167, 1995
Division 2	
Ss. 12, 13	am. No. 181, 1987; No. 37, 1991 rs. No. 167, 1995
Ss. 13A–13C	ad. No. 167, 1995
S. 13D	ad. No. 167, 1995 am. No. 194, 1999
S. 13E	ad. No. 167, 1995
Division 3	
Ss. 13F, 13G	ad. No. 167, 1995
Division 4	
S. 13H	ad. No. 167, 1995
Part III	
Heading to Part III	rs. No. 167, 1995
Division 1	
Heading to Div. 1 of Part III	ad. No. 167, 1995
S. 14	am. No. 63, 1976; No. 72, 1983; No. 181, 1987; No. 182, 1989 rs. No. 167, 1995
S. 14A	ad. No. 167, 1995
Division 2	
Heading to Div. 2 of Part III	ad. No. 167, 1995
S. 14B	ad. No. 167, 1995

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
	am. No. 194, 1999
Ss. 14C, 14D	ad. No. 167, 1995
Division 3	
Heading to Div. 3 of Part III	ad. No. 167, 1995
S. 14E	ad. No. 167, 1995 am. No. 143, 2000
Ss. 14F, 14G	ad. No. 167, 1995
Division 4	
Heading to Div. 4 of Part III	ad. No. 167, 1995
S. 14H	ad. No. 167, 1995
S. 15	am. No. 63, 1976; No. 72, 1983; No. 181, 1987; No. 167, 1995
S. 15A	ad. No. 194, 1999
S. 16	rs. No. 63, 1976 am. No. 72, 1983; No. 181, 1987
S. 16A	ad. No. 72, 1983 am. No. 181, 1987 rs. No. 167, 1995
Ss. 16B, 16C	ad. No. 167, 1995
S. 17	am. No. 72, 1983; No. 181, 1987; No. 167, 1995; No. 194, 1999
S. 19	am. No. 63, 1976; No. 181, 1987; No. 167, 1995
Division 5	
Heading to Div. 5 of Part III	ad. No. 167, 1995
Subdivision A	
Heading to Subdiv. A of Div. 5 of Part III	ad. No. 167, 1995
Heading to s. 19A	am. No. 194, 1999
S. 19A	ad. No. 113, 1991 am. No. 167, 1995; No. 194, 1999
S. 19AAA	ad. No. 194, 1999
S. 19AA	ad. No. 167, 1995
Heading to s. 19B	am. No. 194, 1999
S. 19B	ad. No. 113, 1991 am. No. 167, 1995; No. 194, 1999
S. 19BAA	ad. No. 194, 1999
S. 19BA	ad. No. 167, 1995
Subdivision B	
Heading to Subdiv. B of Div. 5 of Part III	ad. No. 167, 1995
Ss. 19D, 19E	ad. No. 113, 1991 am. No. 194, 1999; No. 143, 2000
Ss. 19EA, 19EB	ad. No. 143, 2000
Heading to s. 19F	am. No. 143, 2000
S. 19F	ad. No. 113, 1991

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
	am. No. 143, 2000
Note to s. 19F(1)	ad. No. 143, 2000
S. 19FA	ad. No. 143, 2000
S. 19G	ad. No. 113, 1991 rs. No. 143, 2000
S. 19GA	ad. No. 143, 2000
S. 19H	ad. No. 143, 2000
Subdivision C	
Heading to Subdiv. C of Div. 5 of Part III	ad. No. 167, 1995
S. 19J	ad. No. 113, 1991 am. No. 167, 1995; No. 194, 1999
S. 19K	ad. No. 113, 1991 am. No. 167, 1995; No. 61, 2001
Heading to s. 19L	am. No. 143, 2000
S. 19L	ad. No. 113, 1991 am. No. 143, 2000
S. 19M	ad. No. 113, 1991 am. No. 167, 1995; No. 143, 2000
Division 6	
Div. 6 of Part III	ad. No. 167, 1995
S. 19N	ad. No. 167, 1995
Heading to s. 19P	am. No. 143, 2000
S. 19P	ad. No. 167, 1995 am. No. 143, 2000
S. 19Q	ad. No. 167, 1995 am. No. 143, 2000
Part IV	
Division 1	
Heading to Div. 1 of Part IV	ad. No. 8, 1988
S. 20	am. No. 72, 1983; No. 8, 1988
Division 2	
Heading to Div. 2 of Part IV	ad. No. 8, 1988
S. 21	am. No. 8, 1988
S. 21A	ad. No. 72, 1983
S. 21B	ad. No. 72, 1983 am. No. 8, 1988
Division 3	
Heading to Div. 3 of Part IV	ad. No. 8, 1988
S. 22	am. No. 63, 1976; No. 102, 1977; No. 72, 1983; No. 181, 1987; No. 8, 1988; No. 143, 1992; No. 84, 1994; No. 143, 2000
S. 23	am. No. 8, 1988; No. 143, 1992
S. 24	am. No. 8, 1988

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 25	rs. No. 63, 1976 am. No. 8, 1988
S. 26	am. No. 181, 1987; No. 8, 1988
Division 4	
Div. 4 of Part IV	ad. No. 8, 1988
S. 26A	ad. No. 8, 1988
S. 26B	ad. No. 8, 1988 am. No. 167, 1995; No. 194, 1999; No. 143, 2000
Note to s. 26B	ad. No. 143, 2000
Ss. 26C, 26D	ad. No. 8, 1988
S. 26E	ad. No. 8, 1988 am. No. 99, 1988
Ss. 26F, 26G	ad. No. 8, 1988
Ss. 26H, 26I	ad. No. 8, 1988 am. No. 159, 2001
S. 26J	ad. No. 8, 1988 am. No. 43, 1996
S. 26JA	ad. No. 122, 1991 am. No. 146, 1999
S. 26K	ad. No. 8, 1988 rs. No. 143, 1992
Ss. 26L–26N	ad. No. 8, 1988
Division 5	
Heading to Div. 5 of Part IV	ad. No. 8, 1988
S. 28	am. No. 63, 1976; No. 102, 1977; No. 72, 1983; No. 181, 1987
S. 30	am. No. 63, 1976
S. 31	am. No. 72, 1983; No. 181, 1987; No. 120, 1988; No. 194, 1999
S. 33A	ad. No. 194, 1999 am. No. 143, 2000
Ss. 33B, 33C	ad. No. 194, 1999
S. 34	am. No. 72, 1983; No. 181, 1987; No. 194, 1999
Division 6	
Heading to Div. 6 of Part IV	ad. No. 8, 1988
S. 36	am. No. 181, 1987
S. 37	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 181, 1987 rs. No. 157, 1989 am. No. 194, 1999
S. 37A	ad. No. 72, 1983 am. No. 72, 1984 rs. No. 193, 1985 am. No. 181, 1987; Nos. 8 and 99, 1988; No. 167, 1995; Nos. 146 and 194, 1999; No. 143, 2000
Note to s. 37A	ad. No. 143, 2000
S. 37B	ad. No. 72, 1983

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
	am. No. 193, 1985; No. 181, 1987; Nos. 146 and 194, 1999
S. 37C	ad. No. 143, 1992
Division 7	
Heading to Div. 7 of Part IV	ad. No. 8, 1988
S. 38	am. No. 72, 1983; No. 8, 1988; No. 194, 1999
Part IVA	
Part IVA	ad. No. 157, 1989
Division 1	
Ss. 38A, 38B	ad. No. 157, 1989
Division 2	
Ss. 38C–38E	ad. No. 157, 1989
S. 38F	ad. No. 157, 1989 am. No. 159, 2001
S. 38G	ad. No. 157, 1989 rs. No. 122, 1991 am. No. 146, 1999
Ss. 38H, 38J	ad. No. 157, 1989
S. 38K	ad. No. 157, 1989 am. No. 122, 1991; No. 94, 1992
Ss. 38L, 38M	ad. No. 157, 1989
Division 3	
S. 38N	ad. No. 157, 1989 am. No. 113, 1991; Nos. 146 and 194, 1999; No. 143, 2000
S. 38P	ad. No. 157, 1989
S. 38Q	ad. No. 157, 1989 rs. No. 146, 1999
S. 38R	ad. No. 157, 1989
Division 4	
S. 38S	ad. No. 157, 1989 rs. No. 152, 1997
Ss. 38T, 38U	ad. No. 157, 1989 rep. No. 152, 1997
Ss. 38W, 38X	ad. No. 157, 1989
Part V	
S. 39	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 181, 1987; No. 8, 1988; No. 34, 1997; No. 89, 1998; No. 194, 1999; No. 161, 2000
S. 40	am. No. 72, 1983; No. 181, 1987; No. 89, 1998; No. 194, 1999
S. 40A	ad. No. 194, 1999
S. 41	am. No. 63, 1976; No. 181, 1987; No. 159, 1991; No. 194, 1999
S. 42	am. No. 72, 1983; No. 194, 1999
S. 43	am. No. 181, 1987; No. 167, 1995

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 44	am. No. 63, 1976; No. 72, 1983; No. 72, 1984; No. 181, 1987; No. 167, 1995; No. 194, 1999; No. 143, 2000
S. 44A	ad. No. 8, 1988
S. 45	am. No. 63, 1976 rs. No. 23, 1979 am. No. 72, 1983; No. 181, 1987; No. 8, 1988; No. 194, 1999; No. 143, 2000
S. 45A	ad. No. 194, 1999 am. No. 143, 2000
S. 46	am. No. 72, 1983; No. 181, 1987 (as am. by No. 8, 1988); No. 8, 1988; No. 194, 1999; No. 143, 2000
Part VI	
S. 48	am. No. 72, 1983
S. 51	rs. No. 209, 1976
S. 55	am. No. 181, 1987
S. 55A	ad. No. 181, 1987 am. No. 167, 1995
Part VII	
Part VII	ad. No. 167, 1995
Division 1	
Div. 1 of Part VII	ad. No. 167, 1995
Subdivision A	
S. 60A	ad. No. 167, 1995
Subdivision B	
S. 60B	ad. No. 167, 1995
S. 60C	ad. No. 167, 1995 am. No. 143, 2000
Subdivision C	
S. 60D	ad. No. 167, 1995 am. No. 194, 1999; No. 143, 2000
S. 60E	ad. No. 167, 1995
Subdivision D	
S. 60F	ad. No. 167, 1995 am. No. 194, 1999
S. 60G	ad. No. 167, 1995
S. 60H	ad. No. 167, 1995 am. No. 194, 1999
Division 2	
Div. 2 of Part VII	ad. No. 167, 1995
Ss. 61A–61E	ad. No. 167, 1995
Division 3	
Div. 3 of Part VII	ad. No. 167, 1995
Ss. 62A, 62B	ad. No. 167, 1995
Heading to s. 62C	am. No. 194, 1999
S. 62C	ad. No. 167, 1995

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 62CA	ad. No. 194, 1999
Ss. 62D–62G	ad. No. 167, 1995
S. 62H	ad. No. 167, 1995 am. No. 194, 1999
Division 4	
Div. 4 of Part VII	ad. No. 167, 1995
Ss. 63A, 63B	ad. No. 167, 1995
S. 63C	ad. No. 167, 1995
Note to s. 63C(2)	am. No. 34, 1997
Note to s. 63C(3)	am. No. 34, 1997
S. 63CAA	ad. No. 34, 1997
S. 63D	ad. No. 167, 1995 am. No. 194, 1999
S. 63DA	ad. No. 143, 2000
S. 63E	ad. No. 167, 1995 am. No. 194, 1999; No. 143, 2000
S. 63F	ad. No. 167, 1995 am. No. 143, 2000
S. 63G	ad. No. 167, 1995
Note to s. 63G(5)	am. No. 34, 1997
S. 63H	ad. No. 167, 1995
Division 5	
Div. 5 of Part VII	ad. No. 167, 1995
S. 64A	ad. No. 167, 1995
S. 64B	ad. No. 167, 1995 am. No. 194, 1999
S. 64C	ad. No. 167, 1995
Division 6	
Div. 6 of Part VII	ad. No. 167, 1995
Subdivision A	
S. 65A	ad. No. 167, 1995
S. 65AA	ad. No. 143, 2000
S. 65B	ad. No. 167, 1995
Subdivision B	
S. 65C	ad. No. 167, 1995 am. No. 143, 2000
S. 65D	ad. No. 167, 1995 am. No. 143, 2000
S. 65DA	ad. No. 143, 2000
Ss. 65E–65L	ad. No. 167, 1995
Subdivision C	
Ss. 65M–65P	ad. No. 167, 1995
S. 65Q	ad. No. 167, 1995

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
	am. No. 143, 2000
Subdivision D	
Ss. 65R–65T	ad. No. 167, 1995
Ss. 65U, 65V	ad. No. 167, 1995 am. No. 143, 2000
S. 65W	ad. No. 167, 1995
Subdivision E	
S. 65X	ad. No. 167, 1995
S. 65Y	ad. No. 167, 1995 am. No. 24, 2001
Note to s. 65Y(1)	ad. No. 24, 2001
Note to s. 65Y(2)	ad. No. 24, 2001
S. 65Z	ad. No. 167, 1995 am. No. 24, 2001
Note to s. 65Z(1)	ad. No. 24, 2001
Note to s. 65Z(2)	ad. No. 24, 2001
S. 65ZA	ad. No. 167, 1995 am. No. 24, 2001
Note to s. 65ZA(3)	ad. No. 24, 2001
S. 65ZB	ad. No. 167, 1995 am. No. 24, 2001
Note to s. 65ZB(3)	ad. No. 24, 2001
Ss. 65ZC, 65ZD	ad. No. 167, 1995
Division 7	
Div. 7 of Part VII	ad. No. 167, 1995
Subdivision A	
S. 66A	ad. No. 167, 1995 am. No. 143, 2000
Subdivision B	
Ss. 66B–66D	ad. No. 167, 1995
Subdivision C	
S. 66E	ad. No. 167, 1995 am. No. 143, 2000
Subdivision D	
S. 66F	ad. No. 167, 1995 am. No. 143, 2000
Ss. 66G–66K	ad. No. 167, 1995
S. 66L	ad. No. 167, 1995 am. No. 143, 2000
S. 66M	ad. No. 167, 1995 am. No. 34, 1997
S. 66N	ad. No. 167, 1995
Subdivision E	
S. 66P	ad. No. 167, 1995 am. No. 194, 1999

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 66Q, 66R	ad. No. 167, 1995
S. 66S	ad. No. 167, 1995 am. No. 194, 1999; No. 143, 2000
Subdivision EA	
Subdiv. EA of Div. 7 of Part VII	ad. No. 143, 2000
S. 66SA	ad. No. 143, 2000
Subdivision F	
Ss. 66T–66U	ad. No. 167, 1995
S. 66V	ad. No. 167, 1995
S. 66VA	ad. No. 143, 2000
S. 66W	ad. No. 167, 1995 rs. No. 143, 2000
Division 8	
Div. 8 of Part VII	ad. No. 167, 1995
Subdivision A	
S. 67A	ad. No. 167, 1995
Subdivision B	
Ss. 67B, 67C	ad. No. 167, 1995
S. 67D	ad. No. 167, 1995 am. No. 194, 1999
Ss. 67E–67G	ad. No. 167, 1995
Subdivision C	
S. 67H	ad. No. 167, 1995 am. No. 146, 1999
S. 67J	ad. No. 167, 1995
S. 67K	ad. No. 167, 1995 am. No. 143, 2000
S. 67L	ad. No. 167, 1995
S. 67M	ad. No. 167, 1995 am. No. 143, 2000
S. 67N	ad. No. 167, 1995 am. No. 194, 1999; No. 143, 2000
S. 67P	ad. No. 167, 1995 am. No. 24, 2001
S. 67Q	ad. No. 167, 1995 am. No. 143, 2000
Note to s. 67Q	rep. No. 143, 2000
Notes 1, 2 to s. 67Q	ad. No. 143, 2000
Ss. 67R-67S	ad. No. 167, 1995
S. 67T	ad. No. 167, 1995 am. No. 143, 2000
Ss. 67U, 67V	ad. No. 167, 1995
S. 67W	ad. No. 167, 1995

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
	am. No. 194, 1999; No. 143, 2000
S. 67X	ad. No. 167, 1995 am. No. 143, 2000
Note to s. 67X(3)	ad. No. 143, 2000
S. 67Y	ad. No. 167, 1995
Subdivision D	
S. 67Z	ad. No. 167, 1995 am. No. 194, 1999
Heading to s. 67ZA	am. No. 143, 2000
S. 67ZA	ad. No. 167, 1995 am. No. 143, 2000
S. 67ZB	ad. No. 167, 1995
Subdivision E	
Ss. 67ZC, 67ZD	ad. No. 167, 1995
Division 9	
Div. 9 of Part VII	ad. No. 167, 1995
Ss. 68A, 68B	ad. No. 167, 1995
S. 68C	ad. No. 167, 1995 am. No. 143, 2000
Note to s. 68C(1)	ad. No. 143, 2000
Division 10	
Div. 10 of Part VII	ad. No. 167, 1995
Subdivision A	
S. 68D	ad. No. 167, 1995
Subdivision B	
Ss. 68E, 68F	ad. No. 167, 1995
S. 68G	ad. No. 167, 1995 am. No. 194, 1999
S. 68H	ad. No. 167, 1995
S. 68J	ad. No. 167, 1995 am. No. 194, 1999
S. 68K	ad. No. 167, 1995
Subdivision C	
S. 68L	ad. No. 167, 1995 am. No. 143, 2000
S. 68M	ad. No. 167, 1995
Division 11	
Div. 11 of Part VII	ad. No. 167, 1995
S. 68N	ad. No. 167, 1995
Ss. 68P–68S	ad. No. 167, 1995
S. 68T	ad. No. 167, 1995 am. No. 194, 1999
Division 12	
Div. 12 of Part VII	ad. No. 167, 1995

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision A	
S. 69A	ad. No. 167, 1995
Subdivision B	
Ss. 69B–69F	ad. No. 167, 1995
Subdivision C	
S. 69G	ad. No. 167, 1995
Heading to 69H	am. No. 194, 1999
S. 69H	ad. No. 167, 1995 am. No. 194, 1999
Ss. 69J–69M	ad. No. 167, 1995
S. 69MA	ad. No. 194, 1999 rep. No. 143, 2000
S. 69N	ad. No. 167, 1995 am. No. 34, 1997
Subdivision D	
Ss. 69P–69U	ad. No. 167, 1995
Subdivision E	
S. 69V	ad. No. 167, 1995
S. 69VA	ad. No. 143, 2000
Ss. 69X–69Z	ad. No. 167, 1995
Ss. 69ZA–69ZD	ad. No. 167, 1995
Subdivision F	
Ss. 69ZE–69ZK	ad. No. 167, 1995
Division 13	
Div. 13 of Part VII	ad. No. 167, 1995
Subdivision A	
S. 70A	ad. No. 167, 1995
Subdivision B	
S. 70B	ad. No. 167, 1995
Ss. 70C, 70D	ad. No. 167, 1995 am. No. 194, 1999
S. 70E	ad. No. 167, 1995
Subdivision C	
S. 70F	ad. No. 167, 1995 am. No. 143, 2000
Ss. 70G– 70L	ad. No. 167, 1995
Subdivision D	
Ss. 70M, 70N	ad. No. 167, 1995 am. No. 143, 2000
Division 13A	
Div. 13A of Part VII	ad. No. 143, 2000
Subdivision A	
S. 70NB	ad. No. 143, 2000

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 70NBA	ad. No. 143, 2000
Ss. 70NC–70NE	ad. No. 143, 2000
S. 70NEA	ad. No. 143, 2000
Subdivision B	
Ss. 70NF–70NI	ad. No. 143, 2000
Ss. 70NIA, 70NIB	ad. No. 143, 2000
Subdivision C	
Ss. 70NJ-70NR	ad. No. 143, 2000
Division 14	
Div. 14 of Part VII	ad. No. 167, 1995
Ss. 70P, 70Q	ad. No. 167, 1995
Part VIII	
Heading to Part VIII	rs. No. 181, 1987
S. 71A	ad. No. 143, 2000
S. 72	rs. No. 72, 1983
S. 74	am. No. 181, 1987
S. 75	am. No. 63, 1976; No. 72, 1983; No. 181, 1987; No. 124, 1989; No. 84, 1997; No. 143, 2000
S. 77	am. No. 181, 1987
S. 77A	ad. No. 181, 1987
S. 78	am. No. 120, 1988
S. 79	am. No. 63, 1976; No. 72, 1983; No. 181, 1987; No. 124, 1989; No. 84, 1997; No. 194, 1999
S. 79A	ad. No. 63, 1976 am. No. 23, 1979; No. 72, 1983; No. 181, 1987; No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 86, 2002
Ss. 79B–79E	ad. No. 86, 2002
S. 80	am. No. 181, 1987; No. 194, 1999
S. 82	am. No. 72, 1983; No. 181, 1987
S. 83	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 181, 1987; No. 194, 1999
S. 84	am. No. 72, 1983; No. 181, 1987 rep. No. 143, 2000
S. 85	am. No. 72, 1983 rep. No. 143, 2000
S. 85A	ad. No. 72, 1983 am. No. 143, 2000
S. 86A	ad. No. 143, 2000
S. 86	am. No. 72, 1983; No. 181, 1987; No. 124, 1989; No. 167, 1995; No. 194, 1999; No. 143, 2000
S. 87	am. No. 23, 1979 rs. No. 72, 1983 am. No. 72, 1983; No. 72, 1984; No. 181, 1987; No. 124, 1989; No. 167, 1995; No. 194, 1999; No. 143, 2000
S. 87A	ad. No. 181, 1987

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 88	am. No. 72, 1983
S. 89	am. No. 72, 1984
S. 89A	ad. No. 63, 1976 am. No. 181, 1987
S. 90	am. No. 63, 1976 rs. No. 72, 1983 am. No. 181, 1987; No. 37, 1991
Part VIIIA	
Part VIIIA	ad. No. 143, 2000
Ss. 90A–90J	ad. No. 143, 2000
S. 90K	ad. No. 143, 2000 am. No. 61, 2001
S. 90KA	ad. No. 143, 2000
S. 90L	ad. No. 143, 2000
Ss. 90M–90Q	ad. No. 86, 2002
Part VIIIB	
Part VIIIB	ad. No. 61, 2001
Division 1	
Subdivision A	
S. 90MA	ad. No. 61, 2001
S. 90MB	ad. No. 61, 2001 am. No. 114, 2001
S. 90MC	ad. No. 61, 2001
Subdivision B	
S. 90MD	ad. No. 61, 2001 am. No. 121, 2002
S. 90MDA	ad. No. 61, 2001
S. 90ME	ad. No. 61, 2001 am. No. 114, 2001
Ss. 90MF, 90MG	ad. No. 61, 2001
Division 2	
Subdivision A	
S. 90MH	ad. No. 61, 2001
Subdivision B	
Ss. 90MI, 90MJ	ad. No. 61, 2001
Subdivision C	
S. 90MK	ad. No. 61, 2001
S. 90ML	ad. No. 61, 2001 am. No. 121, 2002
S. 90MLA	ad. No. 121, 2002
Ss. 90MM, 90MN	ad. No. 61, 2001
Subdivision D	
Ss. 90MO–90MR	ad. No. 61, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 3	
S. 90MS	ad. No. 61, 2001
S. 90MT	ad. No. 61, 2001 am. No. 121, 2002
S. 90MU	ad. No. 61, 2001
S. 90MUA	ad. No. 121, 2002
Division 4	
Ss. 90MV, 90MW	ad. No. 61, 2001
S. 90MX	ad. No. 61, 2001 am. No. 121, 2002
S. 90MY	ad. No. 61, 2001
S. 90MZ	ad. No. 61, 2001 am. No. 121, 2002
Ss. 90MZA, 90MZB	ad. No. 61, 2001
S. 90MZC	ad. No. 61, 2001 am. No. 121, 2002
Division 5	
S. 90MZD	ad. No. 61, 2001 am. No. 121, 2002
Ss. 90MZE–90MZH	ad. No. 61, 2001
Part IX	
S. 91	am. No. 95, 1976; No. 181, 1987; No. 167, 1995
S. 91A	ad. No. 95, 1976 am. No. 181, 1987
S. 91B	ad. No. 72, 1983
S. 92	am. No. 72, 1983; No. 181, 1987; No. 167, 1995
S. 92A	ad. No. 37, 1991 am. No. 167, 1995
Part X	
S. 93A	ad. No. 72, 1983 am. No. 194, 1999
Heading to s. 94	am. No. 194, 1999
S. 94	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; Nos. 141 and 181, 1987; No. 8, 1988; No. 115, 1990; No. 194, 1999; No. 143, 2000
S. 94AAA	ad. No. 194, 1999
S. 94AA	ad. No. 115, 1990 am. No. 167, 1995; No. 194, 1999; No. 143, 2000
S. 94A	ad. No. 63, 1976 am. No. 23, 1979; No. 141, 1987; No. 194, 1999
S. 95	am. No. 63, 1976
S. 96	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 181, 1987; No. 8, 1988; No. 194, 1999
S. 96A	ad. No. 89, 1998
Part XI	

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 97	am. No. 72, 1983; No. 8, 1988; No. 194, 1999
S. 98	am. No. 72, 1983; No. 194, 1999
S. 98A	ad. No. 72, 1983 am. No. 72, 1983; No. 181, 1987; No. 194, 1999; No. 143, 2000
S. 100A	ad. No. 37, 1991
S. 100B	ad. No. 143, 2000
S. 101	am. No. 37, 1991
S. 102	rs. No. 181, 1987
S. 102A	ad. No. 37, 1991 am. No. 167, 1995
S. 102B	ad. No. 167, 1995 am. No. 194, 1999
Part XII	
S. 103	am. No. 63, 1976
S. 104	am. No. 72, 1983; No. 72, 1984; No. 181, 1987
S. 104A	ad. No. 76, 1986
Part XIII	
S. 105	am. No. 95, 1976; No. 72, 1983; No. 181, 1987; No. 194, 1999; No. 143, 2000
Note to s. 105(1)	ad. No. 194, 1999
S. 106	ad. No. 143, 2000
Ss. 106A, 106B	ad. No. 143, 2000
S. 107	am. No. 72, 1983; No. 181, 1987; No. 182, 1989 rs. No. 143, 2000
S. 109	am. No. 181, 1987; No. 167, 1995
S. 109A	ad. No. 143, 2000
S. 109B	ad. No. 194, 1999
Part XIIIAA	
Heading to Part XIIIAA	ad. No. 143, 2000
S. 110	am. No. 63, 1976; No. 72, 1983; No. 72, 1984; No. 168, 1986; No. 181, 1987; No. 182, 1989; No. 34, 1997
Ss. 110A, 110B	ad. No. 143, 2000
S. 111	am. No. 72, 1983; No. 143, 2000
S. 111A	ad. No. 72, 1983 am. No. 143, 2000
S. 111B	ad. No. 72, 1983 am. No. 167, 1995; No. 143, 2000
Heading to s. 111C	am. No. 89, 1998
S. 111C	ad. No. 167, 1995 am. No. 89, 1998; No. 143, 2000
S. 111D	ad. No. 143, 2000
S. 112	am. No. 63, 1976 rs. No. 72, 1983 am. No. 72, 1983; No. 181, 1987

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
	rep. No. 143, 2000
Part XIIIA	
Heading to Part XIIIA	rs. No. 143, 2000
Part XIIIA	ad. No. 182, 1989
Division 1	
S. 112AA	ad. No. 182, 1989 am. No. 23, 1992; No. 167, 1995; No. 143, 2000
Ss. 112AB, 112AC	ad. No. 182, 1989 am. No. 167, 1995; No. 143, 2000
Division 2	
S. 112AD	ad. No. 182, 1989 am. No. 37, 1991; No. 167, 1995; No. 34, 1997; No. 143, 2000
S. 112AE	ad. No. 182, 1989 am. No. 143, 2000
S. 112AF	ad. No. 182, 1989 am. No. 167, 1995 rs. No. 143, 2000
S. 112AG	ad. No. 182, 1989 am. No. 143, 2000
Heading to s. 112AH	am. No. 143, 2000
S. 112AH	ad. No. 182, 1989 am. No. 143, 2000
Note to s. 112AH(8)	ad. No. 143, 2000
S. 112AK	ad. No. 182, 1989
S. 112AM	ad. No. 182, 1989 am. No. 143, 2000
Ss. 112AN, 112AO	ad. No. 182, 1989
Heading to Div. 3 of Part XIIIA	rep. No. 143, 2000
Part XIIIB	
Heading to Part XIIIB	ad. No. 143, 2000
S. 112AP	ad. No. 182, 1989 am. No. 194, 1999; No. 143, 2000
Part XIV	
S. 112A	ad. No. 72, 1983
S. 114	am. No. 72, 1983; No. 72, 1984; No. 181, 1987; No. 182, 1989
S. 114AA	ad. No. 72, 1983 am. No. 181, 1987; No. 182, 1989; No. 143, 2000
Note to s. 114AA(1)	ad. No. 143, 2000
S. 114AB	ad. No. 72, 1983 am. No. 181, 1987; No. 37, 1991; No. 167, 1995
Part XIVA	
Heading to Part XIVA	am. No. 76, 1986
Part XIVA	ad. No. 23, 1979
S. 114A	ad. No. 23, 1979

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
	am. No. 76, 1986
S. 114B	ad. No. 23, 1979 am. No. 72, 1983; No. 76, 1986; No. 182, 1989; No. 152, 1997
S. 114BA	ad. No. 76, 1986
Note to s. 114BA(1)	ad. No. 152, 1997
S. 114BB	ad. No. 76, 1986
Ss. 114C, 114D	ad. No. 23, 1979
S. 114E	ad. No. 23, 1979 am. No. 181, 1987; No. 159, 2001
S. 114F	ad. No. 23, 1979 am. No. 181, 1987; No. 43, 1996
S. 114G	ad. No. 23, 1979 am. No. 182, 1989 rs. No. 229, 1992 am. No. 146, 1999
S. 114H	ad. No. 23, 1979 am. No. 181, 1987
S. 114J	ad. No. 23, 1979 am. No. 229, 1992; No. 152, 1997; No. 156, 1999
S. 114K	ad. No. 23, 1979 am. No. 181, 1987; No. 182, 1989
S. 114L	ad. No. 23, 1979
S. 114M	ad. No. 23, 1979 am. Nos. 65 and 166, 1985; No. 182, 1989; No. 199, 1991 rs. No. 167, 1995 am. No. 146, 1999
S. 114MA	ad. No. 76, 1986
S. 114MB	ad. No. 76, 1986 am. No. 182, 1989 rep. No. 152, 1997
S. 114MC	ad. No. 76, 1986 am. No. 182, 1989
S. 114MD	ad. No. 76, 1986 am. No. 152, 1997
S. 114ME	ad. No. 76, 1986 rep. No. 152, 1997
S. 114MF	ad. No. 76, 1986
S. 114N	ad. No. 72, 1983 rs. No. 76, 1986 rep. No. 152, 1997
Part XV	
S. 115	am. No. 63, 1976; No. 72, 1983; No. 181, 1987; No. 182, 1989; No. 167, 1995; No. 43, 1996; Nos. 146 and 194, 1999
S. 116C	ad. No. 67, 1983 am. No. 165, 1984; No. 181, 1987; No. 194, 1999

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 117	am. No. 72, 1983; No. 181, 1987; No. 167, 1995; No. 194, 1999; No. 143, 2000
S. 117AA	ad. No. 143, 2000
S. 117A	ad. No. 72, 1983 am. No. 182, 1989; No. 167, 1995
S. 117B	ad. No. 72, 1983 am. No. 72, 1983; No. 194, 1999
S. 117C	ad. No. 72, 1983 am. No. 72, 1983; No. 181, 1987; No. 22, 1992; No. 167, 1995; No. 194, 1999; No. 143, 2000
S. 118	rs. No. 72, 1983 am. No. 181, 1987
S. 121	rs. No. 72, 1983 am. No. 72, 1983; No. 37, 1991; No. 194, 1999; No. 143, 2000
Note to s. 121(10)	ad. No. 143, 2000
S. 122	am. No. 181, 1987
S. 122AA	ad. No. 143, 2000
S. 122A	ad. No. 37, 1991
S. 122B	ad. No. 143, 2000
S. 123	am. Nos. 63 and 95, 1976; No. 23, 1979 rs. No. 72, 1983 am. No. 193, 1985; No. 99, 1988; No. 182, 1989; No. 113, 1991; No. 23, 1992; No. 167, 1995; No. 34, 1997; No. 194, 1999; No. 143, 2000
Note to s. 123	ad. No. 143, 2000
S. 124	ad. No. 72, 1983 am. No. 181, 1987; No. 194, 1999
S. 124A	ad. No. 49, 2000
S. 125	ad. No. 72, 1983 am. No. 181, 1987; No. 113, 1991; No. 167, 1995; No. 25, 1997; No. 143, 2000

Repeal Table

The amendment history of the repealed provisions of the *Family Law Act 1975* up to and including Act No. 167 of 1995 appears in the Table below.

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 5	rs. No. 63, 1976; No. 72, 1983 rep. No. 181, 1987
S. 5A	ad. No. 72, 1983 rep. No. 181, 1987
S. 10	am. Nos. 63 and 95, 1976; No. 72, 1983 rep. No. 181, 1987
Part II (ss. 11-13)	rep. No. 167, 1995
Ss. 11-13	rep. No. 167, 1995
S. 18	am. No. 63, 1976; No. 72, 1983 rep. No. 167, 1995
Heading to Part IIIA	rep. No. 167, 1995
Heading to Div. 1 of Part IIIA	rep. No. 167, 1995
S. 19C	ad. No. 113, 1991 rep. No. 167, 1995
Heading to Div. 2 of Part IIIA	rep. No. 167, 1995
Heading to Div. 3 of Part IIIA	rep. No. 167, 1995
S. 19H	ad. No. 113, 1991 rep. No. 167, 1995
S. 23A	ad. No. 102, 1977 rep. No. 159, 1991
S. 29	am. No. 63, 1976 rep. No. 72, 1983
S. 32	rep. No. 209, 1976
S. 38V	ad. No. 157, 1989 rep. No. 136, 1991
Heading to Part VII	rs. No. 181, 1987 rep. No. 167, 1995

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part VII ..... (ss. 60, 60A, 60AA, 60B, 60C, 60E-60H, 61, 61A-61C, 62, 62A, 63, 63A-63F, 64, 64A, 65, 65A, 66, 66A, 66B, 66BA, 66C-66F, 66FA, 66G, 66H, 66J-66N, 66P-66Z, 66ZA-66ZD, 66ZDA, 66ZE, 67-70, 70AA, 70A, 70B, 70BA-70BC, 70C-70F)	rep. No. 167, 1995
Heading to Div. 1 of Part VII	ad. No. 181, 1987 rep. No. 167, 1995
Div. 1 of Part VII ..... (ss. 60, 60A, 60AA, 60B, 60C)	rep No. 167, 1995
S. 60	am. No. 72, 1983; No. 72, 1984 rs. No. 181, 1987 am. No. 182, 1989; Nos. 37 and 113, 1991; No. 22, 1992 rep. No. 167, 1995
S. 60A	ad. No. 72, 1983 rs. No. 181, 1987 am. No. 37, 1991 rep. No. 167, 1995
S. 60AA	ad. No. 37, 1991 rep. No. 167, 1995
Ss. 60B, 60C	ad. No. 181, 1987 rep. No. 167, 1995
S. 60D	ad. No. 181, 1987 rep. No. 37, 1991
Div. 2 of Part VII ..... (ss. 60E-60H)	ad. No. 181, 1987 rep. No. 167, 1995
S. 60E	ad. No. 181, 1987 am. No. 22, 1992 rep. No. 167, 1995
Ss. 60F, 60G	ad. No. 181, 1987 rep. No. 167, 1995
S. 60H	ad. No. 181, 1987 am. No. 22, 1992 rep. No. 167, 1995
Heading to Div. 3 of Part VII	ad. No. 181, 1987 rep. No. 167, 1995
Div. 3 of Part VII ..... (ss. 61, 61A-61C, 62, 62A)	rep. No. 167, 1995
S. 61	am. No. 63, 1976; No. 23, 1979 rs. No. 181, 1987 rep. No. 167, 1995
Ss. 61A-61C	ad. No. 181, 1987 rep. No. 167, 1995

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 62	am. No. 63, 1976; No. 23, 1979; No. 72, 1983 rep. No. 167, 1995
S. 62A	ad. No. 72, 1983 rep. No. 167, 1995
Heading to Div. 4 of Part VII	ad. No. 181, 1987 rep. No. 167, 1995
Div. 4 of Part VII (ss. 63, 63A-63D)	rep. No. 167, 1995
S. 63	am. No. 23, 1979 rs. No. 181, 1987 am. No. 37, 1991 rep. No. 167, 1995
S. 63A	ad. No. 181, 1987 am. No. 124, 1989 rep. No. 167, 1995
Ss. 63B-63D	ad. No. 181, 1987 rep. No. 167, 1995
Div. 5 of Part VII (ss. 63E, 63F, 64, 64A, 65, 65A, 66)	rep. No. 167, 1995
S. 63E	ad. No. 181, 1987 rep. No. 167, 1995
S. 63F	ad. No. 181, 1987 am. No. 37, 1991 rep. No. 167, 1995
S. 64	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 72, 1984; No. 181, 1987; No. 8, 1988; No. 182, 1989; No. 37, 1991 rep. No. 167, 1995
S. 64A	ad. No. 182, 1989 am. No. 37, 1991 rep. No. 167, 1995
S. 65	am. No. 72, 1983; No. 181, 1987 rep. No. 167, 1995
S. 65A	ad. No. 120, 1988 rep. No. 167, 1995
S. 66	rep. No. 167, 1995
Div. 6 of Part VII (ss. 66A, 66B, 66BA, 66C-66F, 66FA, 66G, 66H, 66J-66N)	rep. No. 167, 1995
Ss. 66A, 66B	ad. No. 181, 1987 rep. No. 167, 1995
S. 66BA	ad. No. 124, 1989 rs. No. 138, 1990 rep. No. 167, 1995
S. 66C	ad. No. 181, 1987 rep. No. 167, 1995
Ss. 66D, 66E	ad. No. 181, 1987 am. No. 37, 1991 rep. No. 167, 1995

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 66F	ad. No. 181, 1987 rep. No. 167, 1995
S. 66FA	ad. No. 22, 1992 rep. No. 167, 1995
Ss. 66G, 66H	ad. No. 181, 1987 rep. No. 167, 1995
Ss. 66J-66L	ad. No. 181, 1987 rep. No. 167, 1995
S. 66M	ad. No. 181, 1987 am. No. 138, 1990 rep. No. 167, 1995
S. 66N	ad. No. 181, 1987 am. No. 37, 1991 rep. No. 167, 1995
Div. 7 of Part VII (ss. 66P-66U)	ad. No. 181, 1987 rep. No. 167, 1995
Ss. 66P-66U	ad. No. 181, 1987 rep. No. 167, 1995
Div. 8 of Part VII (ss. 66V, 66W)	ad. No. 181, 1987 rep. No. 167, 1995
Ss. 66V, 66W	ad. No. 181, 1987 rep. No. 167, 1995
Div. 9 of Part VII (ss. 66X-66Z, 66ZA, 66ZB)	ad. No. 181, 1987 rep. No. 167, 1995
Ss. 66X-66Z	ad. No. 181, 1987 rep. No. 167, 1995
Ss. 66ZA, 66ZB	ad. No. 181, 1987 rep. No. 167, 1995
Div. 10 of Part VII (ss. 66ZC, 66ZD, 66ZDA, 66ZE)	rep. No. 167, 1995
S. 66ZC	ad. No. 181, 1987 rep. No. 167, 1995
S. 66ZD	ad. No. 181, 1987 am. No. 182, 1989; No. 37, 1991 rep. No. 167, 1995
S. 66ZDA	ad. No. 182, 1989 am. No. 37, 1991 rep. No. 167, 1995
S. 66ZE	ad. No. 181, 1987 am. No. 37, 1991 rep. No. 167, 1995
Heading to Div. 11 of Part VII	ad. No. 181, 1987 rep. No. 167, 1995
Div. 11 of Part VII (ss. 67-69)	rep. No. 167, 1995
S. 67	am. No. 63, 1976; No. 72, 1983; No. 181, 1987 rep. No. 167, 1995

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 68	am. No. 72, 1983; No. 181, 1987 rep. No. 167, 1995
S. 69	am. No. 72, 1984 rep. No. 167, 1995
Heading to Div. 12 of Part VII	ad. No. 181, 1987 rs. No. 182, 1989 rep. No. 167, 1995
Div. 12 of Part VII (ss. 70, 70AA, 70A, 70B)	rep. No. 167, 1995
S. 70	am. No. 72, 1983; No. 181, 1987; No. 182, 1989 rep. No. 167, 1995
S. 70AA	ad. No. 182, 1989 am. No. 37, 1991 rep. No. 167, 1995
Ss. 70A, 70B	ad. No. 72, 1983 am. No. 181, 1987; No. 37, 1991 rep. No. 167, 1995
Div. 12A of Part VII (ss. 70BA-70BC)	ad. No. 37, 1991 rep. No. 167, 1995
Ss. 70BA-70BC	ad. No. 37, 1991 rep. No. 167, 1995
Div. 13 of Part VII (ss. 70C, 70D)	ad. No. 181, 1987 rep. No. 167, 1995
S. 70C	ad. No. 181, 1987 am. No. 182, 1989 rep. No. 167, 1995
S. 70D	ad. No. 181, 1987 rs. No. 182, 1989 rep. No. 167, 1995
Div. 14 of Part VII (s. 70E)	ad. No. 181, 1987 rep. No. 167, 1995
Div. 14 of Part VII (ss. 70E, 70F)	rep. No.167, 1995
S. 70E	ad. No. 181, 1987 rep. No. 167, 1995
S. 70F	ad. No. 37, 1991 rep. No. 167, 1995
S. 73	rep. No. 181, 1987
S. 76	rep. No. 181, 1987
S. 99	rep. No. 181, 1987
S. 99A	ad. No. 72, 1983 rep. No. 181, 1987
S. 106	am. No. 63, 1976; No. 23, 1979 rep. No. 72, 1983
S. 108	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 181, 1987 rep. No. 182, 1989
S. 112AJ	ad. No. 182, 1989 rep. No. 167, 1995

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 112AL	ad. No. 182, 1989 am. No. 37, 1991 rep. No. 167, 1995
S. 116	am. No. 63, 1976 rep. No. 23, 1979
Ss. 116A, 116B.....	ad. No. 67, 1973 rep. No. 23, 1992

Note 2

Family Law Amendment (Child Protection Convention) Act 2002 (No. 69, 2002)

The following amendments commence on the day on which the Child Protection Convention enters into force in Australia:

Schedule 1

1 At the end of subsection 31(2)

Add:

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

2 At the end of paragraph 39(5)(a)

Add "or".

3 At the end of paragraph 39(5)(b)

Add "or".

4 After paragraph 39(5)(d)

Insert:

(da) proceedings are instituted under Division 4 of Part XIIIAA or under regulations made for the purposes of section 111CZ; or

5 At the end of subsection 39(5A)

Add:

; or (d) proceedings are instituted under Division 4 of Part XIIIAA or under regulations made for the purposes of section 111CZ.

6 At the end of paragraph 39(6)(a)

Add "or".

7 At the end of paragraph 39(6)(b)

Add "or".

8 After paragraph 39(6)(d)

Note 2

Insert:

(da) proceedings are instituted under Division 4 of Part XIIIAA or under regulations made for the purposes of section 111CZ; or

9 At the end of subsection 42(2)

Add:

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

10 At the end of section 61C

Add:

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

11 At the end of section 63E

Add:

Note: Division 4 of Part XIIIAA (International protection of children) may affect the court's power to register a parenting plan.

12 At the end of subsection 63F(1)

Add:

Note: Section 111CT may affect the operation of the child welfare provisions of a registered parenting plan.

13 At the end of subsection 65D(1)

Add:

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

14 At the end of section 67K

Add:

(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.

15 Subsection 67M(2)

After "this Part", insert "or section 111CX".

16 Subsection 67N(2)

After "this Part", insert "or section 111CX".

17 At the end of subsection 67P(1)

Add:

; 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.

18 At the end of section 67P

Add:

(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.

19 At the end of subsection 67ZC(1)

Add:

Note: Division 4 of Part XIIIAA (International protection of children) may affect the jurisdiction of a court to make an order relating to the welfare of a child.

20 At the end of section 69E

Add:

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

Note 2

21 At the end of section 70H

Add:

Note: Division 4 of Part XIIIAA (International protection of children) may affect the operation of a registered overseas child order.

22 Before section 110

Insert:

Division 1—International maintenance orders and agreements etc.

23 After section 111A

Insert:

Division 2—International child abduction

24 After section 111B

Insert:

Division 3—International agreements about adoption etc.

25 After section 111C

Insert:

Division 4—International protection of children

Subdivision A—Preliminary

111CA Definitions

(1) In this Division:

another country means a Convention country or a non-Convention country.

Australia includes the external Territories.

central authority of a Convention country means:

Note 2

(a) if there is one central authority of the Convention country under Article 29 of the Child Protection Convention—the Convention country's central authority; or

(b) otherwise—the central authority designated, under Article 29 of the Child Protection Convention, as the Convention country's central authority to which any communication may be addressed for transmission to the appropriate central authority of the Convention country.

Child Protection Convention means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children signed at The Hague on 19 October 1996, a copy of the English text of which is set out in Schedule 1.

Commonwealth central authority means the Secretary of the Attorney-General's Department.

Commonwealth personal protection measure relating to a child means a measure (within the meaning of the Child Protection Convention) under this Act that is directed to the protection of the person of the child.

Commonwealth property protection measure relating to a child means a measure (within the meaning of the Child Protection Convention) under this Act for appointing, or deciding the powers of, a guardian of the child's property.

competent authority:

(a) ***competent authority*** of Australia means an entity that has responsibility or authority under the law in force in Australia, or part of Australia, to take measures or make decisions about:

(i) protecting the person of a child; or

(ii) appointing or deciding the powers of a guardian of a child's property; and

(b) ***competent authority*** of a Convention country means an entity that has responsibility or authority under the law in force in the Convention country to take, or make decisions about, a foreign measure relating to a child; and

Note 2

(c) ***competent authority*** of a non-Convention country means an entity that has responsibility or authority under the law in force in the country to take measures or make decisions about:

(i) protecting the person of a child; or

(ii) appointing or deciding the powers of a guardian of a child's property.

Convention country means a country, other than Australia, for which the Child Protection Convention has entered into force.

country of refuge of a child means a country in which the child is present as a refugee child.

entity includes the following:

(a) an individual;

(b) a corporation;

(c) an unincorporated body;

(d) a government authority or body;

(e) a court or tribunal.

foreign measure means:

(a) a foreign personal protection measure; or

(b) a foreign property protection measure.

foreign personal protection measure relating to a child means a measure (within the meaning of the Child Protection Convention) taken by a competent authority of a Convention country for protecting the person of the child.

foreign property protection measure relating to a child means a measure (within the meaning of the Child Protection Convention) taken by a competent authority of a Convention country for appointing, or deciding the powers of, a guardian of the child's property.

non-Convention country means a country for which the Child Protection Convention has not entered into force.

parental responsibility has the same meaning as in the Child Protection Convention.

refugee child means a child:

(a) who is a refugee; or

(b) who is internationally displaced due to disturbances occurring in his or her country of habitual residence; or

(c) whose country of habitual residence cannot be determined.

Territory includes each external Territory.

(2) Unless the contrary intention appears, expressions used:

(a) in this Division; or

(b) in regulations made for the purposes of this Division;

have the same meaning as they have in the Child Protection Convention.

111CB Relationship between this Division and other provisions

(1) This Division has effect despite the rest of this Act, except sections 69ZK and 111B and the regulations made for the purposes of section 111B.

(2) This Division, except section 111CZ, has effect subject to sections 69ZK and 111B and the regulations made for the purposes of section 111B.

(3) Section 111CZ, and regulations made for the purposes of that section, have effect despite section 69ZK.

Subdivision B—Jurisdiction for the person of a child

111CC Application of this Subdivision

This Subdivision applies only if an issue under this Act is whether a court, as opposed to any of the following authorities, has jurisdiction to take measures directed to the protection of the person of a child:

(a) a central authority or competent authority of a Convention country;

(b) a competent authority of a non-Convention country.

Note 2

111CD Jurisdiction relating to the person of a child

(1) A court may exercise jurisdiction for a Commonwealth personal protection measure only in relation to:

(a) a child who is present and habitually resident in Australia; or

(b) a child who is present in Australia and habitually resident in a Convention country, if:

(i) the child's protection requires taking the measure as a matter of urgency; or

(ii) the measure is provisional and limited in its territorial effect to Australia; or

(iii) the child is a refugee child; or

(iv) a request to assume jurisdiction is made to the court by, or at the invitation of, a competent authority of the country of the child's habitual residence; or

(v) a competent authority of the country of the child's habitual residence agrees to the court assuming jurisdiction; or

(vi) the court is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3)); or

(c) a child who is present in a Convention country, if:

(i) the child is habitually resident in Australia; or

(ii) the child has been wrongfully removed from or retained outside Australia and the court keeps jurisdiction under Article 7 of the Child Protection Convention; or

(iii) a request to assume jurisdiction is made to the court by, or at the invitation of, a competent authority of the country of the child's habitual residence or country of refuge; or

(iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the court assuming jurisdiction; or

(v) the child is habitually resident in a Convention country and the court is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3)); or

(d) a child who is present in Australia and is a refugee child; or

(e) a child who is present in a non-Convention country, if:

(i) the child is habitually resident in Australia; and

(ii) any of paragraphs 69E(1)(b) to (e) applies to the child; or

(f) a child who is present in Australia, if:

(i) the child is habitually resident in a non-Convention country; and

(ii) any of paragraphs 69E(1)(b) to (e) applies to the child.

(2) A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(ii) if the measure is not incompatible with a foreign measure already taken by a competent authority of a Convention country under Articles 5 to 10 of the Child Protection Convention.

(3) A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(vi) or (c)(v) for a Commonwealth personal protection measure relating to a child if:

(a) one or both of the child's parents are habitually resident in Australia when the proceedings referred to in that subparagraph begin; and

(b) one or both of the parents have parental responsibility for the child; and

(c) the jurisdiction of the court to take the measure is accepted by the parents and each other person with parental responsibility for the child; and

(d) the exercise of jurisdiction to take the measure is in the best interests of the child; and

(e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(4) Paragraphs 111CD(1)(a) to (d) are subject to the limitations in sections 111CE, 111CF and 111CH.

Note 2

111CE Limitation when a child is wrongfully removed from or retained outside a Convention country

A court must not, other than in a case of urgency, exercise jurisdiction in accordance with paragraph 111CD(1)(a), (b), (c) or (d) to take a Commonwealth personal protection measure relating to a child if:

(a) the child has been wrongfully removed from or retained outside a Convention country; and

(b) an authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

111CF Limitations when prior proceedings pending in a Convention country

(1) This section applies to the exercise of jurisdiction by a court in accordance with paragraph 111CD(1)(a), subparagraph 111CD(1)(b)(iii), (iv), (v) or (vi) or paragraph 111CD(1)(c) or (d).

(2) The court must not exercise that jurisdiction to take a Commonwealth personal protection measure relating to a child if:

(a) a corresponding measure has been sought from a competent authority of a Convention country at the time of commencement of the proceedings before the court; and

(b) any of the following applies:

(i) the child is habitually resident in the Convention country;

(ii) the child is present in the Convention country and is a refugee child;

(iii) a request to assume jurisdiction is made to the competent authority of the Convention country by, or at the invitation of, a competent authority of the country of the child's habitual residence or country of refuge;

(iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the competent authority of the Convention country assuming jurisdiction;

(v) the competent authority of the Convention country is exercising jurisdiction in proceedings concerning the

divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3));

(vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

(3) Subparagraph (2)(b)(v) only applies (subject to subsection (4)) if:

(a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph commence; and

(b) one or both of the parents has parental responsibility for the child; and

(c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and

(d) the exercise of jurisdiction to take the measure is in the best interests of the child; and

(e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(4) Subsection (2) does not apply if the competent authority of the Convention country has declined jurisdiction or is no longer considering taking the measure sought.

111CG If a court is asked to assume jurisdiction

(1) A court may, if it considers that it is in the child's best interests, accept or reject a request made under Article 8 of the Child Protection Convention by, or at the invitation of, a competent authority of a Convention country for the court to assume jurisdiction to take a Commonwealth personal protection measure relating to the child.

(2) A court may order, or invite the parties to proceedings before the court to ask, the Commonwealth central authority to do both of the following in a way that the Commonwealth central authority considers appropriate:

Note 2

(a) to request, under Article 9 of the Child Protection Convention, that a competent authority of a Convention country agree to the court assuming jurisdiction to take a Commonwealth personal protection measure relating to the child;

(b) to report to the court about the outcome of the request.

(3) The court may only make the order or issue the invitation under subsection (2) if it considers that it is better placed than the competent authority to assess the child's best interests.

111CH Limitation if a competent authority of a Convention country is asked to assume jurisdiction

(1) The court may order, or invite the parties to proceedings before the court to ask the Commonwealth central authority, in a way the Commonwealth central authority considers appropriate, to request a competent authority described in Article 8, paragraph 2, of the Child Protection Convention:

(a) to assume jurisdiction under Article 8 of the Convention for protecting the person of the child; and

(b) as the competent authority considers necessary, to take measures to protect the person of the child; and

(c) to report to the court about the outcome of the request.

(2) In addition, the court may make any other order it considers necessary for an order under subsection (1).

(3) The court may only make the order or issue the invitation under subsection (1) if the court considers that the competent authority is better placed to assess the child's best interests.

(4) The court may accept or reject a request under Article 9 of the Child Protection Convention made by, or at the invitation of, a competent authority of a Convention country described in Article 8, paragraph 2 of the Convention, for the competent authority to assume jurisdiction to take a measure for protecting the person of the child.

(5) If the competent authority assumes jurisdiction under the request, a court must not exercise jurisdiction in accordance with paragraph 111CD(1)(a), subparagraphs 111CD(1)(b)(iii) to (vi), or paragraph

111CD(1)(c) or (d), while the competent authority continues to exercise its jurisdiction.

111CI When a certain Commonwealth personal protection measure lapses

(1) A Commonwealth personal protection measure relating to a child that is taken by a court exercising jurisdiction in accordance with subparagraph 111CD(1)(b)(i) or (ii) lapses if:

(a) a foreign personal protection measure relating to the child is taken by a competent authority of a Convention country; and

(b) any of the following applies:

(i) the child is habitually resident in the Convention country;

(ii) the child is present in the Convention country and is a refugee child;

(iii) a request to assume jurisdiction is made to the competent authority of the Convention country by, or at the invitation of, a competent authority of the country of the child's habitual residence;

(iv) a competent authority of the country of the child's habitual residence agrees to the competent authority of the Convention country assuming jurisdiction;

(v) a competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (2));

(vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

(2) Subparagraph (1)(b)(v) only applies if:

(a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph are started; and

(b) one or both of the parents has parental responsibility for the child; and

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(c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and

(d) the exercise of jurisdiction to take the measure is in the best interests of the child; and

(e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(3) A Commonwealth personal protection measure relating to a child that is taken by a court exercising jurisdiction in a case of urgency, or in the taking of a measure of a provisional character, lapses if:

(a) a measure required by the situation for protecting the person of the child is taken by a competent authority of a non-Convention country; and

(b) the measure is registered:

(i) in accordance with regulations made for the purposes of section 70G; or

(ii) under a law of a State or Territory.

Subdivision C—Jurisdiction for decisions about a guardian of a child's property

111CJ Application of this Subdivision

This Subdivision applies only if an issue under this Act is whether a court, as opposed to any of the following authorities, has jurisdiction to appoint, or determine the powers of, a guardian of a child's property:

(a) a central authority or competent authority of a Convention country;

(b) a competent authority of a non-Convention country.

111CK Jurisdiction to appoint, or determine the powers of, a guardian for a child's property

(1) A court may exercise jurisdiction for a Commonwealth property protection measure only in relation to:

(a) a child who is habitually resident in Australia; or

(b) a child who is habitually resident in a Convention country, if:

(i) the protection of the child's property in Australia requires taking the measure as a matter of urgency; or

(ii) the measure is provisional and limited in its territorial effect to property in Australia; or

(iii) a request to assume jurisdiction is made to the court by, or at the invitation of, a competent authority of the country of the child's habitual residence or country of refuge; or

(iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the court assuming jurisdiction; or

(v) the child has been wrongfully removed from or retained outside Australia and the court keeps jurisdiction under Article 7 of the Child Protection Convention; or

(vi) the court is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3)); or

(c) a child who is present in Australia and is a refugee child; or

(d) a child who is present in a non-Convention country, if:

(i) the child is habitually resident in Australia; and

(ii) any of paragraphs 69E(1)(b) to (e) applies to the child; or

(e) a child who is present in Australia, if:

(i) the child is habitually resident in a non-Convention country; and

(ii) any of paragraphs 69E(1)(b) to (e) applies to the child.

(2) A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(ii) if the measure is not incompatible with a foreign measure already taken by a competent authority of a Convention country under Articles 5 to 10 of the Child Protection Convention.

(3) A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(vi) for a Commonwealth property protection measure relating to a child if:

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(a) one or both of the child's parents are habitually resident in Australia when the proceedings referred to in that subparagraph begin; and

(b) one or both of the parents have parental responsibility for the child; and

(c) the jurisdiction of the court to take the measure is accepted by the parents and each other person with parental responsibility for the child; and

(d) the exercise of jurisdiction to take the measure is in the best interests of the child; and

(e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(4) Paragraphs (1)(a) to (c) are subject to the limitations in sections 111CL, 111CM and 111CO.

111CL Limitation when a child is wrongfully removed from or retained outside a Convention country

A court must not, other than in a case of urgency, exercise jurisdiction in accordance with paragraph 111CK(1)(a), (b) or (c) to take a Commonwealth property protection measure relating to a child if:

(a) the child has been wrongfully removed from or retained outside a Convention country; and

(b) an authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

111CM Limitations when prior proceedings pending in a Convention country

(1) This section applies to the exercise of jurisdiction by a court in accordance with paragraph 111CK(1)(a), subparagraph 111CK(1)(b)(iii), (iv), (v) or (vi) or paragraph 111CK(1)(c).

(2) The court must not exercise that jurisdiction to take a Commonwealth property protection measure relating to a child if:

(a) a corresponding measure has been sought from a competent authority of a Convention country at the time of commencement of proceedings before the court; and

(b) any of the following applies:

(i) the child is habitually resident in the Convention country;

(ii) the child is present in the Convention country and is a refugee child;

(iii) a request to assume jurisdiction is made to a competent authority of the country of the child's habitual residence or country of refuge;

(iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the competent authority assuming jurisdiction;

(v) the competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3));

(vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

(3) Subparagraph (2)(b)(v) only applies (subject to subsection (4)) if:

(a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph are commenced; and

(b) one or both of the parents have parental responsibility for the child; and

(c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and

(d) the exercise of jurisdiction to take the measure is in the best interests of the child; and

(e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

Note 2

(4) Subsection (2) does not apply if the competent authority of the Convention country has declined jurisdiction or is no longer considering taking the measure sought.

111CN If a court is asked to assume jurisdiction

(1) A court may, if it considers that it is in the child's best interests, accept or reject a request made under Article 8 of the Child Protection Convention by, or at the invitation of, a competent authority of a Convention country for the court to assume jurisdiction to take a Commonwealth property protection measure relating to the child.

(2) A court may order, or invite the parties to proceedings before the court to ask, the Commonwealth central authority to do both of the following in a way that the Commonwealth central authority considers appropriate:

(a) to request, under Article 9 of the Child Protection Convention, that a competent authority of a Convention country agree to the court assuming jurisdiction to take a Commonwealth property protection measure relating to the child;

(b) to report to the court about the outcome of the request.

(3) The court may only make the order or issue the invitation under subsection (2) if it considers that it is better placed than the competent authority to assess the child's best interests.

111CO Limitation if a competent authority of a Convention country is asked to assume jurisdiction

(1) The court may order, or invite the parties to proceedings before the court to ask the Commonwealth central authority, in a way the Commonwealth central authority considers appropriate, to request a competent authority described in Article 8, paragraph 2, of the Child Protection Convention:

(a) to assume jurisdiction under Article 8 of the Convention for appointing, or deciding the powers of, a guardian of the child's property; and

(b) as the competent authority considers necessary, to take a measure appointing, or deciding the powers of, a guardian of the child's property; and

(c) to report to the court about the outcome of the request.

(2) In addition, the court may make any other order it considers necessary for an order under subsection (1).

(3) The court may only make the order or issue the invitation under subsection (1) if the court considers that the competent authority is better placed to assess the child's best interests.

(4) The court may accept or reject a request under Article 9 of the Child Protection Convention made by, or at the invitation of, a competent authority of a Convention country described in Article 8, paragraph 2 of the Convention, for the competent authority to assume jurisdiction to take a measure for the protection of the child's property.

(5) If the competent authority assumes jurisdiction under the request, a court must not exercise jurisdiction in accordance with paragraph 111CK(a) or subparagraphs 111CK(1)(b)(iii) to (vi) or paragraph 111CK(1)(c), while the competent authority continues to exercise its jurisdiction.

111CP When a certain Commonwealth property protection measure lapses

(1) A Commonwealth property protection measure relating to a child that is taken by a court exercising jurisdiction in accordance with subparagraph 111CK(1)(b)(i) or (ii) lapses if:

(a) a foreign property protection measure relating to the child is taken by a competent authority of a Convention country; and

(b) any of the following applies:

(i) the child is habitually resident in the Convention country;

(ii) the child is present in the Convention country and is a refugee child;

(iii) a request to assume jurisdiction is made to the competent authority of the Convention country by, or at

Note 2

the invitation of, a competent authority of the country of the child's habitual residence;

(iv) a competent authority of the country of the child's habitual residence agrees to the competent authority of the Convention country assuming jurisdiction;

(v) a competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (2));

(vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

(2) Subparagraph (1)(b)(v) only applies if:

(a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph are started; and

(b) one or both of the parents have parental responsibility for the child; and

(c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and

(d) the exercise of jurisdiction to take the measure is in the best interests of the child; and

(e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(3) A Commonwealth property protection measure relating to a child that is taken by a court exercising jurisdiction in a case of urgency, or in the taking of a measure of a provisional character, lapses if:

(a) a measure required by the situation for the appointment, or the determination of the powers, of a guardian for a child's property is taken by a competent authority of a non-Convention country; and

(b) the measure is registered:

(i) in accordance with regulations made for the purposes of section 70G; or

(ii) under a law of a State or Territory.

Subdivision D—Applicable law

111CQ Meaning of *law*

In this Subdivision:

law does not include choice of law rules.

111CR Applicable law generally

(1) This section applies to a court exercising jurisdiction in accordance with Subdivision B or C.

(2) The court must apply the law of Australia in exercising that jurisdiction.

(3) However, the court may in exceptional circumstances apply or take into account the law of another country with which:

(a) a child has a substantial connection; or

(b) a child's property is substantially connected;

if the court considers the protection of the person of the child, or the child's property, requires the court to do so.

(4) In subsection (2):

law of Australia means:

(a) law in force throughout Australia; or

(b) law in force in a part of Australia;

and includes the principles and rules of the common law and of equity as so in force.

111CS Applicable law concerning parental responsibility

(1) The principles set out in this section apply despite anything in this Act.

(2) The circumstances in which parental responsibility for a child is attributed to a person, or extinguished, by operation of law (without the intervention of a court or appropriate authority) are

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governed by the law that applies in the country of the child's habitual residence.

(3) The circumstances in which parental responsibility for a child is attributed to a person, or extinguished, by an agreement or a unilateral act (without the intervention of a court or appropriate authority) are governed by the law that applies in the country of the child's habitual residence when the agreement or act takes effect.

(4) The exercise of parental responsibility for a child is governed by the law applying in the country of the child's habitual residence.

(5) If a child's country of habitual residence changes to another country:

(a) parental responsibility for the child that exists under the law applying in the country in which the child was habitually resident continues to exist; and

(b) the circumstances in which parental responsibility for the child is attributed by operation of law to a person who does not already have such responsibility are governed by the law applying in the country of the new habitual residence; and

(c) the exercise of parental responsibility for the child is governed by the law applying in the country of the new habitual residence.

(6) Despite subsections (2) to (5), if:

(a) the law that applies because of this section is the law of a non-Convention country; and

(b) the choice of law rules of that non-Convention country designate that the law of another non-Convention country applies; and

(c) the other non-Convention country would apply its own law;

the law of that other non-Convention country applies instead.

(7) The parental responsibility referred to in subsection (2), (3), (4) or (5) may be ended, or the conditions of its exercise changed, by a measure taken in accordance with section 111CD or 111CK.

(8) A court need not apply a principle set out in subsection (2), (3), (4) or (5) if, on the application of an interested person, the court considers that doing so would be manifestly contrary to public policy having regard to the best interests of the child concerned.

Subdivision E—Recognition of foreign measures

111CT Effect of registered foreign measures

(1) This section applies to a foreign measure that is registered in a court in accordance with regulations made for the purposes of section 111CZ.

(2) The foreign measure:

(a) has the same force and effect as a Commonwealth personal protection measure or a Commonwealth property protection measure (as appropriate); and

(b) prevails over any earlier inconsistent measure in force in Australia, including:

(i) an order registered under section 70D or 70G; or

(ii) any other order made, or agreement registered, under this Act.

Subdivision F—Co-operation

111CU Obligation to obtain consent to place child

(1) A court must obtain the consent of a competent authority of a Convention country before placing a child in a foster family, or in institutional care, in the Convention country.

(2) Before placing a child, the court may order, or invite the parties to proceedings before the court to ask, the Commonwealth central authority to consult a competent authority of the Convention country concerned.

(3) If the court orders the Commonwealth central authority to consult, then the court must provide the Commonwealth central authority with a report on the child and the reasons for the proposed placement.

Note 2

111CV Obligation to inform competent authority about serious danger to a child

(1) A court must inform a competent authority of another country about any information the court may have about any serious danger to a child:

(a) whose residence has moved from Australia to the other country; or

(b) who is present in the other country.

(2) Subsection (1) has effect despite any obligation of confidentiality imposed on the court or a person by this Act, any other law or anything else (including a contract or professional ethics).

(3) A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of the provision of information under subsection (1).

(4) Evidence of the provision of information under subsection (1) is not admissible in any:

(a) court (whether or not exercising jurisdiction under this Act); or

(b) tribunal or other body concerned with professional ethics;

except where that evidence is given by the person who provided the information.

(5) In this section:

court includes a person carrying out duties, performing functions or exercising powers as:

(a) a member of the court personnel; or

(b) a family and child counsellor; or

(c) a family and child mediator; or

(d) an arbitrator.

111CW Court proceedings for contact

(1) A court hearing proceedings under Part VII (Children) or regulations made for the purposes of section 111B concerning contact with a child must admit into evidence and consider the

findings (if any) of a competent authority of a Convention country on the suitability of a parent to have contact with the child.

(2) A court may adjourn the proceedings concerning contact with a child pending the outcome of a request by a parent of the child to a competent authority of a Convention country for a finding on the suitability of the parent to have contact with the child.

(3) On the application of a parent who is an Australian resident seeking to obtain or keep contact with a child, a court may:

(a) admit evidence; and

(b) make a finding on the suitability of that parent to have contact with the child; and

(c) specify conditions on which the contact is to be given.

111CX Jurisdiction for a location order or a Commonwealth information order

A court may make a location order under section 67M or a Commonwealth information order under section 67N for the purposes of the Child Protection Convention.

111CY Giving information to central authorities and competent authorities in Convention countries

(1) This section applies to:

(a) a court; and

(b) the Commonwealth central authority; and

(c) central authorities of Australia appointed as mentioned in Article 29, paragraph 2, of the Child Protection Convention; and

(d) other competent authorities of Australia.

(2) If it would be consistent with this Division or the Child Protection Convention to do so, the court or authority may give information to:

(a) a court or an authority of Australia to which this section applies; or

(b) a central authority or other competent authority of a Convention country.

Note 2

Subdivision G—Regulations

111CZ Regulations to implement the Convention

(1) The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Child Protection Convention.

(2) Regulations made for the purposes of this section may, in particular:
   (a) provide that the regulations do not affect the operation of laws of a State or Territory that relate to the implementation of the Child Protection Convention; and
   (b) provide that specified provisions of the Child Protection Convention have the force of law in Australia; and
   (c) include a list of Convention countries or territorial units of Convention countries.

(3) Regulations made for the purposes of this section may:
   (a) confer jurisdiction on a federal court (other than the High Court) or a court of a Territory; or
   (b) invest a court of a State with federal jurisdiction.

   Such jurisdiction is in addition to any other jurisdiction provided for under this Act.

(4) Regulations made for the purposes of subsection (3) may make different provision in respect of matters arising in relation to different States or Territories. This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

(5) Subsections (2), (3) and (4) do not, by implication, limit subsection (1).

Division 5—Other matters

26 At the end of the Act

Add:

Schedule 1—Child Protection Convention

Note: This is the copy of the Child Protection Convention referred to in the definition of ***Child Protection Convention*** in subsection 111CA(1).

The undersigned, Delegates of the Governments of Argentina, Australia, Austria, Belgium, Canada, China, Croatia, the Czech Republic, Egypt, Finland, The former Yugoslav Republic of Macedonia, France, Germany, Greece, Ireland, Israel, Italy, Japan, Luxembourg, Malta, Mexico, Monaco, Morocco, the Netherlands, Norway, Poland, Portugal, Romania, the Slovak Republic, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela, Member States, as well as the Representatives of the Governments of Burkina Faso, Colombia, Costa Rica, Ecuador, Georgia, the Holy See, the Republic of Korea, Mauritius, New Zealand, Paraguay, Peru, the Philippines, the Russian Federation, South Africa and Sri Lanka, participating as Observers, convened at The Hague on 30 September 1996, at the invitation of the Government of the Netherlands, in the Eighteenth Session of the Hague Conference on Private International Law.

Following the deliberations laid down in the records of the meetings, have decided to submit to their Governments—

CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN

The States signatory to the present Convention,

Considering the need to improve the protection of children in international situations,

Wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of children,

Recalling the importance of international co-operation for the protection of children,

Note 2

Confirming that the best interests of the child are to be a primary consideration,

Noting that the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors* is in need of revision,

Desiring to establish common provisions to this effect, taking into account the *United Nations Convention on the Rights of the Child* of 20 November 1989,

Have agreed on the following provisions—

CHAPTER I—SCOPE OF THE CONVENTION

Article 1

1 The objects of the present Convention are—

a to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;

b to determine which law is to be applied by such authorities in exercising their jurisdiction;

c to determine the law applicable to parental responsibility;

d to provide for the recognition and enforcement of such measures of protection in all Contracting States;

e to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

2 For the purposes of this Convention, the term ‘parental responsibility’ includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child.

Note 2

Article 2

The Convention applies to children from the moment of their birth until they reach the age of 18 years.

Article 3

The measures referred to in Article 1 may deal in particular with—

a the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;

b rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence;

c guardianship, curatorship and analogous institutions;

d the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;

e the placement of the child in a foster family or in institutional care, or the provision of care by *kafala* or an analogous institution;

f the supervision by a public authority of the care of a child by any person having charge of the child;

g the administration, conservation or disposal of the child's property.

Article 4

The Convention does not apply to—

a the establishment or contesting of a parent-child relationship;

Note 2

b decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;

c the name and forenames of the child;

d emancipation;

e maintenance obligations;

f trusts or succession;

g social security;

h public measures of a general nature in matters of education or health;

i measures taken as a result of penal offences committed by children;

j decisions on the right of asylum and on immigration.

CHAPTER II—JURISDICTION

Article 5

1 The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

2 Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

Article 6

1 For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5.

2 The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.

Article 7

1 In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and

a each person, institution or other body having rights of custody has acquiesced in the removal or retention; or

b the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.

2 The removal or the retention of a child is to be considered wrongful where—

a it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

3 So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent

Note 2

measures under Article 11 as are necessary for the protection of the person or property of the child.

Article 8

1 By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

— request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or

— suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.

2 The Contracting States whose authorities may be addressed as provided in the preceding paragraph are

a a State of which the child is a national,

b a State in which property of the child is located,

c a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,

d a State with which the child has a substantial connection.

3 The authorities concerned may proceed to an exchange of views.

4 The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.

Article 9

Note 2

1 If the authorities of a Contracting State referred to in Article 8, paragraph 2, consider that they are better placed in the particular case to assess the child's best interests, they may either

— request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary, or

— invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child.

2 The authorities concerned may proceed to an exchange of views.

3 The authority initiating the request may exercise jurisdiction in place of the authority of the Contracting State of the habitual residence of the child only if the latter authority has accepted the request.

Article 10

1 Without prejudice to Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child if

a at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and

b the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child.

2 The jurisdiction provided for by paragraph 1 to take measures for the protection of the child ceases as soon as the decision allowing or refusing the application for divorce, legal separation or annulment of the marriage has become final, or the proceedings have come to an end for another reason.

Note 2

Article 11

1 In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.

2 The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.

3 The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

Article 12

1 Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5 to 10.

2 The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken a decision in respect of the measures of protection which may be required by the situation.

3 The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in the Contracting State where the measures were taken as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

Article 13

1 The authorities of a Contracting State which have jurisdiction under Articles 5 to 10 to take measures for the protection of the person or property of the child must abstain from exercising this jurisdiction if, at the time of the commencement of the proceedings, corresponding measures have been requested from the authorities of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration.

2 The provisions of the preceding paragraph shall not apply if the authorities before whom the request for measures was initially introduced have declined jurisdiction.

Article 14

The measures taken in application of Articles 5 to 10 remain in force according to their terms, even if a change of circumstances has eliminated the basis upon which jurisdiction was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures.

CHAPTER III—APPLICABLE LAW

Article 15

1 In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law.

2 However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection.

3 If the child's habitual residence changes to another Contracting State, the law of that other State governs, from the time of the change, the conditions

Note 2

of application of the measures taken in the State of the former habitual residence.

Article 16

1 The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.

2 The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.

3 Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.

4 If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence.

Article 17

The exercise of parental responsibility is governed by the law of the State of the child's habitual residence. If the child's habitual residence changes, it is governed by the law of the State of the new habitual residence.

Article 18

The parental responsibility referred to in Article 16 may be terminated, or the conditions of its exercise modified, by measures taken under this Convention.

Note 2

Article 19

1 The validity of a transaction entered into between a third party and another person who would be entitled to act as the child's legal representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the child's legal representative under the law designated by the provisions of this Chapter, unless the third party knew or should have known that the parental responsibility was governed by the latter law.

2 The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State.

Article 20

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

Article 21

1 In this Chapter the term "law" means the law in force in a State other than its choice of law rules.

2 However, if the law applicable according to Article 16 is that of a non-Contracting State and if the choice of law rules of that State designate the law of another non-Contracting State which would apply its own law, the law of the latter State applies. If that other non-Contracting State would not apply its own law, the applicable law is that designated by Article 16.

Article 22

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

Note 2

CHAPTER IV—RECOGNITION AND ENFORCEMENT

Article 23

1 The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.

2 Recognition may however be refused—

a if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;

b if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;

c on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;

d if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;

e if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;

f if the procedure provided in Article 33 has not been complied with.

Article 24

Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.

Article 25

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

Article 26

1 If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.

2 Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.

3 The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.

Article 27

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

Article 28

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

Note 2

CHAPTER V—CO-OPERATION

Article 29

1 A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on such authorities.

2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 30

1 Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

2 They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of children.

Article 31

The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to—

a facilitate the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter;

b facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;

c provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State.

Article 32

On a request made with supporting reasons by the Central Authority or other competent authority of any Contracting State with which the child has a substantial connection, the Central Authority of the Contracting State in which the child is habitually resident and present may, directly or through public authorities or other bodies,

a provide a report on the situation of the child;

b request the competent authority of its State to consider the need to take measures for the protection of the person or property of the child.

Article 33

1 If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by *kafala* or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.

2 The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.

Note 2

Article 34

1 Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so requires, may request any authority of another Contracting State which has information relevant to the protection of the child to communicate such information.

2 A Contracting State may declare that requests under paragraph 1 shall be communicated to its authorities only through its Central Authority.

Article 35

1 The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.

2 The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised. An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision.

3 An authority having jurisdiction under Articles 5 to 10 to decide on access may adjourn a proceeding pending the outcome of a request made under paragraph 2, in particular, when it is considering an application to restrict or terminate access rights granted in the State of the child's former habitual residence.

4 Nothing in this Article shall prevent an authority having jurisdiction under Articles 5 to 10 from taking provisional measures pending the outcome of the request made under paragraph 2.

Note 2

Article 36

In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child's residence has changed to, or that the child is present in another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.

Article 37

An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family.

Article 38

1 Without prejudice to the possibility of imposing reasonable charges for the provision of services, Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter.

2 Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges.

Article 39

Any Contracting State may enter into agreements with one or more other Contracting States with a view to improving the application of this Chapter in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Note 2

CHAPTER VI—GENERAL PROVISIONS

Article 40

1 The authorities of the Contracting State of the child's habitual residence, or of the Contracting State where a measure of protection has been taken, may deliver to the person having parental responsibility or to the person entrusted with protection of the child's person or property, at his or her request, a certificate indicating the capacity in which that person is entitled to act and the powers conferred upon him or her.

2 The capacity and powers indicated in the certificate are presumed to be vested in that person, in the absence of proof to the contrary.

3 Each Contracting State shall designate the authorities competent to draw up the certificate.

Article 41

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

Article 42

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State.

Article 43

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality.

Note 2

Article 44

Each Contracting State may designate the authorities to which requests under Articles 8, 9 and 33 are to be addressed.

Article 45

1 The designations referred to in Articles 29 and 44 shall be communicated to the Permanent Bureau of the Hague Conference on Private International Law.

2 The declaration referred to in Article 34, paragraph 2, shall be made to the depositary of the Convention.

Article 46

A Contracting State in which different systems of law or sets of rules of law apply to the protection of the child and his or her property shall not be bound to apply the rules of the Convention to conflicts solely between such different systems or sets of rules of law.

Article 47

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units—

1 any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;

2 any reference to the presence of the child in that State shall be construed as referring to presence in a territorial unit;

Note 2

3 any reference to the location of property of the child in that State shall be construed as referring to location of property of the child in a territorial unit;

4 any reference to the State of which the child is a national shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the child has the closest connection;

5 any reference to the State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage, shall be construed as referring to the territorial unit whose authorities are seised of such application;

6 any reference to the State with which the child has a substantial connection shall be construed as referring to the territorial unit with which the child has such connection;

7 any reference to the State to which the child has been removed or in which he or she has been retained shall be construed as referring to the relevant territorial unit to which the child has been removed or in which he or she has been retained;

8 any reference to bodies or authorities of that State, other than Central Authorities, shall be construed as referring to those authorised to act in the relevant territorial unit;

9 any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed as referring to the law or procedure or authority of the territorial unit in which such measure was taken;

10 any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought.

Article 48

For the purpose of identifying the applicable law under Chapter III, in relation to a State which comprises two or more territorial units each of which has its

own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply—

a if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;

b in the absence of such rules, the law of the relevant territorial unit as defined in Article 47 applies.

Article 49

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Convention, the following rules apply—

a if there are rules in force in such a State identifying which among such laws applies, that law applies;

b in the absence of such rules, the law of the system or the set of rules of law with which the child has the closest connection applies.

Article 50

This Convention shall not affect the application of the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, as between Parties to both Conventions. Nothing, however, precludes provisions of this Convention from being invoked for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 51

In relations between the Contracting States this Convention replaces the *Convention of 5 October 1961 concerning the powers of authorities and the law*

Note 2

applicable in respect of the protection of minors, and the Convention governing the guardianship of minors, signed at The Hague 12 June 1902, without prejudice to the recognition of measures taken under the Convention of 5 October 1961 mentioned above.

Article 52

1 This Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

2 This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of children habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.

3 Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.

4 The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

Article 53

1 The Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State.

2 The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State.

Article 54

Note 2

1 Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English.

2 However, a Contracting State may, by making a reservation in accordance with Article 60, object to the use of either French or English, but not both.

Article 55

1 A Contracting State may, in accordance with Article 60,

a reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory;

b reserve the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property.

2 The reservation may be restricted to certain categories of property.

Article 56

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convoke a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII—FINAL CLAUSES

Article 57

Note 2

1 The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Eighteenth Session.

2 It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 58

1 Any other State may accede to the Convention after it has entered into force in accordance with Article 61, paragraph 1.

2 The instrument of accession shall be deposited with the depositary.

3 Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b* of Article 63. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 59

1 If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2 Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3 If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Note 2

Article 60

1 Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 59, make one or both of the reservations provided for in Articles 54, paragraph 2, and 55. No other reservation shall be permitted.

2 Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.

3 The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 61

1 The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 57.

2 Thereafter the Convention shall enter into force—

a for each State ratifying, accepting or approving it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b for each State acceding, on the first day of the month following the expiration of three months after the expiration of the period of six months provided in Article 58, paragraph 3;

c for a territorial unit to which the Convention has been extended in conformity with Article 59, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 62

Note 2

1 A State Party to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units to which the Convention applies.

2 The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period.

Article 63

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 58 of the following—

a the signatures, ratifications, acceptances and approvals referred to in Article 57;

b the accessions and objections raised to accessions referred to in Article 58;

c the date on which the Convention enters into force in accordance with Article 61;

d the declarations referred to in Articles 34, paragraph 2, and 59;

e the agreements referred to in Article 39;

f the reservations referred to in Articles 54, paragraph 2, and 55 and the withdrawals referred to in Article 60, paragraph 2;

g the denunciations referred to in Article 62.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Note 2

[Signatures omitted]

Done at The Hague, on the 19th day of October 1996, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Eighteenth Session.

As at 1 January 2003 the amendments are not incorporated in this compilation.

Table A

Table A

Application, saving or transitional provisions

Family Law Amendment Act 2000 (No. 143, 2000)

Schedule 1

31 Saving

The amendments made by the previous items in this Schedule do not affect any act or thing done by a court under Division 2 of Part XIIIA of the *Family Law Act 1975* before the commencement of this Schedule, and any such act or thing continues to have effect according to its terms after that commencement as if those amendments had not been made.

Schedule 3

20 Application of amendments

The amendments of section 19F of the *Family Law Act 1975* made by this Schedule apply in relation to applications for review that are made after the commencement of this item (even if the award concerned was registered before that time).

24 Application of amendment

The amendment made by item 23 applies to arbitration that begins after the commencement of that item.

40 Validation of past transfers

To avoid doubt, a purported transfer of proceedings under subsection 45(2) of the *Family Law Act 1975* before the commencement of item 39 is taken not to have been invalid or ineffective merely because it was done on the court's own initiative.

56 Application of amendment

The amendment made by item 55 applies to child maintenance orders made after the commencement of that item.

56B Application of amendment

Section 66W of the *Family Law Act 1975*, as amended by item 56A, applies to arrears that are outstanding on or after the commencement of that item.

75 Transitional

After the commencement of this item:

(a) anything done before that commencement under section 84 or 85 of the *Family Law Act 1975* is taken to have been done under section 106A or 106B respectively of that Act; and

(b) a reference in an order made under that Act to section 84 or 85 of that Act is taken to be a reference to section 106A or 106B respectively of that Act.

83 Saving

Any regulations made for the purposes of paragraph 89(b) of the *Family Law Act 1975* and in force immediately before the commencement of item 82 have effect as if they were made for the purposes of section 110B inserted in that Act by that item.

Jurisdiction of Courts (Miscellaneous Amendments) Act 2000 (No. 161, 2000)

Schedule 1

16 Pre-commencement jurisdiction of the Federal Magistrates Court

The enactment of this Schedule does not imply that the Parliament did not intend that the Federal Magistrates Court was to have jurisdiction, at a time before the commencement of this item, to hear and determine:

(a) a proceeding arising under the *Administrative Decisions (Judicial Review) Act 1977* that was transferred to the Federal Magistrates Court under section 32AB of the *Federal Court of Australia Act 1976*; or

(b) a proceeding arising under the *Family Law Act 1975* that was transferred to the Federal Magistrates Court under section 33B of the *Family Law Act 1975*.

Table A

Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001 (No. 24, 2001)

4 Application of amendments

(1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Family Law Legislation Amendment (Superannuation) Act 2001 (No. 61, 2001)

4 Definitions

In this Act, unless the contrary intention appears:

Family Law Act means the *Family Law Act 1975*.

marriage includes a void marriage.

section 79 order means an order (other than an interim order) made under section 79 of the Family Law Act.

section 87 agreement means an agreement approved under section 87 of the Family Law Act.

startup time means the time when Schedule 1 commences.

superannuation amendments means the amendments made by Schedule 1.

5 Application of superannuation amendments

(1) Subject to this section, the superannuation amendments apply to all marriages, including those that were dissolved before the startup time.

(2) Subject to subsections (3) and (4), the superannuation amendments do not apply to a marriage if a section 79 order, or a section 87 agreement, is in force in relation to the marriage at the startup time.

(3) If a section 79 order that is in force at the startup time is later set aside under paragraph 79A(1)(a), (b), (c), (d) or (e) of the Family Law Act, then the superannuation amendments apply to the marriage from the time the order is set aside.

(4) If an approval of a section 87 agreement that is in force at the startup time is later revoked on a ground specified in paragraph 87(8)(a), (c) or (d) of the Family Law Act, then the superannuation amendments apply to the marriage from the time the approval is revoked.

(5) Part VIIIB of the Family Law Act does not apply in relation to a financial agreement that was made before the startup time.

Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001 (No. 159, 2001)

Schedule 1

97 Application of amendments

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.