



Western Australia

Family Court Amendment Act 2022

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Family Court Amendment Act 2022

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Western Australia

Family Court Amendment Act 2022

No. 28 of 2022

An Act to amend the *Family Court Act 1997* and to consequentially amend other Acts.

[Assented to 31 August 2022]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Family Court Amendment Act 2022*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 4 (other than Division 3) — on the day after assent day;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Family Court Act 1997* amended

3. Act amended

This Part amends the *Family Court Act 1997*.

4. Section 5 amended

In section 5(1) insert in alphabetical order:

bankrupt has the same meaning as in the Family Law Act;

Bankruptcy Act means the *Bankruptcy Act 1966* (Commonwealth);

(FLA s. 4(1))

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

(FLA s. 4(1))

debtor subject to a personal insolvency agreement has the meaning given in section 7B;

(FLA s. 4(1))

personal insolvency agreement has the meaning given in the Bankruptcy Act section 5(1);

(FLA s. 4(1))

property, in relation to de facto partners, or either of them, means property to which those partners are, or that partner is, as the case may be, entitled, whether in possession or reversion;

(FLA s. 4(1))

property settlement proceedings means proceedings with respect to —

- (a) the property of de facto partners, or either of them; or

- (b) the vested bankruptcy property in relation to a bankrupt de facto partner;

(FLA s. 4(1))

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

(FLA s. 4(1))

vested bankruptcy property, in relation to a bankrupt, means property, as defined in the Bankruptcy Act section 5(1), of the bankrupt that has vested in the bankruptcy trustee under that Act;

5. Section 7B inserted

After section 7A insert:

7B. Meaning of *debtor subject to a personal insolvency agreement* — FLA s. 5

For the purposes of this Act, a person is a *debtor subject to a personal insolvency agreement* if —

- (a) the person is a debtor (within the meaning of the Bankruptcy Act Part X); and
- (b) the person executes a personal insolvency agreement; and
- (c) the agreement has not come to an end (as defined in the Bankruptcy Act section 5(1)).

6. Section 36 amended

After section 36(4a)(c) insert:

- (ca) applications for orders under this Act with respect to vested bankruptcy property;

7. Section 45 amended

- (1) In section 45 delete “Where” and insert:

- (1) Where

- (2) At the end of section 45 insert:

- (2) For the purposes of subsection (1), if the bankruptcy trustee of a bankrupt de facto partner applies under the Bankruptcy Act section 139A for an order under Part VI Division 4A of that Act, proceedings relating to that application are taken to be related to proceedings in relation to that de facto partner’s de facto relationship.

8. Section 205T amended

- (1) In section 205T delete the definition of *property*.
- (2) In section 205T in the definition of *income tested pension, allowance or benefit* delete “definition;” and insert:

definition.

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9. Section 205W amended

After section 205W(2) insert:

- (3) Subsections (1) and (2) do not apply in relation to —
- (a) proceedings between the following persons with respect to the maintenance of the person referred to in subparagraph (i) —
 - (i) a de facto partner; and
 - (ii) the bankruptcy trustee of a bankrupt de facto partner;
 - or
 - (b) proceedings between a de facto partner and the bankruptcy trustee of a bankrupt de facto partner, with respect to any vested bankruptcy property in relation to the bankrupt partner, being proceedings arising out of the de facto relationship.

10. Section 205X amended

In section 205X:

- (a) delete “this Division” and insert:

section 205ZCA, 205ZE or 205ZG, or a declaration under section 205ZA(1),
- (b) in paragraph (a) delete “parties to the application” and insert:

de facto partners to whom the application relates

(c) in paragraph (b)(i) delete “parties” and insert:

de facto partners

11. Section 205Y amended

In section 205Y after “an order” insert:

or declaration

12. Section 205ZA amended

Delete section 205ZA(3).

13. Section 205ZB amended

Delete section 205ZB(1) and (2) and insert:

- (1) Subject to subsection (2), a de facto partner whose de facto relationship has ended may apply for an order under section 205ZCA, 205ZE or 205ZG, or a declaration under section 205ZA(1), only if —
 - (a) the application is made within the period (the *standard application period*) of —
 - (i) 2 years after the end of the de facto partner’s de facto relationship; or
 - (ii) 12 months after a financial agreement or former financial agreement between the de facto partners was set aside, or found to be invalid, as the case may be;
 - or
 - (b) both de facto partners consent to the application.

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- (1A) However, if proceedings are instituted by an application made with the consent of both de facto partners, 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.
- (2) The court may grant the de facto partner leave to apply after the end of the standard application period if the court is satisfied that hardship would be caused to the de facto partner or a child if leave were not granted.

14. Section 205ZC amended

- (1) In section 205ZC:
 - (a) delete “A de facto” and insert:
 - (1) A de facto
 - (b) delete “party is unable to support herself or himself” and insert:

partner is unable to support themselves
- (2) At the end of section 205ZC insert:
 - (2) The liability under subsection (1) of a bankrupt de facto partner to maintain the other de facto partner may be satisfied, in whole or in part, by way of the transfer of vested bankruptcy property in relation to the bankrupt partner if the court makes an order under this Division for the transfer.

15. Section 205ZCA inserted

After section 205ZC insert:

**205ZCA. Powers of court in maintenance proceedings —
FLA s. 74**

- (1) In proceedings with respect to the maintenance of a de facto partner, the court may make such order as it considers proper for the provision of maintenance in accordance with this Division.
- (2) Subsection (3) applies if —
 - (a) an application is made for an order under this section in proceedings between de facto partners with respect to the maintenance of 1 of the partners; and
 - (b) either of the following subparagraphs apply to 1 of the de facto partners —
 - (i) when the application was made, the de facto partner was a bankrupt;
 - (ii) after the application was made but before it is finally determined, the de facto partner became a bankrupt;and
 - (c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and
 - (d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings.
- (3) The court must join the bankruptcy trustee as a party to the proceedings.
- (4) If a bankruptcy trustee is a party to proceedings with respect to the maintenance of a de facto partner, then,

except with the leave of the court, the bankrupt de facto partner is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt partner.

- (5) The court must not grant leave under subsection (4) unless the court is satisfied that there are exceptional circumstances.
- (6) Subsection (7) applies if —
 - (a) an application is made for an order under this section in proceedings between de facto partners with respect to the maintenance of 1 of the partners; and
 - (b) either of the following subparagraphs apply to 1 of the de facto partners (the *debtor party*) —
 - (i) when the application was made, the de facto partner was a debtor subject to a personal insolvency agreement;
 - (ii) after the application was made but before it is finally determined, the de facto partner becomes a debtor subject to a personal insolvency agreement;and
 - (c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and
 - (d) the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings.
- (7) The court must join the trustee of the agreement as a party to the proceedings.

- (8) If the trustee of a personal insolvency agreement is a party to proceedings with respect to the maintenance of a de facto partner then, except with the leave of the court, the de facto partner who is the debtor subject to the personal insolvency agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.
- (9) The court must not grant leave under subsection (8) unless the court is satisfied that there are exceptional circumstances.
- (10) For the purposes of subsections (2) and (6), an application for an order under this section is taken to be finally determined when —
 - (a) the application is withdrawn or dismissed; or
 - (b) an order (other than an interim order) is made as a result of the application.

16. Section 205ZD amended

- (1) Delete section 205ZD(1).
- (2) In section 205ZD(2) delete “this section,” and insert:

section 205ZCA,
- (3) In section 205ZD(3):
 - (a) in paragraph (d)(ii) delete “party” and insert:

partner

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- (b) in paragraphs (e) and (f) delete “party” and insert:

de facto partner
- (c) in paragraph (f) delete “party; and” and insert:

de facto partner; and
- (d) in paragraph (h) delete “the party” and insert:

the de facto partner
- (e) in paragraph (h) delete “that party” (each occurrence) and insert:

that partner
- (f) after paragraph (h) insert:
 - (ha) the effect of any proposed order on the ability of a creditor of a de facto partner to recover the creditor’s debt, so far as that effect is relevant; and
- (g) in paragraph (i) delete “party” and insert:

de facto partner
- (h) in paragraph (i) delete “party; and” and insert:

de facto partner; and

- (i) in paragraphs (j) and (k) delete “party” and insert:

de facto partner
- (j) in paragraph (k) delete “party’s” and insert:

partner’s
- (k) in paragraph (l) delete “party” and insert:

de facto partner
- (l) delete paragraph (m) and insert:
 - (m) the terms of any order made or proposed to be made under section 205ZG in relation to —
 - (i) the property of the de facto partners; or
 - (ii) vested bankruptcy property in relation to a bankrupt de facto partner;
 - and
 - (ma) the terms of any order or declaration made or proposed to be made under the Family Law Act Part VIIIC in relation to a de facto partner; and
- (m) in paragraph (p) delete “the parties.” and insert:

the de facto partners; and
- (n) after paragraph (p) insert:
 - (q) without limiting paragraph (p), the terms of any superannuation agreement between the de facto

partners that is in force (as those terms are defined in the Family Law Act section 90YD).

- (4) In section 205ZD(4) delete “this section,” and insert:

section 205ZCA,

Note: The heading to amended section 205ZD is to read:

Matters to be taken into consideration in relation to maintenance — FLA s. 75

17. Section 205ZG amended

- (1) Delete section 205ZG(1) and insert:

- (1) In property settlement proceedings, the court may make such order as it considers appropriate —
- (a) in the case of proceedings with respect to the property of the de facto partners, or either of them — altering the interests of the partners in the property; or
 - (b) in the case of proceedings with respect to the vested bankruptcy property in relation to a bankrupt de facto partner — altering the interests of the bankruptcy trustee in the vested bankruptcy property.

- (1A) An order made under subsection (1) may include —
- (a) an order for a settlement of property in substitution for any interest in the property; and
 - (b) an order requiring either or both of the de facto partners, or the relevant bankruptcy trustee (if any), to make, for the benefit of either or both of the de facto partners or a child of the de facto

relationship, such settlement or transfer of
property as the court determines.

- (2) In section 205ZG(2) delete “proceedings with respect to the property of de facto partners, or either of them may, after the death of a partner to the proceedings,” and insert

property settlement proceedings may, after the death of 1 of the
de facto partners,

- (3) In section 205ZG(4):

- (a) delete “proceedings with respect to any property of de facto partners, or either of them,” and insert:

property settlement proceedings

- (b) in paragraph (a) delete “to the de facto relationship”.

- (4) Delete section 205ZG(5) and insert:

- (5) Subsection (5A) applies if, in property settlement proceedings, a court is of the opinion —

- (a) that there is likely to be a significant change in the financial circumstances of the de facto partners, 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, if that significant change in financial circumstances occurs, an order that the court could make with respect to the following matters is more likely to do justice as between the de facto partners than an order that the court

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could make immediately with respect to those following matters —

- (i) the property of the de facto partners, or either of them;
- (ii) the vested bankruptcy property in relation to a bankrupt de facto partner.

(5A) Without limiting the power of any court to grant an adjournment in proceedings under this Act, the court may, if so requested by either de facto partner or the relevant bankruptcy trustee (if any), adjourn the proceedings until such time, before the expiration of a period specified by the court, as that de facto partner or the relevant bankruptcy trustee, as the case may be, applies for the proceedings to be determined, but nothing in this subsection requires the court to adjourn any proceedings in any particular circumstances.

(5) In section 205ZG(6):

(a) delete “(5),” and insert:

(5A),

(b) delete “with respect to any of the property of the de facto partners or of either of them.” and insert:

with respect to —

- (a) any of the property of the de facto partners, or of either of them; or
- (b) any of the vested bankruptcy property in relation to a bankrupt de facto partner.

- (6) In section 205ZG(8):
- (a) delete “proceedings with respect to the property of de facto partners, or either of them are completed, either party to the proceedings” and insert:

property settlement proceedings are completed, either de facto partner
 - (b) delete paragraph (b) and insert:

(b) if the court is of the opinion that it would have made an order with respect to property if the deceased party had not died, and 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 —
 - (i) any of the property of the de facto partners, or either of them; or
 - (ii) any of the vested bankruptcy property in relation to a bankrupt de facto partner;and
- (7) In section 205ZG(9) delete “proceedings with respect to the property of de facto partners, or either of them” and insert:

property settlement proceedings

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- (8) After section 205ZG(9) insert:
- (10) The following are entitled to become a party to proceedings in which an application is made for an order under this section —
- (a) a creditor of a party to the proceedings if the creditor may not be able to recover the creditor's debt if the order were made;
 - (b) any other person whose interests would be affected by the making of the order.
- (11) Subsection (10) does not apply to a creditor of a party to the proceedings —
- (a) if the party is a bankrupt, to the extent to which the debt is a provable debt (within the meaning of the Bankruptcy Act); or
 - (b) if the party is a debtor subject to a personal insolvency agreement, to the extent to which the debt is covered by the personal insolvency agreement.
- (12) Subsection (13) applies if —
- (a) an application is made for an order under this section in proceedings between de facto partners with respect to the property of the de facto partners, or either of them; and
 - (b) either of the following subparagraphs apply to a de facto partner —
 - (i) when the application was made, the de facto partner was a bankrupt;
 - (ii) after the application was made but before it is finally determined, the de facto partner became a bankrupt;
- and

- (c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and
 - (d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings.
- (13) The court must join the bankruptcy trustee as a party to the proceedings.
- (14) If a bankruptcy trustee is a party to property settlement proceedings, then, except with the leave of the court, the bankrupt de facto partner is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt partner.
- (15) The court must not grant leave under subsection (14) unless the court is satisfied that there are exceptional circumstances.
- (16) Subsection (17) applies if —
- (a) an application is made for an order under this section in proceedings between de facto partners with respect to the property of the de facto partners, or either of them; and
 - (b) either of the following subparagraphs apply to a de facto partner (the **debtor party**) —
 - (i) when the application was made, the de facto partner was a debtor subject to a personal insolvency agreement;
 - (ii) after the application was made but before it is finally determined, the de facto partner becomes a debtor subject to a personal insolvency agreement;
- and

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- (c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and
 - (d) the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings.
- (17) The court must join the trustee of the agreement as a party to the proceedings.
- (18) If the trustee of a personal insolvency agreement is a party to property settlement proceedings, then, except with the leave of the court, the de facto partner who is the debtor subject to the personal insolvency agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.
- (19) The court must not grant leave under subsection (18) unless the court is satisfied that there are exceptional circumstances.
- (20) For the purposes of subsections (12) and (16), an application for an order under this section is taken to be finally determined when —
- (a) the application is withdrawn or dismissed; or
 - (b) an order (other than an interim order) is made as a result of the application.

18. Section 205ZH amended

- (1) In section 205ZH(1) delete “proceedings with respect to the property of de facto partners, or either of them,” and insert:

property settlement proceedings,

- (2) In section 205ZH(2) delete “proceedings with respect to the property of de facto partners, or either of them,” and insert:

property settlement proceedings

- (3) In section 205ZH(5) delete “either party to the proceedings” and insert:

either de facto partner

- (4) After section 205ZH(6) insert:

- (7) For the purposes of this section, a creditor of a party to the proceedings in which the order under section 205ZG was made is taken to be a person whose interests are affected by the order if the creditor may not be able to recover the creditor’s debt because the order has been made.

- (8) Subsection (9) applies if —

- (a) an order is made by a court under section 205ZG in proceedings with respect to the property of de facto partners or either of them; and
- (b) either of the following subparagraphs apply to a de facto partner —
 - (i) when the order was made, the de facto partner was a bankrupt;
 - (ii) after the order was made, the de facto partner became a bankrupt.

- (9) For the purposes of this section, the bankruptcy trustee is taken to be a person whose interests are affected by the order.

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- (10) Subsection (11) applies if —
 - (a) a de facto partner is a bankrupt; and
 - (b) an order is made by a court under section 205ZG in proceedings with respect to the vested bankruptcy property in relation to the bankrupt partner.
- (11) For the purposes of this section, the bankruptcy trustee is taken to be a person whose interests are affected by the order.
- (12) Subsection (13) applies if —
 - (a) an order is made by a court under section 205ZG in proceedings with respect to the property of de facto partners or either of them; and
 - (b) either of the following subparagraphs apply to a de facto partner —
 - (i) when the order was made, the de facto partner was a debtor subject to a personal insolvency agreement;
 - (ii) after the order was made, the de facto partner became a debtor subject to a personal insolvency agreement.
- (13) For the purposes of this section, the trustee of the agreement is taken to be a person whose interests are affected by the order.

19. Section 205ZHC amended

In section 205ZHC(1)(a) delete “either party” and insert:

a party

20. Sections 205ZHE to 205ZHH inserted

After section 205ZHD insert:

205ZHE. Notifying third parties about application — FLA s. 79F

- (1) Subsection (2) applies in relation to a person who —
 - (a) applies for an order under this Division; or
 - (b) is a party to proceedings for an order under this Division.
- (2) The rules may specify the circumstances in which a person referred to in subsection (1) is to give notice of the application to a person who is not a party to the proceedings.

205ZHF. Notifying bankruptcy trustee etc. about application under section 205ZA, 205ZCA, 205ZG or 205ZH — FLA s. 79G

- (1) The rules may make provision for a bankrupt who becomes a party to a proceeding for an application under section 205ZA, 205ZCA, 205ZG or 205ZH to give notice of the application to the bankruptcy trustee.
- (2) The rules may make provision for a debtor subject to a personal insolvency agreement who becomes a party to a proceeding for an application under section 205ZA, 205ZCA, 205ZG or 205ZH to give notice of the application to the trustee of the agreement.

205ZHG. Notifying court about bankruptcy etc. — FLA s. 79H

- (1) Subsection (2) applies in relation to a person who —
 - (a) is a de facto partner; and

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- (b) is a party to a proceeding for an application under section 205ZA, 205ZCA, 205ZG or 205ZH; and
 - (c) before that application is finally determined, becomes a bankrupt.
- (2) The rules may make provision for a person referred to in subsection (1) to notify a court exercising jurisdiction under this Act that the person has become a bankrupt.
- (3) Subsection (4) applies in relation to a person who —
 - (a) is a de facto partner; and
 - (b) is a party to a proceeding for an application under section 205ZA, 205ZCA, 205ZG or 205ZH; and
 - (c) before that application is finally determined, becomes a debtor subject to a personal insolvency agreement.
- (4) The rules may make provision for a person referred to in subsection (3) to notify a court exercising jurisdiction under this Act that the person has become a debtor subject to a personal insolvency agreement.
- (5) Subsection (6) applies in relation to a person who —
 - (a) is a de facto partner; and
 - (b) is a party to a proceeding for an application under section 205ZA, 205ZCA, 205ZG or 205ZH; and
 - (c) before that application is finally determined, becomes a party to a proceeding before a court (whether of a kind referred to in section 8(a) or (b) or otherwise) under the Bankruptcy Act that relates to —
 - (i) the bankruptcy of the person; or

- (ii) the person's capacity as a debtor subject to a personal insolvency agreement.
- (6) The rules may make provision for a person referred to in subsection (5) to notify a court exercising jurisdiction under this Act of the institution of the proceeding under the Bankruptcy Act.
- (7) Subsection (8) applies in relation to a person who —
 - (a) is the bankruptcy trustee of a bankrupt de facto partner; and
 - (b) applies under the Bankruptcy Act section 139A for an order under Part VI Division 4A of that Act.
- (8) The rules may make provision for a person referred to in subsection (7) to notify a court exercising jurisdiction under this Act of the making of the application.
- (9) For the purposes of this section, an application for an order under section 205ZCA, 205ZG or 205ZH is taken to be finally determined when —
 - (a) the application is withdrawn or dismissed; or
 - (b) an order (other than an interim order) is made as a result of the application.
- (10) For the purposes of this section, an application for a declaration under section 205ZA is taken to be finally determined when —
 - (a) the application is withdrawn or dismissed; or
 - (b) a declaration is made as a result of the application.

205ZHH. Notifying non-bankrupt de facto partner about application under Bankruptcy Act section 139A — FLA s. 79J

- (1) Subsection (2) applies in relation to a person who —
 - (a) is the bankruptcy trustee of a bankrupt de facto partner; and
 - (b) applies under the Bankruptcy Act section 139A for an order under Part VI Division 4A of that Act in relation to an entity (other than the other de facto partner).
- (2) The rules may make provision for a person referred to in subsection (1) who is aware that either de facto partner is a party to proceedings under this Act, to notify the other de facto partner of the making of the application.

21. Section 205ZI amended

After section 205ZI(3) insert:

- (4) If a bankruptcy trustee is a party to a proceeding before the court, the court may make an order under subsection (1)(e) directed to the bankrupt.
- (5) If the trustee of a personal insolvency agreement is a party to a proceeding before the court, the court may make an order under subsection (1)(e) directed to the debtor subject to the personal insolvency agreement.
- (6) Subsections (4) and (5) do not limit subsection (1)(e).

22. Section 205ZL amended

- (1) In section 205ZL(1) delete “In proceedings with respect to the maintenance of a de facto partner, if there is in force an order with respect to the maintenance of that person by the de facto partner of that person” and insert:

If there is in force an order, whenever made, with respect to the maintenance of a de facto partner

- (2) After section 205ZL(1) insert:

- (1A) A court’s jurisdiction under subsection (1) may be exercised —

- (a) in any case — in proceedings with respect to the maintenance of a de facto partner; or
- (b) if there is a bankrupt de facto partner — on the application of the bankruptcy trustee; or
- (c) if a de facto partner is a debtor subject to a personal insolvency agreement — on the application of the trustee of the agreement.

- (3) In section 205ZL(5) delete “partner to — ” and insert:

partner, or by the bankruptcy trustee of a de facto partner, to —

23. Sections 205ZPA and 205ZPB inserted

After section 205ZP insert:

205ZPA. Financial agreement may include agreement that deals with superannuation

- (1) A financial agreement may include an agreement that deals with superannuation interests (as defined in the Family Law Act section 90YD) of either or both of the parties to the financial agreement as if those interests were property.
- (2) For the purposes of subsection (1), it does not matter whether or not the superannuation interests are in existence at the time the agreement is made.

Note for this section:

The Family Law Act section 90YK(3) provides that the part of the financial agreement that deals with superannuation interests has effect only in accordance with the Family Law Act Part VIII C. In particular, it cannot be enforced under this Act.

205ZPB. Need for separation declaration for certain provisions of financial agreement or former financial agreement to take effect — FLA s. 90DA

- (1) A financial agreement or former financial agreement that is binding on the parties to the agreement, to the extent to which it deals with how, in the event of the breakdown of the de facto relationship, all or any of the property or financial resources of either or both of the parties at the time when the agreement is made, or at a later time and during the de facto relationship, is to be dealt with, is of no force or effect until a separation declaration is made.
- (2) Subsection (1) ceases to apply if either or both of the parties die.

- (3) A separation declaration is a written declaration that complies with subsections (4) and (5), and may be included in the financial agreement to which it relates.
- (4) The declaration must be signed by at least 1 of the parties to the financial agreement or former financial agreement.
- (5) The declaration must state that —
 - (a) the parties lived in a de facto relationship; and
 - (b) the parties have separated and are living separately and apart at the declaration time; and
 - (c) in the opinion of the party (or parties) making the declaration, there is no reasonable likelihood of cohabitation being resumed.
- (6) For the purposes of subsection (5)(b), the parties to the de facto relationship can have separated and be living separately and apart even if —
 - (a) their cohabitation was brought to an end by the action or conduct of 1 only of them; or
 - (b) they have continued to reside in the same residence; or
 - (c) either of them has rendered some household services to the other.
- (7) In subsection (5)(b) —
declaration time means the time when the declaration was signed by a party to the financial agreement or former financial agreement.

24. Section 205ZV amended

(1) In section 205ZV(1):

(a) after “the financial agreement,” insert:

termination agreement or former financial agreement,

(b) in paragraph (e) delete “unconscionable.” and insert:

unconscionable; or

(c) after paragraph (e) insert:

(f) a payment flag is operating under the Family Law Act Part VIIIIC on a superannuation interest (as defined in section 90YD of that Act) 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.

(2) In section 205ZV(3) after “financial agreement” (each occurrence) insert:

or former financial agreement

(3) In section 205ZV(6) in the definition of *creditor* paragraph (b) delete “financial agreement;” and insert:

agreement;

(4) In section 205ZV(6) in the definition of *interested person*:

(a) delete “a financial agreement” and insert:

a financial agreement, termination agreement or former financial agreement

(b) in paragraph (a) delete “financial agreement; or” and insert:

agreement; or

25. Section 205ZZ amended

In section 205ZZ(1)(a) delete “either party” and insert:

a party

26. Section 210 amended

In section 210 delete “Act” and insert:

Act, the *Federal Circuit and Family Court of Australia Act 2021* (Commonwealth) and the Bankruptcy Act

27. Section 211 amended

After section 211(5) insert:

(6) If, in dismissing an appeal under subsection (2), the Family Court of Western Australia is of the opinion that the appeal does not raise any question of general

principle, it may give reasons for its decision in short form.

28. Section 211B amended

Delete section 211B(1) and insert:

- (1) Subsection (1A) applies if —
 - (a) an appeal has been instituted in a court under this Part; and
 - (b) it appears to the court that the appeal has no reasonable prospect of success.
- (1A) The court may, at any time, order that the proceedings on the appeal be dismissed.

29. Section 222 amended

(1) After section 222(1) insert:

- (1A) If a de facto partner is a bankrupt and the bankruptcy trustee is a party to proceedings under this Act, the court hearing the proceedings may set aside or restrain the making of an instrument or disposition —
 - (a) which is made or proposed to be made by or on behalf of, or by direction or in the interest of, the bankrupt; and
 - (b) which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.

- (1B) If a de facto partner is a debtor subject to a personal insolvency agreement and the trustee of the agreement is a party to proceedings under this Act, the court hearing the proceedings may set aside or restrain the making of an instrument or disposition —
- (a) which is made or proposed to be made by or on behalf of, or by direction or in the interest of, the debtor; and
 - (b) 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) In section 222(2):
- (a) delete “(1)” and insert:

(1), (1A) or (1B)
 - (b) delete “such instrument or disposition” and insert:

instrument or disposition referred to in subsection (1), (1A) or (1B)
- (3) In section 222(3) delete “(1)” and insert:
- (1), (1A) or (1B)
- (4) After section 222(4) insert:
- (4AA) An application may be made to a court for an order under this section by —
- (a) a party to the proceedings; or

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- (b) a creditor of a party to the proceedings if the creditor may not be able to recover their debt if the instrument or disposition were made; or
 - (c) any other person whose interests would be affected by the making of the instrument or disposition.
- (5) In section 222(4a) delete “(1) has under this section, such a court” and insert:

(1), (1A) or (1B) has under this section, the court

30. Section 235A amended

After section 235A(3) insert:

- (4) If a de facto partner is a bankrupt, a court may, on the application of the other de facto partner, by interlocutory order, grant an injunction under this section restraining the bankruptcy trustee from declaring and distributing dividends amongst the bankrupt’s creditors.
- (5) If a de facto partner is a debtor subject to a personal insolvency agreement, a court may, on the application of the other de facto partner, by interlocutory order, grant an injunction under this section restraining the trustee of the agreement from disposing of (whether by sale, gift or otherwise) property subject to the agreement.
- (6) Subsections (4) and (5) do not limit the rest of this section.

31. Section 247 amended

After section 247(2) insert:

- (3) Schedule 2 Division 3 has effect in relation to the amendments made by the *Family Court Amendment Act 2022*.

32. Schedule 2 Division 3 inserted

After Schedule 2 Division 2 insert:

Division 3 — Provisions for *Family Court Amendment Act 2022*

13. Application of amendments

- (1) In this clause —
commencement day means the day on which the *Family Court Amendment Act 2022* Part 2 comes into operation.
- (2) Subject to subclause (3), the amendments to this Act made by the *Family Court Amendment Act 2022* sections 4, 5, 7, 9, 14, 15, 16, 17, 18, 20, 21, 22, 23, 29 and 30, to the extent to which they relate to bankruptcies or personal insolvency agreements, apply in relation to —
 - (a) bankruptcies for which the date of the bankruptcy is on or after the commencement day; and
 - (b) personal insolvency agreements, whether executed before, on or after the commencement day.
- (3) The following provisions, as inserted by the *Family Court Amendment Act 2022*, apply to proceedings instituted on or after the commencement day, whether the date of the bankruptcy is before, on or after the commencement day —
 - (a) section 205ZCA(2), (3), (4) and (5);

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- (b) section 205ZCA(10), to the extent to which it relates to section 205ZCA(2);
 - (c) the definitions in section 5(1), to the extent to which they relate to section 205ZCA(2), (3), (4) and (5);
 - (d) section 205ZG(12), (13), (14) and (15);
 - (e) section 205ZG(20), to the extent to which it relates to section 205ZG(12);
 - (f) the definitions in section 5(1), to the extent to which they relate to section 205ZG(12), (13), (14) and (15).
- (4) Section 205ZA(3), as in force immediately before the commencement day, continues to apply on and after that day to a declaration or order made under section 205ZA before that day.
 - (5) The amendment to section 205ZB made by the *Family Court Amendment Act 2022* section 13 applies in relation to applications made on or after the commencement day.
 - (6) Section 205ZPA applies in relation to a financial agreement made on or after the commencement day.
 - (7) Section 205ZPB applies in relation to a financial agreement or former financial agreement made between parties whose de facto relationship breaks down on or after the commencement day.
 - (8) Section 211(6) applies in relation to appeals whether instituted before, on or after the commencement day.
 - (9) The amendment to section 211B made by the *Family Court Amendment Act 2022* section 28 applies in relation to appeals whether instituted before, on or after the commencement day.

**Part 3 — *Family Legislation Amendment Act 2006*
amended**

33. Act amended

This Part amends the *Family Legislation Amendment Act 2006*.

34. Part 4 deleted

Delete Part 4.

Part 4 — *Duties Act 2008* amended

Division 1 — Act amended

35. Act amended

This Part amends the *Duties Act 2008*.

Division 2 — Amendments commencing on day after Royal Assent

36. Section 128 amended

- (1) In section 128(1) delete the definition of *superannuation interest*.
- (2) In section 128(1) in the definition of *flag lifting agreement* delete “90MN;” and insert:

90XN;

- (3) In section 128(1) in the definition of *matrimonial property* delete “interest;” and insert:

interest as defined in the Family Law Act section 90XD;

- (4) In section 128(1) in the definition of *superannuation agreement* delete “90MH;” and insert:

90XH;

- (5) In section 128(1) in the definition of *superannuation fund* delete “121;” and insert:

121.

Division 3 — Amendments commencing on proclamation

37. Section 128 amended

- (1) In section 128(1) insert in alphabetical order:

de facto flag lifting agreement means a flag lifting agreement as defined in the Family Law Act section 90YS;

de facto splitting agreement means —

- (a) a de facto superannuation agreement that has effect under the Family Law Act Part VIIC; or
- (b) a de facto flag lifting agreement that has effect under the Family Law Act Part VIIC;

de facto superannuation agreement means a superannuation agreement as defined in the Family Law Act section 90YK;

- (2) In section 128(1) in the definition of *de facto relationship property* delete “them;” and insert:

them and includes a superannuation interest as defined in the Family Law Act section 90YD;

38. Section 130 amended

In section 130:

- (a) in paragraph (a) delete “205T;” and insert:

205T, or a de facto splitting agreement;
- (b) after paragraph (b)(i) insert:
 - (ia) the Family Law Act Part VIIIIC; or
- (c) in paragraph (b)(ii) delete “the Family Court Act Part 5A.” and insert:

a provision referred to in subparagraph (i) or (ia).

39. Section 131 amended

In section 131(2)(d):

- (a) in subparagraph (ii) delete “children.” and insert:

children; or
- (b) after subparagraph (ii) insert:
 - (iii) a trustee of a superannuation fund.

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