



Western Australia

Family Court Amendment (Commonwealth Reforms) Act 2024

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Western Australia

Family Court Amendment (Commonwealth Reforms) Act 2024

No. 49 of 2024

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

[Assented to 6 December 2024]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Family Court Amendment (Commonwealth Reforms) Act 2024*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation.

Part 2 — *Family Court Act 1997* amended

3. Act amended

This Part amends the *Family Court Act 1997*.

4. Section 4 amended

- (1) In section 4 delete “Without limiting section 32(2) of the *Interpretation Act 1984*, a” and insert:

(1) A

- (2) At the end of section 4 insert:

(2) A reference to “FCFCAA” followed by a section designation in the heading to a section of this Act is a reference to the section of the *Federal Circuit and Family Court of Australia Act 2021* (Commonwealth) with which the section in this Act is comparable.

(3) Nothing in this section limits the *Interpretation Act 1984* section 32(2).

Note: The heading to amended section 4 is to read:

References in section headings and definitions to comparable provisions of Commonwealth Acts

5. Section 5 amended

- (1) In section 5(1) delete the following definitions and any reference immediately before each definition to “FLA” followed by a section designation:

community service order

contravened an order

Family Court of Australia

order under this Act affecting children
primary order
proceedings
reasonable excuse for contravening

(2) In section 5(1) insert in alphabetical order:

case guardian —

- (a) means a person appointed by a court under the rules to manage and conduct a case for a child or a person with a disability; and
- (b) includes a next friend, guardian ad litem, tutor or litigation guardian;

(FLA s. 4(1))

child-related order — see section 205G(2);

(FLA s. 4(1))

communicate — see section 236A(1);

(FLA s. 4(1))

contravene, in relation to a child-related order — see section 205C;

(FLA s. 4(1))

conveyance includes a vehicle, a vessel and an aircraft;

(FLA s. 4(1))

designated family report — see section 65AB;

(FLA s. 4(1))

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

(FLA s. 4(1))

family law practice and procedure provisions has the meaning given by section 211C(4);

(FLA s. 4(1))

family report writer — see section 65AA;

(FLA s. 4(1))

Federal Circuit and Family Court of Australia means the Federal Circuit and Family Court of Australia (Division 1);

final parenting order includes a parenting order that is an interlocutory order if the parenting order is not expressed to be an order until further order;

(FLA s. 4(1))

information sharing agency has the meaning given by section 162C;

(FLA s. 4(1))

information sharing safeguards has the meaning given by section 162I(1);

(FLA s. 4(1))

proceedings —

- (a) means a proceeding in a court, whether between parties or not, and includes cross-proceedings or an incidental proceeding in the course of or in connection with a proceeding; and
- (b) in Part 11A, includes a part of proceedings;

(FLA s. 4(1))

protected material has the meaning given by section 162F(3);

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(FLA s. 4(1))

public — see section 236A(2);

(FLA s. 4(1))

reasonable excuse, in relation to contravening a child-related order, has a meaning affected by section 205D;

(FLA s. 4(1))

regulator — see section 65AC(2)(b);

- (3) In section 5(1) in the definition of *alleged contravention* delete “Division 6 Subdivision 4,” and insert:

Division 14 Subdivision 2,

- (4) In section 5(1) in the definition of *alleged offender* delete “Division 6 Subdivision 4,” and insert:

Division 14 Subdivision 2,

- (5) In section 5(1) immediately before the definition of *Part 5 Order* delete “(FLA s. 4(1))”.

- (6) In section 5(1) in the definition of *relative*:

- (a) in paragraph (a)(vi) delete “child;” and insert:

child; or

(b) after paragraph (a)(vi) insert:

(vii) for an Aboriginal child or Torres Strait Islander child — a person who, in accordance with the child’s Aboriginal or Torres Strait Islander culture (including but not limited to any kinship systems of that culture), is related to the child;

(c) delete paragraph (b) and insert:

(b) in section 6(e) — has the meaning given by section 7(1); and

(c) in section 6(ea) — has the meaning given by section 7(2);

(7) In section 5(1) in the definition of *step-parent* paragraph (c) after “marriage” insert:

or de facto relationship

6. Section 6 amended

(1) Delete section 6(b) and insert:

(b) section 66C(4)(a); and

(2) Delete section 6(e) and insert:

(e) the first person is or has been a relative of the second person within the meaning of section 7(1); or

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- (ea) except for the purposes of sections 66F, 66HA and 66HB — the first person is or has been a relative of the second person within the meaning of section 7(2); or

7. Section 7 amended

- (1) In section 7:
 - (a) delete “For” and insert:
 - (1) For
 - (b) delete “section 6,” and insert:

section 6(e),
- (2) At the end of section 7 insert:
 - (2) For the purposes of section 6(ea), if a person is related to an Aboriginal or Torres Strait Islander child in accordance with the child’s Aboriginal or Torres Strait Islander culture (including but not limited to any kinship systems of that culture), the person is a relative of the child.

Note: The heading to amended section 7 is to read:

Meaning of *relative* — FLA s. 4(1AC) and (1AD)

8. Section 8 amended

In section 8 after “4,” insert:

4A, 4AA, 4B, 4C,

9. Section 24 amended

In section 24:

- (a) delete “Family Court of Australia” (1st occurrence) and insert:

Federal Circuit and Family Court of Australia

- (b) in paragraph (a) delete “Family Court of Australia,” and insert:

Federal Circuit and Family Court of Australia,

- (c) in paragraph (a) delete “Family Court of Australia; and” and insert:

Federal Circuit and Family Court of Australia; and

- (d) in paragraph (c) delete “Family Court of Australia,” and insert:

Federal Circuit and Family Court of Australia,

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- (e) in paragraph (c) delete “Family Court of Australia; and” and insert:

Federal Circuit and Family Court of Australia; and

- (f) in paragraph (d) delete “Family Court of Australia,” and insert:

Federal Circuit and Family Court of Australia,

10. Section 33 amended

- (1) Delete section 33(3) and insert:

- (3) The following powers of the Court cannot be delegated to a registrar —

- (a) the power to make a divorce order in proceedings that are defended;
- (b) the power to make a decree of nullity of marriage;
- (c) the power to make a declaration as to the validity of —
 - (i) a marriage; or
 - (ii) a divorce; or
 - (iii) the annulment of a marriage;
- (d) the power to make an excluded child order as defined in subsection (4A);
- (e) the power to make an order setting aside a registered award under section 65Q or 65R.

- (2) In section 33(4A) in the definition of *excluded child order* before paragraph (c) insert:

(ba) an order made under section 205H; or

Note: The heading to amended section 33 is to read:

Delegation of powers to registrars — FCFCAA s. 98

11. Section 33B inserted

At the end of Part 2 Division 3 insert:

33B. Protection of registrars

- (1) In conducting a conference relating to a matter relevant to a proceeding, a registrar of the Court has the same protection and immunity as a judge has in performing the functions of a judge.
- (2) This section does not limit any other protection or immunity such a registrar has (in relation to such a conference or otherwise).

12. Section 37 amended

In section 37(1)(a) delete “a man and a woman” and insert:

2 people

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13. Section 43 amended

(1) Delete section 43(1) and insert:

(1) This section applies if —

- (a) proceedings for a parenting order (other than a child maintenance order) or an order relating to the welfare of a child are instituted in or transferred to the Magistrates Court (the *court*); and
- (b) the court is not constituted by a family law magistrate; and
- (c) the respondent, in answer to the application by which the proceedings were instituted, seeks an order different from that sought in the application.

(2) After section 43(3) insert:

(3A) Before transferring the proceedings, the court may make such orders (including an order under section 65K(1)) as it considers necessary pending the disposal of the proceedings by the Court.

(3) Delete section 43(4a) and (4b).

(4) In section 43(7) and (8) delete “Magistrates Court” and insert:

court

- (5) Delete section 43(9).

Note: The heading to amended section 43 is to read:

Transfer of proceedings from Magistrates Court in parenting cases

14. Section 43A amended

- (1) In section 43A(1):
- (a) in paragraph (a) delete “other” and insert:

higher
 - (b) in paragraph (a) after “instituted in” insert:

or transferred to
 - (c) in paragraph (c) delete “are” and insert:

were
- (2) In section 43A(4) after “instituted in” insert:

or transferred to
- (3) In section 43A(7):
- (a) delete “a court” and insert:

the Court
 - (b) delete “that court shall” and insert:

the Court must

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(c) delete “that court.” and insert:

the Court.

(4) After section 43A(8) insert:

(9) Subsection (8) does not affect the duty of the court to comply with this section.

Note: The heading to amended section 43A is to read:

Transfer of proceedings from Magistrates Court in cases in relation to property — FLA s. 46

15. Section 43B inserted

After section 43A insert:

**43B. Transfer of proceedings to the Court —
FLA s. 46(3A)**

If proceedings under this Act are pending in the Magistrates Court, and the Magistrates Court is not constituted by a family law magistrate, the Court may, on the application of a party or of its own motion, order that the proceedings be removed to the Court.

16. Section 47 amended

In section 47 in the definition of *family counselling*:

(a) in paragraph (b)(ii) delete “children.” and insert:

children;

(b) after paragraph (b) insert:

or

(c) one or more persons who may apply for a parenting order under section 88 to deal with issues relating to the care of children.

17. Section 51 amended

In section 51 in the definition of *family dispute resolution* delete paragraph (a) and insert:

(a) in which a family dispute resolution practitioner —

(i) helps people affected, or likely to be affected, by the breakdown of a relationship covered by this Act to resolve some or all of their disputes with each other; or

(ii) helps persons who may apply for a parenting order under section 88 to resolve some or all of their disputes with each other relating to the care of children;

and

18. Part 4 Division 4 inserted

At the end of Part 4 insert:

Division 4 — Post-separation parenting programs

59A. Admissibility of communications in post-separation parenting programs — FLA s. 10PA

- (1) Evidence of anything said, or of any admission made, by a person attending a post-separation parenting program is not admissible —
 - (a) in any court (whether of a kind referred to in section 8(a) or (b) or otherwise); or
 - (b) in any proceedings before a person authorised by a law of the Commonwealth, of a State or of a Territory, or by the consent of the parties, to hear evidence.
- (2) Subsection (1) does not apply to an admission or disclosure referred to in subsection (3) unless, in the opinion of the court or person authorised to hear evidence referred to in subsection (1), there is sufficient evidence of the admission or disclosure available to the court from other sources.
- (3) For the purposes of subsection (2), the admissions and disclosures are the following —
 - (a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse;
 - (b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse.

19. Section 62 amended

Delete section 62(3) and insert:

- (3) Despite subsection (2), a thing said or admission made is admissible even if the person who said the thing or made the admission had not been informed of the effect of subsection (1), if —
 - (a) it is an admission by an adult that indicates that a child who has not attained the age of 18 years has been abused or is at risk of abuse; or
 - (b) it is a disclosure by a child who has not attained the age of 18 years that indicates that a child who has not attained the age of 18 years has been abused or is at risk of abuse.
- (4) Subsection (3) does not apply if, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

20. Section 63 amended

- (1) In section 63 delete “A family consultant has, in performing his or her” and insert:

- (1) A family consultant has, in performing their

- (2) At the end of section 63 insert:

- (2) However, if a family consultant is also a family report writer, that protection and immunity —
 - (a) does not relieve the family consultant of their obligations under regulations made for the purposes of section 65AC; and

- (b) does not extend to action taken to enforce such regulations.

21. Part 4AA inserted

After section 65A insert:

Part 4AA — Family report writers

65AA. Family report writers — FLA s. 11H

Any individual who prepares a designated family report is a *family report writer*.

65AB. Designated family reports — FLA s. 11J

- (1) A report that relates to a child is a *designated family report* if —
 - (a) the report is prepared following a family assessment (which usually includes the report's preparer meeting with the child and others significant to the child's care, welfare and development and, if appropriate, advising of the child's views); and
 - (b) the report sets out the expert views and advice of the report's preparer on parenting arrangements for the purposes of parenting orders being made by a court in relation to the child; and
 - (c) the report is both —
 - (i) covered by subsection (2); and
 - (ii) not excluded by regulations made for the purposes of this paragraph.

- (2) This subsection covers the following reports —
- (a) a report prepared for the court by a family consultant in relation to an appointment (or a series of appointments) a party to proceedings has been directed to attend, or to arrange for a child to attend, with the family consultant under section 65;
 - (b) a report prepared by a family consultant at the direction of the court under section 73(2);
 - (c) a report about a child prepared for the use of an independent children’s lawyer as mentioned in section 166(2);
 - (d) any other report prepared for parties to proceedings before a court, or for a court for the purposes of proceedings before the court.

**65AC. Regulations prescribing standards and requirements for family report writers —
FLA s. 11K**

- (1) The regulations may make provision for, and in relation to —
- (a) standards and requirements that family report writers, or a class or classes of family report writers, must comply with in connection with the role of preparing designated family reports; and
 - (b) consequences of non-compliance with prescribed standards and requirements.
- (2) Without limiting subsection (1)(a), regulations made for the purposes of that paragraph may deal with any or all of the following matters —
- (a) recognition, monitoring and enforcement of compliance with prescribed standards and requirements;

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- (b) the person or persons responsible for that recognition, monitoring and enforcement (each such person is a *regulator*);
- (c) duties of family report writers, and persons intending to become family report writers, in relation to establishing and maintaining recognition of their compliance, including duties in relation to providing information and documents to a regulator;
- (d) circumstances in which a regulator may collect, use and share information and documents for the purposes of meeting the regulator's responsibilities;
- (e) review of decisions that affect recognition of a family report writer's compliance;
- (f) processes for dealing with persons who make false or misleading representations about a family report writer's compliance;
- (g) processes for handling complaints involving family report writers;
- (h) training for family report writers;
- (i) the charging of fees, to family report writers, for services provided to them in connection with recognition, and maintenance of recognition, of their compliance;
- (j) publication of the names of family report writers who are recognised as complying with prescribed standards and requirements;
- (k) publication of information about the named family report writers for the purposes of informing the court, parties to proceedings and the public about any or all of the following —
 - (i) their qualifications, training and experience;

- (ii) their availability;
 - (iii) the fees they charge;
 - (iv) their compliance status, including in relation to particular standards or requirements;
 - (v) any relevant memberships of professional associations, registration or employment;
 - (vi) any other matters relevant to their role of preparing designated family reports;
- (1) standards and requirements in relation to the content of designated family reports.
- (3) Regulations dealing with the matter mentioned in subsection (2)(k) must not require or allow the publication of personal information (as defined in the *Privacy Act 1988* (Commonwealth) section 6(1)) about any child or other individual to whom a report relates.
- (4) Without limiting subsection (1)(b), regulations made for the purposes of that paragraph may do any or all of the following —
- (a) prescribe offences, the penalties for which do not exceed \$9 390;
 - (b) provide for suspension or cancellation of recognition of compliance;
 - (c) provide that, if a family report writer is not recognised, or if recognition of a family report writer's compliance is suspended or cancelled, a court must not have regard to designated family reports prepared by the family report writer;
 - (d) prohibit the preparation of designated family reports by family report writers who are not recognised.

65AD. Disclosure by court to regulator — FLA s. 11L

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

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

65AE. Immunity of regulator — FLA s. 11M

A regulator is not liable in civil or criminal proceedings for or in relation to anything done or omitted to be done, in good faith, in the performance or exercise, or purported performance or exercise, of the regulator's functions or powers under regulations made for the purposes of section 65AC.

22. Section 65G amended

In section 65G(1):

- (a) in paragraph (b) delete “65D.” and insert:

65D; and
- (b) after paragraph (b) insert:
- (c) section 65E.

23. Part 5 Division 1 Subdivision 1 heading amended

In the heading to Part 5 Division 1 Subdivision 1 delete “**and principles**”.

24. Section 66 replaced

Delete section 66 and insert:

66. Objects of Part — FLA s. 60B

The objects of this Part are —

- (a) to ensure that the best interests of children are met, including by ensuring their safety; and
- (b) to give effect to the Convention on the Rights of the Child done at New York on 20 November 1989 as ratified by Australia at 17 December 1990.

Note for this section:

The text of the Convention is set out in Australian Treaty Series 1991 No. 4 ([1991] ATS 4). In 2024, the text of the Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

25. Section 66C replaced

Delete section 66C and insert:

66C. How a court determines what is in child’s best interests — FLA s. 60CC

- (1) Subject to subsection (4), in determining what is in the child’s best interests, the court must —
 - (a) consider the matters set out in subsection (2);
 - and

- (b) if the child is an Aboriginal or Torres Strait Islander child — also consider the matters set out in subsection (4).
- (2) For the purposes of subsection (1)(a), the court must consider the following matters —
- (a) what arrangements would promote the safety (including safety from being subjected to, or exposed to, family violence, abuse, neglect, or other harm) of —
 - (i) the child; and
 - (ii) each person who has care of the child (whether or not a person has parental responsibility for the child);
 - (b) any views expressed by the child;
 - (c) the developmental, psychological, emotional and cultural needs of the child;
 - (d) the capacity of each person who has or is proposed to have parental responsibility for the child to provide for the child's developmental, psychological, emotional and cultural needs;
 - (e) the benefit to the child of being able to have a relationship with the child's parents, and other people who are significant to the child, where it is safe to do so;
 - (f) anything else that is relevant to the particular circumstances of the child.
- (3) In considering the matters set out in subsection (2)(a), the court must include consideration of —
- (a) any history of family violence, abuse or neglect involving the child or a person caring for the child (whether or not the person had parental responsibility for the child); and

- (b) any family violence order that applies or has applied to the child or a member of the child's family.
- (4) For the purposes of subsection (1)(b), the court must consider the following matters —
- (a) the child's right to enjoy the child's Aboriginal or Torres Strait Islander culture, by having the support, opportunity and encouragement necessary —
 - (i) to connect with, and maintain their connection with, members of their family and with their community, culture, country and language; and
 - (ii) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
 - (iii) to develop a positive appreciation of that culture;
 - (b) the likely impact any proposed parenting order under this Part will have on that right.
- (5) If the court is considering whether to make an order with the consent of all the parties to the proceedings, the court may, but is not required to, have regard to all or any of the matters set out in subsection (2) or (4).

26. Section 66D amended

In section 66D(1) delete "66C(3)(a)" and insert:

66C(2)(b)

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27. Section 66HB amended

- (1) Delete section 66HB(1).
- (2) In section 66HB(2):
 - (a) in paragraph (a)(i) delete “a prescribed government agency; or” and insert:

an information sharing agency; or
 - (b) in paragraph (a)(ii) delete “a prescribed government agency;” and insert:

an information sharing agency;
- (3) In section 66HB(3):
 - (a) in paragraph (a)(i) delete “a prescribed government agency; or” and insert:

an information sharing agency; or
 - (b) in paragraph (a)(ii) delete “a prescribed government agency;” and insert:

an information sharing agency;

Note: The heading to amended section 66HB is to read:

**Informing court of notifications to, and investigations by,
information sharing agencies — FLA s. 60CI**

28. Section 66HC amended

Delete section 66HC(2)(b) and insert:

- (b) encourage the person to act in the child's best interests by applying the considerations set out in section 66C(2) and (4).

29. Section 66H amended

(1) Delete sections 66H(1), (3), (4) and (5).

(2) In section 66H(7):

- (a) in paragraph (d) delete "issues." and insert:

issues;

- (b) after paragraph (d) insert:

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

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30. Section 66I amended

(1) Delete section 66I(1) and insert:

(1) Subsection (1A) applies if —

- (a) an application is made for a Part 5 Order in relation to a child; and
- (b) section 66H(6) does not apply to the application because the court is satisfied that there are reasonable grounds to believe that —
 - (i) there has been abuse of the child by one of the parties to the proceedings; or
 - (ii) there has been family violence by one of the parties to the proceedings.

(1A) A court must not hear the application unless the applicant has indicated in writing that the applicant has received information from a family counsellor or family dispute resolution practitioner about the services and options (including alternatives to court action) available in circumstances of abuse or violence.

(2) In section 66I(2) delete “(1)” and insert:

(1A)

(3) Delete section 66I(3) and insert:

- (3) A failure to comply with subsection (1A) in relation to proceedings on an application for a Part 5 Order does not affect the validity of —
 - (a) those proceedings; or

- (b) any order made in those proceedings.

31. Section 69A inserted

After section 69 insert:

69A. Consultation between parents on major long-term issues — FLA s. 61CA

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

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

32. Section 70 amended

After section 70(2) insert:

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

33. Sections 70A and 70B replaced

Delete sections 70A and 70B and insert:

70A. Effect of parenting order that provides for joint decision-making about major long-term issues — FLA s. 61DAA

- (1) If a parenting order provides for joint decision-making by persons in relation to all or specified major long-term issues in relation to a child, then, except to the extent the order otherwise specifies, the order is taken to require each of the persons —
 - (a) to consult each other person in relation to each such decision; and
 - (b) to make a genuine effort to come to a joint decision.
- (2) To avoid doubt, this section does not require any other person to establish, before acting on a decision about the child communicated by one of those persons, that the decision has been made jointly.

70B. No need to consult on issues that are not major long-term issues — FLA s. 61DAB

- (1) If a child is spending time with a person at a particular time under a parenting order, the order is taken not to require the person to consult a person to whom subsection (2) applies about decisions that are made in relation to the child during that time on issues that are not major long-term issues.

- (2) For the purposes of subsection (1), this subsection applies to a person who —
 - (a) has parental responsibility for the child; or
 - (b) shares parental responsibility for the child with another person.
- (3) Subsection (1) applies subject to any provision to the contrary made by a parenting order.

34. Section 78A amended

- (1) Delete section 78A(2)(a) and (b).
- (2) Delete section 78A(3) and (4).

35. Section 86 amended

Delete section 86(1)(b) and (c).

36. Section 89 amended

- (1) In section 89(1) delete “sections 70A and” and insert:

section
- (2) In section 89(2) delete “section 70A and”.
- (3) Delete section 89(3).

37. Section 89AAA inserted

After section 89 insert:

**89AAA. Reconsideration of final parenting orders —
FLA s. 65DAAA**

- (1) If a final parenting order is in force in relation to a child, a court must not reconsider the final parenting order unless —
 - (a) the court has considered whether there has been a significant change of circumstances since the final parenting order was made; and
 - (b) the court is satisfied that, in all the circumstances (and taking into account whether there has been a significant change of circumstances since the final parenting order was made), it is in the best interests of the child for the final parenting order to be reconsidered.
- (2) For the purposes of determining whether the court is satisfied as mentioned in subsection (1)(b), and without limiting section 66C, the court may have regard to any matters that the court considers relevant, including the following —
 - (a) the reasons for the final parenting order and the material on which it was based;
 - (b) whether there is any material available that was not available to the court that made the final parenting order;
 - (c) the likelihood that, if the final parenting order is reconsidered, the court will make a new parenting order that affects the operation of the final parenting order in a significant way (whether by varying, discharging or suspending

the final parenting order, in whole or in part, or in some other way);

- (d) any potential benefit, or detriment, to the child that might result from reconsidering the final parenting order.
- (3) Despite subsection (1), the court may reconsider a final parenting order with the agreement or consent of all the parties to that order.
- (4) The failure of a court to comply with subsection (1) does not affect the validity of any order made by the court.

38. Section 89AA deleted

Delete section 89AA.

39. Sections 89AC and 89AD deleted

Delete sections 89AC and 89AD.

40. Section 91 amended

Delete section 91(4).

41. Part 5 Division 6 Subdivisions 3 and 4 deleted

Delete Part 5 Division 6 Subdivisions 3 and 4.

42. Section 106 amended

In section 106(2):

- (a) delete “108” and insert:

108, 108A

(b) delete “107” and insert:

107, 107A

43. Sections 107 and 108 replaced

Delete sections 107 and 108 and insert:

107. Obligations if certain parenting orders have been made: taking or sending child outside Australia — FLA s. 65Y

- (1) A person commits a crime if —
- (a) a parenting order to which this Subdivision applies is in force in relation to a child; and
 - (b) the person intentionally or recklessly takes or sends, or attempts to take or send, the child from the State to a place outside Australia; and
 - (c) the child is not taken or sent, or attempted to be taken or sent, from the State to a place outside Australia —
 - (i) with the consent in writing (authenticated as prescribed) of each person in whose favour the parenting order was made; or
 - (ii) in accordance with an order of a court (whether of a kind referred to in section 8(a) or (b) or otherwise) made, under this Part, under the Family Law Act Part VII or under a law of any other State or a Territory, at the time of, or after, the making of the parenting order;
- and

- (d) the person —
 - (i) is or was a party to the proceedings in which the parenting order was made; or
 - (ii) is acting on behalf of, or at the request of, a person who is or was a party to the proceedings in which the parenting order was made.

Penalty for this subsection: imprisonment for 3 years and a fine of \$56 340.

Summary conviction penalty for this subsection: imprisonment for 18 months and a fine of \$28 170.

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

**107A. Obligations if certain parenting orders have been made: retaining child outside Australia —
FLA s. 65YA**

- (1) A person commits a crime if —
 - (a) a parenting order to which this Subdivision applies is in force in relation to a child; and
 - (b) the child has been taken or sent from the State to a place outside Australia, by or on behalf of a party to the proceedings in which the parenting order was made —
 - (i) with the consent in writing (authenticated as prescribed) of each

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person in whose favour the parenting order was made; or

- (ii) in accordance with an order of a court (whether of a kind referred to in section 8(a) or (b) or otherwise) made, under this Part, under the Family Law Act Part VII or under a law of any other State or a Territory, at the time, or after, the parenting order was made;

and

- (c) the person intentionally or recklessly retains, or attempts to retain, the child outside Australia otherwise than in accordance with a consent or order of a kind mentioned in paragraph (b) (whether or not the person took or sent the child as mentioned in that paragraph); and
- (d) the person —
 - (i) was a party to the proceedings in which the parenting order was made; or
 - (ii) is retaining, or attempting to retain, the child on behalf of, or at the request of, such a party.

Penalty for this subsection: imprisonment for 3 years and a fine of \$56 340.

Summary conviction penalty for this subsection: imprisonment for 18 months and a fine of \$28 170.

- (2) Subsection (1) does not apply if —
 - (a) the person (whether or not the person was the party to the proceedings) retains, or attempts to retain, the child as mentioned in subsection (1)(c) because the person believes the conduct is necessary to prevent family violence; and

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

108. Obligations if proceedings for the making of certain parenting orders are pending: taking or sending child outside Australia — FLA s. 65Z

- (1) A person commits a crime if —
 - (a) proceedings (the *Part 5 proceedings*) are pending for the making of a parenting order to which this Subdivision applies in relation to a child; and
 - (b) the person intentionally or recklessly takes or sends, or attempts to take or send, the child from the State to a place outside Australia; and
 - (c) the child is not taken or sent, or attempted to be taken or sent, from the State to a place outside Australia —
 - (i) with the consent in writing (authenticated as prescribed) of each other party to the Part 5 proceedings; or
 - (ii) in accordance with an order of a court (whether of a kind referred to in section 8(a) or (b) or otherwise) made, under this Part, under the Family Law Act Part VII or under a law of any other State or a Territory, after the institution of the Part 5 proceedings;
- and
- (d) the person is —
 - (i) a party to the Part 5 proceedings; or

- (ii) acting on behalf of, or at the request of, a person who is a party to the Part 5 proceedings.

Penalty for this subsection: imprisonment for 3 years and a fine of \$56 340.

Summary conviction penalty for this subsection: imprisonment for 18 months and a fine of \$28 170.

- (2) Subsection (1) does not apply if —
 - (a) the person (whether or not the person is the party to the Part 5 proceedings) takes or sends, or attempts to take or send, the child from the State to a place outside Australia because the person believes the conduct is necessary to prevent family violence; and
 - (b) the conduct is reasonable in the circumstances as the person perceives them.

108A. Obligations if proceedings for the making of certain parenting orders are pending: retaining child outside Australia — FLA s. 65ZAA

- (1) A person commits a crime if —
 - (a) proceedings (the *Part 5 proceedings*) for the making, in relation to a child, of a parenting order to which this Subdivision applies are pending; and
 - (b) the child has been taken or sent from the State to a place outside Australia by or on behalf of a party to the Part 5 proceedings —
 - (i) with the consent in writing (authenticated as prescribed) of each other party to the Part 5 proceedings; or

- (ii) in accordance with an order of a court (whether of a kind referred to in section 8(a) or (b) or otherwise) made, under this Part, under the Family Law Act Part VII or under a law of any other State or a Territory, after the institution of the Part 5 proceedings;

and

- (c) the person intentionally or recklessly retains, or attempts to retain, the child outside Australia otherwise than in accordance with a consent or order of a kind mentioned in paragraph (b) (whether or not the person took or sent the child as mentioned in that paragraph); and
- (d) the person is a party to the Part 5 proceedings, or is retaining, or attempting to retain, the child on behalf of, or at the request of, such a party.

Penalty for this subsection: imprisonment for 3 years and a fine of \$56 340.

Summary conviction penalty for this subsection: imprisonment for 18 months and a fine of \$28 170.

- (2) Subsection (1) does not apply if —
 - (a) the person (whether or not the person is the party to the Part 5 proceedings) retains, or attempts to retain, the child as mentioned in subsection (1)(c) because the person believes the conduct is necessary to prevent family violence; and
 - (b) the conduct is reasonable in the circumstances as the person perceives them.

44. Section 109 amended

- (1) Delete section 109(1) to (3) and insert:
- (1) A person (the *first person*) commits an offence if —
- (a) a parenting order to which this Subdivision applies is in force in relation to a child; and
 - (b) the first person is a captain, owner or charterer of an aircraft or vessel; and
 - (c) another person (the *carer*) in whose favour the parenting order was made has served on the first person a statutory declaration that —
 - (i) relates to the parenting order; and
 - (ii) complies with subsection (4);and
 - (d) the statutory declaration was made by the carer not earlier than 7 days before the date of service; and
 - (e) the first person intentionally or recklessly, and without reasonable excuse, permits the child to leave a place in the State in the aircraft or vessel; and
 - (f) the destination of the aircraft or vessel is outside Australia; and
 - (g) the child does not leave —
 - (i) in the company, or with the consent in writing (authenticated as prescribed), of the carer; or
 - (ii) in accordance with an order of a court (whether of a kind referred to in section 8(a) or (b) or otherwise) made, under this Part, under the Family Law Act Part VII or under a law of any other

State or a Territory, at the time of, or
after, the making of the parenting order.

Penalty for this subsection: a fine of \$18 780.

- (2) In section 109(4) delete “A statutory declaration referred to in subsection (1)(b)” and insert:

The statutory declaration

45. Section 110 amended

- (1) Delete section 110(1) to (3) and insert:

- (1) A person (the *first person*) commits an offence if —
- (a) proceedings (the *Part 5 proceedings*) are pending for the making of a parenting order to which this Subdivision applies in relation to a child; and
 - (b) the first person is a captain, owner or charterer of an aircraft or vessel; and
 - (c) a party (the *carer*) to the Part 5 proceedings has served on the captain, owner or charterer a statutory declaration that —
 - (i) relates to the Part 5 proceedings; and
 - (ii) complies with subsection (4);
- and
- (d) the statutory declaration was made by the carer not earlier than 7 days before the date of service; and
 - (e) the first person intentionally or recklessly, and without reasonable excuse, permits the child to

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- leave a place in the State in the aircraft or vessel; and
- (f) the destination of the aircraft or vessel is outside Australia; and
 - (g) the child does not leave —
 - (i) in the company, or with the consent in writing (authenticated as prescribed), of the carer; or
 - (ii) in accordance with an order of a court (whether of a kind referred to in section 8(a) or (b) or otherwise) made, under this Part, under the Family Law Act Part VII or under a law of any other State or a Territory, after the institution of the Part 5 proceedings.

Penalty for this subsection: a fine of \$18 780.

(2) In section 110(4):

- (a) delete “A statutory declaration referred to in subsection (1)(b)” and insert:

The statutory declaration

- (b) in paragraph (a) delete “relevant proceedings referred to in subsection (1)(a),” and insert:

Part 5 proceedings,

- (c) in paragraph (b) delete “proceedings referred to in subsection (1)(a)” and insert:

Part 5 proceedings

46. Section 111 amended

In section 111(1) delete “109(1)(b) or 110(1)(b)” and insert:

109 or 110

47. Section 133 amended

In section 133 after paragraph (c) insert:

- (ca) orders for information in child-related proceedings (Subdivision 4A); and

48. Section 160 amended

In section 160(1):

- (a) in paragraph (f) delete “interests.” and insert:

interests; or

- (b) after paragraph (f) insert:

- (g) a family report writer who is recognised, in accordance with regulations made for the purposes of section 65AC, as complying with prescribed standards and requirements.

49. Section 162B amended

In section 162B(4) delete “202K to obtain documents or information from prescribed government agencies” and insert:

162D or 162E to obtain particulars, documents or information from information sharing agencies

50. Part 5 Division 8 Subdivision 4A inserted

After Part 5 Division 8 Subdivision 4 insert:

Subdivision 4A — Orders for information in child-related proceedings

**162C. Meaning of *information sharing agency* —
FLA s. 67ZBC**

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

**162D. Order to provide particulars of documents or information relating to certain matters —
FLA s. 67ZBD**

- (1) A court may make an order, in child-related proceedings, requiring an information sharing agency to —
 - (a) inform the court whether the agency has in its possession or control any documents or information relating to a matter mentioned in subsection (2); and

- (b) if it has — give the court particulars of the documents or information.
- (2) The matters are the following —
- (a) abuse, neglect or family violence to which a child to whom the proceedings relate has been, or is suspected to have been, subjected or exposed;
 - (b) family violence to which a party to the proceedings has been exposed, or in which a party to the proceedings has engaged, to the extent it may affect a child to whom the proceedings relate;
 - (c) any risk or potential risk of a child to whom the proceedings relate being subjected or exposed to abuse, neglect or family violence;
 - (d) any risk or potential risk of a party to the proceedings being subjected to, or engaging in, family violence, to the extent any such family violence may affect a child to whom the proceedings relate.
- (3) The order may (but is not required to) include descriptions of the kinds of documents or information that the court considers the agency may have in its possession or control relating to a matter mentioned in subsection (2).
- (4) Any descriptions mentioned in subsection (3) do not limit the scope of the order.
- (5) The following are examples of descriptions of kinds of documents or information that may be included in an order —
- (a) notifications to the agency of suspected abuse of a child to whom the proceedings relate;

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

162E. Order to provide documents or information relating to certain matters — FLA s. 67ZBE

- (1) A court may make an order, in child-related proceedings, requiring an information sharing agency to produce to the court any documents, and give the

court any information, in the agency's possession or control relating to a matter mentioned in subsection (2).

- (2) The matters are the following —
 - (a) abuse, neglect or family violence to which a child to whom the proceedings relate has been, or is suspected to have been, subjected or exposed;
 - (b) family violence to which a party to the proceedings has been exposed, or in which a party to the proceedings has engaged, to the extent it may affect a child to whom the proceedings relate;
 - (c) any risk or potential risk of a child to whom the proceedings relate being subjected or exposed to abuse, neglect or family violence;
 - (d) any risk or potential risk of a party to the proceedings being subjected to, or engaging in, family violence, to the extent any such family violence may affect a child to whom the proceedings relate.
- (3) The order may (but is not required to) include descriptions of the kinds of documents or information that the court considers the agency may have in its possession or control relating to a matter mentioned in subsection (2).
- (4) Any descriptions mentioned in subsection (3) do not limit the scope of the order.
- (5) The following are examples of descriptions of kinds of documents or information that may be included in an order —
 - (a) notifications to the agency of suspected abuse of a child to whom the proceedings relate;

- (b) notifications to the agency of suspected abuse, by a party to the proceedings, of any other child.
- (6) The agency may, on its own initiative —
 - (a) produce to the court other documents, or give the court other information, in the agency's possession or control that, in the agency's opinion, relates to a matter mentioned in subsection (2); or
 - (b) give to the court particulars of those other documents or information.
- (7) If the agency produces a document or gives information or particulars on its own initiative under subsection (6), the agency must consider —
 - (a) redacting the document if the document contains protected material; or
 - (b) not providing the information or particulars to the extent that the information is, or the particulars would reveal, protected material.
- (8) A written law has no effect to the extent that it would, apart from this subsection, hinder or prevent the agency —
 - (a) complying with the order; or
 - (b) providing documents, information or particulars on its own initiative under subsection (6).

162F. Disclosure of protected material — FLA s. 67ZBF

- (1) An order made under section 162D or 162E does not require, but allows, an information sharing agency to —

- (a) give the court particulars of a document or information, to the extent that the particulars would reveal protected material; or
 - (b) produce a document to the court, to the extent that the document contains protected material; or
 - (c) give the court information that is protected material.
- (2) If the agency does not give the court particulars or information, or does not produce a document, on the grounds that the particulars would reveal, or the document contains or the information is, protected material, the agency must inform the court —
- (a) that the agency has not provided, or, that in the agency's opinion it is not required to provide, certain particulars, documents or information; and
 - (b) in the agency's opinion, which of subsections (3)(a) to (c) apply to the particulars, document or information.
- (3) **Protected material** is information —
- (a) that is the subject of legal professional privilege; or
 - (b) that discloses, or would enable a person to ascertain, the identity of a person who communicated information to the agency in confidence; or
 - (c) the disclosure of which would —
 - (i) endanger a person's life or present an unreasonable risk of harm to a person; or

- (ii) prejudice legal proceedings (including proceedings in a tribunal and a coronial inquiry, investigation and inquest); or
- (iii) contravene a court order or law that, disregarding sections 162D(8) and 162E(8), would restrict the publication or other disclosure of information in connection with legal proceedings; or
- (iv) be contrary to the public interest.

**162G. Advice to court about risk of disclosure —
FLA s. 67ZBG**

- (1) This section applies if, under an order made under section 162D or 162E, or under section 162D(6) or 162E(6), an information sharing agency —
 - (a) gives the court particulars of a document or information; or
 - (b) produces documents to the court; or
 - (c) gives the court information.
- (2) The agency must advise the court about any risks the court should consider when disclosing the particulars, documents or information, including any risk to —
 - (a) a party to the proceedings; or
 - (b) a child to whom the proceedings relate; or
 - (c) a person who communicated information to the agency in confidence; or
 - (d) any other person.

162H. Admission of particulars, documents or information into evidence — FLA s. 67ZBH

- (1) The court must admit into evidence any particulars, documents or information provided under an order

made under section 162D or 162E, or under section 162D(6) or 162E(6), on which the court intends to rely.

- (2) Subsection (3) applies if a particular, a document or information is or relates to —
 - (a) a notification to the agency of suspected child abuse or family violence; or
 - (b) an assessment by the agency of investigations into a notification of that kind or the findings or outcomes of those investigations; or
 - (c) a report commissioned by the agency in the course of investigating a notification of that kind.
- (3) Despite subsection (1), the court must not disclose the identity of the person (the *notifier*) who made the notification, or information that could identify the notifier, unless —
 - (a) the notifier consents to the disclosure; or
 - (b) the notifier is a party to the proceedings; or
 - (c) the court is satisfied that the notifier's identity, or information that could identify the notifier, is critically important to the proceedings and that failure to make the disclosure would prejudice the proper administration of justice.
- (4) Before making a disclosure for the reasons set out in subsection (3)(b) or (c), the court must —
 - (a) ensure that the agency is notified about the intended disclosure and given an opportunity to respond; and
 - (b) have regard to any advice given to the court under section 162G.

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

162I. Information sharing agencies and court must have regard to information sharing safeguards — FLA s. 67ZBI

- (1) An information sharing agency must, when providing particulars, documents or information under an order made under section 162D or 162E, or under section 162D(6) or 162E(6), have regard to the matters prescribed by the regulations for the purposes of this subsection (the *information sharing safeguards*).
- (2) The court must have regard to the information sharing safeguards when using particulars, documents or information provided by an information sharing agency under an order made under section 162D or 162E, or under section 162D(6) or 162E(6).
- (3) For the purposes of subsection (2), *use* includes handle, store and access.

162J. When orders may be made — FLA s. 67ZBJ

- (1) A court may make an order under section 162D or 162E at any time after the commencement of child-related proceedings and before making final orders.
- (2) A court may make an order under section 162E in relation to an information sharing agency without first making an order under section 162D in relation to that agency.

162K. Subpoena in respect of certain documents or information — FLA s. 67ZBK

If an order has been made under section 162E in the course of child-related proceedings requiring an information sharing agency to provide documents or information, a party to those proceedings must not, without the court's permission, request the issue of a subpoena requiring that agency to provide documents or information in relation to those proceedings.

51. Section 163 replaced

Delete section 163 and insert:

163. Orders for delivery of travel documents — FLA s. 67ZD

If a court having jurisdiction under this Part considers that there is a possibility or threat that a child may be removed from Australia, it may order that the following documents be ordered up to the court on such conditions as the court considers appropriate —

- (a) any Australian travel document (as defined in the *Australian Passports Act 2005* (Commonwealth) section 6(1)) that has been issued to the child or any other person concerned;
- (b) any passport or other travel document that has been issued to the child or any other person concerned by or on behalf of the government of a foreign country.

s. 52

52. Section 164 amended

Delete section 164(4) and (5).

53. Section 165 amended

After section 165(5) insert:

- (5A) Subject to subsection (5C), the independent children's lawyer must perform the following duties (not necessarily at the same time) —
- (a) meet with the child;
 - (b) provide the child with an opportunity to express any views in relation to the matters to which the proceedings relate.
- (5B) The independent children's lawyer has discretion in relation to the following matters (subject to any order or direction of the court with respect to the matter, for example under section 164(2)(b) or subsection (5E)(b) of this section) —
- (a) when, how often and how meetings with the child take place;
 - (b) when, how often and how the child is provided with an opportunity to express views.
- (5C) The independent children's lawyer is not required to perform a duty if —
- (a) the child is under 5 years of age; or
 - (b) the child does not want to meet with the independent children's lawyer, or express their views (as the case requires); or
 - (c) there are exceptional circumstances that justify not performing the duty.

- (5D) Without limiting subsection (5C)(c), exceptional circumstances for the purposes of that paragraph include that performing the duty would —
 - (a) expose the child to a risk of physical or psychological harm that cannot be safely managed; or
 - (b) have a significant adverse effect on the wellbeing of the child.
- (5E) If the independent children’s lawyer proposes not to perform a duty because of subsection (5C)(c), the court must do the following before making final orders —
 - (a) determine whether it is satisfied that exceptional circumstances exist that justify not performing the duty;
 - (b) if the court determines that those circumstances do not exist — make an order requiring the independent children’s lawyer to meet with the child or provide the child with an opportunity to express their views (as the case requires).

54. Section 173 amended

In section 173(c) delete “and principles”.

55. Section 174 amended

(1) After section 174(2) insert:

- (2A) Subsection (2)(c)(iii) does not apply to a child if the court is satisfied that it is in the child’s best interests not to receive an explanation of the order or injunction.

s. 56

(2B) Subsection (2)(d) does not require inclusion of a matter in an explanation given to a child if the court is satisfied that it is in the child's best interests for the matter not to be included in the explanation.

(2) After section 174(3) insert:

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

56. Section 176 amended

In section 176(5)(b) delete "contact" and insert:

spending time

57. Section 177 amended

In section 177(2)(a) delete "66C(3)(a); and" and insert:

66C(2)(b); and

58. Section 178 amended

In section 178(1):

(a) delete "earlier" and insert:

earliest

- (b) delete paragraph (b) and insert:
 - (b) the time specified in the interim order as the time at which the revival, variation or suspension ceases to have effect; and
 - (c) the time the order, injunction or arrangement is affected by an order (however described) made by a court (whether of a kind referred to in section 8(a) or (b) or otherwise), under section 176 or otherwise, after the revival, variation or suspension.

59. Section 188 amended

In section 188(3)(d) delete “dissolution of the marriage,” and insert:

divorce of the parties,

60. Section 194A inserted

After section 194 insert:

194A. Declarations of parentage — FLA s. 69VA

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 State.

s. 61

61. Part 5 Division 11 Subdivision 6 inserted

At the end of Part 5 Division 11 insert:

Subdivision 6 — Short form reasons for decisions relating to interim parenting orders

202AA. Short form reasons for decisions relating to interim parenting orders — FLA s. 69ZL

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

62. Section 202K deleted

Delete section 202K.

63. Part 5 Division 13 replaced

Delete Part 5 Division 13 and insert:

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

Subdivision 1 — Preliminary

205A. Simplified outline — FLA s. 70NAA

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

- (2) The court may, at any stage of proceedings (and without having to make a finding about the contravention), make any of the following orders —
 - (a) a make-up time parenting order;
 - (b) an order varying or suspending a parenting order;
 - (c) an order requiring the respondent and any other party to the proceedings to attend a post-separation parenting program.
- (3) If the court finds on the balance of probabilities that the respondent contravened the child-related order without having a reasonable excuse, the court may make any of the following orders (having regard to the seriousness of the contravention) —
 - (a) an order requiring the respondent to enter into a bond;
 - (b) an order imposing a fine on the respondent for failing to enter into a bond.
- (4) If the court is satisfied beyond reasonable doubt that the respondent contravened the child-related order without having a reasonable excuse, the court may also make any of the following orders (having regard to the seriousness of the contravention) —
 - (a) an order imposing a fine on the respondent;
 - (b) an order imposing a sentence of imprisonment on the respondent.
- (5) This Division also sets out ancillary matters relating to terms of imprisonment, the enforcement of bonds and other miscellaneous matters.

205B. Objects — FLA s. 70NAB

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

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

205C. Meaning of *contravene* a child-related order — FLA s. 70NAC

- (1) A person *contravenes* a child-related order only if —
 - (a) the person is a person (other than a child) to whom the order applies and —
 - (i) the person intentionally fails to comply with the order; or
 - (ii) the person makes no reasonable attempt to comply with the order;
- or

- (b) the person is not a person to whom the order applies, and the person is not a child, but —
 - (i) the person intentionally prevents compliance with the order by a person to whom the order applies; or
 - (ii) the person aids or abets a contravention of the order by a person to whom the order applies.
- (2) Without limiting subsection (1), a person *contravenes* a child-related order if —
- (a) the order provides for a matter set out in an item of the Table in column 1; and
 - (b) the person intentionally does a thing set out in that item in column 2.

Table

Item	Column 1	Column 2
1.	With whom a child is to live	Either — <ul style="list-style-type: none"> (a) contrary to the order, removes the child from the care of another person; or (b) contrary to the order, refuses or fails to deliver or return the child to another person.
2.	With whom a child is to spend time	Hinders or prevents another person from spending time with the child in accordance with the order.

Item	Column 1	Column 2
3.	With whom a child is to communicate	Hinders or prevents another person from communicating with the child in accordance with the order.
4.	The allocation of parental responsibility for a child to another person	Hinders or prevents the other person from discharging that responsibility in accordance with the order.
5.	The maintenance of a child	Either — (a) contrary to the order, fails to pay maintenance; or (b) prevents another person paying maintenance in accordance with the order.

205D. Meaning of *reasonable excuse* for contravening a child-related order — FLA s. 70NAD

- (1) A person has a *reasonable excuse* for contravening a child-related order if —
 - (a) the person contravened the order because at the time of the contravention the person did not understand the obligations imposed by the order; and
 - (b) a court considers that the person ought to be excused in respect of the contravention.
- (2) If a court decides that a person has a reasonable excuse under subsection (1) for contravening a child-related

order, the court must explain to the person, in language likely to be readily understood by the person —

- (a) the obligations imposed on the person by the order; and
 - (b) the consequences that may follow if the person contravenes the order again.
- (3) A person has a **reasonable excuse** for contravening a child-related order if —
- (a) the person contravened the order because the person reasonably believed that the person's actions constituting the contravention were necessary to protect the health or safety of the person, a child or any other person; and
 - (b) the period of the contravention was not longer than necessary to protect the health or safety of the person, child or other person.
- (4) This section does not limit the circumstances in which a person may have a reasonable excuse for contravening a child-related order.

205E. Burden of proof in relation to reasonable excuse — FLA s. 70NADA

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

205F. Standard of proof — FLA s. 70NAE

The standard of proof to be applied in determining matters in proceedings under this Division (other than section 205K(1)(d)) is proof on the balance of probabilities.

Subdivision 2 — Orders relating to contraventions of child-related orders

205G. Court may make orders in proceedings relating to contravention of child-related orders — FLA s. 70NBA

- (1) This Subdivision sets out orders that a court exercising jurisdiction in proceedings under this Act may make if —
 - (a) an issue arises in the proceedings about whether a person (the *respondent*) has contravened a child-related order; and
 - (b) a party to the proceedings makes an application for an order under this Subdivision in relation to the issue.
- (2) Each of the following is a *child-related order* —
 - (a) a parenting order;
 - (b) an injunction granted by a court —
 - (i) under section 235; or
 - (ii) under section 235A in so far as the injunction is for the protection of a child;
 - (c) a bond entered into —
 - (i) under a parenting order; or
 - (ii) under section 205K(1)(a); or
 - (iii) for the purposes of section 205N(3);
 - (d) an undertaking given to, and accepted by, a court that relates to, or to the making of, an order, injunction or bond referred to in any of paragraphs (a) to (c);

- (e) a subpoena issued under the rules that —
 - (i) relates to, or to the making of, an order, injunction or bond referred to in any of paragraphs (a) to (c); and
 - (ii) is issued to a party to the proceedings for the order, injunction or bond, as the case may be.

205H. Make-up time parenting orders — FLA s. 70NBB

- (1) If a child does not spend time with a person as required by a child-related order as a result of the alleged contravention mentioned in section 205G(1), then, in lieu of that time, the court may make a parenting order (a *make-up time parenting order*) that the child spend time with the person.
- (2) The court may make a make-up time parenting order at any stage of the proceedings.
- (3) To avoid doubt, the amount of time specified in the make-up time parenting order may be different from the amount of time that the child missed with the person as a result of the alleged contravention.

205I. Variation and suspension of child-related orders that are parenting orders — FLA s. 70NBC

- (1) The court may, at any stage of the proceedings, vary a child-related order that is a parenting order.
- (2) Subsection (1) does not limit the circumstances in which a court having jurisdiction under this Act may vary a child-related order that is a parenting order.
- (3) The court may, at any stage of the proceedings, suspend for a specified period of time the operation of, or part of the operation of, a child-related order that is a parenting order.

**205J. Post-separation parenting programs —
FLA 70NBD**

- (1) The court may, at any stage of the proceedings, make an order requiring the respondent and, if appropriate, one or more other parties to the proceedings, to attend a post-separation parenting program or other specified program.
- (2) The executive manager of the court must advise the provider of the program of the making of an order under subsection (1) as soon as reasonably practicable after the order is made.
- (3) The provider of the program must inform the court, and any other party to the proceedings, if —
 - (a) the provider considers that a person ordered to attend the program is unsuitable to attend the program; or
 - (b) a person ordered to attend the program fails to attend the entire program, or any part of it.
- (4) The court may make any order (other than an order under section 205K(1)(d)) that it considers appropriate if a person ordered to attend a program is considered as being unsuitable to attend the program, or fails to attend any part of the program.
- (5) If the court has found that the respondent has contravened the child-related order without having a reasonable excuse, then the court must take into account the seriousness of that contravention when making an order under subsection (4).

205K. Orders where contravention established without reasonable excuse — FLA s. 70NBF

- (1) If the court finds that the respondent has contravened a child-related order without having a reasonable excuse, the court may make any of the following orders —
 - (a) an order requiring the respondent to enter into a bond in accordance with section 205L;
 - (b) if an order is made under paragraph (a), and the respondent fails, without having a reasonable excuse, to enter into the bond — an order imposing a fine not exceeding \$3 130 on the respondent;
 - (c) where the contravention resulted in a child not spending time with, or living with, a person (the *affected person*) for a period — an order requiring the respondent to compensate the affected person for some or all of any expenses the affected person reasonably incurred as a result of the contravention;
 - (d) where the court is satisfied beyond reasonable doubt that the respondent contravened the order —
 - (i) an order imposing a fine not exceeding \$18 780;
 - (ii) an order imposing a term of imprisonment.
- (2) In making an order mentioned in subsection (1), the court must have regard to —
 - (a) the likely effects of making the order on any child, or any other person; and
 - (b) the seriousness of the contravention.

- (3) Without limiting the matters the court may take into account, the following matters must be taken into account by the court when having regard to the seriousness of the contravention —
 - (a) whether a court has previously found that the respondent has contravened a child-related order without having a reasonable excuse;
 - (b) whether the respondent behaved in a way that showed a serious disregard of the respondent's obligations under the child-related order mentioned in subsection (1);
 - (c) the behaviour of any person with whom the child is to live or spend time under the child-related order mentioned in subsection (1).
- (4) The court may sentence the respondent to imprisonment under subsection (1)(d)(ii) only if the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention in any other way under subsection (1).

Subdivision 3 — Further provisions relating to bonds and imprisonment

205L. Matters relating to bonds — FLA s. 70NCA

- (1) This section sets out requirements relating to bonds that the court may require the respondent to enter into under section 205K(1)(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 the respondent by a bond include (without limitation) conditions that require the respondent —
- (a) to attend a post-separation parenting program; or
 - (b) to attend an appointment (or a series of appointments) with a family consultant; or
 - (c) to attend family counselling; or
 - (d) to attend family dispute resolution; or
 - (e) to be of good behaviour.
- (5) Before requiring the respondent to enter into a bond, the court must explain to the respondent, in language likely to be readily understood by the respondent —
- (a) the purpose and effect of the proposed requirement; and
 - (b) the consequences that may follow if the respondent —
 - (i) fails to enter into the bond; or
 - (ii) having entered into the bond — fails to act in accordance with the bond.

205M. Procedure for enforcing bonds — FLA s. 70NCB

- (1) This section applies if —
- (a) the court finds that the respondent has contravened a child-related order without having a reasonable excuse; and
 - (b) the respondent has entered into a bond in accordance with an order made under section 205K(1)(a); and
 - (c) the respondent fails, without having a reasonable excuse, to comply with the bond.

- (2) The court may —
 - (a) without prejudice to the continuance of the bond, impose a fine not exceeding \$3 130 on the respondent; or
 - (b) revoke the bond and deal with the respondent in any manner in which the respondent could have been dealt with for the contravention of the child-related order if —
 - (i) the bond had not been entered into; and
 - (ii) the respondent was before the court under this Division in respect of the contravention of the child-related order.
- (3) Without limiting the matters the court may take into account, the court must take into account the following matters when acting under subsection (2) —
 - (a) the fact that the bond was entered into;
 - (b) anything done pursuant to the bond;
 - (c) any fine imposed, and any other order made, for or in respect of the contravention of the child-related order.

205N. Matters relating to imprisonment — FLA s. 70NCC

- (1) This section applies if a sentence of imprisonment is imposed on the respondent under section 205K(1)(d)(ii).
- (2) The sentence of imprisonment must be expressed to be —
 - (a) for a specified period of no more than 12 months; or

- (b) for a period ending at the earlier of —
 - (i) the time when the respondent complies with the child-related order concerned; or
 - (ii) the time when the respondent has been imprisoned under the sentence for 12 months, or such lesser period as is specified by the court ordering the sentence.
- (3) When sentencing the respondent to imprisonment, the court may direct that, after serving a specified part of the term of imprisonment, the respondent be released upon the respondent entering into a bond (with or without surety or security) that the respondent will be of good behaviour for a specified period of up to 2 years.
- (4) The court that sentences the respondent to imprisonment must —
 - (a) state the reasons why it is satisfied as mentioned in section 205K(4); and
 - (b) cause those reasons to be entered in the records of the court.
- (5) The failure of the court to comply with subsection (4) does not invalidate a sentence.

**205O. Powers of court in relation to imprisoned person —
FLA s. 70NCD**

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

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

205P. Rules relating to child maintenance orders and child support — FLA s. 70NCE

- (1) The court must not make an order imposing a sentence of imprisonment on the respondent under section 205K(1)(d)(ii), in respect of a contravention of a child maintenance order made under this Act, unless the court is satisfied that the contravention was intentional or fraudulent.
- (2) To avoid doubt, the serving by the respondent of a period of imprisonment imposed under section 205K(1)(d)(ii) for failure to make a payment under a child maintenance order does not affect the respondent's liability to make the payment.
- (3) The court must not make an order imposing a sentence of imprisonment on the respondent under section 205K(1)(d)(ii) in respect of —
 - (a) a contravention of an administrative assessment of child support made under the *Child Support (Assessment) Act 1989* (Commonwealth); or
 - (b) a breach of a child support agreement made under that Act; or
 - (c) a contravention of an order made by a court (whether of a kind referred to in section 8(a) or (b) or otherwise) under Part 7 Division 4 of that Act for a departure from such an assessment (including such an order that contains matters mentioned in section 141 of that Act).

Subdivision 4 — Miscellaneous

205Q. Court may issue warrant for arrest of alleged offender — FLA s. 70NDA

- (1) The court may issue a warrant authorising a person to whom it is addressed to arrest the respondent if —
 - (a) a child-related order that is a parenting order provides that a child is to live with, spend time with or communicate with a person (the *complainant*); and
 - (b) the court is satisfied that there are reasonable grounds for believing that the respondent has contravened the order on any of the grounds mentioned in any of items 1 to 3 of the Table in section 205C(2); and
 - (c) the issue of the warrant is necessary to ensure that the respondent will attend before the court to be dealt with under this Division for the alleged contravention.
- (2) A warrant stops being in force on the date specified in the warrant (which must be no more than 6 months after the issue of the warrant).

205R. Relationship between Division and prosecutions for offences under other laws — FLA s. 70NDB

- (1) This section applies if —
 - (a) an act or omission by the respondent —
 - (i) constitutes an alleged contravention of a child-related order; and
 - (ii) also constitutes an alleged offence under any law;and

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

Division 14 — Dealing with people who have been arrested

Subdivision 1 — What this Division does

205S. What this Division does — FLA s. 70P

This Division is about dealing with people who have been arrested.

Subdivision 2 — Dealing with people who have been arrested

205SA. Situation to which this Subdivision applies — FLA s. 70PA

This Subdivision applies if a person —

- (a) is arrested under a warrant issued under section 205Q(1); or
- (b) is arrested without warrant under a recovery order.

**205SB. Arrested person to be brought before court —
FLA s. 70PB**

- (1) The arresting person must —
 - (a) ensure that the alleged offender is brought before a court 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.
- (3) This section does not authorise the holding in custody of the alleged offender after the end of the holding period.
- (4) In this section —

holding period, in relation to the arrest of an alleged offender, 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.

205SC. Obligation of court where application before it to deal with contravention — FLA s. 70PC

- (1) This section applies if —
 - (a) the alleged offender is brought before a court under section 205SB; and
 - (b) there is an application before the court for the alleged offender to be dealt with under Division 13 for the alleged contravention.
- (2) The court must, without delay, proceed to hear and determine the application.

205SD. Obligation of court where no application before it, but application before another court, to deal with contravention — FLA s. 70PD

- (1) This section applies if —
 - (a) the alleged offender is brought before a court under section 205SB; and
 - (b) there is no application, or no longer any application, before the court for the alleged offender to be dealt with under Division 13 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 13 for the alleged contravention.

- (2) The court must, without delay —
- (a) order that the alleged offender is to be released from custody on entering into a recognisance (with or without surety or security) that the alleged offender will attend before the other court on a date, at a time and at a place specified by the court; or
 - (b) order the arresting person to arrange for the alleged offender to be brought before the other court on such date and at such time as the court specifies, being a date and time such that the alleged offender is to be brought before the other court as soon as practicable, and in any event not more than 72 hours, after the order is made.
- (3) If a court makes an order under subsection (2)(b) for the alleged offender to be brought before another court —
- (a) subject to paragraph (c), the alleged offender may be kept in custody until brought before the other court; and
 - (b) if the alleged offender is brought before the other court as required by the order, the other court must, without delay, proceed to hear and determine the application mentioned in subsection (1)(c); and
 - (c) if the alleged offender is not brought before the other court as required by the order, the alleged offender must be released without delay.

205SE. Obligation of court where no application before any court to deal with contravention — FLA s. 70PE

- (1) This section applies if —
 - (a) the alleged offender is brought before a court under section 205SB; and
 - (b) there is no application, or no longer any application, before the court for the alleged offender to be dealt with under Division 13 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 13 for the alleged contravention.
- (2) The court must, without delay, order the release of the alleged offender.

205SF. Applications heard as required by section 205SC(2) or 205SD(3)(b) — FLA s. 70PF

- (1) If a court hearing an application as required by section 205SC(2) or 205SD(3)(b) adjourns the hearing, the court must —
 - (a) order the alleged offender to be kept in such custody as the court considers appropriate during the adjournment; or
 - (b) order that the alleged offender is to be released from custody, either on entering into a recognisance (with or without surety or security) that the alleged offender will attend before the court on the resumption of the hearing or otherwise.

- (2) This section does not authorise the holding in custody of the alleged offender during an adjournment of proceedings that —
 - (a) is expressed to be for a period of more than 24 hours; or
 - (b) continues for more than 24 hours.

64. Part 8 Division 1A inserted

At the beginning of Part 8 insert:

Division 1A — Overarching purpose of the family law practice and procedure provisions

211C. Overarching purpose of the family law practice and procedure provisions — FLA s. 95

- (1) The overarching purpose of the family law practice and procedure provisions is to facilitate the just resolution of disputes —
 - (a) in a way that ensures the safety of families and children; and
 - (b) in relation to proceedings under this Act in which the best interests of a child are the paramount consideration — in a way that promotes the best interests of the child; and
 - (c) according to law; and
 - (d) as quickly, inexpensively and efficiently as possible.
- (2) Without limiting subsection (1), the overarching purpose includes the following objectives in relation to proceedings under this Act —
 - (a) the just determination of all such proceedings;

- (b) the efficient use of the judicial and administrative resources available for the purposes of courts exercising jurisdiction in such proceedings;
 - (c) the efficient disposal of the overall caseload of courts exercising jurisdiction in such proceedings;
 - (d) the disposal of all such proceedings in a timely manner;
 - (e) the resolution of disputes at a cost that is proportionate to the importance and complexity of the matters in dispute.
- (3) The family law practice and procedure provisions must be interpreted and applied, and any power conferred or duty imposed by them (including the power to make rules) must be exercised or carried out, in the way that best promotes the overarching purpose.
- (4) The *family law practice and procedure provisions* are the following, so far as they apply in relation to proceedings under this Act —
- (a) the rules;
 - (b) any other provision made by or under this Act, or any other written law, with respect to the practice and procedure of a court (whether of a kind referred to in section 8(a) or (b) or otherwise).

211D. Duty to act consistently with overarching purpose — FLA s. 96

- (1) The parties to proceedings under this Act must conduct the proceedings (including negotiations for settlement of the dispute to which the proceedings relate) in a way that is consistent with the overarching purpose of the family law practice and procedure provisions.

- (2) A party's lawyer must, in the conduct of proceedings under this Act on the party's behalf (including in the conduct of negotiations for settlement of the dispute to which the proceedings relate) —
 - (a) take account of the duty imposed on the party by subsection (1); and
 - (b) assist the party to comply with the duty.
- (3) In proceedings under this Act a court may, for the purpose of enabling a party to comply with the duty imposed by subsection (1), require the party's lawyer to give the party an estimate of —
 - (a) the likely duration of the proceedings or part of the proceedings; and
 - (b) the likely amount of costs that the party will have to pay in connection with the proceedings or part of the proceedings (including the costs that the lawyer will charge to the party).
- (4) In exercising the discretion to award costs in proceedings under this Act, a court must take account of any failure to comply with the duty imposed by subsection (1) or (2).
- (5) Without limiting the exercise of that discretion, a court may order a party's lawyer to bear costs personally.
- (6) If a court orders a lawyer to bear costs personally because of a failure to comply with the duty imposed by subsection (2), the lawyer must not recover the costs from the lawyer's client.

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65. Section 212 amended

In section 212(1) delete “subsections (2) and (5),” and insert:

this Act,

66. Section 214C amended

- (1) In section 214C(1)(c) delete “Family Law Act section 98AB(1)” and insert:

Federal Circuit and Family Court of Australia Act 2021
(Commonwealth) section 72(1)

- (2) In section 214C(2)(b) delete “Family Law Act section 98AB(2)” and insert:

Federal Circuit and Family Court of Australia Act 2021
(Commonwealth) section 72(2)

Note: The heading to amended section 214C is to read:

Swearing or affirming of affidavits

67. Section 219AI amended

In section 219AI delete “*Evidence and Procedure (New Zealand) Act 1994* of the Commonwealth.” and insert:

Trans-Tasman Proceedings Act 2010 (Commonwealth).

68. **Parts 8A and 8B inserted**

After section 219AL insert:

Part 8A — Suppression and non-publication orders

Division 1 — Preliminary

219AM. Terms used — FLA s. 102P

In this Part —

information includes any document;

news publisher means a person engaged in the business of publishing news or a public or community broadcasting service engaged in the publishing of news through a public news medium;

non-publication order means an order that prohibits or restricts the publication of information (but that does not otherwise prohibit or restrict the disclosure of information);

party to proceedings includes the complainant or victim (or alleged victim) in criminal proceedings and any person named in evidence given in proceedings and, in relation to proceedings that have concluded, means a person who was a party to the proceedings before the proceedings concluded;

publish means disseminate or provide access to the public or a section of the public by any means, including by —

- (a) publication in a book, newspaper, magazine or other written publication; or
- (b) broadcast by radio or television; or
- (c) public exhibition; or

- (d) broadcast or publication by means of the internet;

suppression order means an order that prohibits or restricts the disclosure of information (by publication or otherwise).

219AN. Powers of a court not affected — FLA s. 102PA

This Part does not limit or otherwise affect any powers that a court has apart from this Part to regulate its proceedings or to deal with a contempt of the court.

219AO. Other laws not affected — FLA s. 102PB

This Part does not limit or otherwise affect the operation of a provision made by or under any Act (other than this Act) that prohibits or restricts, or authorises a court to prohibit or restrict, the publication or other disclosure of information in connection with proceedings.

219AP. Relationship with Part 11A — FLA s. 102PC

This Part and Part 11A do not limit each other.

Division 2 — Suppression and non-publication orders

219AQ. Safeguarding public interest in open justice — FLA s. 102PD

In deciding whether to make a suppression order or non-publication order, the court concerned must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

219AR. Power to make orders — FLA s. 102PE

- (1) A court exercising jurisdiction in proceedings under this Act may, by making a suppression order or non-publication order on grounds permitted by this Part, prohibit or restrict the publication or other disclosure of —
 - (a) information tending to reveal the identity of or otherwise concerning any party to or witness in the proceedings or any person who is related to or otherwise associated with any party to or witness in the proceedings; or
 - (b) information that relates to the proceedings and is —
 - (i) information that comprises evidence or information about evidence; or
 - (ii) information obtained by the process of discovery; or
 - (iii) information produced under a subpoena; or
 - (iv) information lodged with or filed in the court.
- (2) The court may make such orders as it thinks appropriate to give effect to an order under subsection (1).

219AS. Grounds for making an order — FLA s. 102PF

- (1) The court may make a suppression order or non-publication order on one or more of the following grounds —
 - (a) the order is necessary to prevent prejudice to the proper administration of justice;
 - (b) the order is necessary to prevent prejudice to the interests of the Commonwealth or a State or

Territory in relation to national or international security;

- (c) the order is necessary to protect the safety of any person;
 - (d) the order is necessary to avoid causing undue distress or embarrassment to a party to or witness in criminal proceedings involving an offence of a sexual nature (including an act of indecency).
- (2) A suppression order or non-publication order must specify the ground or grounds on which the order is made.

219AT. Procedure for making an order — FLA s. 102PG

- (1) The court may make a suppression order or non-publication order on its own initiative or on the application of —
 - (a) a party to the proceedings concerned; or
 - (b) any other person considered by the court to have a sufficient interest in the making of the order.
- (2) Each of the following persons is entitled to appear and be heard by the court on an application for a suppression order or non-publication order —
 - (a) the applicant for the order;
 - (b) a party to the proceedings concerned;
 - (c) the Government (or an agency of the Government);
 - (d) the government (or an agency of the government) of the Commonwealth or another State or a Territory;
 - (e) a news publisher;

- (f) any other person who, in the court's opinion, has a sufficient interest in the question of whether a suppression order or non-publication order should be made.
- (3) A suppression order or non-publication order may be made at any time during proceedings or after proceedings have concluded.
- (4) A suppression order or non-publication order may be made subject to such exceptions and conditions as the court thinks fit and specifies in the order.
- (5) A suppression order or non-publication order must specify the information to which the order applies with sufficient particularity to ensure that the court order is limited to achieving the purpose for which the order is made.

219AU. Interim orders — FLA s. 102PH

- (1) If an application is made to the court for a suppression order or non-publication order, the court may, without determining the merits of the application, make the order as an interim order to have effect, subject to revocation by the court, until the application is determined.
- (2) If an order is made as an interim order, the court must determine the application as a matter of urgency.

219AV. Duration of orders — FLA s. 102PI

- (1) A suppression order or non-publication order operates for the period decided by the court and specified in the order.
- (2) In deciding the period for which an order is to operate, the court is to ensure that the order operates for no

longer than is reasonably necessary to achieve the purpose for which it is made.

- (3) The period for which an order operates may be specified by reference to a fixed or ascertainable period or by reference to the occurrence of a specified future event.

219AW. Exception for court officials — FLA s. 102PJ

A suppression order does not prevent a person from disclosing information if the disclosure is not by publication and is in the course of performing functions or duties or exercising powers in a public official capacity —

- (a) in connection with the conduct of proceedings or the recovery or enforcement of any penalty imposed in proceedings; or
- (b) in compliance with any procedure adopted by the court for informing a news publisher of the existence and content of a suppression order or non-publication order made by the court.

219AX. Contravention of order — FLA s. 102PK

- (1) A person commits an offence if —
 - (a) the person does an act or omits to do an act; and
 - (b) the act or omission contravenes an order made by a court under section 219AR.

Penalty for this subsection: imprisonment for 12 months and a fine of \$18 780.

- (2) An act or omission that constitutes an offence under this section may be punished as a contempt of court even though it could be punished as an offence.

- (3) An act or omission that constitutes an offence under this section may be punished as an offence even though it could be punished as a contempt of court.
- (4) If an act or omission constitutes both an offence under this section and a contempt of court, the offender is not liable to be punished twice.
- (5) Part 10 does not apply in relation to a contravention of an order made by a court under section 219AR.

Part 8B — Decrees and orders relating to unmeritorious, harmful, and vexatious proceedings

Division 1 — Preliminary

219AY. Terms used — FLA s. 102Q

- (1) In this Part —
 - appropriate court official* means —
 - (a) in relation to the Family Court of Western Australia — the Principal Registrar of the Court; and
 - (b) in relation to any other court — the principal officer (however described) of the court;
 - Australian court or tribunal* means a court or tribunal of the Commonwealth, a State or a Territory;
 - harmful proceedings order* means an order made under section 219AZB(1);
 - institute*, in relation to proceedings, includes —
 - (a) for civil proceedings — the taking of a step or the making of an application that may be necessary before proceedings can be started against a party; and

- (b) for proceedings before a tribunal — the taking of a step or the making of an application that may be necessary before proceedings can be started before the tribunal; and
- (c) for criminal proceedings — the making of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) for civil or criminal proceedings or proceedings before a tribunal — the taking of a step or the making of an application that may be necessary to start an appeal in relation to the proceedings or to a decision made in the course of the proceedings;

proceedings —

- (a) in relation to a court — has the meaning given by section 5(1); and
- (b) in relation to a tribunal — means a proceeding in the tribunal, whether between parties or not, and includes an incidental proceeding in the course of, or in connection with, a proceeding;

proceedings of a particular type includes —

- (a) proceedings in relation to a particular matter; and
- (b) proceedings against a particular person;

vexatious proceedings includes —

- (a) proceedings that are an abuse of the process of a court or tribunal; and
- (b) proceedings instituted in a court or tribunal to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
- (c) proceedings instituted or pursued in a court or tribunal without reasonable ground; and

- (d) proceedings conducted in a court or tribunal in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose;

vexatious proceedings order means an order made under section 219AZG(2).

- (2) A reference in this Part to a person acting in concert with another person in instituting or conducting proceedings does not include a reference to a person who is so acting as a lawyer or representative of the other person.

219AZ. Interactions between provisions and with other powers of court — FLA s. 102QA

The provisions of this Part do not limit or otherwise affect —

- (a) each other; or
- (b) any other power that a court has to deal with proceedings.

Division 2 — Summary decrees

219AZA. Summary decrees — FLA s. 102QAB

- (1) In proceedings under this Act, the court hearing the proceedings may make a decree for one party (the *first party*) against another in relation to the whole or any part of the proceedings if —
 - (a) the first party is prosecuting the proceedings or that part of the proceedings; and
 - (b) the court is satisfied that the other party has no reasonable prospect of successfully defending the proceedings or that part of the proceedings.

- (2) In proceedings under this Act, the court hearing the proceedings may make a decree for one party (the *first party*) against another in relation to the whole or any part of the proceedings if —
 - (a) the first party is defending the proceedings or that part of the proceedings; and
 - (b) the court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceedings or that part of the proceedings.
- (3) For the purposes of this section, a defence or proceedings or part of proceedings need not be hopeless or bound to fail to have no reasonable prospect of success.
- (4) In proceedings under this Act, the court hearing the proceedings may dismiss all or part of the proceedings at any stage if it is satisfied that the proceedings or the part is frivolous, vexatious or an abuse of process.
- (5) To avoid doubt, proceedings or a part of proceedings are not frivolous, vexatious or an abuse of process merely because an application relating to the proceedings or the part is made and later withdrawn.
- (6) If the court makes a decree, or dismisses all or part of proceedings, under this section, the court may make such order as to costs as the court considers just.
- (7) The court may take action under this section on its own initiative or on application by a party to the proceedings.

Division 3 — Harmful proceedings orders

Subdivision 1 — Making harmful proceedings orders

219AZB. Making harmful proceedings orders — FLA s. 102QAC

- (1) A court exercising jurisdiction in proceedings under this Act may make an order (a *harmful proceedings order*) prohibiting a party (the *first party*) to the proceedings from instituting proceedings under this Act against another party to the proceedings without the leave of the court under section 219AZF, if the court is satisfied that there are reasonable grounds to believe that —
 - (a) the other party would suffer harm if the first party instituted further proceedings against the other party; or
 - (b) in the case of child-related proceedings — the child who is the subject of the proceedings would suffer harm if the first party instituted further proceedings against the other party.
- (2) For the purposes of subsection (1), harm may include, but is not limited to, the following —
 - (a) psychological harm or oppression;
 - (b) major mental distress;
 - (c) a detrimental effect on the other party's capacity to care for a child;
 - (d) financial harm.
- (3) In determining whether to make an order under subsection (1), the court may have regard to —
 - (a) the history of the proceedings under this Act between the first party and the other party; and

- (b) whether the first party has frequently instituted or conducted proceedings against the other party in any Australian court or tribunal (including proceedings instituted (or attempted to be instituted) or conducted, and orders made, before the commencement of the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 68); and
 - (c) the cumulative effect, or any potential cumulative effect, of any harm resulting from the proceedings referred to in paragraphs (a) and (b).
- (4) The court may make a harmful proceedings order on its own initiative or on application by a party to the proceedings.
- (5) The court must not make a harmful proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.
- (6) An order made under subsection (1) is a final order.
- (7) If the court makes an order under subsection (1), the court must also make an order as to whether the court is to notify the other party, in the event that the first party makes an application under section 219AZD for leave to institute proceedings against the other party, of either or both of the following —
 - (a) that the application has been made;
 - (b) if the application is dismissed — that the application has been dismissed.
- (8) The court must have regard to the wishes of the other party in making an order under subsection (7).

Subdivision 2 — Consequences of harmful proceedings orders

219AZC. Proceedings in contravention of harmful proceedings order — FLA s. 102QAD

- (1) If a person is subject to a harmful proceedings order prohibiting the person from instituting proceedings under this Act in a court having jurisdiction under this Act —
 - (a) the person must not institute proceedings in the court without the leave of the court under section 219AZF; and
 - (b) another person must not, acting in concert with the person, institute proceedings in the court without the leave of the court under section 219AZF.
- (2) If proceedings are instituted in contravention of subsection (1), the proceedings are stayed.
- (3) Without limiting subsection (2), the court may make —
 - (a) an order declaring proceedings are proceedings to which subsection (2) applies; and
 - (b) any other order in relation to the stayed proceedings it considers appropriate, including an order for costs.
- (4) The court may make an order under subsection (3) on its own initiative or on the application of a person a party to the proceedings.

**219AZD. Application for leave to institute proceedings —
FLA s. 102QAE**

- (1) This section applies to a person (the *applicant*) who is —
 - (a) subject to a harmful proceedings order prohibiting the person from instituting further proceedings under this Act in a court having jurisdiction under this Act; or
 - (b) acting in concert with another person who is subject to an order mentioned in paragraph (a).
- (2) The applicant may apply to the court for leave to institute proceedings that are subject to the order.
- (3) The applicant must file an affidavit with the application that —
 - (a) lists all the occasions on which the applicant has applied for leave under this section; and
 - (b) discloses all relevant facts about the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) The applicant must —
 - (a) not serve a copy of the application or affidavit on a person unless an order is made under section 219AZF; and
 - (b) if the order is made — serve the copy in accordance with the order.

**219AZE. Dismissing application for leave —
FLA s. 102QAF**

- (1) The court may make an order dismissing an application under section 219AZD for leave to institute proceedings if it considers the affidavit does not substantially comply with section 219AZD(3).

- (2) The court must make an order dismissing an application under section 219AZD for leave to institute proceedings if it considers the proceedings are vexatious proceedings.
- (3) The court may dismiss the application without an oral hearing (either with or without the consent of the applicant).
- (4) The court may make an order under this section in Chambers.

**219AZF. Granting application for leave —
FLA s. 102QAG**

- (1) The court may make an order granting the application for leave only if it is satisfied that the proceedings are not frivolous, vexatious or an abuse of process, and have reasonable prospects of success.
- (2) An order under subsection (1) may be made subject to the conditions the court considers appropriate.

Division 4 — Vexatious proceedings orders

Subdivision 1 — Making vexatious proceedings orders

**219AZG. Making vexatious proceedings orders —
FLA s. 102QB**

- (1) This section applies if a court exercising jurisdiction in proceedings under this Act is satisfied —
 - (a) a person has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals; or
 - (b) a person, acting in concert with another person who is subject to a vexatious proceedings order or who is covered by paragraph (a), has

instituted or conducted vexatious proceedings
in an Australian court or tribunal.

- (2) The court may make any or all of the following orders —
 - (a) an order staying or dismissing all or part of any proceedings in the court already instituted by the person;
 - (b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act;
 - (c) any other order the court considers appropriate in relation to the person.
- (3) The court may make a vexatious proceedings order on its own initiative or on the application of any of the following —
 - (a) the Attorney General;
 - (b) the appropriate court official;
 - (c) a person against whom another person has instituted or conducted vexatious proceedings;
 - (d) a person who has a sufficient interest in the matter.
- (4) The court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.
- (5) An order made under subsection (2)(a) or (b) is a final order.
- (6) For the purposes of subsection (1), the court may have regard to the following, including in relation to proceedings instituted (or attempted to be instituted) or conducted, and orders made, before the

commencement of the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 68 —

- (a) proceedings instituted (or attempted to be instituted) or conducted in any Australian court or tribunal;
- (b) orders made by any Australian court or tribunal;
- (c) the person's overall conduct in proceedings conducted in any Australian court or tribunal (including the person's compliance with orders made by that court or tribunal).

**219AZH. Notification of vexatious proceedings orders —
FLA s. 102QC**

- (1) A person may request the appropriate court official of a court for a certificate stating whether a person named in the request is or has been the subject of a vexatious proceedings order made by the court.
- (2) If a person makes a request under subsection (1) and the person named in the request is or has been the subject of a vexatious proceedings order made by the court, the appropriate court official must issue to the person making the request a certificate —
 - (a) specifying the date of the order; and
 - (b) specifying any other information prescribed by the rules.
- (3) This section is subject to any written law, law of the Commonwealth or order of the court restricting the publication or disclosure of the name of a party to proceedings in the court.

Subdivision 2 — Consequences of vexatious proceedings orders

219AZI. Proceedings in contravention of vexatious proceedings order — FLA s. 102QD

- (1) If a person is subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act —
 - (a) the person must not institute proceedings, or proceedings of that type, in the court without the leave of the court under section 219AZL; and
 - (b) another person must not, acting in concert with the person, institute proceedings, or proceedings of that type, in the court without the leave of the court under section 219AZL.
- (2) If proceedings are instituted in contravention of subsection (1), the proceedings are stayed.
- (3) Without limiting subsection (2), the court may make —
 - (a) an order declaring proceedings are proceedings to which subsection (2) applies; and
 - (b) any other order in relation to the stayed proceedings it considers appropriate, including an order for costs.
- (4) The court may make an order under subsection (3) on its own initiative or on the application of any of the following —
 - (a) the Attorney General;
 - (b) the appropriate court official;
 - (c) a person against whom another person has instituted or conducted vexatious proceedings;

- (d) a person who has a sufficient interest in the matter.

219AZJ. Application for leave to institute proceedings by person subject to vexatious proceedings order — FLA s. 102QE

- (1) This section applies to a person (the *applicant*) who is —
- (a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act; or
 - (b) acting in concert with another person who is subject to an order mentioned in paragraph (a).
- (2) The applicant may apply to the court for leave to institute proceedings that are subject to the order.
- (3) The applicant must file an affidavit with the application that —
- (a) lists all the occasions on which the applicant has applied for leave under this section; and
 - (b) lists all other proceedings the applicant has instituted in any Australian court or tribunal, including proceedings instituted before the commencement of the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 68; and
 - (c) discloses all relevant facts about the application, whether supporting or adverse to the application, that are known to the applicant.

- (4) The applicant must —
 - (a) not serve a copy of the application or affidavit on a person unless an order is made under section 219AZL(1)(a); and
 - (b) if the order is made — serve the copy in accordance with the order.

219AZK. Dismissing application for leave by person subject to vexatious proceedings order — FLA s. 102QF

- (1) The court may make an order dismissing an application under section 219AZJ for leave to institute proceedings if it considers the affidavit does not substantially comply with section 219AZJ(3).
- (2) The court must make an order dismissing an application under section 219AZJ for leave to institute proceedings if it considers the proceedings are vexatious proceedings.
- (3) The court may dismiss the application without an oral hearing (either with or without the consent of the applicant).
- (4) The court may make an order under this section in Chambers.

219AZL. Granting application for leave by person subject to vexatious proceedings order — FLA s. 102QG

- (1) Before the court makes an order granting an application under section 219AZJ for leave to institute proceedings, it must —
 - (a) order that the applicant serve the following people with a copy of the application and

affidavit and a notice that the person is entitled to be heard on the application —

- (i) the person against whom the applicant proposes to institute the proceedings;
 - (ii) any other person specified in the order;
- and
- (b) give the applicant and each person described in paragraph (a)(i) or (ii), on appearance, an opportunity to be heard at the hearing of the application.
- (2) At the hearing of the application, the court may receive as evidence any record of evidence given, or affidavit filed, in any proceedings in any Australian court or tribunal in which the applicant is, or at any time was, involved either as a party or as a person acting in concert with a party.
 - (3) The court may make an order granting the application.
 - (4) An order made under subsection (3) may be made subject to the conditions the court considers appropriate.
 - (5) The court may grant leave only if it is satisfied the proceedings are not vexatious proceedings.

69. Section 220A amended

Delete section 220A(1)(a) and insert:

- (a) a child-related order; or

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70. Section 231 amended

Delete section 231(1) and insert:

- (1) Subject to this section, an order made under section 226 may be varied or discharged by the court that made the order or the Court.

71. Section 233A amended

- (1) In section 233A delete the definition of *order under this Act*.
- (2) In section 233A insert in alphabetical order:

relevant order means a child-related order or an order under this Act (as defined in section 223).

72. Section 234 amended

In section 234(1):

- (a) in paragraph (a) delete “an order under this Act; or” and insert:

a relevant order; or

- (b) in paragraph (b) delete “an order under this Act” and insert:

a relevant order

73. Part 11A inserted

After section 236 insert:

Part 11A — Restriction on communication of accounts and lists of proceedings

236A. Terms used — FLA s. 114P

(1) In this Part —

communicate means communicate by any means, including by any of the following —

- (a) publication in a book, newspaper, magazine or other written publication;
- (b) broadcast by radio or television;
- (c) public exhibition;
- (d) broadcast or publication or other communication by means of the internet.

(2) In this Part (other than section 236D(1)(b)) —

public includes a section of the public.

236B. Indictable offence: communication to the public of account of proceedings that identifies parties or others involved in proceedings — FLA s. 114Q

(1) A person commits a crime if —

- (a) the person communicates to the public an account of proceedings under this Act; and
- (b) the account identifies —
 - (i) a party to the proceedings; or
 - (ii) a witness in the proceedings; or

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- (iii) a person who is related to, or is associated with, a party to the proceedings; or
- (iv) a person who is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate.

Penalty for this subsection: imprisonment for 12 months and a fine of \$18 780.

Summary conviction penalty for this subsection: a fine of \$9 390.

- (2) Subsection (1) does not apply if the communication is —
 - (a) in accordance with a direction of a court; or
 - (b) otherwise approved by a court.
- (3) For the purposes of subsection (1)(b), an account of proceedings is taken to identify a person if the account includes material that is sufficient to identify the person to a member of the public.
- (4) Examples of material referred to in subsection (3) might include the following —
 - (a) a picture, recording, or physical description of the person;
 - (b) a name or title that identifies the person;
 - (c) an address or location where the person resides or works;
 - (d) details of the person's employment, paid or voluntary;
 - (e) the relationship or other connection between the person and an identified person or business;
 - (f) the person's political, philosophical or religious beliefs;

- (g) any real or personal property associated with the person.

236C. Indictable offence: communication to the public of list of court proceedings that refers to names of parties — FLA s. 114R

- (1) A person commits a crime if the person communicates to the public a list of proceedings, identified by reference to the names of the parties to the proceedings, that are to be dealt with by any of the following under this Act —
 - (a) a court;
 - (b) an officer of a court investigating or dealing with a matter in accordance with this Act, the regulations or the rules;
 - (c) a tribunal established by or under a law of this State or of the Commonwealth or of any other State or a Territory.

Penalty for this subsection: imprisonment for 12 months and a fine of \$18 780.

Summary conviction penalty for this subsection: a fine of \$9 390.

- (2) Subsection (1) does not apply if —
 - (a) the communication is the publication, by the court, officer or tribunal, of a list of proceedings the court, officer or tribunal is to deal with; or
 - (b) the communication is —
 - (i) in accordance with a direction of a court or otherwise approved by a court; or
 - (ii) in accordance with the rules.

236D. When a communication is not a communication to the public — FLA s. 114S

- (1) For the purposes of sections 236B(1)(a) and 236C(1), a communication to a person or body is not a communication to the public if —
 - (a) the person or body has a significant and legitimate interest in the subject matter of the communication; and
 - (b) that interest is substantially greater than, or different from, the interests of members of the public generally.
- (2) Without limiting subsection (1), none of the following is a communication to the public —
 - (a) a private communication between a party to proceedings and one or more persons who are members of the party's family or friends of the party;
 - (b) a communication of a pleading, transcript of evidence, or other document for use in connection with any of the following proceedings, to a person concerned in those proceedings —
 - (i) proceedings in a court;
 - (ii) proceedings before an officer of a court investigating or dealing with a matter in accordance with this Act, the regulations or the rules;
 - (iii) proceedings in a tribunal established by or under a law of this State or of the Commonwealth or of any other State or a Territory;
 - (c) a communication of a pleading, transcript of evidence, or other document, to a prescribed

- authority of a State or Territory that has responsibilities relating to the welfare of children;
- (d) a communication of a pleading, transcript of evidence, or other document, to —
 - (i) a body that is responsible for disciplining members of a profession in a State or Territory; or
 - (ii) a person concerned in disciplinary proceedings against a member of a profession in a State or Territory (being proceedings before a body that is responsible for disciplining members of that profession in that State or Territory);
 - (e) a communication of a pleading, transcript of evidence, or other document, to a body that grants assistance by way of legal aid for the purpose of facilitating a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case;
 - (f) a communication of material intended primarily for use by the members of any profession (being part of a series of law reports or any other publication of a technical character);
 - (g) a communication of an account of proceedings to a member of a profession in connection with —
 - (i) the person's practice of that profession; or
 - (ii) any form of professional training in which that person is involved;

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- (h) a communication of an account of proceedings to a student in connection with the student's studies.

236E. Consent of DPP required to commence proceedings — FLA s. 114T

Proceedings for an offence against section 236B(1) or 236C(1) must not be commenced without the written consent of the DPP.

74. Section 237 amended

- (1) In section 237(1):
 - (a) delete “sections 205SB and 242,” and insert:

section 219AZA(6),
 - (b) delete “is to” and insert:

must
- (2) In section 237(2) delete “(6A) and (6)” and insert:

(6A), (6) and (7)
- (3) After section 237(6) insert:

(7) The court must not make an order under subsection (2) against a case guardian unless the court is satisfied that one or more acts or omissions of the case guardian

relating to the proceedings are unreasonable or have delayed the proceedings unreasonably.

75. Section 238 amended

In section 238(1)(b) delete “107 or 108” and insert:

107, 107A, 108 or 108A

76. Section 240 amended

Delete section 240(2) and (3) and insert:

- (2) Subsection (3) applies if —
 - (a) a party to proceedings to which this section applies makes an offer to the other party to the proceedings to settle the proceedings; and
 - (b) the offer is made in accordance with the rules.
- (3) The terms of the offer must not be disclosed to a court in which the proceedings are being heard except for the purposes of the consideration by the court of whether it should make an order as to costs under section 237(2) and the terms of any such order.

77. Sections 242 and 243 deleted

Delete sections 242 and 243.

78. Section 243A replaced

Delete section 243A and insert:

**243A. Making arrests under this Act or warrants —
FLA s. 122A**

- (1) This section and section 243B apply to any of the following persons (the *arrestor*) who is authorised by this Act, or by a warrant issued under this Act or under the rules, to arrest another person (the *arrestee*) —
 - (a) the Marshal of the Court;
 - (b) a police officer.
- (2) In the course of arresting the arrestee, the arrestor —
 - (a) must not use more force, or subject the arrestee to greater indignity, than is necessary and reasonable to make the arrest or to prevent the arrestee's escape after the arrest; and
 - (b) must not do anything that is likely to cause the death of, or grievous bodily harm to, the arrestee unless the arrestor reasonably believes that doing that thing is necessary to protect life or prevent serious injury to another person (including the arrestor); and
 - (c) if the arrestee is attempting to escape arrest by fleeing — must not do a thing described in paragraph (b) unless —
 - (i) the arrestor reasonably believes that doing that thing is necessary to protect life or prevent serious injury to another person (including the arrestor); and

- (ii) the arrestee has, if practicable, been called on to surrender and the arrestee reasonably believes that the arrestee cannot be arrested in any other way.
- (3) When arresting the arrestee, the arrestee must inform the arrestee of the grounds for the arrest.
- (4) It is sufficient if the arrestee is informed of the substance of those grounds, not necessarily in precise or technical language.
- (5) Subsection (3) does not apply if —
 - (a) it is reasonable, in the circumstances, to assume that the arrestee knows the substance of the grounds for the arrest; or
 - (b) the arrestee's actions make it impracticable for the arrestee to inform the arrestee of those grounds.

243B. Powers to enter and search premises, and stop conveyances, for making arrests under this Act or warrants — FLA s. 122AA

- (1) In this section —
 - arrestee* has the meaning given in section 243A(1);
 - arrestee* has the meaning given in section 243A(1);
 - premises* includes a place and a conveyance.
- (2) If the arrestee reasonably believes the arrestee is on premises, the arrestee may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the arrestee or arresting the arrestee.

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- (3) However, the arrester must not enter a dwelling house between 9 pm one day and 6 am the next day unless the arrester reasonably believes that it would not be practicable to arrest the arrestee there or elsewhere at another time.
- (4) If the arrester may enter and search a conveyance under subsection (2) (disregarding subsection (3)), the arrester may, for the purposes of effecting the entry and search, stop and detain the conveyance.
- (5) If the arrester stops, detains, enters or searches a conveyance under this section for the purposes of arresting the arrestee, the arrester —
 - (a) may use such assistance as is necessary; and
 - (b) must search the conveyance in a public place or in some other place to which members of the public have ready access; and
 - (c) must not detain the conveyance for longer than is necessary and reasonable to search it; and
 - (d) may use such force as is necessary and reasonable in the circumstances, but must not damage the conveyance by forcing open a part of the conveyance unless —
 - (i) the person (if any) apparently in charge of the conveyance has been given a reasonable opportunity to open that part; or
 - (ii) it is not possible to give that person such an opportunity.

79. Section 244 amended

In section 244(3):

- (a) after paragraph (f) insert:
 - (fa) the prevention or termination of vexatious proceedings; and
- (b) in paragraph (j)(iii) delete “205O or 205S;” and insert:
205H, 205J or 205K;
- (c) in paragraph (m) delete “next friend” and insert:
case guardian

80. Section 245 amended

In section 245(4) delete “subsection (5),” and insert:

section 65AC(4)(a) and subsection (5),

81. Section 247 amended

After section 247(3) insert:

- (4) Schedule 2 Division 4 has effect in relation to the amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024*.

82. Schedule 2 Division 4 inserted

At the end of Schedule 2 insert:

Division 4 — Provisions for *Family Court Amendment (Commonwealth Reforms) Act 2024*

14. Application of amendments

- (1) In this clause —
commencement day means the day on which the *Family Court Amendment (Commonwealth Reforms) Act 2024* Part 2 comes into operation;
old Act means the *Family Court Act 1997* as in force immediately before commencement day.
- (2) Subject to subclause (8), the insertion by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 5(2) of the definition of *family law practice and procedure provisions* applies, and the amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* sections 6(1), 23, 24, 25, 26, 28, 31, 32, 33, 34, 36, 38, 39, 52, 53, 54, 55, 57 and 64 apply, in relation to the following proceedings —
 - (a) proceedings instituted on or after commencement day;
 - (b) proceedings instituted before, and not finally determined by, commencement day, other than proceedings in respect of which a final hearing has commenced by commencement day.
- (3) So far as the amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* sections 5(6), 6(2) and 7 apply in relation to proceedings, they apply in relation to —
 - (a) proceedings instituted on or after commencement day; and

- (b) proceedings instituted before, and not finally determined by, commencement day, other than proceedings in respect of which a final hearing has commenced by commencement day.
- (4) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 9 are taken to apply on and from 1 September 2021.
- (5) Section 33B, as inserted by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 11, applies in relation to the performance of a function or the exercise of a power of a registrar of the Court, before, on or after the day on which the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 11 comes into operation, regardless of whether the relevant proceeding commenced before, on or after commencement of that section.
- (6) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* sections 13 and 14 apply in relation to proceedings instituted on or after commencement day.
- (7) The amendment made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 19 applies in relation to a thing said or an admission made if the thing or admission is to be admitted, on or after commencement day, into proceedings (whether those proceedings are instituted before, on or after commencement day).
- (8) Section 69A, as inserted by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 31, applies on and from commencement day.
- (9) The amendment made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 37 applies in relation to final parenting orders whether the orders came into force before, or come into force on or after, commencement day.

- (10) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* sections 42 to 46 apply to —
- (a) a child taken or sent from the State on or after commencement day; or
 - (b) a child taken or sent from the State before commencement day, if the period specified in the consent or order in accordance with which the child was taken or sent —
 - (i) ended after commencement day; or
 - (ii) was extended so that it ended after commencement day.
- (11) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 58 apply in relation to revivals, variations and suspensions of orders, injunctions and arrangements if the revivals, variations and suspensions are made under section 176 on or after commencement day.
- (12) Despite the repeal of section 202K of the old Act made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 62, section 202K of the old Act continues to apply on and after commencement day, in relation to orders made before commencement day, as if the repeal had not happened.
- (13) Despite the amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* sections 65, 68, 77 and 79(a), the rules that were in force immediately before commencement day under the old Act (to the extent the rules relate to vexatious proceedings) continue to apply on and after commencement day in relation to proceedings that were pending in a court immediately before commencement day.
- (14) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* sections 65, 68, 77 and 79(a) do not affect the validity of any orders that were

- made before commencement day under the rules (to the extent the rules relate to vexatious proceedings).
- (15) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* sections 68 and 74(1) apply in relation to the following proceedings —
- (a) proceedings instituted on or after commencement day;
 - (b) proceedings instituted before, and not finally determined by, commencement day.
- (16) Part 11A of this Act, as inserted by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 73, applies in relation to acts or omissions occurring on or after commencement day.
- (17) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 74(2) and (3) apply in relation to persons who become case guardians in proceedings on or after commencement day, whether the proceedings were instituted before, on or after that day.
- (18) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 76 apply in relation to offers made before, on or after commencement day.
- (19) The repeal of section 242 by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 77 —
- (a) applies to proceedings instituted before, on or after commencement day; but
 - (b) does not affect any action taken under that section before commencement day.
- (20) Regulations that were in force for the purposes of section 243(8)(aa) of the old Act continue in force on and after commencement day as if they were regulations in force for the purposes of section 236D(2)(c).

- (21) Sections 243A and 243B, as inserted by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 78, apply in relation to arrests —
- (a) authorised by this Act on or after commencement day; and
 - (b) authorised by warrants issued on or after commencement day.
- (22) The Governor may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by any or all of the following provisions of the *Family Court Amendment (Commonwealth Reforms) Act 2024* —
- (a) section 5(1), in so far as that subsection deletes the definitions of ***community service order***, ***contravened an order***, ***order under this Act affecting children***, ***primary order*** and ***reasonable excuse for contravening***;
 - (b) section 5(2), in so far as that subsection inserts definitions of ***child-related order***, ***contravene*** and ***reasonable excuse***;
 - (c) section 5(3), 5(4), 18, 35, 36, 63, 69, 71, 72, 74(1) or 79(b).
- (23) To avoid doubt, the regulations made under subclause (22) cannot do the following —
- (a) create an offence or civil penalty;
 - (b) provide powers of —
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) directly amend the text of the *Family Court Amendment (Commonwealth Reforms) Act 2024* or this Act.

Note: The headings to the sections listed in the Table are to read as set out in the Table.

Table

Section	Section heading
s. 33A	Engagement of consultants and other persons
s. 34	Director of Court Counselling has functions of family consultants — FCFCAA s. 278
s. 34A	Director of Court Counselling may delegate powers and functions that relate to family consultants — FCFCAA s. 279
s. 34B	Director of Court Counselling may give directions that relate to family services functions — FCFCAA s. 280
s. 34C	Director of Court Counselling may authorise officer or staff member to act as family counsellor or family dispute resolution practitioner — FCFCAA s. 281
s. 34D	Director of Court Counselling may engage persons to perform family counselling services or family dispute resolution services
s. 46A	Change of venue — FCFCAA s. 65

Part 3 — Other Acts amended

83. Adoption Act 1994 amended

- (1) This section amends the *Adoption Act 1994*.
- (2) Delete section 124(2)(b) and insert:
 - (b) a communication to a person or body that, under the *Family Court Act 1997* section 236D(1), is not a communication to the public for the purposes of sections 236B(1)(a) and 236C(1) of that Act; or
 - (c) a communication that, under the *Family Court Act 1997* section 236D(2), is not a communication to the public.
- (3) After section 124(2) insert:
 - (2A) In subsection (2) —
communicate has the meaning given in the *Family Court Act 1997* section 236A(1).

84. Surrogacy Act 2008 amended

- (1) This section amends the *Surrogacy Act 2008*.
- (2) In section 42(1) in the Table delete “s. 243”.
- (3) After section 42(1) insert:
 - (1A) The *Family Court Act 1997* applies as if —
 - (a) the reference in section 236B(1)(a) of that Act to proceedings under that Act referred also to proceedings or a part of proceedings in which

- the court exercises jurisdiction conferred on it by this Act; and
- (b) the reference in section 236C(1) of that Act to proceedings that are to be dealt with by the court under that Act referred also to proceedings or a part of proceedings that are to be dealt with by the court in the exercise of jurisdiction conferred on it by this Act.
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