

Western Australia

## **Family Legislation Amendment Act 2006**

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## Family Legislation Amendment Act 2006

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Western Australia

## Family Legislation Amendment Act 2006

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No. 35 of 2006

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**An Act to amend —**

- **the *Family Court Act 1997*;**
  - **the *Child Support (Adoption of Laws) Act 1990*;**
  - **the *Children and Community Services Act 2004*;**
  - **the *Guardianship and Administration Act 1990*; and**
  - **the *Restraining Orders Act 1997*,**
- and for related purposes.**

[Assented to 4 July 2006]

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This is the *Family Legislation Amendment Act 2006*.

**2. Commencement**

- (1) Subject to this section, this Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

**3. The Act amended**

Except in Parts 5 and 6, the amendments in this Act are to the *Family Court Act 1997*\*.

[\* *Reprint 2 as at 14 April 2006.*]

## **Part 2 — Miscellaneous amendments**

### **Division 1 — Removal of requirements to register parenting plans**

**4. Section 5 amended**

Section 5 is amended by inserting in the appropriate alphabetical position —

“

**“registered parenting plan”** has the meaning given by section 76(6);

”.

**5. Section 74 amended**

Section 74 is amended by deleting “and provides for their registration in courts”.

**6. Section 75 replaced**

Section 75 is repealed and the following section is inserted instead —

“

**75. Parents encouraged to reach agreement —  
FLA s. 63B**

The parents of a child are encouraged —

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

**Family Legislation Amendment Act 2006**

**Part 2** Miscellaneous amendments

**Division 1** Removal of requirements to register parenting plans

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

”.

**7. Section 76 amended**

After section 76(5) the following subsection is inserted —

“

- (6) A registered parenting plan is a parenting plan —
  - (a) that was registered in a court under section 79 as in force at any time before the commencement of section 7 of the *Family Legislation Amendment Act 2006*; and
  - (b) that continued to be registered immediately before that section commenced.

”.

**8. Section 78 replaced**

Section 78 is repealed and the following section is inserted instead —

“

**78. Parenting plan may be varied or revoked by further written agreement — FLA s. 63D**

A parenting plan, other than a plan to which section 78B applies, may be varied or revoked by agreement in writing between the parties to the plan.

”.



**9. Section 78A replaced by sections 78A and 78B**

Section 78A is repealed and the following sections are inserted instead —

“

**78A. Explanation by person advising or assisting in the making of a parenting plan — FLA s. 63DA**

If a person who is —

- (a) a family and child counsellor; or
- (b) a family and child mediator; or
- (c) a legal practitioner,

gives advice or assistance to people in connection with the making by them of a parenting plan, the person must explain to them, in language likely to be readily understood by them, the availability of programs to help people who experience difficulties in complying with a parenting plan.

**78B. Registered parenting plans — FLA s. 63DB**

- (1) This section applies to a registered parenting plan.
- (2) A registered parenting plan continues in force until revoked in accordance with section 79, or set aside, varied or discharged as referred to in section 82.
- (3) A registered parenting plan cannot be varied.
- (4) Subject to subsection (5), a registered parenting plan may be revoked by agreement in writing between the parties to the plan.
- (5) An agreement revoking a registered parenting plan —
  - (a) may, in accordance with the rules, be registered in a court, under section 79; and
  - (b) does not have effect to revoke the plan until it is so registered.

”

**10. Section 79 replaced**

Section 79 is repealed and the following section is inserted instead —

“

**79. Registration of a revocation of a registered parenting plan — FLA s. 63E**

- (1) This section applies to a registered parenting plan (the “**plan**”).
- (2) To apply for registration of an agreement (the “**revocation agreement**”) revoking a registered parenting plan —
  - (a) an application for registration of the revocation agreement must be lodged in accordance with the rules; and
  - (b) the application must be accompanied by —
    - (i) a copy of the revocation agreement; and
    - (ii) the information required by the rules; and
    - (iii) a statement, in relation to each party, that is to the effect that the party has been provided with independent legal advice as to the meaning and effect of the revocation agreement and that is signed by the legal practitioner who provided that advice.
- (3) A court may register the revocation agreement if it considers it appropriate to do so having regard to the best interests of the child to whom the agreement relates.

- (4) In determining whether it is appropriate to register the revocation agreement, a court —
- (a) must have regard to the information accompanying the application for registration; and
  - (b) may, but is not required to, have regard to all or any of the matters set out in section 166(2).

”.

**11. Section 80 amended**

Section 80(1) is repealed and the following subsection is inserted instead —

“

- (1) This section applies to a registered parenting plan that contains child welfare provisions.

”.

**12. Section 81 amended**

Section 81(1) is repealed and the following subsection is inserted instead —

“

- (1) This section applies if a registered parenting plan contains child maintenance provisions.

”.

**13. Section 82 amended**

- (1) Before section 82(1) the following subsection is inserted —

“

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

”.

- (2) Section 82(1) is amended by deleting “parenting plan registered under section 79” and inserting instead —

“ registered parenting plan ”.

- (3) Section 82(3) is amended by deleting paragraph (d) and inserting instead —

“

- (d) section 176, under which a court may revive, vary, discharge or suspend a registered parenting plan.

”.

**14. Section 174 amended**

Section 174 is amended in the definition of “Division 10 contact order” by deleting paragraph (b)(iv) and inserting instead —

“

- (iv) a registered parenting plan;

”.

**15. Section 205A amended**

Section 205A is amended in the definition of “order under this Act affecting children” as follows:

- (a) by deleting paragraph (e) and inserting instead —

“

- (e) a registered parenting plan; or

”;

- (b) after each of paragraphs (a) and (b) and paragraph (f)(i) by inserting —

“ or ”.

**16. Section 221 amended**

Section 221(1)(b) is amended by deleting “parenting plan registered under section 79” and inserting instead —

“ registered parenting plan ”.

**Division 2 — Use of audio links, video links, etc.**

**17. Section 5 amended**

Section 5 is amended by inserting in the appropriate alphabetical positions —

“

**(FLA s. 4(1))**

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

**(FLA s. 4(1))**

“**video link**” means facilities (for example, closed-circuit television facilities) that enable audio and visual communication between persons in different places;

”.

**18. Heading to Part 8 Division 1 inserted**

Before section 212 the following heading is inserted in Part 8 —

“

**Division 1 — General matters concerning procedure and evidence**

”.

**19. Part 8 Division 2 inserted**

After section 219 the following Division is inserted in Part 8 —

“

**Division 2 — Use of video link, audio link or other appropriate means to give testimony, make appearances and give submissions etc.**

**219AA. Evidence Act 1906 not excluded**

This Division is in addition to and does not limit the operation of the *Evidence Act 1906*.

**219AB. Testimony — FLA s. 102C**

- (1) A court or a judge may, for the purposes of any proceedings, direct or allow testimony to be given by video link, audio link or other appropriate means.
- (2) The testimony must be given on oath or affirmation unless —
  - (a) the person giving the testimony is in a foreign country; and
  - (b) either —
    - (i) the law in force in that country does not permit the person to give testimony on oath or affirmation for the purposes of the proceedings; or
    - (ii) the law in force in that country would make it inconvenient for the person to give testimony on oath or affirmation for the purposes of the proceedings;and
  - (c) the court or a judge is satisfied that it is appropriate for the testimony to be given otherwise than on oath or affirmation.
- (3) If the testimony is given otherwise than on oath or affirmation, the court or a judge must give the testimony such weight as the court or the judge thinks fit in the circumstances.
- (4) The power conferred on the court or a judge by subsection (1) may be exercised —
  - (a) on the application of a party to the proceedings concerned; or
  - (b) on the court's own initiative or on the judge's own initiative, as the case may be.

- (5) This section applies whether the person giving testimony is in or outside Australia, but does not allow testimony to be given by a person who is in New Zealand.

**219AC. Appearance of persons — FLA s. 102D**

- (1) A court or a judge may, for the purposes of any proceedings, direct or allow a person to appear before the court or the judge by way of video link, audio link or other appropriate means.
- (2) The power conferred on a court or a judge by subsection (1) may be exercised —
- (a) on the application of a party to the proceedings concerned; or
  - (b) on the court's own initiative or on the judge's own initiative, as the case may be.
- (3) This section applies whether the person appearing is in or outside Australia, but does not apply if the person appearing is in New Zealand.

**219AD. Making of submissions — FLA s. 102E**

- (1) A court or a judge may, for the purposes of any proceedings, direct or allow a person to make a submission to the court or the judge by way of video link, audio link or other appropriate means.
- (2) The power conferred on a court or a judge by subsection (1) may be exercised —
- (a) on the application of a party to the proceedings concerned; or
  - (b) on the court's own initiative or on the judge's own initiative, as the case may be.
- (3) This section applies whether the person making the submission is in or outside Australia, but does not

apply if the person making the submission is in New Zealand.

**219AE. Conditions for use of links — FLA s. 102F**

- (1) A court or a judge must not exercise the power conferred by section 219AB(1), 219AC(1) or 219AD(1) in relation to a video link unless the court or the judge is satisfied that the following conditions are met in relation to the video link —
  - (a) the courtroom is equipped with facilities (for example, television monitors) that enable all eligible persons present in that courtroom to see and hear the person (the remote person) who is —
    - (i) giving the testimony; or
    - (ii) appearing; or
    - (iii) making the submission,as the case may be, by way of the video link; and
  - (b) the place at which the remote person is located is equipped with facilities (for example, television monitors) that enable all eligible persons present in that place to see and hear each eligible person who is present in the courtroom; and
  - (c) such other conditions (if any) as are prescribed by the rules in relation to the video link; and
  - (d) such other conditions (if any) as are imposed by the court or a judge.
- (2) The conditions that may be prescribed by the rules in accordance with subsection (1)(c) include conditions relating to —
  - (a) the form of the video link; and



- (b) the equipment, or class of equipment, used to establish the link; and
  - (c) the layout of cameras; and
  - (d) the standard of transmission; and
  - (e) the speed of transmission; and
  - (f) the quality of communication.
- (3) A court or a judge must not exercise the power conferred by section 219AB(1), 219AC(1) or 219AD(1) in relation to an audio link unless the court or a judge is satisfied that the following conditions are met in relation to the audio link —
- (a) the courtroom is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that courtroom to hear the person (the remote person) who is —
    - (i) giving the testimony; or
    - (ii) appearing; or
    - (iii) making the submission,as the case may be, by way of the audio link; and
  - (b) the place at which the remote person is located is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that place to hear each eligible person who is present in the courtroom or other place where the court or the judge is sitting; and
  - (c) such other conditions (if any) as are prescribed by the rules in relation to the audio link; and
  - (d) such other conditions (if any) as are imposed by the court or a judge.

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- (4) The conditions that may be prescribed by the rules in accordance with subsection (3)(c) include conditions relating to —
- (a) the form of the audio link; and
  - (b) the equipment, or class of equipment, used to establish the audio link; and
  - (c) the standard of transmission; and
  - (d) the speed of transmission; and
  - (e) the quality of communication.
- (5) A court or a judge must not exercise the power conferred by section 219AB(1), 219AC(1) or 219AD(1) in relation to appropriate means other than video link or audio link unless the court or the judge is satisfied that the following conditions are met in relation to that means —
- (a) the conditions (if any) as are prescribed by the rules in relation to that other appropriate means; and
  - (b) such other conditions (if any) as are imposed by the court or the judge.
- (6) For the purposes of the application of this section to particular proceedings, eligible persons are such persons as the court or the judge considers should be treated as eligible persons for the purposes of the proceedings.
- (7) In this section —
- “**courtroom**” means the courtroom or other place where the judge or court is sitting.

**219AF. Putting documents to a person — FLA s. 102G**

- (1) This section applies if, in the course of an examination or appearance of a person by video link, audio link or other appropriate means in accordance with this

Division, it is necessary to put a document to the person.

- (2) A court or a judge may direct or allow the document to be put to the person —
- (a) if the document is physically present in the courtroom or other place where the court or the judge is sitting —
    - (i) by causing a copy of the document to be transmitted to the place where the person is located; and
    - (ii) by causing the transmitted copy to be put to the person;

or

  - (b) if the document is physically present in the place where the person is located —
    - (i) by causing the document to be put to the person; and
    - (ii) by causing a copy of the document to be transmitted to the courtroom or other place where the court or the judge is sitting.

**219AG. Administration of oaths and affirmations —  
FLA s. 102J**

An oath to be sworn, or an affirmation to be made, by a person (the “**remote person**”) who is to give testimony by video link, audio link or other appropriate means in accordance with this Division may be administered —

- (a) by means of the video link or audio link, as the case may be, in a way that, as nearly as practicable, corresponds to the way in which the oath or affirmation would be administered if the remote person were to give testimony in the

courtroom or other place where the court or the judge is sitting; or

- (b) if the court or the judge allows another person who is present at the place where the remote person is located to administer the oath or affirmation, by that other person.

**219AH. Expenses — FLA s. 102K**

- (1) A court or a judge may make such orders as the court or the judge thinks just for the payment of expenses, including the court's expenses, incurred in connection with —
  - (a) the giving of testimony by video link, audio link or other appropriate means in accordance with this Division; or
  - (b) the appearance of a person by video link, audio link or other appropriate means in accordance with this Division; or
  - (c) the making of submissions by video link, audio link or other appropriate means in accordance with this Division.
- (2) Subsection (1) has effect subject to the regulations.

**219AI. New Zealand proceedings — FLA s. 102L**

This Division does not affect the operation of the *Evidence and Procedure (New Zealand) Act 1994* of the Commonwealth.

”.

**20. Section 244 amended**

Section 244(3) is amended as follows:

(a) by inserting after paragraph (m) —

“

(n) for the purposes of Part 8 Division 2, providing for the conditions relating to the use of video links, audio links and other appropriate means of communication; and

”;

(b) after each of paragraphs (a) to (m) and (o) to (zaa) by inserting —

“ and ”.

**21. Transitional provision**

The *Family Court Act 1997*, as amended by this Division, applies in relation to proceedings instituted in a court (within the meaning of that Act section 8) before, on or after the commencement of this Division.

**Division 3 — Parenting compliance regime**

**22. Section 95A inserted**

After section 95 the following section is inserted —

“

**95A. Court may order attendance at a post-separation parenting program — FLA s. 65LA**

(1) In proceedings for a parenting order, the court may also make an order in respect of any party to the proceedings as follows —

(a) directing the party or each party to attend before a provider so that the provider can make an initial assessment as to the suitability of the party concerned to attend a program;

- (b) if a party so attending before a provider is assessed by the provider to be suitable to attend a program or a part of a program and the provider nominates a particular program for the party to attend, directing the party to attend that program or that part of that program.
  - (2) In deciding whether to make a particular order under subsection (1), a court must regard the best interests of the child as the paramount consideration.
  - (3) In this section —
    - “post-separation parenting program” or “program”** has the same meaning as in section 70NB of the Family Law Act;
    - “post-separation parenting program provider” or “provider”** means a provider of a program that is included in a list of providers compiled under the Family Law Act;
    - “proceedings for a parenting order”** includes —
      - (a) proceedings for the enforcement of a parenting order; and
      - (b) any other proceedings in which a contravention of a parenting order is alleged.
- ”.

**23. Section 102 amended**

Section 102(1)(b) is amended by deleting “section 226” and inserting instead —

“ Division 13 ”.

**24. Section 205A amended**

- (1) Section 205A is amended by deleting the definition of ““appropriate post-separation parenting program” or “appropriate program” ”.

(2) Section 205A is amended in the definition of “order under this Act affecting children” as follows:

(a) by deleting paragraph (c) and inserting instead —

“

(c) an undertaking given to, and accepted by, the court —

(i) that relates to, or to the making of, an order or injunction referred to in paragraph (a) or (b) or a community service order referred to in paragraph (ea); or

(ii) that relates to a bond referred to in paragraph (f);

or

”.

(b) by deleting paragraph (d) and inserting instead —

“

(d) a subpoena issued under the rules in proceedings under this Act —

(i) that relates to, or to the making of, an order or injunction referred to in paragraph (a) or (b) or a community service order referred to in paragraph (ea); or

(ii) that relates to a bond referred to in paragraph (f),

being a subpoena issued to a party to the proceedings for the order, injunction or bond, as the case may be; or

”.

(c) by inserting after paragraph (e) —

“

(ea) a community service order made under section 205L(5)(a); or

”.

(3) Section 205A is amended by inserting in the appropriate alphabetical position —

“

**“post-separation parenting program provider”** or **“provider”** means a provider of a program that is included in a list of providers compiled under the Family Law Act;

”.

(4) Section 205A is amended by deleting the definition of “primary order” and inserting instead —

“

**“primary order”** means an order under this Act affecting children and includes such an order as varied;

”.

**25. Section 205G amended**

(1) Section 205G(1) is amended as follows:

(a) in paragraph (a) by deleting “an order under this Act affecting children (the “primary order”)” and inserting instead —

“ a primary order ”;

(b) by deleting paragraph (d) and inserting instead —

“

(d) either subsection (1a) or (1b) applies,

”;



- (c) after each of paragraphs (a) and (b) by inserting —  
“ and ”.
- (2) After section 205G(1) the following subsections are inserted —  
“
- (1a) For the purposes of subsection (1)(d), this subsection applies if no court has previously —
- (a) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
  - (b) under section 205H(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order.
- (1b) For the purposes of subsection (1)(d), this subsection applies if —
- (a) a court has previously —
    - (i) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
    - (ii) under section 205H(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order;
  - and
  - (b) the court, in dealing with the current contravention, is satisfied that it is more appropriate for that contravention to be dealt with under this Subdivision.
- ”.
- (3) Section 205G(2) is amended by deleting “subsection (1)(d)(i),” and inserting instead —  
“ subsection (1a), ”.

**26. Section 205H amended**

- (1) Section 205H(1)(a) is amended by deleting subparagraphs (i) and (ii) and inserting the following subparagraphs instead —

“

(i) directing the person or each person to attend before a provider so that the provider can make an initial assessment as to the suitability of the person concerned to attend a program;

(ii) if a person so attending before a provider is assessed by the provider to be suitable to attend a program or a part of a program and the provider nominates a particular program for the person to attend — directing the person to attend that program or that part of that program;

”.

- (2) Section 205H(1)(b) is amended by inserting after “contact” —

“ or residence ”.

- (3) After section 205H(1)(b) the following paragraph is inserted —

“

(ba) make any other order varying the order so contravened;

”.

- (4) Section 205H(4) is amended by deleting “the provider of a program for assessment, or is to attend a program, the court must cause the provider of the program” and inserting instead —

“

a provider for assessment, the court must cause the provider

”.

**27. Section 205K replaced**

Section 205K is repealed and the following section is inserted instead —

“

**205K. Court may make further orders in relation to attendance at program — FLA s. 70NIA**

A court may make such orders as it considers appropriate, other than the orders referred to in section 205L(5), in respect of a person, if —

- (a) it appears to the court that the person has not attended before a provider that the person was ordered to attend before; or
- (b) it appears to the court that the person has not attended a program or a part of a program that the person was ordered to attend; or
- (c) the person was assessed as unsuitable to attend a program.

”.

**28. Section 205L amended**

(1) Section 205L(1) is amended as follows:

- (a) in paragraph (a) by deleting “an order under this Act affecting children (the “primary order”)” and inserting instead —

“ a primary order ”;

- (b) by deleting paragraph (d) and inserting instead —

“

(d) either subsection (1a) or (1b) applies.

”;

- (c) after each of paragraphs (a) and (b) by inserting —

“ and ”.

(2) After section 205L(1) the following subsections are inserted —

“

(1a) For the purposes of subsection (1)(d), this subsection applies if —

(a) no court has previously —

(i) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or

(ii) under section 205H(1)(c), adjourned proceedings in respect of contravention by the person of the primary order;

and

(b) the court dealing with the current contravention is satisfied that the person has behaved in a way that showed a serious disregard of his or her obligations under the primary order.

(1b) For the purposes of subsection (1)(d), this subsection applies if a court has previously —

(a) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or

(b) under section 205H(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order.

”.

(3) After section 205L(7)(a) the following paragraph is inserted —

“

(ab) the person who contravened the parenting order did so after having refused or failed to attend before a provider that the person was ordered to attend before;

”.

- (4) Section 205L(7)(b) is amended by deleting “appropriate”.

**Division 4 — Setting aside financial agreements**

**29. Section 205ZV amended**

- (1) Section 205ZV(1) is amended by inserting after “A court may” —  
“  
    , on an application by a person who was a party to the financial agreement, or by any other interested person,  
”.
- (2) After section 205ZV(1)(a) the following paragraph is inserted —  
“  
    (aa) either party to the agreement entered into the agreement —  
        (i) for the purpose, or for purposes that included the purpose, of defrauding or defeating a creditor or creditors of the party; or  
        (ii) with reckless disregard of the interests of a creditor or creditors of the party;  
    or  
”.
- (3) After each of section 205ZV(1)(a), (b) and (c) by inserting —  
“ or ”.
- (4) After section 205ZV(2) the following subsections are inserted —  
“  
    (3) A court may, on an application by a person who was a party to the financial agreement that has been set aside, or by any other interested person, make such order or

orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.

- (4) An order under subsection (1) or (3) may, after the death of a party to the proceedings in which the order was made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (5) If a party to proceedings under this section dies before the proceedings are completed —
- (a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the rules may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and
  - (b) if the court is of the opinion —
    - (i) that it would have exercised its powers under this section if the deceased party had not died; and
    - (ii) that it is still appropriate to exercise those powers,the court may make any order that it could have made under subsection (1) or (3); and
  - (c) an order under paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (6) In this section —
- “creditor”** —
- (a) in subsection (1)(aa), in relation to a party to the agreement, includes a person who could reasonably have been foreseen by the party

as being reasonably likely to become a creditor of the party; and

- (b) in paragraphs (b) and (c) of the definition of “interested person” includes a person who, at the commencement of the proceedings, could reasonably have been foreseen by the court as being reasonably likely to become a creditor of either of the parties to the financial agreement;

“**government body**” means —

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

“**interested person**”, in relation to proceedings for the setting aside of a financial agreement on the grounds specified in subsection (1)(aa) includes —

- (a) either or both of the parties to the financial agreement; or
- (b) a creditor of either of those parties; or
- (c) a government body acting in the interests of a creditor of either of those parties.

”.

### **30. Transitional provisions**

- (1) Subject to subsection (2), the *Family Court Act 1997* as amended by this Division, applies in relation to financial agreements (within the meaning of that Act section 205T) made at any time, whether before, on or after the commencement of this Division.
- (2) The *Family Court Act 1997* as amended by this Division, does not apply to proceedings that were instituted under that Act before the commencement of this Division.

**Division 5 — Other amendments relating to financial agreements**

**31. Section 205ZR amended**

Section 205ZR(1) is repealed and the following subsections are inserted instead —

“

- (1) No provision of a financial agreement excludes or limits the power of a court to make an order in relation to the maintenance of a de facto partner if subsection (1a) applies.
- (1a) This subsection applies if the court is satisfied that, when the agreement came into effect, the circumstances of the party were such that, taking into account the terms and effect of the agreement, the party was unable to support himself or herself without an income tested pension, allowance or benefit.

”.

**32. Section 205ZS amended**

Section 205ZS(1) is amended as follows:

- (a) by deleting paragraph (b)(ii), (iii) and (iv) and “and” after subparagraph (iii) and inserting instead —

“

and

- (ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement;

and

”;

- (b) after each of paragraphs (a) and (c) by inserting —

“ and ”.



**33. Section 205ZU amended**

Section 205ZU(2) is amended as follows:

- (a) by deleting paragraph (b)(ii), (iii) and (iv) and inserting instead —

“

- (ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement;

and

”;

- (b) after each of paragraphs (a) and (c) by inserting —

“ and ”.

**Division 6 — Orders and injunctions binding third parties**

**34. Division 2A inserted in Part 5A**

After Part 5A Division 2 the following Division is inserted —

“

**Division 2A — Orders and injunctions binding  
third parties**

**Subdivision 1 — Introductory**

**205ZLA. Object of Division — FLA s. 90AA**

The object of this Division is to allow a court, in relation to the property of a de facto partner, to —

- (a) make an order under section 205ZG or 235A;  
or

- (b) grant an injunction under section 235A,

that is directed to, or alters the rights, liabilities or property interests of a third person.

**205ZLB. Definition — FLA s. 90AB**

In this Division —

“**third party**”, in relation to a de facto relationship, means a person who is not one of the de facto partners.

**205ZLC. This Division overrides other laws, trust deeds, etc. — FLA s. 90AC**

- (1) This Division has effect despite anything to the contrary in any of the following (whether made before or after the commencement of this Division) —
  - (a) any other law (whether written or unwritten);
  - (b) anything in a trust deed or other instrument.
- (2) Without limiting subsection (1), nothing done in compliance with this Division by a third party in relation to a de facto relationship is to be treated as resulting in a contravention of a law or instrument referred to in subsection (1).

**205ZLD. Extended meaning of “property” — FLA s. 90AD**

- (1) For the purposes of this Division, a debt owed by a de facto partner is to be treated as property.
- (2) For the purposes of —
  - (a) making an order under section 205ZG or 235A;  
or
  - (b) granting an injunction under section 235A,“**property**” includes a debt owed by a de facto partner.

**205ZLE. Other provisions of this Act not affected by this Division — FLA s. 90ADA**

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

**Subdivision 2 — Orders under section 205ZG**

**205ZLF. Court may make an order under section 205ZG  
binding a third party — FLA s. 90AE**

- (1) In proceedings under section 205ZG, a court may make any of the following orders —
  - (a) an order directed to a creditor of the de facto partners in a de facto relationship to substitute one de facto partner for both partners in relation to the debt owed to the creditor;
  - (b) an order directed to a creditor of one de facto partner to substitute the other de facto partner, or both de facto partners for that de facto partner in relation to the debt owed to the creditor;
  - (c) an order directed to a creditor of the de facto partners in a de facto relationship that the de facto partners be liable for a different proportion of the debt owed to the creditor than the proportion the de facto partners are liable to before the order is made;
  - (d) an order directed to a director of a company or to a company to register a transfer of shares from one de facto partner in a de facto relationship to the other de facto partner.
- (2) In proceedings under section 205ZG, a court may make any other order that —
  - (a) directs a third party to do a thing in relation to the property of a de facto partner; or
  - (b) alters the rights, liabilities or property interests of a third party in relation to a de facto relationship.

- (3) The court may make an order under subsection (1) or (2) only if —
- (a) the making of the order is reasonably necessary, or reasonably appropriate and adapted, to effect a division of property between the de facto partners in a de facto relationship; and
  - (b) if the order concerns a debt of a de facto partner, it is not foreseeable at the time that the order is made that to make the order would result in the debt not being paid in full; and
  - (c) the third party has been accorded procedural fairness in relation to the making of the order; and
  - (d) the court is satisfied that, in all the circumstances, it is just and equitable to make the order; and
  - (e) the court is satisfied that the order takes into account the matters mentioned in subsection (4).
- (4) The matters are as follows —
- (a) the taxation effect (if any) of the order on the de facto partners;
  - (b) the taxation effect (if any) of the order on the third party;
  - (c) the social security effect (if any) of the order on the de facto partners;
  - (d) the third party's administrative costs in relation to the order;
  - (e) if the order concerns a debt of a de facto partner, the capacity of a de facto partner to repay the debt after the order is made;

- (f) the economic, legal or other capacity of the third party to comply with the order;
- (g) if, as a result of the third party being accorded procedural fairness in relation to the making of the order, the third party raises any other matters, those matters;
- (h) any other matter that the court considers relevant.

**Subdivision 3 — Orders or injunctions under section 235A**

**205ZLG. Court may make an order or injunction under section 235A binding a third party — FLA s. 90AF**

- (1) In proceedings under section 235A a court may —
  - (a) make an order restraining a person from repossessing property of a de facto partner; or
  - (b) grant an injunction restraining a person from commencing legal proceedings against a de facto partner.
- (2) In proceedings under section 235A, a court may make any other order, or grant any other injunction that —
  - (a) directs a third party to do a thing in relation to the property of a de facto partner; or
  - (b) alters the rights, liabilities or property interests of a third party in relation to the de facto relationship.
- (3) A court may make an order or grant an injunction under subsection (1) or (2) only if —
  - (a) the making of the order, or the granting of the injunction, is reasonably necessary, or reasonably appropriate and adapted, to effect a division of property between de facto partners; and

- (b) the order or injunction concerns a debt of a de facto partner, it is not foreseeable at the time that the order is made, or the injunction granted, that to make the order or grant the injunction would result in the debt not being paid in full; and
  - (c) the third party has been accorded procedural fairness in relation to the making of the order or injunction; and
  - (d) for an injunction or order under section 235A(1), the court is satisfied that, in all the circumstances, it is proper to make the order or grant the injunction; and
  - (e) for an injunction under section 235A(2), the court is satisfied that, in all the circumstances, it is just or convenient to grant the injunction; and
  - (f) the court is satisfied that the order or injunction takes into account the matters mentioned in subsection (4).
- (4) The matters are as follows —
- (a) the taxation effect (if any) of the order or injunction on the de facto partners;
  - (b) the taxation effect (if any) of the order or injunction on the third party;
  - (c) the social security effect (if any) of the order or injunction on the de facto partners;
  - (d) the third party's administrative costs in relation to the order or injunction;
  - (e) if the order or injunction concerns a debt of a de facto partner, the capacity of a de facto partner to repay the debt after the order is made or the injunction is granted;

- (f) the economic, legal or other capacity of the third party to comply with the order or injunction;
- (g) if, as a result of the third party being accorded procedural fairness in relation to the making of the order or the granting of the injunction, the third party raises any other matters, those matters;
- (h) any other matter that the court considers relevant.

**Subdivision 4 — Other matters**

**205ZLH. Orders and injunctions binding on trustees —  
FLA s. 90AG**

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

**205ZLI. Protection for a third party — FLA s. 90AH**

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

**205ZLJ. Service of documents on a third party —  
FLA s. 90AI**

- (1) If a document is required or permitted to be served for the purposes of this Division on a third party in relation to a de facto relationship, the document may be served in any of the ways in which a document may be served under the rules.

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

**205ZLK. Expenses of third party — FLA s. 90AJ**

- (1) Subsection (2) applies if —
- (a) a court has made an order or granted an injunction in accordance with this Division in relation to a de facto relationship; and
  - (b) a third party in relation to the de facto relationship has incurred expense as a necessary result of the order or injunction.
- (2) A court may make such order as it considers just for the payment of the reasonable expenses of the third party incurred as a necessary result of the order or injunction.
- (3) In deciding whether to make an order under subsection (2), subject to what a court considers just, a court must take into account the principle that the parties to the de facto relationship should bear the reasonable expenses of the third party equally.
- (4) The regulations may provide, in situations where a court has not made an order under subsection (2) —
- (a) for the charging by the third party of reasonable fees to cover the reasonable expenses of the third party incurred as a necessary result of the order or injunction; and
  - (b) if such fees are charged, that each of the de facto partners in the de facto relationship is separately liable to pay the third party an amount equal to half of those fees; and
  - (c) for conferring jurisdiction on a particular court or courts in relation to the collection or recovery of such fees.

”.



**35. Transitional provisions**

- (1) In this section —  
    **“commencement”** means the day on which this Division comes into operation;  
    **“section 205ZG order”** means an order (other than an interim or a partial order) made under section 205ZG of the *Family Court Act 1997*.
- (2) Subject to this section, the *Family Court Act 1997*, as amended by this Division, applies in relation to all de facto relationships to which that Act otherwise applies.
- (3) Subject to subsection (4), the *Family Court Act 1997*, as amended by this Division, does not apply in relation to a de facto relationship if a section 205ZG order is in force in relation to the relationship at the commencement.
- (4) If a section 205ZG order that is in force at the commencement is later set aside under section 205ZH(1)(a), (b), (c) or (d) of the *Family Court Act 1997*, then the *Family Court Act 1997*, as amended by this Division, applies in relation to the de facto relationship in relation to which the order was in force, only from the time the order is set aside.

**Division 7 — Amendments about Magistrates Courts**

**36. Section 43 amended**

- (1) Section 43(1) is repealed and the following subsection is inserted instead —
- “
- (1) This section applies —
- (a) if —
- (i) the Magistrates Court (the **“court”**) is dealing with proceedings in which a parenting order (other than a child

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---

maintenance order) or an order relating to the welfare of a child is sought; and

- (ii) the respondent, in answer to the application by which the proceedings are instituted, seeks an order different from that sought in the application; and
- (iii) the court is not constituted by a family law magistrate;

or

(b) if —

- (i) the Magistrates Court (the “**court**”) is dealing with proceedings that concern property of a total value exceeding the ceiling amount; and
- (ii) the respondent, in answer to the application by which the proceedings are instituted, seeks an order different from that sought in the application.

”.

(2) After section 43(8) the following subsection is inserted —

“

(9) In this section —

“**ceiling amount**” has the same meaning as in section 46(1AA) of the Family Law Act unless otherwise prescribed in the regulations.

”.

**37. Section 209A inserted**

After section 209 the following section is inserted in Part 7 —

“

**209A. Interpretation**

In this Part —

“**Chief Justice**” has the same meaning as it has in the  
*Supreme Court Act 1935*;

“**decree**” includes —

- (a) a judgment or an order; and
- (b) an order dismissing an application or prosecution; and
- (c) a decision to not make an order; and
- (d) a declaration,

and in relation to a decree of the Family Court of Western Australia, includes an order dismissing an appeal from the Magistrates Court;

“**judge**” means a judge of the Supreme Court.

”.

**38. Sections 210A, 210AA and 210AB inserted**

After section 210 the following sections are inserted —

“

**210A. Non-federal jurisdictions — appeal from decree of Magistrates Court constituted by a family law magistrate**

- (1) This section applies only if the Magistrates Court is constituted by a family law magistrate.
- (2) In respect of the non-federal jurisdictions of the Magistrates Court an appeal lies from a decree of the court to the Court of Appeal, unless the decree is an interlocutory order.

- (3) Subsection (2) has effect subject to section 210AA.
- (4) The jurisdiction of the Court of Appeal in relation to an appeal under this section may, if the Chief Justice considers that it is appropriate, be exercised by a single judge.
- (5) Subsection (4) has effect subject to subsections (9) and (11).
- (6) An appeal under this section is to be instituted within —
  - (a) the time prescribed by the rules of the Supreme Court; or
  - (b) such further time as is allowed in accordance with those rules.
- (7) On an appeal under this section, the Court of Appeal may affirm, reverse or vary the decree or decision the subject of the appeal and may make such decree or decision as, in the opinion of the court, ought to have been made in the first instance, or may, if it considers appropriate, order a re-hearing on such terms and conditions, if any, as it considers appropriate.
- (8) If, in dismissing an appeal under this section, the Court of Appeal is of the opinion that the appeal does not raise any question of general principle, it may give reasons for its decision in short form.
- (9) A single judge or the Court of Appeal may —
  - (a) join or remove a party to an appeal under this section; or
  - (b) make an order by consent disposing of an appeal under this section (including an order for costs); or

- (c) give directions about the conduct of an appeal under this section, including directions about —
    - (i) the use of written submissions; and
    - (ii) limiting the time for oral argument.
- (10) The rules of the Supreme Court may make provision enabling matters of the kind mentioned in subsection (9) to be dealt with, subject to conditions prescribed by those rules, without an oral hearing.
- (11) Applications of a procedural nature, including applications —
  - (a) for an extension of time within which to institute an appeal under this section; or
  - (b) for leave to amend the grounds of an appeal under this section; or
  - (c) to reinstate an appeal under this section that, because of the rules of the Supreme Court, was taken to have been abandoned; or
  - (d) to stay an order of the Court of Appeal made in connection with an appeal under this section; or
  - (e) for an extension of time within which to file an application for leave to appeal; or
  - (f) for security for costs in relation to an appeal; or
  - (g) to reinstate an appeal dismissed under a provision of the rules of the Supreme Court; or
  - (h) to adjourn the hearing of an appeal; or
  - (i) to vacate the hearing date of an appeal; or
  - (j) to expedite the hearing of an appeal,may be heard and determined by a single judge or by the Court of Appeal.
- (12) The rules of the Supreme Court may make provision enabling applications of a kind mentioned in

subsection (11) to be dealt with, subject to conditions prescribed by those rules, without an oral hearing.

- (13) An appeal does not lie to the Court of Appeal from a decision of a single judge exercising jurisdiction under this section.
- (14) The single judge referred to in subsection (4), (9) or (11) need not be a member of the Court of Appeal.

**210AA. Leave to appeal needed in some cases referred to in section 210A**

An appeal does not lie under section 210A from a decree prescribed by the regulations except by leave of —

- (a) a single judge (who need not be a member of the Court of Appeal); or
- (b) the Court of Appeal.

**210AB. Case stated**

- (1) If, in proceedings in the Magistrates Court, being proceedings in which a decree to which section 210A applies could be made, a question of law arises which —

- (a) the family court magistrate; and
- (b) at least one of the parties,

wish to have determined by the Court of Appeal before the proceedings are further dealt with —

- (c) the family law magistrate must state the facts and question in the form of a special case for the opinion of the Court of Appeal; and
- (d) the Court of Appeal must hear and determine the question.

- (2) The Court of Appeal may draw from the facts and the documents any inference, whether of fact or of law, which could have been drawn from them by the family law magistrate.

”.

**39. Section 211 amended**

Section 211(1) is repealed and the following section is inserted instead —

“

- (1) Subsection (2) does not apply if the Magistrates Court is constituted by a family law magistrate, unless the decree is an interlocutory order and —
- (a) the Family Court of Western Australia has granted leave to appeal; or
  - (b) the decree is a decree prescribed in the regulations for the purposes of this paragraph.

”.

**40. Sections 211A and 211B inserted**

After section 211 the following sections are inserted in Part 7 —

“

**211A. Appeals, and applications for leave, without oral hearing**

- (1) Subject to subsection (2), an appeal under section 210A or 211 may be dealt with without an oral hearing if all the parties to the appeal consent to the appeal being dealt with in that way.
- (2) Subsection (1) does not apply to an appeal if the court to which the appeal is made otherwise orders.
- (3) A consent given under subsection (1) may only be withdrawn with the leave of the court.

**211B. Power to dismiss appeal**

If it appears to a court hearing an appeal under this Part that the notice of the appeal does not disclose proper grounds of appeal (whether generally, or in relation to a particular ground of appeal), the court may order that the proceedings on the appeal be stayed or dismissed (either generally or in relation to that ground).

”.

**41. Transitional provision**

The *Family Court Act 1997*, as amended by section 36 of this Act, applies in relation to proceedings in a court (within the meaning of that Act section 8) that have not been finally determined before the commencement of that section, whether the proceedings were instituted in the court before, on or after the commencement of that section.

**Division 8 — Amendments relating to the *Criminal Property Confiscation Act 2000***

**42. Section 5 amended and consequential amendment**

- (1) Section 5 is amended by inserting in the appropriate alphabetical positions —

“

**(FLA s. 4(1))**

**“application for a confiscation declaration”** means any of the following —

- (a) an application under section 30 of the *Criminal Property Confiscation Act 2000*, for a declaration that property has been confiscated;
- (b) an application under section 27 of the *Criminal Property Confiscation Act 2000*, for a confiscable property declaration;



- (c) an application under section 32A(1) of the *Misuse of Drugs Act 1981* that a person be declared a drug trafficker;

**(FLA s. 4(1))**

**“confiscation declaration”** means any of the following —

- (a) a declaration under section 30 of the *Criminal Property Confiscation Act 2000* that property has been confiscated;
- (b) a confiscable property declaration under section 27 of the *Criminal Property Confiscation Act 2000*;
- (c) a declaration under section 32A(1) of the *Misuse of Drugs Act 1981* that a person is a drug trafficker;

**(FLA s. 4(1))**

**“criminal confiscation order”** means any of the following —

- (a) a confiscation declaration;
- (b) a freezing order, within the meaning of the *Criminal Property Confiscation Act 2000*;
- (c) a freezing notice, within the meaning of the *Criminal Property Confiscation Act 2000*;

**(FLA s. 4(1))**

**“DPP”** means the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1991*;

**(FLA s. 4(1))**

**“Registry Manager”** means —

- (a) in relation to the Family Court of Western Australia, the Principal Registrar of that Court; and

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(b) in relation to a court other than the Family Court of Western Australia, the principal officer of the court or any other appropriate officer of the court;

”.

(2) Section 243(7) is amended by deleting “Director of Public Prosecutions appointed under section 5 of the *Director of Public Prosecutions Act 1991*.” and inserting instead —

“ DPP. ”.

**43. Section 205ZH amended**

Section 205ZH(1) is amended as follows:

(a) after paragraph (d) by deleting the comma and inserting instead —

“

; or

(e) a criminal confiscation order has been made in relation to property of the de facto partners or either of them,

”;

(b) after each of paragraphs (a) and (b) by inserting —

“ or ”.

**44. Sections 205ZHA, 205ZHB, 205ZHC and 205ZHD inserted**

After section 205ZH the following sections are inserted —

“

**205ZHA. Notification of criminal confiscation orders etc. —  
FLA s. 79B**

(1) If —

(a) a person makes an application for an order, under this Division, with respect to —

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

- (ii) the maintenance of a de facto partner;  
and
- (b) the person knows that the property of the de facto partners, or either of them is the subject of —
  - (i) a criminal confiscation order; or
  - (ii) an application for a confiscation declaration,

the person must —

- (c) disclose in the application the criminal confiscation order or application for a confiscation declaration; and
- (d) give to the court a sealed copy of that order or declaration.

Penalty: \$5 500.

- (2) If —
  - (a) a person is a party to a proceeding under this Division; and
  - (b) the person is notified by the DPP that the property of the de facto parties, or either of them, is subject to —
    - (i) a criminal confiscation order; or
    - (ii) an application for a confiscation declaration,

the person must notify the Registry Manager in writing of the criminal confiscation order or the application for a confiscation declaration.

Penalty: \$5 500.

**205ZHB. Court to stay proceedings under this Division affected by criminal confiscation order etc. —  
FLA s. 79C**

- (1) A court in which proceedings under this Division are pending must stay those proceedings if notified under section 205ZHA in relation to the proceedings.
- (2) A court may, before staying proceedings under subsection (1), invite or require the DPP to make submissions relating to staying the proceedings.
- (3) A court must, on application of the DPP, stay proceedings under this Division if the property of de facto partners, or either of them, is subject to —
  - (a) a criminal confiscation order; or
  - (b) an application for a confiscation declaration.
- (4) A court must notify the DPP if the court stays proceedings under subsection (1) or (3).
- (5) The DPP must notify the Registry Manager if —
  - (a) a criminal confiscation order ceases to be in force; or
  - (b) an order is made under section 87 of the *Criminal Property Confiscation Act 2000* for the release of property that has been confiscated; or
  - (c) an application for a confiscation declaration is finally determined.
- (6) For the purposes of subsection (5), an application for a confiscation declaration is finally determined when —
  - (a) the application is withdrawn; or
  - (b) if the application is successful, the resulting confiscation declaration is made; or

- (c) if the application is unsuccessful, the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.

**205ZHC. Lifting a stay — FLA s. 79D**

- (1) A court that stayed proceedings under section 205ZHB must wholly or partially lift the stay if —
  - (a) either party to the proceedings makes an application for the stay to be lifted and the DPP consents to such an application; or
  - (b) the DPP makes an application for the stay to be lifted.
- (2) A court that stayed proceedings under section 205ZHB may, on its own motion, wholly or partially lift the stay if the DPP consents to such a motion.
- (3) Giving the Registry Manager written notice of the DPP's consent under this section is taken to be the giving of that consent, unless the court requires the DPP to appear at the proceedings. The notice may be given by the DPP or by a party to the proceedings.

**205ZHD. Intervention by DPP — FLA s. 79E**

- (1) The DPP may intervene in any proceedings under this Division in relation to which a court is notified under section 205ZHA, or in any proceedings under section 205ZHB or 205ZHC in which the DPP is not already a party.
- (2) If the DPP intervenes, the DPP is taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

”.

**45. Sections 205ZX, 205ZY, 205ZZ and 205ZZA inserted in Part 5A Division 3**

After section 205ZW the following sections are inserted in Part 5A Division 3 —

“

**205ZX. Notification of criminal property confiscation order etc. FLA — s. 90M**

- (1) If —
- (a) a person makes an application for an order under Division 2, with respect to —
    - (i) the property of de facto partners, or either of them; or
    - (ii) the maintenance of a de facto partner;and
  - (b) the person knows that the property of the de facto partners or either of them is subject to —
    - (i) a criminal confiscation order; or
    - (ii) an application for a confiscation declaration,
- the person must —
- (c) disclose in the application the criminal confiscation order or the application for a confiscation declaration; and
  - (d) give to the court a sealed copy of that order or application.

Penalty: \$5 500.

- (2) If —
- (a) a person is a party to a proceeding under Division 2; and

- (b) the person is notified by the DPP that the property of the de facto parties, or either of them, is subject to —
  - (i) a criminal confiscation order; or
  - (ii) an application for a confiscation declaration,

the person must notify the Registry Manager in writing of the criminal confiscation order or the application for a confiscation declaration.

Penalty: \$5 500.

**205ZY. Court to stay proceedings under Division 2 affected by criminal confiscation order etc. — FLA s. 90N**

- (1) A court in which proceedings under Division 2 are pending must stay those proceedings if notified under section 205ZX in relation to the proceedings.
- (2) A court may, before staying proceedings under subsection (1), invite or require the DPP to make submissions relating to staying the proceedings.
- (3) A court must, on application of the DPP, stay proceedings under Division 2 if the property of de facto partners, or either of them, is subject to —
  - (a) a criminal confiscation order; or
  - (b) an application for a confiscation declaration.
- (4) A court must notify the DPP if the court stays proceedings under subsection (1) or (3).
- (5) The DPP must notify the Registry Manager if —
  - (a) a criminal confiscation order ceases to be in force; or
  - (b) an order is made under section 87 of the *Criminal Property Confiscation Act 2000* for the release of property that has been confiscated; or

- (c) an application for a confiscation declaration is finally determined.
- (6) For the purposes of subsection (5), an application for a confiscation declaration is finally determined when —
  - (a) the application is withdrawn; or
  - (b) if the application is successful, the resulting confiscation declaration is made; or
  - (c) if the application is unsuccessful, the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.

**205ZZ. Lifting a stay — FLA s. 90P**

- (1) A court that stayed proceedings under section 205ZY must wholly or partially lift the stay if —
  - (a) either party to the proceedings makes an application for the stay to be lifted and the DPP consents to such an application; or
  - (b) the DPP makes an application for the stay to be lifted.
- (2) A court that stayed proceedings under section 205ZY may, on its own motion, wholly or partially lift the stay if the DPP consents to such a motion.
- (3) Giving the Registry Manager written notice of the DPP's consent under this section is taken to be the giving of that consent, unless the court requires the DPP to appear at the proceedings.
- (4) Notice to the Registry Manager may be given by the DPP or by a party to the proceedings.





**47. Part 5 Division 13 Subdivision 1A inserted**

After section 205F the following Subdivision is inserted in Part 5 Division 13 —

“

**Subdivision 1A — Court’s powers where contravention without reasonable excuse not established**

**205FA. Court’s power to vary parenting order — FLA s. 70NEB**

- (1) A court may make an order varying a parenting order if —
  - (a) proceedings in relation to the parenting order are brought before a court having jurisdiction under this Act and it is alleged in those proceedings that a person (“**the respondent**”) committed a contravention of the primary order; and
  - (b) either —
    - (i) the court is not satisfied that the respondent has committed a contravention of the parenting order; or
    - (ii) the court is satisfied that the respondent has committed a contravention of the parenting order but the respondent proves that the respondent had a reasonable excuse for the contravention.
- (2) Subsection (1) applies whether the parenting order is made before or after the commencement of this Subdivision.

”.



(b) proceedings to enforce a decree or injunction made under section 235 or Division 6 or 12 of Part 5.

(2) If —

(a) a party to proceedings to which this section applies makes an offer to the other party to the proceedings to settle the proceedings; and

(b) the offer is made in accordance with any relevant rules,

the fact that the offer has been made, or 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.

(3) A judge or magistrate of a court mentioned in subsection (2) is not disqualified from sitting in the proceedings only because the fact that an offer has been made is, contrary to that subsection, disclosed to the court.

”.

## **51. Savings provision**

Despite the amendment effected by section 50, the *Family Court Act 1997*, as in force immediately before the commencement of this Subdivision, continues to apply in respect of offers to settle proceedings made under section 240 of that Act before the commencement of this Subdivision.

**Subdivision 3 — Suspension of sentences of imprisonment**

**52. Section 205Q amended**

After section 205Q(4) the following subsection is inserted —

“

(4a) A court that sentences a person to imprisonment under section 205L(5)(e) may —

- (a) suspend the sentence upon the terms and conditions determined by the court; and
- (b) terminate a suspension made under paragraph (a).

”.

**53. Section 226 amended**

Section 226(3)(d) is amended by inserting before “to” —

“ subject to subsection (4), ”.

**54. Section 227 amended**

After section 227(4) the following subsection is inserted —

“

(4a) A court that sentences a person to imprisonment under section 226(3)(d) may —

- (a) suspend the sentence upon the terms and conditions determined by the court; and
- (b) terminate a suspension made under paragraph (a).

”.

**Subdivision 4 — Enforcement (removal of information procedure)**

**55. Section 205P amended**

- (1) Section 205P(3) to (8) are repealed and the following subsection is inserted instead —

“

- (3) If the court (whether or not constituted by the judge or magistrate who made the community service order or required the bond to be entered into in accordance with section 205O) is satisfied that the person has, without reasonable excuse, failed to comply with the order or bond, the court may take action under subsection (9).

”.

- (2) Section 205P(11) is repealed.

**56. Section 230 amended**

- (1) Section 230(3) to (8) are repealed and the following subsection is inserted instead —

“

- (3) If the court (whether or not constituted by the judge or magistrate who imposed the sentencing alternative) is satisfied that the person has, without reasonable excuse, failed to comply with —

- (a) the sentencing alternative; or  
(b) any requirements made in relation to the sentencing alternative,

the court may take action under subsection (9).

”.

- (2) Section 230(11) is repealed.

**57. Savings provision**

Despite the amendments effected by this Subdivision, the *Family Court Act 1997*, as in force immediately before the commencement of this Subdivision, continues to apply to failures to comply with orders, bonds or sentencing alternatives made or imposed under that Act before the commencement of this Subdivision.

**Subdivision 5 — Private arbitration**

**58. Section 60B amended**

Section 60B(3) is amended in the definition of “dispute” as follows:

- (a) by deleting paragraph (a) and inserting instead —

“

- (a) Part 5A proceedings or proceedings under section 221; or

”;

- (b) after paragraph (b) by inserting —

“ or ”.

**Subdivision 6 — Change of venue**

**59. Section 46A inserted**

After section 46 the following section is inserted in Part 3 —

“

**46A. Change of venue — FLA s. 27A**

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

”.

**Subdivision 7 — Definition of disposition**

**60. Section 222 amended**

Section 222(5) is amended by deleting the definition of “disposition” and inserting instead —

“**disposition**” includes —

- (a) a sale or gift; and
- (b) the issue, grant, creation, transfer or cancellation of, or a variation of the rights attaching to, an interest in a company or a trust;

“**interest**” —

- (a) in a company includes —
  - (i) a share in or debenture of the company; and
  - (ii) an option over a share in or debenture of the company (whether the share or debenture is issued or not);

and

- (b) in a trust includes —
  - (i) a beneficial interest in the trust; and
  - (ii) the interest of a settlor in property subject to the trust; and
  - (iii) a power of appointment under the trust; and
  - (iv) a power to rescind or vary a provision of, or to rescind or vary the effect of the exercise of a power under, the trust; and
  - (v) an interest that is conditional, contingent or deferred.

”.



**61. Savings provision**

Despite the amendments effected by section 60, the *Family Court Act 1997*, as in force immediately before the commencement of that section, continues to apply to dispositions made under that Act before the commencement of that section.

**Subdivision 8 — Recovery of amounts paid under maintenance orders**

**62. Part 5 Division 7 Subdivision 7 inserted**

After section 132 the following Subdivision is inserted —

“

**Subdivision 7 — Recovery of amounts paid under maintenance orders**

**132A. Recovery of amounts paid, and property transferred or settled, under maintenance orders — FLA s. 66X**

- (1) This section applies if —
- (a) a court has at any time purported to make an order (“**the purported order**”) of a kind referred to in section 126(1)(a), (b) or (c) requiring a person (“**the maintenance provider**”) to pay an amount, or to transfer or settle property, by way of maintenance for a child; and
  - (b) the maintenance provider has —
    - (i) paid another person an amount or amounts; or
    - (ii) transferred or settled property, in compliance, or partial compliance, with the purported order; and

- (c) a court has determined that the maintenance provider is not a parent or step-parent of the child.
- (2) If the maintenance provider applies to a court for an order under this subsection, the court must make such order as it considers just and equitable in the circumstances, for —
  - (a) if the purported order was of a kind referred to in section 126(1)(a) or (b), the repayment to the maintenance provider, by the person to whom the amount or amounts referred to in subsection (1)(b)(i) were paid, of an amount up to, or equal to, that amount or the sum of those amounts; or
  - (b) if the purported order was of the kind referred to in section 126(1)(c), the return to the maintenance provider of —
    - (i) the property referred to in subsection (1)(b)(ii); or
    - (ii) an amount up to, or equal to, the value of that property.
- (2a) A court may only order the repayment of an amount that is less than the amount, or the sum of the amounts, referred to in subsection (1)(b)(i), or the return of an amount that is less than the value of the property referred to in subsection (1)(b)(ii), in exceptional circumstances.
- (3) If the purported order was of the kind referred to in section 126(1)(c) and the court that made the order did so —
  - (a) in part by way of providing maintenance for the child; and
  - (b) in part for some other purpose,

the reference in subsection (2)(b) to the property, or the value of the property, referred to in subsection (1)(b)(ii) is taken to be a reference to that property, or the value of that property, only to the extent to which that property was transferred or settled by way of providing maintenance for the child.

- (4) Without limiting subsection (2)(b), the orders that a court may make under that paragraph include the following —
- (a) an order that a specified payment be made;
  - (b) an order that a specified transfer or settlement of property be made;
  - (c) an order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order.
- (5) An amount paid to the Commonwealth under the Child Support (Registration and Collection) Act section 30 is to be taken, for the purposes of this section, to have been paid to the person to whom, apart from that section, the amount would have been payable.

”.

**Subdivision 9 — Other miscellaneous amendments**

**63. Section 5 amended**

Section 5 is amended by inserting in the appropriate alphabetical position —

“

**(FLA s. 4(1))**

“**child representative**” means a person who represents a child in proceedings under an appointment made under a court order under section 171(2);

”.

**64. Section 55 amended**

Section 55(1) is amended by deleting “, prepared in accordance with the rules,”.

**65. Section 57 amended**

Section 57(2) is repealed and the following subsection is inserted instead —

“

(2) The Principal Registrar must make arrangements for the dispute to be mediated.

”.

**66. Section 59 amended**

- (1) Section 59(1) is amended by deleting “and in accordance with any relevant rules”.
- (2) Section 59(3) is amended by deleting “in accordance with the rules”.

**67. Section 61 amended**

Section 61(2) is amended by deleting “, prepared in accordance with the rules,”.

**68. Section 64 amended and transitional provision**

- (1) Section 64(2) is amended by deleting “subsection (3)” and inserting instead —
- “ subsections (3) and (4) ”.
- (2) After section 64(3) the following subsections are inserted —
- “
- (4) Subsection (2) does not apply to the following —
- (a) an admission by an adult that indicates that a child has been abused or is at risk of abuse;
- (b) a disclosure by a child that indicates that the child has been abused or is at risk of abuse,
- unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.
- (5) In this section —
- “abuse”**, in relation to a child, means —
- (a) an assault, including a sexual assault, of the child which is an offence under a law, written or unwritten, in force in the State or Territory in which the act constituting the assault occurs; or
- (b) a person involving the child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned person or the other person, and where there is unequal power in the relationship between the child and the first-mentioned person;
- “child”** means a person who is under 18 years of age.
- ”.

- (3) The *Family Court Act 1997*, as amended by this section, does not apply to, or in respect of admissions or disclosures made under that Act before the commencement of this section.

**69. Section 169 amended**

Section 169(2) is amended by deleting “, in accordance with any relevant rules,”.

**70. Section 205J amended and transitional provision**

- (1) Section 205J is amended by inserting before “Evidence” the subsection designation “(1)”.
- (2) At the end of section 205J the following subsections are inserted —

“

- (2) Subsection (1) does not apply to the following —

- (a) an admission by an adult that indicates that a child has been abused or is at risk of abuse;
- (b) a disclosure by a child that indicates that the child has been abused or is at risk of abuse,

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

- (3) In this section —

“**abuse**”, in relation to a child, means —

- (a) an assault, including a sexual assault, of the child which is an offence under a law, written or unwritten, in force in the State or Territory in which the act constituting the assault occurs; or
- (b) a person involving the child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned



**75. Section 222A amended**

Section 222A(2) is repealed and the following subsection is inserted instead —

“

- (2) This section does not affect the operation of —
- (a) Part 5 Division 13; or
  - (b) Part 10 Division 2; or
  - (c) Part 10A.

”.

**76. Section 226 amended**

Section 226(3)(b) is amended by inserting after “sentence” —

“ by order ”.

**77. Section 237 amended and transitional provision**

- (1) Section 237(2) is amended by deleting “subsection (3)” and inserting instead —

“ subsections (3), (5) and (6) ”.

- (2) After section 237(3) the following subsections are inserted —

“

- (4) To avoid doubt, in proceedings in which a child representative has been appointed, the court may make an order under subsection (2) as to costs or security for costs, whether by way of interlocutory order or otherwise, to the effect that each party to the proceedings bears, in such proportion as the court considers just, the costs of the child representative in respect of the proceedings.



- (5) However, in proceedings in which a child representative has been appointed, if —
- (a) a party to the proceedings has received legal aid in respect of the proceedings; or
  - (b) the court considers that a party to the proceedings would suffer financial hardship if the party had to bear a proportion of the costs of the child representative,

the court must not make an order under subsection (2) against that party in relation to the costs of the child representative.

- (6) In considering what order (if any) should be made under subsection (2) in proceedings in which a child representative has been appointed, a court must disregard the fact that the child representative is funded under a legal aid scheme or service established under a Commonwealth, State or Territory law or approved under the Family Law Act.

”.

- (3) The *Family Court Act 1997*, as amended by this section, does not apply to, or in respect of, proceedings instituted under that Act before the commencement of this section.

**78. Section 238 amended**

- (1) Section 238(1)(a) is amended by deleting “section 226” and inserting instead —
- “ Part 5 Division 13 ”.
- (2) Section 238(1)(c) is amended by deleting “section 226” and inserting instead —
- “ Part 5 Division 13 ”.

**79. Section 243 amended**

Section 243(8) is amended as follows:

- (a) in paragraph (da) by deleting “the display of a notice in the premises of a court that lists” and inserting instead —  
“ the publication by a court of lists of ”;
- (b) after paragraph (f) by deleting the full stop and inserting instead —  
“  
; or  
(g) the publication of accounts of proceedings, where those accounts have been approved by a court.  
”;
- (c) after each of paragraphs (a) to (da) by inserting —  
“ or ”.

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**80. Section 5 amended**

Section 5 is amended as follows:

- (a) by inserting before “In” the subsection designation “(1)”;
- (b) by deleting the definitions of “family violence” and “relative”;
- (c) by inserting in the appropriate alphabetical positions —

“

**(FLA s. 4(1))**

“**Aboriginal child**” means a child who is a descendant of the Aboriginal people of Australia;

**(FLA s. 4(1))**

“**Aboriginal or Torres Strait Islander culture**”, in relation to a child —

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

**(FLA s. 4(1))**

“**family violence**” means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person’s family that causes that or any other member of the person’s family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety;

**(FLA s. 4(1))**

**“major long-term issues”** has the meaning given by section 7A;

**(FLA s. 4(1))**

**“Part 5 Order”** means an order made under Part 5;

**(FLA s. 4(1))**

**“relative”**, of a child —

(a) in Part 5, means —

- (i) a step-parent of the child; or
- (ii) a brother, sister, half-brother, half-sister, step-brother or step-sister of the child; or
- (iii) a grandparent of the child; or
- (iv) an uncle or aunt of the child; or
- (v) a nephew or niece of the child; or
- (vi) a cousin of the child;

and

(b) in section 6, has the meaning given by section 7;

**(FLA s. 4(1))**

**“Torres Strait Islander child”** means a child who is a descendant of the Indigenous inhabitants of the Torres Strait Islands;

”;

(d) at the end of section 5 by inserting the following subsections —

“

(2) A reference in this Act to a person who has parental responsibility for a child is a reference to a person who —

- (a) has some or all of that responsibility solely;
- or

(b) shares some or all of that responsibility with another person.

(3) A reference in this Act to a person who shares parental responsibility for a child with another person is a reference to a person who shares some or all of the parental responsibility for the child with that other person.

”.

**81. Heading inserted in Part 5 Division 1**

After the heading to Part 5 Division 1 the following heading is inserted —

“

**Subdivision 1 — Objects and principles**

”.

**82. Section 66 replaced**

Section 66 is repealed and the following section is inserted instead —

“

**66. Object of Part and principles underlying it — FLA s. 60B**

(1) The objects of this Part are to ensure that the best interests of children are met by —

(a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and

(b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and

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- (c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and
  - (d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.
- (2) The principles underlying these objects are that (except when it is or would be contrary to a child's best interests) —
- (a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
  - (b) children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and
  - (c) parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and
  - (d) parents should agree about the future parenting of their children; and
  - (e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).
- (3) For the purposes of subsection (2)(e), an Aboriginal child's or Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right —
- (a) to maintain a connection with that culture; and

- (b) to have the support, opportunity and encouragement necessary —
  - (i) to explore the full extent of that culture, consistent with the child’s age and developmental level and the child’s views; and
  - (ii) to develop a positive appreciation of that culture.

”.

**83. Subdivisions 2 and 3 inserted in Part 5 Division 1**

After section 66 the following Subdivisions are inserted in Part 5 Division 1 —

“

**Subdivision 2 — Best interests of the child**

**66A. Child’s best interests paramount consideration in making a parenting order — FLA s. 60CA**

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

**66B. Proceedings to which Subdivision applies — FLA s. 60CB**

- (1) This Subdivision applies to any proceedings under this Part in which the best interests of a child are the paramount consideration.
- (2) This Subdivision also applies to proceedings, in relation to a child, to which section 80(2) or (6) or 176 applies.

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

- (1) Subject to subsection (6), in determining what is in the child's best interests, the court must consider the matters set out in subsections (2) and (3).
- (2) The primary considerations are —
  - (a) the benefit to the child of having a meaningful relationship with both of the child's parents; and
  - (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.
- (3) Additional considerations are —
  - (a) any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views; and
  - (b) the nature of the relationship of the child with —
    - (i) each of the child's parents; and
    - (ii) other persons (including any grandparent or other relative of the child);and
  - (c) the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent; and
  - (d) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from —
    - (i) either of his or her parents; or



- (ii) any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living;

and

- (e) the practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis; and
- (f) the capacity of —
  - (i) each of the child's parents; and
  - (ii) any other person (including any grandparent or other relative of the child),

to provide for the needs of the child, including emotional and intellectual needs; and

- (g) the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant; and
- (h) if the child is an Aboriginal child or a Torres Strait Islander child —
  - (i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
  - (ii) the likely impact any proposed parenting order under this Part will have on that right;

and

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- (i) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents; and
  - (j) any family violence involving the child or a member of the child's family; and
  - (k) any family violence order that applies to the child or a member of the child's family, if —
    - (i) the order is a final order; or
    - (ii) the making of the order was contested by a person;and
  - (l) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child; and
  - (m) any other fact or circumstance that the court thinks is relevant.
- (4) Without limiting subsection (3)(c) and (i), the court must consider the extent to which each of the child's parents has fulfilled, or failed to fulfil, his or her responsibilities as a parent and, in particular, the extent to which each of the child's parents —
- (a) has taken, or failed to take, the opportunity —
    - (i) to participate in making decisions about major long-term issues in relation to the child; and
    - (ii) to spend time with the child; and
    - (iii) to communicate with the child;and

- (b) has facilitated, or failed to facilitate, the other parent —
    - (i) participating in making decisions about major long-term issues in relation to the child; and
    - (ii) spending time with the child; and
    - (iii) communicating with the child;and
  - (c) has fulfilled, or failed to fulfil, the parent's obligation to maintain the child.
- (5) If the child's parents have separated, the court must, in applying subsection (4), have regard, in particular, to events that have happened, and circumstances that have existed, since the separation occurred.
- (6) If the court is considering whether to make an order with the consent of all the parties to the proceedings, the court may, but is not required to, have regard to all or any of the matters set out in subsection (2) or (3).
- (7) For the purposes of subsection (3)(h), an Aboriginal child's or a Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right —
- (a) to maintain a connection with that culture; and
  - (b) to have the support, opportunity and encouragement necessary —
    - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
    - (ii) to develop a positive appreciation of that culture.

**66D. How the views of a child are expressed — FLA s. 60CD**

- (1) A court required under section 66C(3)(a) to consider any views expressed by a child in deciding whether to make a particular parenting order in relation to the child is to inform itself of the views expressed by a child in accordance with this section.
- (2) The court may inform itself of views expressed by a child —
  - (a) by having regard to anything contained in a report given to the court under section 73(2); or
  - (b) by making an order under section 164 for the child's interests in the proceedings to be independently represented by a lawyer; or
  - (c) subject to the rules, by such other means as the court thinks appropriate.

**66E. Children not required to express views — FLA s. 60CE**

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

**66F. Informing court of relevant family violence orders — FLA s. 60CF**

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

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

**66G. Court to consider risk of family violence — FLA s. 60CG**

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

**Subdivision 3 — Family dispute resolution**

**66H. Attending family dispute resolution before applying for Part 5 Order — FLA s. 60I**

- (1) In this section —
- “dispute resolution provisions of the rules”** means the provisions of the *Family Law Rules 2004* of the Commonwealth referred to in section 60I(12) of the Family Law Act to the extent, if any, that those rules are adopted by the rules under this Act.
- (2) The object of this section is to ensure that all persons who have a dispute about matters that may be dealt with by a Part 5 Order make a genuine effort to resolve that dispute by family dispute resolution before the Part 5 Order is applied for.

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- (3) The dispute resolution provisions of the rules (with such modifications as are necessary) must be complied with before an application is made under this Act for a parenting order if the application is made —
  - (a) on or after the commencement of this section; and
  - (b) before 1 July 2007.
- (4) Subsections (6) to (10) apply to an application for a Part 5 Order in relation to a child if —
  - (a) the application is made on or after 1 July 2007 and before the date fixed by Proclamation for the purposes of this paragraph; and
  - (b) none of the parties to the proceedings on the application has applied, before 1 July 2007, for a Part 5 Order in relation to the child.
- (5) Subsections (6) to (10) apply to all applications for a Part 5 Order in relation to a child that are made on or after the date fixed by Proclamation for the purposes of this subsection.
- (6) Subject to subsection (8), a court must not hear an application for a Part 5 Order in relation to a child unless —
  - (a) the applicant files in the court a certificate given to the applicant by a family dispute resolution practitioner under subsection (7); and
  - (b) the certificate is filed with the application for the Part 5 Order.
- (7) A family dispute resolution practitioner may give one of these kinds of certificates to a person —
  - (a) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues

that the order would deal with, but the person's failure to do so was due to the refusal, or the failure, of the other party or parties to the proceedings to attend;

- (b) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, because the practitioner considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to conduct the proposed family dispute resolution;
  - (c) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, and that all attendees made a genuine effort to resolve the issue or issues;
  - (d) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the person, the other party or another of the parties did not make a genuine effort to resolve the issue or issues.
- (8) Subsection (6) does not apply to an application for a Part 5 Order in relation to a child if —
- (a) the applicant is applying for the order —
    - (i) to be made with the consent of all the parties to the proceedings; or

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(ii) in response to an application that another party to the proceedings has made for a Part 5 Order;

or

(b) the court is satisfied that there are reasonable grounds to believe that —

(i) there has been abuse of the child by one of the parties to the proceedings; or

(ii) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or

(iii) there has been family violence by one of the parties to the proceedings; or

(iv) there is a risk of family violence by one of the parties to the proceedings;

or

(c) all the following conditions are satisfied —

(i) the application is made in relation to a particular issue;

(ii) a Part 5 Order has been made in relation to that issue within the period of 12 months before the application is made;

(iii) the application is made in relation to a contravention of the order by a person;

(iv) the court is satisfied that there are reasonable grounds to believe that the person has behaved in a way that shows a serious disregard for his or her obligations under the order;

or

(d) the application is made in circumstances of urgency; or



- (e) one or more of the parties to the proceedings is unable to participate effectively in family dispute resolution (whether because of an incapacity of some kind, physical remoteness from dispute resolution services or for some other reason); or
  - (f) other circumstances specified in the regulations are satisfied.
- (9) If —
- (a) a person applies for a Part 5 Order; and
  - (b) the person does not, before applying for the order, attend family dispute resolution with a family dispute resolution practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with; and
  - (c) subsection (6) does not apply to the application because of subsection (8),

the court must consider making an order that the person attend family dispute resolution with a family dispute resolution practitioner and the other party or parties to the proceedings in relation to that issue or those issues.

- (10) The validity of —
- (a) proceedings on an application for a Part 5 Order; or
  - (b) any order made in those proceedings,

is not affected by a failure to comply with subsection (6) in relation to those proceedings.

**66I. Family dispute resolution not attended because of child abuse or family violence — FLA s. 60J**

- (1) If —
- (a) section 66H(6) to (10) apply to an application for a Part 5 Order (see section 66H(4) and (5)); 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,

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

- (2) Subsection (1) does not apply if the court is satisfied that there are reasonable grounds to believe that —
- (a) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or
  - (b) there is a risk of family violence by one of the parties to the proceedings.
- (3) The validity of —
- (a) proceedings on an application for a Part 5 Order; or
  - (b) any order made in those proceedings,

is not affected by a failure to comply with subsection (1) in relation to those proceedings.

- (4) If —
- (a) the applicant indicates in writing that the applicant has not received information about the services and options (including alternatives to court action) available in circumstances of abuse or violence; and
  - (b) subsection (2) does not apply,

the executive manager of the court concerned must ensure that the applicant is referred to a family counsellor or family dispute resolution practitioner in order to obtain information about those matters.

**66J. Court to take prompt action in relation to allegations of child abuse or family violence — FLA s. 60K**

- (1) This section applies if —
- (a) an application is made to a court for a Part 5 Order in relation to a child; and
  - (b) a document is filed in the court, on or after the commencement of this section, in relation to the proceedings for the order; and
  - (c) the document alleges as a consideration that is relevant to whether the court should grant or refuse the application, that —
    - (i) there has been abuse of the child by one of the parties to the proceedings; or
    - (ii) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or
    - (iii) there has been family violence by one of the parties to the proceedings; or
    - (iv) there is a risk of family violence by one of the parties to the proceedings;
- and

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- (d) the document is a document of the kind prescribed by the rules for the purposes of this paragraph.
- (2) A court must —
  - (a) consider what interim or procedural orders (if any) should be made —
    - (i) to enable appropriate evidence about the allegation to be obtained as expeditiously as possible; and
    - (ii) to protect the child or any of the parties to the proceedings;
  - and
  - (b) make such orders of that kind as the court considers appropriate; and
  - (c) deal with the issues raised by the allegation as expeditiously as possible.
- (3) A court must take the action required by subsection (2)(a) and (b) —
  - (a) as soon as practicable after the document is filed; and
  - (b) if it is appropriate having regard to the circumstances of the case, within 8 weeks after the document is filed.
- (4) Without limiting subsection (2)(a)(i), the court must consider whether orders should be made under section 202K to obtain reports from prescribed government agencies in relation to the allegations.
- (5) Without limiting subsection (2)(a)(ii), the court must consider whether orders should be made, or an injunction granted, under section 235.
- (6) A failure to comply with a provision of this section in relation to an application does not affect the validity of

any order made in the proceedings in relation to the application.

”.

**84. Sections 70A and 70B inserted**

After section 70 the following sections are inserted —

“

**70A. Presumption of equal shared parental responsibility when making parenting orders — FLA s. 61DA**

- (1) When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child’s parents to have equal shared parental responsibility for the child.
- (2) The presumption does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in —
  - (a) abuse of the child or another child who, at the time, was a member of the parent’s family (or that other person’s family); or
  - (b) family violence.
- (3) When the court is making an interim order, the presumption applies unless the court considers that it would not be appropriate in the circumstances for the presumption to be applied when making that order.
- (4) The presumption may be rebutted by evidence that satisfies the court that it would not be in the best interests of the child for the child’s parents to have equal shared parental responsibility for the child.

**70B. Application of presumption of equal shared parental responsibility after interim parenting order made — FLA s. 61DB**

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

”.

**85. Section 71A inserted**

After section 71 the following section is inserted in Part 5 Division 2 —

“

**71A. Application to Aboriginal or Torres Strait Islander children — FLA s. 61F**

In —

- (a) applying this Part to the circumstances of an Aboriginal or Torres Strait Islander child; or
- (b) identifying a person or persons who have exercised, or who may exercise, parental responsibility for such a child,

the court must have regard to any kinship obligations, and child-rearing practices, of the child’s Aboriginal or Torres Strait Islander culture.

”.

**86. Section 73 amended**

After section 73(3) the following subsections are inserted —

“

- (3a) A family consultant who is directed to give the court a report on a matter under subsection (2) must —
  - (a) ascertain the views of the child in relation to that matter; and

- (b) include the views of the child on that matter in the report.
- (3b) Subsection (3a) does not apply if complying with that subsection would be inappropriate because of —
  - (a) the child's age or maturity; or
  - (b) some other special circumstance.

”.

**87. Section 76 amended**

- (1) Section 76(1) is amended as follows:

- (a) after paragraph (b) by inserting —

“

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

”;

- (b) after paragraph (a) by inserting —

“ and ”.

- (2) Section 76(2) is repealed and the following subsections are inserted instead —

“

- (1a) An agreement is not a parenting plan unless it is made free from any threat, duress or coercion.
- (2) A parenting plan may deal with one or more of the following —
  - (a) the person or persons with whom a child is to live;
  - (b) the time a child is to spend with another person or other persons;
  - (c) the allocation of parental responsibility for a child;

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- (d) if 2 or more persons are to share parental responsibility for a child, the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility;
  - (e) the communication a child is to have with another person or other persons;
  - (f) maintenance of a child;
  - (g) the process to be used for resolving disputes about the terms or operation of the plan;
  - (h) the process to be used for changing the plan to take account of the changing needs or circumstances of the child or the parties to the plan;
  - (i) any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.
- (2a) The person referred to in subsection (2) may be, or the persons referred to in that subsection may include, either a parent of the child or a person other than the parent of the child (including a grandparent or other relative of the child).
- (2b) Without limiting subsection (2)(c), the plan may deal with the allocation of responsibility for making decisions about major long-term issues in relation to the child.
- (2c) The communication referred to in subsection (2)(e) includes (but is not limited to) communication by —
- (a) letter; and



- (b) telephone, email or any other electronic means.

”.

**88. Section 78A replaced**

Section 78A is repealed and the following section is inserted instead —

“

**78A. Obligations of advisers — FLA s. 63DA**

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

- (ii) in the best interests of the child, they could consider the option of an arrangement of that kind; and
  - (c) inform them that decisions made in developing parenting plans should be made in the best interests of the child; and
  - (d) inform them of the matters that may be dealt with in a parenting plan in accordance with section 76(2); and
  - (e) inform them that, if there is a parenting order in force in relation to the child, the order may (because of section 85A) include a provision that the order is subject to a parenting plan they enter into; and
  - (f) inform them about the desirability of including in the plan —
    - (i) if they are to share parental responsibility for the child under the plan, provisions of the kind referred to in section 76(2)(d) (which deals with the form of consultations between the parties to the plan) as a way of avoiding future conflicts over, or misunderstandings about, the matters covered by that paragraph; and
    - (ii) provisions of the kind referred to in section 76(2)(g); and
    - (iii) provisions of the kind referred to in section 76(2)(h);
- and
- (g) explain to them, in language they are likely to readily understand, the availability of programs to help people who experience difficulties in complying with a parenting plan; and

- (h) inform them that section 89AB requires the court to have regard to the terms of the most recent parenting plan in relation to the child when making a parenting order in relation to the child if it is in the best interests of the child to do so.
- (3) For the purposes of subsection (2)(b), a child will be taken to spend substantial and significant time with a parent only if —
  - (a) the time the child spends with the parent includes both —
    - (i) days that fall on weekends and holidays; and
    - (ii) days that do not fall on weekends or holidays;and
  - (b) the time the child spends with the parent allows the parent to be involved in —
    - (i) the child’s daily routine; and
    - (ii) occasions and events that are of particular significance to the child;and
  - (c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.
- (4) Subsection (3) does not limit the other matters to which regard may be had in determining whether the time a child spends with a parent would be substantial and significant.
- (5) In this section —
  - “**adviser**” means a person who is —
    - (a) a legal practitioner; or

- (b) a family counsellor; or
- (c) a family dispute resolution practitioner; or
- (d) a family consultant.

”.

**89. Section 79 amended**

Section 79(4)(b) is amended by deleting “166(2).” and inserting instead —

“ 66C(2) and (3). ”.

**90. Section 84 amended**

- (1) Section 84(2) to (4) are repealed and the following subsections are inserted instead —

“

- (2) A parenting order may deal with one or more of the following —
- (a) the person or persons with whom a child is to live;
  - (b) the time a child is to spend with another person or other persons;
  - (c) the allocation of parental responsibility for a child;
  - (d) if 2 or more persons are to share parental responsibility for a child, the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility;
  - (e) the communication a child is to have with another person or other persons;
  - (f) maintenance of a child;
  - (g) the steps to be taken before an application is made to a court for a variation of the order to

take account of the changing needs or circumstances of —

- (i) a child to whom the order relates; or
  - (ii) the parties to the proceedings in which the order is made;
  - (h) the process to be used for resolving disputes about the terms or operation of the order;
  - (i) any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.
- (2a) The person referred to in subsection (2) may be, or include, either a parent of the child or a person other than the parent of the child (including a grandparent or other relative of the child).
- (3) Without limiting subsection (2)(c), the order may deal with the allocation of responsibility for making decisions about major long-term issues in relation to the child.
- (4) The communication referred to in subsection (2)(e) includes (but is not limited to) communication by —
- (a) letter; and
  - (b) telephone, email or any other electronic means.
- (4a) Without limiting subsection (2)(g) and (h), the parenting order may provide that the parties to the proceedings must consult with a family dispute resolution practitioner to assist with —
- (a) resolving any dispute about the terms or operation of the order; or
  - (b) reaching agreement about changes to be made to the order.

”.

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(2) Section 84(5) is amended by deleting “(c)” and inserting instead —

“ (f) ”.

(3) Section 84(6) to (8) are repealed and the following subsection is inserted instead —

“

(6) For the purposes of this Act —

(a) a parenting order that provides that a child is to live with a person is made in favour of that person; and

(b) a parenting order that provides that a child is to spend time with a person is made in favour of that person; and

(c) a parenting order that provides that a child is to have communication with a person is made in favour of that person; and

(d) a parenting order that —

(i) allocates parental responsibility for a child to a person; or

(ii) provides that a person is to share parental responsibility for a child with another person,

is made in favour of that person.

”.

**91. Section 85A inserted**

After section 85 the following section is inserted in Part 5  
Division 5 —

“

**85A. Parenting orders subject to later parenting plans —  
FLA s. 64D**

- (1) Subject to subsection (2), a parenting order in relation to a child is taken to include a provision that the order is subject to a parenting plan that is —
  - (a) entered into subsequently by the child’s parents; and
  - (b) agreed to, in writing, by any other person (other than the child) to whom the parenting order applies.
- (2) The court may, in exceptional circumstances, include in a parenting order a provision that the parenting order, or a specified provision of the parenting order, may only be varied by a subsequent order of the court (and not by a parenting plan).
- (3) Without limiting subsection (2), exceptional circumstances for the purposes of that subsection include the following —
  - (a) circumstances that give rise to a need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence;
  - (b) the existence of substantial evidence that one of the child’s parents is likely to seek to use coercion or duress to gain the agreement of the other parent to a parenting plan.

”.

**92. Section 86 amended**

(1) Section 86 is amended as follows:

(a) by inserting before “This” the subsection designation “(1)”;

(b) by deleting paragraph (b) and inserting instead —

“

(b) the general obligations created by parenting orders, other than child maintenance orders (Subdivision 3); and

(c) after paragraph (a) by inserting —

“ and ”.

”.

(2) At the end of section 86 the following subsection is inserted —

“

(2) Measures designed to improve communication between separated parents and to educate parents about their respective responsibilities in relation to their children are contained in this Division (see section 89A).

”.

**93. Section 86A replaced**

Section 86A is repealed and the following section is inserted instead —

“

**86A. Child’s best interests paramount consideration in making a parenting order — FLA s. 65AA**

Section 66A provides that in deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

”.



**94. Section 89 amended**

- (1) Section 89(1) is amended by inserting after “subject to” —  
“ sections 70A and 89AB and ”.
- (2) Section 89(2) is amended by inserting after “subject to” —  
“ section 70A and section 89AB and ”.

**95. Sections 89AA, 89AB, 89AC and 89AD inserted**

After section 89 the following sections are inserted —

“

**89AA. Court to consider child spending equal time or substantial and significant time with each parent in certain circumstances — FLA s. 65DAA**

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

- (b) the court does not make an order (or include a provision in the order) for the child to spend equal time with each of the parents,

the court must —

- (c) consider whether the child spending substantial and significant time with each of the parents would be in the best interests of the child; and
  - (d) consider whether the child spending substantial and significant time with each of the parents is reasonably practicable; and
  - (e) if it is, consider making an order to provide (or including a provision in the order) for the child to spend substantial and significant time with each of the parents.
- (3) For the purposes of subsection (2), a child will be taken to spend substantial and significant time with a parent only if —
- (a) the time the child spends with the parent includes both —
    - (i) days that fall on weekends and holidays; and
    - (ii) days that do not fall on weekends or holidays;and
  - (b) the time the child spends with the parent allows the parent to be involved in —
    - (i) the child's daily routine; and
    - (ii) occasions and events that are of particular significance to the child;and
  - (c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.

- (4) Subsection (3) does not limit the other matters to which a court can have regard in determining whether the time a child spends with a parent would be substantial and significant.
- (5) In determining for the purposes of subsections (1) and (2) whether it is reasonably practicable for a child to spend equal time, or substantial and significant time, with each of the child's parents, the court must have regard to —
  - (a) how far apart the parents live from each other; and
  - (b) the parents' current and future capacity to implement an arrangement for the child spending equal time, or substantial and significant time, with each of the parents; and
  - (c) the parents' current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind; and
  - (d) the impact that an arrangement of that kind would have on the child; and
  - (e) such other matters as the court considers relevant.

**89AB. Court to have regard to parenting plans — FLA s. 65DAB**

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

**89AC. Effect of parenting order that provides for shared parental responsibility — FLA s. 65DAC**

- (1) This section applies if, under a parenting order —
  - (a) 2 or more persons are to share parental responsibility for a child; and
  - (b) the exercise of that parental responsibility involves making a decision about a major long-term issue in relation to the child.
- (2) The order is taken to require the decision to be made jointly by those persons.
- (3) The order is taken to require each of those persons —
  - (a) to consult the other person in relation to the decision to be made about that issue; and
  - (b) to make a genuine effort to come to a joint decision about that issue.
- (4) To avoid doubt, this section does not require any other person to establish, before acting on a decision about the child communicated by one of those persons, that the decision has been made jointly.

**89AD. No need to consult on issues that are not major long-term issues — FLA s. 65DAE**

- (1) If a child is spending time with a person at a particular time under a parenting order, the order is taken not to require the person to consult a person who —
  - (a) has parental responsibility for the child; or
  - (b) shares parental responsibility for the child with another person,about decisions that are made in relation to the child during that time on issues that are not major long-term issues.

- (2) Subsection (1) applies subject to any provision to the contrary made by a parenting order.

”.

**96. Section 90 repealed**

Section 90 is repealed.

**97. Section 92 amended**

- (1) Section 92(2)(a) and “or” after it are deleted and the following is inserted instead —

“

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

”.

- (2) Section 92(2)(b) is amended by deleting “the conditions in paragraph (a) are not satisfied.” and inserting instead —

“ paragraph (a) has not been complied with. ”.

**98. Section 237A inserted**

After section 237 the following section is inserted —

“

**237A. Costs where false allegation or statement made —  
FLA s. 117AB**

- (1) This section applies if —
- (a) proceedings under this Act are brought before a court; and
- (b) the court is satisfied that a party to the proceedings knowingly made a false allegation or statement in the proceedings.

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- (2) The court must order that party to pay some or all of the costs of another party, or other parties, to the proceedings.

”.

**99. Transitional provisions**

- (1) In this section —
- “**commencement**” means the day on which this Division comes into operation;
- “**new Act**” means the *Family Court Act 1997* as in force after commencement;
- “**parenting order**” has the same meaning as in the *Family Court Act 1997*.
- (2) Section 66C of the new Act applies to orders made on or after commencement.
- (3) The amendments effected by sections 84 and 94 apply in respect of parenting orders made on or after commencement.
- (4) The amendment effected by section 85 applies to proceedings under Part 5 of the *Family Court Act 1997*, whether the proceedings were initiated before, on or after commencement.
- (5) The amendment effected by section 86 applies to directions given under section 73(2) of the new Act on or after commencement.
- (6) The amendment effected by section 87 applies to parenting plans made on or after commencement.
- (7) The amendment effected by section 90 applies to parenting orders made on or after commencement.
- (8) The amendment effected by section 91 applies to parenting orders made on or after commencement (this includes, without limitation, a parenting order that varies an earlier parenting order, whether the earlier parenting order was made before or after commencement).

- (9) Sections 89AA, 89AB, 89AC and 89AD of the new Act apply to parenting orders made on or after commencement.
- (10) The amendment effected by section 97 applies to a court proposing to make an order mentioned in section 92(1) of the new Act, whether the proceedings to which the order relates were initiated before or after commencement.
- (11) The amendments effected by this Division are taken not to constitute changed circumstances that would justify making an order to discharge or vary, or to suspend or revive the operation of, some or all of a parenting order that was made before commencement.

**Division 2 — Amendments about compliance regime**

**100. Section 89 amended**

Section 89(3) is amended by deleting “205H(1)(c) of proceedings under Division 13 Subdivision 2” and inserting instead —

“ 205O of proceedings under Division 13 Subdivision 5 ”.

**101. Part 5 Division 13 replaced**

Part 5 Division 13 is repealed and the following Division is inserted instead —

“

**Division 13 — Consequences of failure to comply with orders, and other obligations, that affect children**

**Subdivision 1 — Preliminary**

**205A. Simplified outline of Division — FLA s. 70NAA**

- (1) This Division deals with the powers that a court has to make orders to enforce compliance with orders under this Act affecting children.

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- (2) A court always has the power to vary the order under Subdivision 2, and, in doing so, the court will have regard to any parenting plan that has been entered into since the order was made (see section 205H).
- (3) The other orders that a court can make depend on whether —
  - (a) a contravention is alleged to have occurred but is not established (Subdivision 3); or
  - (b) the court finds that a contravention has occurred but there is a reasonable excuse for the contravention (Subdivision 4); or
  - (c) the court finds that there was a contravention and there is no reasonable excuse for the contravention (Subdivision 5 for less serious contraventions and Subdivision 6 for more serious contraventions).

**205B. Application of Division — FLA s. 70NAB**

Despite anything contained in any other provision of this Division, this Division does not apply in respect of a contravention, committed before this Division commences, of an order under this Act affecting children if a court made an order, in respect of that contravention before this Division commences, under this Act as previously in force.

**205C. Meaning of “contravened an order” — FLA s. 70NAC**

A person is taken for the purposes of this Division to have contravened an order under this Act affecting children if, and only if —

- (a) where the person is bound by the order, he or she has —
  - (i) intentionally failed to comply with the order; or



(ii) made no reasonable attempt to comply with the order;

or

- (b) otherwise, he or she has —
- (i) intentionally prevented compliance with the order by a person who is bound by it; or
  - (ii) aided or abetted a contravention of the order by a person who is bound by it.

**205D. Requirements taken to be included in certain orders — FLA s. 70NAD**

For the purposes of this Division —

- (a) a parenting order that deals with whom a child is to live with is taken to include a requirement that people act in accordance with section 96 in relation to the order; and
- (b) a parenting order that deals with whom a child is to spend time with is taken to include a requirement that people act in accordance with section 97 in relation to the order; and
- (c) a parenting order that deals with whom a child is to communicate with is taken to include a requirement that people act in accordance with section 98 in relation to the order; and
- (d) a parenting order to which section 98 applies is taken to include a requirement that people act in accordance with that section in relation to the order.

**205E. Meaning of “reasonable excuse for contravening” an order — FLA s. 70NAE**

- (1) The circumstances in which a person may be taken to have had, for the purposes of this Division, a

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reasonable excuse for contravening an order under this Act affecting children include, but are not limited to, the circumstances set out in subsections (2), (4), (5), (6) and (7).

- (2) A person (the “**respondent**”) is taken to have had a reasonable excuse for contravening an order under this Act affecting children if —
  - (a) the respondent contravened the order because, or substantially because, he or she did not, at the time of the contravention, understand the obligations imposed by the order on the person who was bound by it; and
  - (b) a court is satisfied that the respondent ought to be excused in respect of the contravention.
- (3) If a court decides that a person had a reasonable excuse for contravening an order under this Act for the reason referred to in subsection (2)(a), it is the duty of the court to explain to the person, in language likely to be readily understood by the person, the obligations imposed on him or her by the order and the consequences that may follow if he or she again contravenes the order.
- (4) A person (the “**respondent**”) is taken to have had a reasonable excuse for contravening a parenting order to the extent to which it deals with whom a child is to live with in a way that resulted in the child not living with a person in whose favour the order was made if —
  - (a) the respondent believed on reasonable grounds that the actions constituting the contravention were necessary to protect the health or safety of a person (including the respondent or the child); and
  - (b) the period during which, because of the contravention, the child did not live with the

person in whose favour the order was made was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).

- (5) A person (the “**respondent**”) is taken to have had a reasonable excuse for contravening a parenting order to the extent to which it deals with whom a child is to spend time with in a way that resulted in a person and a child not spending time together as provided for in the order if —
- (a) the respondent believed on reasonable grounds that not allowing the child and the person to spend time together was necessary to protect the health or safety of a person (including the respondent or the child); and
  - (b) the period during which, because of the contravention, the child and the person did not spend time together was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).
- (6) A person (the “**respondent**”) is taken to have had a reasonable excuse for contravening a parenting order to the extent to which it deals with whom a child is to communicate with in a way that resulted in a person and a child not having the communication provided for under the order if —
- (a) the respondent believed on reasonable grounds that not allowing the child and the person to communicate together was necessary to protect the health or safety of a person (including the respondent or the child); and
  - (b) the period during which, because of the contravention, the child and the person did not communicate was not longer than was

necessary to protect the health or safety of the person referred to in paragraph (a).

- (7) A person (the “**respondent**”) is taken to have had a reasonable excuse for contravening a parenting order to which section 98A applies by acting contrary to section 98A if —
- (a) the respondent believed on reasonable grounds that the action constituting the contravention was necessary to protect the health or safety of a person (including the respondent or the child); and
  - (b) the period during which, because of that action, a person in whose favour the order was made was hindered in or prevented from discharging responsibilities under the order was not for longer than was necessary to protect the health or safety of the person referred to in paragraph (a).

**205F. Standard of proof — FLA s. 70NAF**

- (1) Subject to subsection (3), the standard of proof to be applied in determining matters in proceedings under this Division is proof on the balance of probabilities.
- (2) Without limiting subsection (1), that subsection applies to the determination of whether a person who contravened an order under this Act affecting children had a reasonable excuse for the contravention.
- (3) A court may only make an order under —
  - (a) section 205SB(2)(a), (d) or (e); or
  - (b) section 205SF(3)(a),

if the court is satisfied beyond reasonable doubt that the grounds for making the order exist.

**Subdivision 2 — Court’s power to vary parenting order**

**205G. Variation of parenting order — FLA s. 70NBA**

- (1) A court may make an order varying a primary order if —
  - (a) proceedings in relation to the primary order are brought before the court; and
  - (b) it is alleged in those proceedings that a person committed a contravention of the primary order and either —
    - (i) the court does not find that the person committed a contravention of the primary order; or
    - (ii) the court finds that the person committed a contravention of the primary order.
- (2) If Subdivision 6 applies to the contravention, when making an order under subsection (1) varying a primary order, a court, in addition to regarding, under section 66A, the best interests of the child as the paramount consideration, must, if any of the following considerations is relevant, take that consideration into account —
  - (a) the person who contravened the primary order did so after having attended, after having refused or failed to attend, or after having been found to be unsuitable to take any further part in, a post-separation parenting program or a part of such a program;
  - (b) there was no post-separation parenting program that the person who contravened the primary order could attend;
  - (c) because of the behaviour of the person who contravened the primary order, it was not

appropriate, in the court's opinion, for the person to attend a post-separation parenting program, or a part of such a program;

- (d) the primary order was a compensatory parenting order made under section 205O(1)(b) or 205SB(2)(c) after the person had contravened a previous order under this Act affecting children.

- (3) This section does not limit the circumstances in which a court may vary a primary order.

**205H. Effect of parenting plan — FLA s. 70NBB**

- (1) This section applies if —
  - (a) a parenting order has been made in relation to a child (whether before or after the commencement of section 101 of the *Family Legislation Amendment Act 2006*); and
  - (b) after the parenting order was made, the parents of the child made a parenting plan that dealt with a matter (the “**relevant matter**”) that was dealt with in the parenting order.
- (2) If —
  - (a) section 205G applies to proceedings brought in relation to the parenting order in relation to the relevant matter; and
  - (b) the parenting plan was in force when the contravention of the parenting order —
    - (i) is alleged to have been committed; or
    - (ii) occurred,

a court must, in exercising its powers under section 205G —

- (c) have regard to the terms of the parenting plan; and

- (d) consider whether to exercise its powers under section 205G to make an order varying the parenting order to include (with or without modification) some or all of the provisions of the parenting plan.

**Subdivision 3 — Contravention alleged but not established**

**205I. Application of Subdivision — FLA s. 70NCA**

This Subdivision applies if —

- (a) a primary order has been made, whether before or after the commencement of this Subdivision; and
- (b) proceedings in relation to the primary order are brought before a court; and
- (c) it is alleged in those proceedings that a person (the “**respondent**”) committed a contravention of the primary order; and
- (d) a court does not find that the respondent committed a contravention of the primary order.

**205J. Costs — FLA s. 70NCB**

- (1) A court may make an order that the person who brought the proceedings (the “**applicant**”) pay some or all of the costs of another party, or other parties, to the proceedings.
- (2) A court must consider making an order under subsection (1) if —
  - (a) the applicant has previously brought proceedings in relation to the primary order or another primary order in which the applicant alleged that the respondent committed a contravention of the primary order or that other primary order; and

- (b) on the most recent occasion on which the applicant brought proceedings of the kind referred to in paragraph (a), the court before which the proceedings were brought —
  - (i) was not satisfied that the respondent had committed a contravention of the primary order or that other primary order; or
  - (ii) was satisfied that the respondent had committed a contravention of the primary order or that other primary order but did not make an order under section 205G, 205L, 205M, 205O or 205SB in relation to the contravention.

**Subdivision 4 — Contravention established but reasonable excuse for contravention**

**205K. Application of Subdivision — FLA s. 70NDA**

This Subdivision applies if —

- (a) a primary order has been made, whether before or after the commencement of this Subdivision; and
- (b) a court is satisfied that a person (the “**respondent**”) has, whether before or after the commencement, committed a contravention (the “**current contravention**”) of the primary order; and
- (c) the respondent proves that he or she had a reasonable excuse for the current contravention.



**205L. Order compensating person for time lost — FLA s. 70NDB**

- (1) If —
  - (a) the primary order is a parenting order in relation to a child; and
  - (b) the current contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period),  
a court —
    - (c) may make a further parenting order that compensates the person for time the person did not spend with the child (or the time the child did not live with the person) as a result of the current contravention; and
    - (d) must consider making that kind of order.
- (2) A court must not make an order under subsection (1)(c) if it would not be in the best interests of the child for the court to do so.

**205M. Costs — FLA s. 70NDC**

- (1) If a court does not make an order under section 205L in relation to the current contravention, the court may make an order that the person who brought the proceedings (the “**applicant**”) pay some or all of the costs of another party, or other parties, to the proceedings.
- (2) A court must consider making an order under subsection (1) if —
  - (a) the applicant has previously brought proceedings in relation to the primary order or another primary order in which the applicant alleged that the respondent committed a

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- contravention of the primary order or that other primary order; and
- (b) on the most recent occasion on which the applicant brought proceedings of the kind referred to in paragraph (a), the court before which the proceedings were brought —
- (i) was not satisfied that the respondent had committed a contravention of the primary order or that other primary order; or
  - (ii) was satisfied that the respondent had committed a contravention of the primary order or that other primary order but did not make an order under section 205G, 205L, 205O or 205SB in relation to the contravention.

**Subdivision 5 — Contravention without reasonable excuse  
(less serious contravention)**

**205N. Application of Subdivision — FLA s. 70NEA**

- (1) Subject to subsection (4), this Subdivision applies if —
- (a) a primary order has been made, whether before or after the commencement of this Division; and
  - (b) a court is satisfied that a person has, whether before or after that commencement, committed a contravention (the “**current contravention**”) of the primary order; and
  - (c) the person does not prove that he or she had a reasonable excuse for the current contravention; and

- (d) either subsection (2) or (3) applies, and, if the primary order is an order for the maintenance of a child, this Subdivision applies irrespective of the period since the current contravention occurred.
- (2) For the purposes of subsection (1)(d), this subsection applies if no court has previously —
- (a) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
  - (b) under section 205O(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order.
- (3) For the purposes of subsection (1)(d), this subsection applies if —
- (a) a court has previously —
    - (i) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
    - (ii) under section 205O(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order;
- and
- (b) the court, in dealing with the current contravention, is satisfied that it is more appropriate for that contravention to be dealt with under this Subdivision.
- (4) This Subdivision does not apply if, in circumstances mentioned in subsection (2), the court dealing with the current contravention is satisfied that the person who contravened the primary order has behaved in a way

that showed a serious disregard for his or her obligations under the primary order.

**205O. Powers of court — FLA s. 70NEB**

- (1) If this Subdivision applies, a court may do any or all of the following —
  - (a) make an order directing —
    - (i) the person who committed the current contravention; or
    - (ii) that person and another specified person,  
to attend a post-separation parenting program;
  - (b) if the current contravention is a contravention of a parenting order in relation to a child, make a further parenting order that compensates a person for time the person did not spend with the child (or time the child did not live with the person) as a result of the current contravention;
  - (c) adjourn the proceedings to allow either or both of the parties to the primary order to apply for a further parenting order under Part 5 Division 6 that discharges, varies or suspends the primary order or revives some or all of an earlier parenting order;
  - (d) make an order requiring the person who committed the current contravention to enter into a bond in accordance with section 205P;
  - (e) if —
    - (i) the current contravention is a contravention of a parenting order in relation to a child; and
    - (ii) the current contravention resulted in a person not spending time with the child

(or the child not living with a person for a particular period); and

- (iii) the person referred to in subparagraph (ii) reasonably incurs expenses as a result of the contravention,

make an order requiring the person who committed the current contravention to compensate the person referred to in subparagraph (ii) for some or all of the expenses referred to in subparagraph (iii);

- (f) make an order that the person who committed the current contravention pay some or all of the costs of another party, or other parties, to the proceedings under this Division;
- (g) if the court makes no other orders in relation to the current contravention, order that the person who brought the proceedings in relation to the current contravention pay some or all of the costs of the person who committed the current contravention.

- (2) A court must not make an order under subsection (1)(a) directed to a person other than the person who committed the current contravention unless —

- (a) the person brought the proceedings before the court in relation to the current contravention or is otherwise a party to those proceedings; and
- (b) the court is satisfied that it is appropriate to direct the order to the person because of the connection between the current contravention and the carrying out by the person of his or her parental responsibilities in relation to the child or children to whom the primary order relates.

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- (3) If a court makes an order under subsection (1)(a), the executive manager of the court must ensure that the provider of the program concerned is notified of the making of the order.
- (4) If —
- (a) the current contravention is a contravention of a parenting order in relation to a child; and
  - (b) the contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period),
- a court must consider making an order under subsection (1)(b) to compensate the person for the time the person did not spend with the child (or the time the child did not live with the person) as a result of the contravention.
- (5) A court must not make an order under subsection (1)(b) if it would not be in the best interests of the child for the court to do so.
- (6) In deciding whether to adjourn the proceedings as mentioned in subsection (1)(c), a court must have regard to the following —
- (a) whether the primary order was made by consent;
  - (b) whether either or both of the parties to the proceedings in which the primary order was made were represented in those proceedings by a legal practitioner;
  - (c) the length of the period between the making of the primary order and the occurrence of the current contravention;
  - (d) any other matters that the court thinks relevant.

- (7) A court must consider making an order under subsection (1)(g) if —
- (a) the person (the “**applicant**”) who brought the proceedings in relation to the current contravention has previously brought proceedings in relation to the primary order or another primary order in which the applicant alleged that the person (the “**respondent**”) who committed the current contravention committed a contravention of the primary order or that other primary order; and
  - (b) on the most recent occasion on which the applicant brought proceedings of the kind referred to in paragraph (a), the court before which the proceedings were brought —
    - (i) was not satisfied that the respondent had committed a contravention of the primary order or that other primary order; or
    - (ii) was satisfied that the respondent had committed a contravention of the primary order or that other primary order but did not make an order under section 205G, 205L, 205M, 205SB or this section in relation to the contravention.

**205P. Bonds — FLA s. 70NEC**

- (1) This section provides for bonds that a court may require a person to enter into under section 205O(1)(d).
- (2) A bond is to be for a specified period of up to 2 years.
- (3) A bond may be —
  - (a) with or without surety; and
  - (b) with or without security.

- (4) The conditions that may be imposed on a person by a bond include (without limitation) conditions that require the person —
- (a) to attend an appointment (or a series of appointments) with a family consultant; or
  - (b) to attend family counselling; or
  - (c) to attend family dispute resolution; or
  - (d) to be of good behaviour.
- (5) If a court proposes to require a person to enter into a bond, it must, before making the requirement, explain to the person, in language likely to be readily understood by the person —
- (a) the purpose and effect of the proposed requirement; and
  - (b) the consequences that may follow if the person —
    - (i) fails to enter into the bond; or
    - (ii) having entered into the bond, fails to act in accordance with the bond.

**205Q. Duties of provider of post-separation parenting program — FLA s. 70NED**

The provider of a post-separation parenting program must inform a court if —

- (a) the provider considers that a person ordered to attend the program under section 205O(1)(a) is unsuitable to attend the program, or to continue attending the program; or
- (b) a person ordered to attend the program under section 205O(1)(a) fails to attend the program, or a part of it.



**205R. Evidence — FLA s. 70NEF**

- (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 Territory, or by the consent of the parties, to hear evidence.
- (2) Subsection (1) does not apply to the following —
  - (a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse;
  - (b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse,

unless, in the opinion of the court 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.

**205S. Court may make further orders in relation to attendance at program — FLA s. 70NEG**

A court may make such orders as it considers appropriate, other than the orders referred to in section 205SB(2), in respect of a person, if —

- (a) it appears to the court that the person has not attended a post-separation parenting program that the person was ordered to attend; or
- (b) the person was assessed as unsuitable to attend a program.

**Subdivision 6 — Contravention without reasonable excuse  
(more serious contravention)**

**205SA. Application of Subdivision — FLA s. 70NFA**

- (1) Subject to subsection (2), this Subdivision applies if —
  - (a) a primary order has been made, whether before or after the commencement of this Division;  
and
  - (b) a court is satisfied that a person has, whether before or after that commencement, committed a contravention (the “**current contravention**”) of the primary order; and
  - (c) the person does not prove that he or she had a reasonable excuse for the current contravention;  
and
  - (d) either subsection (2) or (3) applies.
- (2) For the purposes of subsection (1)(d), this subsection applies if —
  - (a) no court has previously —
    - (i) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
    - (ii) under section 205O(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order;  
and
  - (b) the court dealing with the current contravention is satisfied that the person has behaved in a way that showed a serious disregard of his or her obligations under the primary order.

- (3) For the purposes of subsection (1)(d), this subsection applies if a court has previously —
  - (a) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
  - (b) under section 205O(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order.
- (4) This Subdivision does not apply if the court dealing with the current contravention is satisfied that it is more appropriate for that contravention to be dealt with under Subdivision 5.
- (5) This Subdivision applies whether the primary order was made, and whether the current contravention occurred, before or after the commencement of this Division.

**205SB. Powers of court — FLA s. 70NFB**

- (1) If this Subdivision applies, a court must, in relation to the person who committed the current contravention —
  - (a) make an order under subsection (2)(g), unless the court is satisfied that it would not be in the best interests of the child concerned to make that order; and
  - (b) if the court makes an order under subsection (2)(g), consider making another order (or other orders) under subsection (2) that the court considers to be the most appropriate of the orders under subsection (2) in the circumstances; and
  - (c) if the court does not make an order under subsection (2)(g), make at least one order under subsection (2), being the order (or orders) that the court considers to be the most appropriate

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of the orders under subsection (2) in the circumstances.

- (2) The orders that are available to be made by a court are —
- (a) a community service order of a kind referred to in, and in accordance with, section 205SC; or
  - (b) an order requiring the person to enter into a bond in accordance with section 205SE; or
  - (c) if the current contravention is a contravention of a parenting order in relation to a child, a further parenting order that compensates a person for time the person did not spend with the child (or the time the child did not live with the person) as a result of the current contravention, unless it would not be in the best interests of the child concerned to make that order; or
  - (d) to fine the person —
    - (i) in the case of a natural person, not more than \$6 600; or
    - (ii) in the case of a body corporate, not more than \$33 000;
- or
- (e) subject to subsection (7), to impose a sentence of imprisonment on the person in accordance with section 205SG; or
  - (f) if —
    - (i) the current contravention is a contravention of a parenting order in relation to a child; and
    - (ii) the current contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period); and

(iii) the person referred to in subparagraph (ii) reasonably incurs expenses as a result of the contravention,

to make an order requiring the person who committed the current contravention to compensate the person referred to in subparagraph (ii) for some or all of the expenses referred to in subparagraph (iii); or

(g) to make an order that the person who committed the current contravention pay all of the costs of another party, or other parties, to the proceedings under this Division; or

(h) to make an order that the person who committed the current contravention pay some of the costs of another party, or other parties, to the proceedings under this Division.

- (3) If a court varies or discharges under section 205SD a community service order made under subsection (2)(a), the court may give any directions as to the effect of the variation or discharge that the court considers appropriate.
- (4) A court must not make an order imposing a sentence of imprisonment on a person under this section in respect of a contravention of a child maintenance order made under this Act unless the court is satisfied that the contravention was intentional or fraudulent.
- (5) A court must not make an order imposing a sentence of imprisonment on a person under this section in respect of —
- (a) a contravention of an administrative assessment of child support made under the Child Support (Assessment) Act; or

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- (b) a breach of a child support agreement made under that Act; or
  - (c) a contravention of an order made by a court under Division 4 of Part 7 of that Act for a departure from such an assessment (including such an order that contains matters mentioned in section 141 of that Act).
- (6) An order under this section may be expressed to take effect immediately, at the end of a specified period or on the occurrence of a specified event.
- (7) When a court makes an order under this section, the court may make any other orders that the court considers necessary to ensure compliance with the order that was contravened.

**205SC. When court is empowered to make a community service order — FLA s. 70NFC**

- (1) In this section —  
“**Sentencing Act**” means the *Sentencing Act 1995*.
- (2) A community service order imposed on a person under section 205SB(2)(a) can be one of the following kinds —
- (a) a community based order, within the meaning of the Sentencing Act, imposed in accordance with the provisions of Part 9 of that Act;
  - (b) an intensive supervision order, within the meaning of the Sentencing Act, imposed in accordance with the provisions of Part 10 of that Act.
- (3) For the purposes of this Act —
- (a) a reference in Part 9 or 10 of the Sentencing Act to an offence includes a reference to the contravention of an order; and

- (b) a reference in Part 9 or 10 of the Sentencing Act to an offender is a reference to a person who contravened an order; and
  - (c) a reference in Part 9 or 10 of the Sentencing Act to an offender's criminal behaviour is a reference to the behaviour of a person who contravened an order when contravening that order.
- (4) A person who, under the Sentencing Act —
- (a) is the executive manager; or
  - (b) is a community corrections officer,
- has, for the purposes of this Act, the same functions as the person has under Part 9 or 10 of the Sentencing Act, unless a court orders otherwise.
- (5) Where, under section 205SB(2)(a), a court proposes to impose a community service order of a kind referred to in this section on a person, the court must, before doing so, explain or cause to be explained to the person, in language likely to be readily understood by the person —
- (a) the purpose and effect of the proposed community service order; and
  - (b) the requirements, obligations and conditions applicable to that person under the proposed community service order; and
  - (c) the consequences that may follow if the person fails to comply with the proposed community service order or with any requirement, obligation or condition applicable to that person under the proposed community service order; and
  - (d) how the proposed community service order may be discharged or varied.

- (6) If, in the application of Part 9 or 10 of the Sentencing Act for the purposes of this Act, there is any inconsistency between the provisions of the Sentencing Act and this Act, the provisions of this Act prevail.

**205SD. Variation and discharge of community service orders — FLA s. 70NFD**

If —

- (a) the Court makes a community service order under section 205SB(2)(a) then the Court may vary or discharge the order; or
- (b) a court other than the Court makes a community service order under section 205SB(2)(a) then that court or the Court can vary or discharge the order.

**205SE. Bonds — FLA s. 70NFE**

- (1) This section provides for bonds that a court may require a person to enter into under section 205SB(2)(b).
- (2) A bond is to be for a specified period of up to 2 years.
- (3) A bond may be —
- (a) with or without surety; and
- (b) with or without security.
- (4) The conditions that may be imposed on a person by a bond include (without limitation) conditions that require the person —
- (a) to attend an appointment (or a series of appointments) with a family consultant; or
- (b) to attend family counselling; or
- (c) to attend family dispute resolution; or
- (d) to be of good behaviour.



- (5) If a court proposes to require a person to enter into a bond, it must, before making the requirement, explain to the person, in language likely to be readily understood by the person —
- (a) the purpose and effect of the proposed requirement; and
  - (b) the consequences that may follow if the person —
    - (i) fails to enter into the bond; or
    - (ii) having entered into the bond, fails to act in accordance with the bond.

**205SF. Procedure for enforcing community service orders or bonds — FLA s. 70NFF**

- (1) If a court makes a community service order under section 205SB(2)(a) in respect of a person, or an order under section 205SB(2)(b) requiring a person to enter into a bond in accordance with section 205SE, the following provisions have effect.
- (2) If the court (whether or not constituted by the judge or magistrate who made the community service order or required the bond to be entered into in accordance with section 205SE) is satisfied that the person has, without reasonable excuse, failed to comply with the order or bond, the court may take action under subsection (3).
- (3) The court may —
- (a) without prejudice to the continuance of the community service order or the bond entered into in accordance with section 205SE, impose a fine not exceeding \$1 100 on the person; or
  - (b) revoke the community service order or the bond entered into in accordance with section 205SE and, subject to subsection (4), deal with the person, for the contravention in respect of

which the community service order was made or the bond was entered into, in any manner in which the person could have been dealt with for the contravention if —

- (i) the community service order had not been made or the bond had not been entered into; and
  - (ii) the person was before the court under section 205SB in respect of the contravention.
- (4) In dealing with the person as mentioned in subsection (3)(b), the court must, in addition to any other matters that it considers should be taken into account, take into account —
- (a) the fact that the community service order was made or the bond was entered into; and
  - (b) anything done under the community service order or pursuant to the bond; and
  - (c) any fine imposed, and any other order made, for or in respect of the contravention.

**205SG. Sentences of imprisonment — FLA s. 70NFG**

- (1) A sentence of imprisonment imposed on a person under section 205SB(2)(e) is to be expressed to be —
- (a) for a specified period of 12 months or less; or
  - (b) for a period ending when the person —
    - (i) complies with the order concerned; or
    - (ii) has been imprisoned under the sentence for 12 months or such lesser period as is specified by the court,whichever happens first.
- (2) A court must not sentence a person to imprisonment under section 205SB(2)(e) unless the court is satisfied

that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention under any of the other paragraphs of section 205SB(2).

- (3) If a court sentences a person to imprisonment under section 205SB(2)(e), the court must —
  - (a) state the reasons why it is satisfied as mentioned in subsection (2); and
  - (b) cause those reasons to be entered in the records of the court.
- (4) The failure of a court to comply with subsection (3) does not invalidate a sentence.
- (5) A court that sentences a person to imprisonment under section 205SB(2)(e) may —
  - (a) suspend the sentence upon the terms and conditions determined by the court; and
  - (b) terminate a suspension made under paragraph (a).
- (6) A court, when sentencing a person to imprisonment under section 205SB(2)(e), may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a bond described in subsection (7) after he or she has served a specified part of the term of imprisonment.
- (7) A bond for the purposes of subsection (6) is a bond (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.
- (8) A court that has sentenced a person to imprisonment for a period expressed as provided by subsection (1)(b) may order the release of the person if it is satisfied that the person will, if he or she is released, comply with the order concerned.

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- (9) To avoid doubt, the serving by a person of a period of imprisonment under a sentence imposed on the person under section 205SB(2)(e) for failure to make a payment under a child maintenance order does not affect the person's liability to make the payment.

**205SH. Relationship between Subdivision and other laws — FLA s. 70NFH**

- (1) This section applies where an act or omission by a person —
- (a) constitutes a contravention of an order under this Act affecting children; and
  - (b) is also an offence against any law.
- (2) If the person is prosecuted in respect of the offence, a court in which proceedings have been brought under section 205SB in respect of the contravention of the order must —
- (a) adjourn those proceedings until the prosecution has been completed; or
  - (b) dismiss those proceedings.
- (3) The person may be prosecuted for, and convicted of, the offence.
- (4) Nothing in this section renders the person liable to be punished twice in respect of the same act or omission.

”.

**102. Section 237 amended**

Section 237(1) is amended by deleting “section 242,” and inserting instead —

“ sections 205SB, 237A and 242, ”.

**103. Transitional provisions**

- (1) In this section —
- “**commencement**” means the day on which this Division comes into operation;
- “**parenting order**” has the same meaning as in the *Family Court Act 1997*.
- (2) The amendments effected by this Division apply to a contravention, or alleged contravention of a parenting order —
- (a) if the contravention occurs, or the alleged contravention is alleged to occur, on or after commencement; and
  - (b) do not apply if the contravention occurs, or the alleged contravention is alleged to occur, before commencement.

**Division 3 — Amendments about the conduct of child-related proceedings**

**104. Section 5 amended**

Section 5 is amended by inserting in the appropriate alphabetical position —

“

**(FLA s. 4(1))**

“**child-related proceedings**” has the meaning given by section 202A;

”.

**105. Part 5 Division 11A inserted**

After Part 5 Division 11 the following Division is inserted —

“

**Division 11A — Principles for conducting child-related proceedings**

**Subdivision 1 — Proceedings to which this Division applies**

**202A. Proceedings to which this Division applies — FLA s. 69ZM**

- (1) Subject to section 202H, this Division applies to proceedings that are wholly under this Part.
- (2) This Division also applies to proceedings that are partly under this Part —
  - (a) to the extent that they are proceedings under this Part; and
  - (b) if the parties to the proceedings consent, to the extent that they are not proceedings under this Part.
- (3) This Division also applies to any other proceedings between the parties that arise from the breakdown of the parties' relationship, if the parties to the proceedings consent.
- (4) Proceedings to which this Division applies are child-related proceedings.
- (5) Consent given for the purposes of subsection (2)(b) or (3) must be —
  - (a) free from coercion; and
  - (b) given in the form prescribed by the rules.
- (6) A party to proceedings may, with the leave of the court, revoke a consent given for the purposes of subsection (2)(b) or (3).

**Subdivision 2 — Principles for conducting  
child-related proceedings**

**202B. Principles for conducting child-related  
proceedings — FLA s. 69ZN**

- (1) The court must give effect to the principles in this section —
  - (a) in performing duties and exercising powers (whether under this Division or otherwise) in relation to child-related proceedings; and
  - (b) in making other decisions about the conduct of child-related proceedings.
- (2) Failure to give effect to the principles does not invalidate the proceedings or any order made in them.
- (3) Regard is to be had to the principles in interpreting this Division.
- (4) The first principle is that the court is to consider the needs of the child concerned and the impact that the conduct of the proceedings may have on the child in determining the conduct of the proceedings.
- (5) The second principle is that the court is to actively direct, control and manage the conduct of the proceedings.
- (6) The third principle is that the proceedings are to be conducted in a way that will safeguard —
  - (a) the child concerned against family violence, child abuse and child neglect; and
  - (b) the parties to the proceedings against family violence.
- (7) The fourth principle is that the proceedings are, as far as possible, to be conducted in a way that will promote cooperative and child-focused parenting by the parties.

- (8) The fifth principle is that the proceedings are to be conducted without undue delay and with as little formality, and legal technicality and form, as possible.

**202C. This Division also applies to proceedings in Chambers — FLA s. 69ZO**

A judge, registrar or magistrate, who is hearing child-related proceedings in Chambers, has all of the duties and powers that a court has under this Division.

**202D. Powers under this Division may be exercised on court's own initiative — FLA s. 69ZP**

A court may exercise a power under this Division —

- (a) on the court's own initiative; or
- (b) at the request of one or more of the parties to the proceedings.

**Subdivision 3 — Duties and powers related to giving effect to the principles**

**202E. General duties — FLA s. 69ZQ**

- (1) In giving effect to the principles in section 202B, the court must —
- (a) decide which of the issues in the proceedings require full investigation and hearing and which may be disposed of summarily; and
  - (b) decide the order in which the issues are to be decided; and
  - (c) give directions or make orders about the timing of steps that are to be taken in the proceedings; and
  - (d) in deciding whether a particular step is to be taken, consider whether the likely benefits of taking the step justify the costs of taking it; and



- (e) make appropriate use of technology; and
  - (f) if the court considers it appropriate, encourage the parties to use family dispute resolution or family counselling; and
  - (g) deal with as many aspects of the matter as it can on a single occasion; and
  - (h) deal with the matter, where appropriate, without requiring the parties' physical attendance at court.
- (2) Subsection (1) does not limit section 202B(1).
  - (3) A failure to comply with subsection (1) does not invalidate an order.

**202F. Power to make determinations, findings and orders at any stage of proceedings — FLA s. 69ZR**

- (1) If, at any time after the commencement of child-related proceedings and before making final orders, the court considers that it may assist in the determination of the dispute between the parties, the court may do any or all of the following —
  - (a) make a finding of fact in relation to the proceedings;
  - (b) determine a matter arising out of the proceedings;
  - (c) make an order in relation to an issue arising out of the proceedings.
- (2) Subsection (1) does not prevent the court doing something mentioned in subsection (1)(a), (b) or (c) at the same time as making final orders.
- (3) To avoid doubt, a judge, registrar or magistrate who exercises a power under subsection (1) in relation to proceedings is not, merely because of having exercised

the power, required to disqualify himself or herself from a further hearing of the proceedings.

**202G. Use of family consultants — FLA s. 69ZS**

At any time during child-related proceedings, the court may designate a family consultant as the family consultant in relation to the proceedings.

**Subdivision 4 — Matters relating to evidence**

**202H. Rules of evidence not to apply unless court decides — FLA s. 69ZT**

- (1) The excluded rules of evidence do not apply to child-related proceedings.
- (2) A court may give such weight (if any) as it thinks fit to evidence admitted as a consequence of a provision of the *Evidence Act 1906* or the rules of evidence not applying because of subsection (1).
- (3) Despite subsection (1), a court may decide to apply one or more of the excluded rules of evidence to an issue in the proceedings, if —
  - (a) the court is satisfied that the circumstances are exceptional; and
  - (b) the court has taken into account (in addition to any other matters the court thinks relevant) —
    - (i) the importance of the evidence in the proceedings; and
    - (ii) the nature of the subject matter of the proceedings; and
    - (iii) the probative value of the evidence; and
    - (iv) the powers of the court (if any) to adjourn the hearing, to make another order or to give a direction in relation to the evidence.

- (4) If a court decides to apply an excluded rule of evidence to an issue in the proceedings, the court may give such weight (if any) as it thinks fit to evidence admitted as a consequence of the application of the excluded rule of evidence.
- (5) Subsection (1) does not revive the operation of —
- (a) a rule of common law; or
  - (b) any written law,
- that, but for subsection (1), would have been prevented from operating because of an excluded rule of evidence.
- (6) In this section —
- “**child-related proceedings**” includes proceedings that are child-related proceedings within the meaning of the Family Law Act;
- “**excluded rules of evidence**” means such provisions of the *Evidence Act 1906* and the rules of evidence as most closely correspond to the provisions of the *Evidence Act 1995* of the Commonwealth referred to in section 69ZT of the Family Law Act.

**202I. Evidence of family consultants — FLA s. 69ZU**

A court must not, without the consent of the parties to the proceedings, take into account an opinion expressed by a family consultant, unless the consultant gave the opinion as sworn evidence.

**202J. Evidence of children — FLA s. 69ZV**

- (1) This section applies if a court applies the law against hearsay under section 202H(2) to child-related proceedings, as defined in section 202H(6).
- (2) Evidence of a representation made by a child about a matter that is relevant to the welfare of the child or

another child, which would not otherwise be admissible as evidence because of the law against hearsay, is not inadmissible in the proceedings solely because of the law against hearsay.

- (3) A court may give such weight (if any) as it thinks fit to evidence admitted under subsection (2).
- (4) This section applies despite any other Act or rule of law.
- (5) In this section —
  - “**child**” means a person under 18;
  - “**representation**” includes an express or implied representation, whether oral or in writing, and a representation inferred from conduct.

**202K. Evidence relating to child abuse or family violence — FLA s. 69ZW**

- (1) A court may make an order in child-related proceedings requiring a prescribed government agency to provide the court with the documents or information specified in the order.
- (2) The documents or information specified in the order must be documents recording, or information about, one or more of the following —
  - (a) any notifications to the prescribed government agency of suspected abuse of a child to whom the proceedings relate or of suspected family violence affecting the child;
  - (b) any assessments by the agency of investigations into a notification of that kind or the findings or outcomes of those investigations;
  - (c) any reports commissioned by the agency in the course of investigating a notification.

- (3) Nothing in the order is to be taken to require a prescribed government agency to provide the court with —
  - (a) documents or information not in the possession or control of the agency; or
  - (b) documents or information that include the identity of the person who made a notification.
- (4) A written law has no effect to the extent that it would, apart from this subsection, hinder or prevent a prescribed government agency complying with the order.
- (5) A court must admit into evidence any documents or information, provided in response to the order, on which the court intends to rely.
- (6) Despite subsection (5), a court must not disclose the identity of the person who made a notification, or information that could identify that person, unless —
  - (a) the person consents to the disclosure; or
  - (b) the court is satisfied that the identity or information is critically important to the proceedings and that failure to make the disclosure would prejudice the proper administration of justice.
- (7) Before making a disclosure for the reasons in subsection (6)(b), a court must ensure that a prescribed government agency that provided the identity or information —
  - (a) is notified about the intended disclosure; and
  - (b) is given an opportunity to respond.
- (8) In this section —

**“prescribed government agency”** means —

  - (a) a department; or

- (b) a State agency or instrumentality; or
- (c) a body (whether incorporated or not) or the holder of an office, post or position, established or continued by or under a written law for a public purpose, prescribed for the purpose of this section.

**202L. Court's general duties and powers relating to evidence — FLA s. 69ZX**

- (1) In giving effect to the principles in section 202B, a court may —
  - (a) give directions or make orders about the matters in relation to which the parties are to present evidence; and
  - (b) give directions or make orders about who is to give evidence in relation to each remaining issue; and
  - (c) give directions or make orders about how particular evidence is to be given; and
  - (d) if the court considers that expert evidence is required, give directions or make orders about —
    - (i) the matters in relation to which an expert is to provide evidence; and
    - (ii) the number of experts who may provide evidence in relation to a matter; and
    - (iii) how an expert is to provide the expert's evidence;and
  - (e) ask questions of, and seek evidence or the production of documents or other things from, parties, witnesses and experts on matters relevant to the proceedings.

- (2) Without limiting subsection (1) or section 202F, the court may give directions or make orders —
- (a) about the use of written submissions; or
  - (b) about the length of written submissions; or
  - (c) limiting the time for oral argument; or
  - (d) limiting the time for the giving of evidence; or
  - (e) that particular evidence is to be given orally; or
  - (f) that particular evidence is to be given by affidavit; or
  - (g) that evidence in relation to a particular matter not be presented by a party; or
  - (h) that evidence of a particular kind not be presented by a party; or
  - (i) limiting, or not allowing, cross-examination of a particular witness; or
  - (j) limiting the number of witnesses who are to give evidence in the proceedings.
- (3) A court may, in child-related proceedings —
- (a) receive into evidence the transcript of evidence in any other proceedings before —
    - (i) the court; or
    - (ii) another court; or
    - (iii) a tribunal,and draw any conclusions of fact from that transcript that it thinks proper; and
  - (b) adopt any recommendation, finding, decision or judgment of any court, person or body of a kind mentioned in paragraph (a)(i) to (iii).

”.

**106. Section 214 repealed**

Section 214 is repealed.

**107. Transitional provision**

The amendments effected by this Division —

- (a) apply to proceedings commenced by an application filed on or after 1 July 2006; and
- (b) apply to proceedings commenced by an application filed before 1 July 2006, if the parties to the proceedings consent and the court grants leave.

**Division 4 — Amendments about changes to dispute resolution**

**Subdivision 1 — Amendments**

**108. Section 5 amended**

(1) Section 5 is amended as follows:

- (a) by deleting the definitions of “approved counselling organization”, “approved mediation organization”, “arbitrator”, “child counselling”, “community mediator”, “court counsellor”, “court mediator”, “family and child counselling”, “family and child counsellor”, “family and child mediation”, “family and child mediator”, “private arbitration”, “private mediator” and “welfare officer”;

(b) by inserting in the appropriate alphabetical positions —  
“

**(FLA s. 4(1))**

**“arbitration”** has the meaning given by section 56;

**(FLA s. 4(1))**

**“arbitrator”** has the meaning given by section 57;

**“Director of Court Counselling”** means the Director of Court Counselling appointed under section 25(1)(d);



**(FLA s. 4(1))**

**“family consultant”** has the meaning given by section 61;

**(FLA s. 4(1))**

**“family counselling”** has the meaning given by section 47;

**(FLA s. 4(1))**

**“family counsellor”** has the meaning given by section 48;

**(FLA s. 4(1))**

**“family dispute resolution”** has the meaning given by section 51;

**(FLA s. 4(1))**

**“family dispute resolution practitioner”** has the meaning given by section 52;

**(FLA s. 4(1))**

**“post-separation parenting program”** has the meaning given by the Family Law Act;

**(FLA s. 4(1))**

**“relevant property or financial arbitration”** has the meaning given by section 56(2);

**(FLA s. 4(1))**

**“section 65M arbitration”** has the meaning given by section 56(2);

”;

- (c) at the end of the definition of “video link” by deleting the semicolon and inserting instead a full stop.

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- (2) After section 5(3) (as inserted by section 80(d) of this Act) the following subsection is inserted —

“

- (4) A reference in this Act to a person or people involved in proceedings is a reference to —
- (a) any of the parties to the proceedings; and
  - (b) any child whose interests are considered in, or affected by, the proceedings; and
  - (c) any person whose conduct is having an effect on the proceedings.

”.

**109. Section 25 amended**

- (1) Section 25(1)(c) is deleted and the following paragraph is inserted instead —

“

- (c) the executive manager;

”.

- (2) After section 25(2) the following subsection is inserted —

“

- (2a) Subject to subsection (4), the Court may —
- (a) authorise persons to act as —
    - (i) family counsellors; and
    - (ii) family dispute resolution practitioners;and
  - (b) appoint persons as family consultants.

”.

- (3) Section 25(4) is amended as follows:

- (a) by inserting after “cannot be” —

“ authorised to act as an officer of the court, or ”;

(b) after “(2)” by inserting —  
“ , (2a) ”.

(4) Section 25(5) is amended by deleting “Executive Officer” and inserting instead —

“ executive manager ”.

(5) Section 25(6) is amended as follows:

(a) by deleting “Executive Officer” in each of the 3 places where it occurs and inserting in each place —

“ executive manager ”;

(b) by deleting “Executive Officer’s” and inserting instead —

“ executive manager’s ”.

**110. Section 33 amended**

Section 33(3)(e) is amended by deleting “section 60E,” and inserting instead —

“ section 65Q or 65R, ”.

**111. Section 33A inserted**

After section 33 the following section is inserted —

“

**33A. Engagement of consultants etc. — FLA s. 38R**

(1) The executive manager may engage persons having suitable qualifications and experiences as consultants to, or to perform services for, the executive manager.

(2) An engagement under subsection (1) is to be made —

(a) on behalf of the State; and

(b) by written agreement.

”.

**112. Part 2 Division 4 replaced**

Part 2 Division 4 is repealed and the following Division is inserted instead —

“

**Division 4 — Administration of Court’s family services**

**34. Director of Court Counselling has functions of family consultants — FLA s. 38BA**

- (1) The Director of Court Counselling has all of the functions conferred on family consultants by section 60 and any associated powers and duties.
- (2) Without limiting subsection (1), sections 62 and 63 apply to the Director of Court Counselling while the Director of Court Counselling is performing those functions.
- (3) The Director of Court Counselling is responsible for administering the functions of family consultants.

**34A. Director of Court Counselling may delegate powers and functions that relate to family consultants — FLA s. 38BB**

- (1) The Director of Court Counselling may, in writing, delegate to a family consultant any of the Director of Court Counselling’s powers, functions and duties in relation to the functions of family consultants mentioned in section 60.
- (2) A delegate is, in the exercise of a delegated power, function or duty, subject to the directions of the Director of Court Counselling.

**34B. Director of Court Counselling may give directions that relate to family services functions — FLA s. 38BC**

The Director of Court Counselling may give directions that relate to —

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

**34C. Director of Court Counselling may authorise officer or staff member to act as family counsellor or family dispute resolution practitioner — FLA s. 38BD**

- (1) The Director of Court Counselling may authorise an officer of the Court or a staff member to provide family counselling under this Act.
- (2) The Director of Court Counselling may authorise an officer of the Court or a staff member to provide family dispute resolution under this Act.
- (3) If an officer of the Court who is a family consultant also becomes a family counsellor, or family dispute resolution practitioner, because of an authorisation under this section —
  - (a) section 62 does not apply to the officer at any time while the officer is acting as a family counsellor or family dispute resolution practitioner; and
  - (b) the officer must not perform the functions of a family consultant in relation to particular proceedings, if the officer has conducted family counselling or family dispute resolution with a person involved in those proceedings.

**34D. Director of Court Counselling may engage persons to perform family counselling services — FLA s. 38R(1A)**

The Director of Court Counselling may engage persons to perform —

- (a) family counselling services under this Act; or
- (b) family dispute resolution services under this Act.

”.

**113. Section 40 amended**

Section 40(2) is amended as follows:

- (a) by deleting paragraph (b);
- (b) at the end of paragraph (c) by deleting the comma and inserting a full stop instead;
- (c) by deleting “and the provisions of section 64 do not apply to such a registrar”.

**114. Section 46 amended**

Section 46(1) is amended as follows:

- (a) in paragraph (a) by deleting “and child counsellor or a welfare officer” and inserting instead —  
“ counsellor or family dispute resolution practitioner ”;
- (b) in paragraph (b) by deleting “and child counsellor or a welfare officer;” and inserting instead —  
“ consultant; ”.

**115. Part 4 replaced by Parts 4, 4A, 4B and 4C**

Part 4 is repealed and the following Parts are inserted instead —

“

**Part 4 — Non-court based family services**

**Division 1 — Family counselling**

**47. Meaning of “family counselling” — FLA s. 10B**

For the purposes of this Act —

**“family counselling”** means a process in which a family counsellor helps —

- (a) one or more persons to deal with personal and interpersonal issues arising from relationships covered by this Act; or
- (b) one or more persons (including children) who are affected, or likely to be affected, by the breakdown of a relationship covered by this Act to deal with either or both of the following —
  - (i) personal and interpersonal issues;
  - (ii) issues relating to the care of children.

**48. Meaning of “family counsellor” — FLA s. 10C**

For the purposes of this Act —

**“family counsellor”** means —

- (a) a person who is a family counsellor for the purposes of the Family Law Act; or
- (b) a person who is authorised to act under section 34C, or engaged under section 34D, as a family counsellor.

**49. Confidentiality of communications in family counselling — FLA s. 10D**

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



- (e) reporting the commission, or preventing the likely commission, of an offence involving intentional damage to property of a person or a threat of damage to property; or
  - (f) if an independent children's lawyer is representing a child's interests, assisting the lawyer to do so properly.
- (5) A family counsellor may disclose a communication in order to provide information (other than personal information within the meaning of section 6 of the *Privacy Act 1988* of the Commonwealth) for research relevant to families.
- (6) Evidence that would be inadmissible because of section 50 is not admissible merely because this section requires or authorises its disclosure.
- (7) In this section —  
**“communication”** includes admission.

**50. Admissibility of communications in family counselling and in referrals from family counselling — FLA s. 10E**

- (1) Evidence of anything said, or any admission made, by or in the company of —
- (a) a family counsellor conducting family counselling; or
  - (b) a person (the **“professional”**) to whom a family counsellor refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person,
- is not admissible —
- (c) in any court (whether of a kind referred to in section 8(a) or (b) or otherwise); or

- (d) in any proceedings before a board, tribunal or person authorised to hear evidence.
- (2) Subsection (1) does not apply to —
  - (a) 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) a disclosure by a child who has not attained the age of 18 years that indicates that the child has been abused or is at risk of abuse,unless, in the opinion of the court or board, tribunal 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) A family counsellor who refers a person to a professional (within the meaning of subsection (1)(b)) must inform the professional of the effect of this section.

## **Division 2 — Family dispute resolution**

### **51. Meaning of “family dispute resolution” — FLA s. 10F**

For the purposes of this Act —

**“family dispute resolution”** is a process (other than a judicial process) —

- (a) in which a family dispute resolution practitioner helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other; and
- (b) in which the practitioner is independent of all of the parties involved in the process.

**52. Meaning of “family dispute resolution practitioner” — FLA s. 10G**

For the purposes of this Act —

**“family dispute resolution practitioner”** means —

- (a) a person who is a family dispute resolution practitioner for the purposes of the Family Law Act; or
- (b) a person who is authorised to act under section 34C, or engaged under section 34D, as a family dispute resolution practitioner.

**53. Confidentiality of communications in family dispute resolution — FLA s. 10H**

- (1) A family dispute resolution practitioner must not disclose a communication made to the practitioner while the practitioner is conducting family dispute resolution, unless the disclosure is required or authorised by this section.
- (2) A family dispute resolution practitioner must disclose a communication if the practitioner reasonably believes the disclosure is necessary for the purpose of complying with a law of the Commonwealth, a State or a Territory.
- (3) A family dispute resolution practitioner may disclose a communication if consent to the disclosure is given by —
  - (a) if the person who made the communication has attained the age of 18 years, that person; or
  - (b) if the person who made the communication is a child who has not attained the age of 18 years —
    - (i) each person who has parental responsibility for the child; or
    - (ii) a court.

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- (4) A family dispute resolution practitioner may disclose a communication if the practitioner reasonably believes that the disclosure is necessary for the purpose of —
- (a) protecting a child from the risk of harm (whether physical or psychological); or
  - (b) preventing or lessening a serious and imminent threat to the life or health of a person; or
  - (c) reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person; or
  - (d) preventing or lessening a serious and imminent threat to the property of a person; or
  - (e) reporting the commission, or preventing the likely commission, of an offence involving intentional damage to property of a person or a threat of damage to property; or
  - (f) if an independent children’s lawyer is representing a child’s interests, assisting the lawyer to do so properly.
- (5) A family dispute resolution practitioner may disclose a communication in order to provide information (other than personal information within the meaning of section 6 of the *Privacy Act 1988* of the Commonwealth) for research relevant to families.
- (6) A family dispute resolution practitioner may disclose information necessary for the practitioner to give a certificate under section 66H(7).
- (7) Evidence that would be inadmissible because of section 54 is not admissible merely because this section requires or authorises its disclosure.
- (8) In this section —  
**“communication”** includes admission.

**54. Admissibility of communications in family dispute resolution and in referrals from family dispute resolution — FLA s. 10J**

- (1) Evidence of anything said, or any admission made, by or in the company of —
- (a) a family dispute resolution practitioner conducting family dispute resolution; or
  - (b) a person (the “**professional**”) to whom a family dispute resolution practitioner refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person,
- is not admissible —
- (c) in any court (whether of a kind referred to in section 8(a) or (b) or otherwise); or
  - (d) in any proceedings before a board, tribunal or person authorised to hear evidence.
- (2) Subsection (1) does not apply to —
- (a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse; or
  - (b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse,
- unless, in the opinion of the court, board, tribunal 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) Subsection (1) does not apply to information necessary for a practitioner to give a certificate under section 66H(7).

- (4) A family dispute resolution practitioner who refers a person to a professional (within the meaning of paragraph (1)(b)) must inform the professional of the effect of this section.

**55. Family dispute resolution practitioners must comply with regulations — FLA s. 10K**

- (1) The regulations may prescribe requirements to be complied with by family dispute resolution practitioners in relation to the family dispute resolution services they provide.
- (2) The regulations may prescribe penalties not exceeding \$1 00 in respect of offences against regulations made for the purposes of subsection (1).

**Division 3 — Arbitration**

**56. Meaning of “arbitration” — FLA s. 10L**

- (1) For the purposes of this Act —
- “**arbitration**” means a process (other than the judicial process) in which parties to a dispute present arguments and evidence to an arbitrator, who makes a determination to resolve the dispute.
- (2) Arbitration may be either —
- (a) section 65M arbitration, which is arbitration of Part 5A Division 2 proceedings carried out as a result of an order made under section 65M; or
- (b) relevant property or financial arbitration, which is arbitration (other than section 65M arbitration) of —
- (i) Part 5A Division 2 or 3 proceedings or section 221 proceedings; or
- (ii) any part of such proceedings; or
- (iii) any matter arising in such proceedings;  
or

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

**57. Meaning of “arbitrator” — FLA s. 10M**

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

**58. Arbitrators may charge fees for their services — FLA s. 10N**

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

**59. Immunity of arbitrators — FLA s. 10P**

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

**Part 4A — Family consultants**

**Division 1 — About family consultants**

**60. Functions of family consultants — FLA s. 11A**

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

- (a) assisting and advising people involved in the proceedings; and
- (b) assisting and advising courts, and giving evidence, in relation to the proceedings; and

- (c) helping people involved in the proceedings to resolve disputes that are the subject of the proceedings; and
- (d) reporting to the court under section 73; and
- (e) advising the court about appropriate family counsellors, family dispute resolution practitioners and courses, programs and services to which the court can refer the parties to the proceedings.

**61. Meaning of “family consultant” — FLA s. 11B**

For the purposes of this Act —

“**family consultant**” means a person who is a family consultant for the purposes of the Family Law Act.

**62. Admissibility of communications with family consultants and referrals from family consultants — FLA s. 11C**

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

is admissible in proceedings under this Act.

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



- (3) Despite subsection (2), a thing said or admission made is admissible even if the person who said the thing or made the admission had not been informed of the effect of subsection (1), if —
- (a) 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 the child has been abused or is at risk of abuse,

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

**63. Immunity of family consultants — FLA s. 11D**

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

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

**64. Courts to consider seeking advice from family consultants — FLA s. 11E**

- (1) If, under this Act, a court has the power to —
- (a) order a person to attend family counselling or family dispute resolution; or
  - (b) order a person to participate in a course, program or other service (other than arbitration); or
  - (c) order a person to attend appointments with a family consultant; or

- (d) advise or inform a person about family counselling, family dispute resolution or other courses, programs or services,

the court —

- (e) may, before exercising the power, seek the advice of a family consultant as to the services appropriate to the needs of the person and the most appropriate provider of those services; and
  - (f) must, before exercising the power, consider seeking that advice.
- (2) If the court seeks advice under subsection (1), the court must inform the person in relation to whom the advice is sought —
    - (a) whom the court is seeking advice from; and
    - (b) the nature of the advice the court is seeking.

**65. Court may order parties to attend appointments with a family consultant — FLA s. 11F**

- (1) A court exercising jurisdiction in proceedings under this Act may order one or more parties to the proceedings to attend an appointment (or a series of appointments) with a family consultant.
- (2) When making an order under subsection (1), a court must inform the parties of the effect of section 65A.
- (3) A court may make orders under this section —
  - (a) on its own initiative; or
  - (b) on the application of —
    - (i) a party to the proceedings; or
    - (ii) an independent children’s lawyer representing a child’s interests under an order made under section 164.

**65A. Consequences of failure to comply with order under section 65 — FLA s. 11G**

- (1) If a person who is ordered to attend an appointment with a family consultant under section 65 fails to comply with —
  - (a) the order made by the court; or
  - (b) any instruction the consultant gives to the person,the consultant must report the failure to the court.
- (2) On receiving the report, the court may make any further orders it considers appropriate.
- (3) The court may make orders under subsection (2) —
  - (a) on its own initiative; or
  - (b) on the application of —
    - (i) a party to the proceedings; or
    - (ii) an independent children's lawyer representing a child's interests under an order made under section 164.

**Part 4B — Obligations to inform people about non-court based family services and about court's processes and services**

**Division 1 — Introduction**

**65B. Objects of this Part — FLA s. 12A**

The objects of this Part are —

- (a) to ensure that parents or de facto partners considering ending their relationship are informed about the services available to help with a possible reconciliation, in situations where a reconciliation seems a reasonable possibility; and

- (b) to ensure that parents or people affected, or likely to be affected, by the breakdown of a relationship covered by this Act are informed about the services available to help them adjust to —
  - (i) the breakdown of the relationship; and
  - (ii) orders made under this Act;and
- (c) to ensure that parents or people affected, or likely to be affected, by the breakdown of a relationship covered by this Act are informed about ways of resolving disputes other than by applying for orders under this Act.

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

**65C. Prescribed information about non-court based family services and court's processes and services — FLA s. 12B**

- (1) The regulations may prescribe information that is to be included in documents provided to persons under this Part, relating to non-court based family services and court's processes and services.
- (2) Without limitation, information prescribed under this section must include information about —
  - (a) the legal and possible social effects of the proposed proceedings (including the consequences for children whose care, welfare or development is likely to be affected by the proceedings); and
  - (b) the services provided by family counsellors and family dispute resolution practitioners to help people affected by the breakdown of relationships covered by this Act; and

- (c) the steps involved in the proposed proceedings;  
and
- (d) the role of family consultants; and
- (e) the arbitration facilities available to arbitrate disputes in relation to the breakdown of relationships covered by this Act.

**65D. Prescribed information about reconciliation — FLA s. 12C**

The regulations may prescribe information that is to be included in documents provided to persons under this Part, relating to services available to help with a reconciliation between partners to a de facto relationship covered by this Act.

**65E. Prescribed information about Part 5 proceedings — FLA s. 12D**

- (1) The regulations may prescribe information that is to be included in documents provided under this Part to persons involved in proceedings under Part 5.
- (2) Without limitation, the information must include information about the family counselling services available to assist the parties, and the child or children concerned, to adjust to the consequences of orders under that Part.

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

**65F. Obligations on legal practitioners — FLA s. 12E**

- (1) A legal practitioner who is consulted by a person considering instituting proceedings under this Act must give the person documents containing the information prescribed under section 65C.

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- (2) A legal practitioner who is consulted by, or who is representing, a person who is a party to financial or Part 5 proceedings in relation to a relationship covered by this Act must give the person documents containing the information prescribed under section 65D.
- (3) A legal practitioner representing a party in proceedings under Part 5 must give the party documents containing the information prescribed under section 65E.
- (4) A legal practitioner does not have to comply with subsection (1), (2) or (3) if the practitioner has reasonable grounds to believe that the person has already been given documents containing the prescribed information mentioned in that subsection.
- (5) A legal practitioner does not have to comply with subsection (2) if the practitioner considers that there is no reasonable possibility of a reconciliation between the de facto partners.

**65G. Obligations on executive manager — FLA s. 12F**

- (1) The executive manager must ensure that any person who is considering instituting proceedings under this Act is, on the first occasion the person deals with a registry of the court, given documents containing the information prescribed under —
  - (a) section 65C; and
  - (b) section 65D.
- (2) The executive manager must ensure that, if a person involved in proceedings under this Act requests an officer or staff member of the court for information about family counselling services or family dispute resolution services, the person is given documents containing information about those services.

**65H. Obligations on family counsellors, family dispute resolution practitioners and arbitrators — FLA s. 12G**

- (1) A family counsellor, family dispute resolution practitioner or arbitrator who deals with a person considering instituting financial or Part 5 proceedings in relation to a relationship covered by this Act must give the person (and in appropriate cases, that person's de facto partner) documents containing the information prescribed under section 65D.
- (2) A family counsellor, family dispute resolution practitioner or arbitrator does not have to comply with subsection (1), if he or she —
  - (a) has reasonable grounds to believe that the person has already been given documents containing the prescribed information; or
  - (b) considers that there is no reasonable possibility of a reconciliation between the de facto partners.

**Part 4C — Court's powers in relation to court and non-court based family services**

**Division 1 — Introduction**

**65I. Objects of this Part — FLA s. 13A**

- (1) The objects of this Part are —
  - (a) to facilitate access to family counselling —
    - (i) to help de facto partners considering ending their de facto relationship to reconcile; and
    - (ii) to help people adjust to the breakdown of a relationship covered by this Act; and

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- (iii) to help people adjust to court orders under this Act;
- and
- (b) to encourage people to use dispute resolution mechanisms (other than judicial ones) to resolve matters in which a court order might otherwise be made under this Act, provided the mechanisms are appropriate in the circumstances and proper procedures are followed; and
  - (c) to encourage people to use, in appropriate circumstances, arbitration to resolve matters in which a court order might otherwise be made, and to provide ways of facilitating that use; and
  - (d) to give the court the power to require parties to proceedings under this Act to make use of court or non-court based family services appropriate to the needs of the parties.
- (2) The object mentioned in subsection (1)(b) also lies behind the general requirement in section 66H for family dispute resolution services to be used before an application for a Part 5 Order is made.

**Division 2 — Help with reconciliation**

**65J. Court to accommodate possible reconciliations —  
FLA s. 13B**

- (1) If, during the proceedings, the court considers, from the evidence in the proceedings or the attitude of the parties to the de facto relationship, that there is a reasonable possibility of a reconciliation between the parties, the court may adjourn the proceedings to give the parties the opportunity to consider a reconciliation.
- (2) If the court adjourns the proceedings under subsection (1), the court must advise the parties to



attend family counselling, or use the services of another appropriate person or organisation.

- (3) If, after an adjournment under subsection (1), either of the parties requests that the proceedings resume, the court must resume the proceedings as soon as practicable.

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

**65K. Court may refer parties to family counselling, family dispute resolution and other family services — FLA s. 13C**

- (1) A court exercising jurisdiction in proceedings under this Act may, at any stage in the proceedings, make one or more of the following orders —
  - (a) that one or more of the parties to the proceedings attend family counselling; and
  - (b) that the parties to the proceedings attend family dispute resolution; and
  - (c) that one or more of the parties to the proceedings participate in an appropriate course, program or other service.
- (2) The court may suggest a particular purpose for the attendance or participation.
- (3) The order may require the party or parties to encourage the participation of specified other persons who are likely to be affected by the proceedings.
- (4) The court may make any other orders it considers reasonably necessary or appropriate in relation to the order.
- (5) The court may make orders under this section —
  - (a) on its own initiative; or

- (b) on the application of —
  - (i) a party to the proceedings; or
  - (ii) an independent children’s lawyer representing a child’s interests under an order made under section 164.

**65L. Consequences of failure to comply with order under section 65K — FLA s. 13D**

- (1) If a party fails to comply with an order of a court under section 65K, the family counsellor, family dispute resolution practitioner or provider of the course, program or other service must report the failure to the court.
- (2) On receiving the report, the court may make any further orders it considers appropriate.
- (3) The court may make orders under subsection (2) —
  - (a) on its own initiative; or
  - (b) on the application of —
    - (i) a party to the proceedings; or
    - (ii) an independent children’s lawyer representing a child’s interests under an order made under section 164.

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

**65M. Court may refer Part 5A proceedings to arbitration — FLA s. 13E**

- (1) With the consent of all of the parties to the proceedings, a court exercising jurisdiction in Part 5A proceedings may make an order referring the proceedings, or any part of them, or any matter arising in them, to an arbitrator for arbitration.

- (2) If the court makes an order under subsection (1), it may, if necessary, adjourn the proceedings and may make any additional orders as it thinks appropriate to facilitate the effective conduct of the arbitration.

**65N. Court may make orders to facilitate arbitration of certain disputes — FLA s. 13F**

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

**65O. Court may determine questions of law referred by arbitrator — FLA s. 13G**

- (1) An arbitrator of section 65M arbitration or relevant property or financial arbitration may, at any time before making an award in the arbitration, refer a question of law arising in relation to the arbitration for determination by a single judge of the Court.
- (2) The arbitrator may do so —
- (a) on his or her own initiative; or
  - (b) at the request of one or more of the parties to the arbitration if the arbitrator considers it appropriate to do so.
- (3) The arbitrator must not make an award in the arbitration before the judge or Family Law Magistrate has either —
- (a) determined the question of law; or
  - (b) remitted the matter to the arbitrator having found that no question of law arises.

**65P. Awards made in arbitration may be registered in court — FLA s. 13H**

- (1) A party to an award made in section 65M arbitration or in relevant property or financial arbitration may register the award —
  - (a) in the case of section 65M arbitration, in the court that ordered the arbitration; or
  - (b) otherwise, in any court.
- (2) An award registered under subsection (1) has effect as if it were a decree made by that court.

**65Q. Court can review registered awards — FLA s. 13J**

- (1) A party to a registered award made in section 65M arbitration or relevant property or financial arbitration may apply for review of the award, on questions of law, by a single judge of the Court.
- (2) On a review of an award under this section, the judge or Family Law Magistrate may —
  - (a) determine all questions of law arising in relation to the arbitration; and
  - (b) make such decrees as the judge or magistrate thinks appropriate, including a decree affirming, reversing or varying the award.

**65R. Court may set aside registered awards — FLA s. 13K**

- (1) If an award made in section 65M arbitration or relevant property or financial arbitration, or an agreement made as a result of such arbitration, is registered in the Court, the Court may make a decree affirming, reversing or varying the award or agreement.

- (2) The Court may only make a decree under subsection (1) if the Court is satisfied that —
- (a) the award or agreement was obtained by fraud (including non-disclosure of a material matter); or
  - (b) the award or agreement is void, voidable or unenforceable; or
  - (c) in the circumstances that have arisen since the award or agreement was made it is impracticable for some or all of it to be carried out; or
  - (d) the arbitration was affected by bias, or there was a lack of procedural fairness in the way in which the arbitration process, as agreed between the parties and the arbitrator, was conducted.

”.

**116. Heading to Part 5 Division 3 replaced**

The heading to Part 5 Division 3 is deleted and the following heading is inserted instead —

“

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

”.

**117. Section 72 replaced**

Section 72 is repealed and the following section is inserted instead —

“

**72. Court’s obligation to inform people to whom orders under this Part apply about family counselling, family dispute resolution and other family services — FLA s. 62B**

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

”.

**118. Section 73 amended**

- (1) Section 73(2) is amended by deleting “and child counsellor or welfare officer” and inserting instead —

“ consultant ”.

- (2) Section 73(4) and (5) are repealed and the following subsections are inserted instead —

“

(4) The family consultant may include in the report, in addition to the matters required to be included in it, any other matters that relate to the care, welfare or development of the child.

(5) For the purposes of the preparation of the report, the court may make any other orders, or give any other directions, that the court considers appropriate (including orders or directions that a party to proceedings, or the child, attend an appointment or a series of appointments with a family consultant).

”.

- (3) Section 73(6) is amended by deleting “counsellor or welfare officer” and inserting instead —

“ family consultant ”.

**119. Section 91 amended**

- (1) Section 91(1) is repealed.

- (2) Section 91(2) is amended as follows:

- (a) in paragraph (a) by deleting “a conference with a family and child counsellor or a welfare officer” and inserting instead —

“ family counselling ”;

- (b) in paragraph (b) by deleting “a conference” and inserting instead —

“ counselling ”;

- (c) in paragraph (c) by deleting “a conference” and inserting instead —

“ counselling ”.

**120. Section 95 amended**

Section 95(1) is amended as follows:

- (a) in paragraph (a) by deleting “family and child counsellor or a welfare officer;” and inserting instead —

“ family consultant; ”;

- (b) in paragraph (b) by deleting “family and child counsellor or a welfare officer” and inserting instead —

“ family consultant ”.

**121. Section 95A amended**

- (1) Section 95A(1) is repealed and the following subsection is inserted instead —

“

- (1) In proceedings for a parenting order, the court may make an order directing a party to the proceedings to attend a post-separation parenting program.

”.

- (2) Section 95A(3) is amended by deleting the definitions of ““post-separation parenting program” or “program”” and ““post-separation parenting program provider” or “provider””.

**122. Section 95B inserted**

After section 95A the following section is inserted in Subdivision 2 —

“

**95B. Conditions for providers of post-separation parenting programs — FLA s. 65LB**

- (1) An organisation meets the conditions in this section if —
- (a) it is a recipient organisation (see subsection (2)); or
  - (b) there is a recipient organisation in relation to the organisation (see subsection (3)).
- (2) An organisation is a recipient organisation for the purposes of subsection (1)(a) if it receives, or has been approved to receive, funding under a program or a part of a program designated under section 65LB(4) of the Family Law Act in order to provide services that include post-separation parenting programs.



- (3) An organisation is a recipient organisation in relation to another organisation for the purposes of subsection (1)(b) if —
- (a) both —
    - (i) the other organisation is a member of the organisation; and
    - (ii) the organisation receives, or has been approved to receive, funding under a program or a part of a program designated under section 65LB(4) of the Family Law Act in order that the organisation's members may provide services that include post-separation parenting programs;

or

  - (b) both —
    - (i) the organisation acts on behalf of a group of organisations that includes the other organisation; and
    - (ii) the organisation receives, or has been approved to receive, funding under a program or a part of a program designated under section 65LB(4) of the Family Law Act in order that the organisations on whose behalf it acts may provide services that include post-separation parenting programs.

”.

**123. Section 160 amended**

Section 160(1) is repealed and the following subsection is inserted instead —

“

- (1) This section applies to a person in the course of performing duties or functions, or exercising powers, as —
- (a) the Principal Registrar, a Registrar or a Deputy Registrar; or
  - (b) a family consultant; or
  - (c) a family counsellor; or
  - (d) a family dispute resolution practitioner; or
  - (e) an arbitrator; or
  - (f) a legal practitioner independently representing a child’s interests.

”.

**124. Section 217 amended**

Section 217(4) is amended in paragraph (b) of the definition of “examined” by deleting “and child counsellor or a welfare officer” and inserting instead —

“ counsellor or family consultant ”.

**125. Section 244 amended**

Section 244(3) is amended as follows:

- (a) by deleting paragraph (j) and “and” after it and inserting instead —

“

- (j) authorising an officer making an investigation mentioned in paragraph (i) to —
- (i) take evidence on oath or affirmation;
- and

(ii) receive in evidence a report from a family consultant under section 73; and

(iii) receive in evidence a report from a person who has had dealings with a party to the matter under investigation under section 91, 95, 95A, 205O or 205S;

and

(ja) enabling the summoning of witnesses before an officer making an investigation mentioned in paragraph (i) for the purposes of giving evidence or producing books or documents; and

”;

(b) by deleting paragraphs (r) and (s) and “and” after each of those paragraphs and inserting instead —

“

(r) providing for and in relation to —

(i) the attendance at family counselling by parties to proceedings under this Act; and

(ii) the attendance at family dispute resolution by parties to proceedings under this Act; and

(iii) the giving of advice and assistance by family consultants to people involved in proceedings under this Act; and

(iv) the participation by parties to proceedings under this Act in courses, programs and other services (other than those mentioned in subparagraph (i), (ii) or (iii)) that the parties are ordered by the court to participate in; and

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- (v) the use, for the purposes of proceedings under this Act, by the Court and the Magistrates Court exercising jurisdiction under this Act and officers of such courts, of reports about the future conduct of the proceedings that have been prepared by persons who dealt with the parties in accordance with rules made under subparagraph (i), (ii), (iii) or (iv);

and

”;

- (c) in paragraph (t) by deleting “court mediators” and inserting instead —

“ family consultants ”;

- (d) in paragraph (u) —

- (i) by deleting “mediation or”; and

- (ii) by deleting “section 60B;” and inserting instead —

“ sections 65M and 65N; ”;

- (e) in paragraph (v) by deleting “mediated or”;

- (f) after paragraph (v) by inserting the following paragraph —

“

- (va) prescribing the disputes, proceedings or matters in relation to which family consultants may, or must not, perform their functions; and

”;

- (g) by deleting paragraphs (w), (x) and (y) and “and” after each of those paragraphs and inserting instead —

“

- (w) providing for and in relation to —
- (i) the functions to be performed by family consultants; and
  - (ii) the procedures to be followed in performing those functions; and
  - (iii) the procedures to be followed by persons involved in proceedings in relation to which a family consultant is performing functions; and
  - (iv) the procedures to be followed when a family consultant ceases performing functions in relation to a dispute, proceeding or matter;

and

- (x) providing for and in relation to —
- (i) the procedures to be followed by a family counsellor authorised under section 25(2a) or 34C(1) or engaged under section 34D; and
  - (ii) the procedures to be followed by persons attending family counselling with such a counsellor; and
  - (iii) the procedures to be followed when family counselling with such a counsellor ends;

and

- (y) providing for and in relation to —
- (i) the procedures to be followed by a family dispute resolution practitioner authorised under section 25(2a)

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or 34C(2) or engaged under section 34D; and

- (ii) the procedures to be followed by persons attending family dispute resolution with such a practitioner; and
- (iii) the procedures to be followed when family dispute resolution with such a practitioner ends;

and

(ya) providing for and in relation to —

- (i) the procedures to be followed by an arbitrator in relation to a dispute, proceeding or matter under this Act; and
- (ii) the attendance by persons at conferences conducted by arbitrators for the purpose of arbitrating a dispute, proceeding or matter under this Act; and
- (iii) the procedure to be followed when arbitration ends, both where it has resulted in an agreement or award and where it has not;

and

”;

(h) by deleting paragraph (z) and “and” after it and inserting instead —

“

- (z) prescribing matters relating to the costs of —
  - (i) arbitration by arbitrators, and the assessment or taxation of those costs; and
  - (ii) family counselling by family counsellors authorised under section 25(2a) or 34C(1) or engaged under section 34D; and

- (iii) family dispute resolution by family dispute resolution practitioners authorised under section 25(2a) or 34C(2) or engaged under section 34D;

and

”;

- (i) in paragraph (zaa) by deleting “sections 60A or 60B;” and inserting instead —

“ section 65P; ”;

- (j) in paragraph (zab) —

- (i) by deleting “section 60D” and inserting instead —

“ section 65Q ”; and

- (ii) by deleting “section 60E” and inserting instead —

“ section 65R ”.

**126. Section 245 amended**

Section 245(2) is amended as follows:

- (a) in paragraph (b) by deleting subparagraphs (ii) and (iii) and “or” after subparagraph (ii) and inserting instead —

“

or

- (ii) services provided by the Court in circumstances other than where a court orders or directs the provision of the services; and

”;

- (b) in paragraph (ba) by inserting after “arbitrator” —

“ under section 57 ”;

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- (c) in paragraph (bb) —
- (i) by inserting after “(v),” —  
“ (va), ”; and
  - (ii) by inserting after “(y)” —  
“ , (ya) ”;
- (d) by deleting paragraph (c) and inserting instead —  
“  
(c) the manner of authorising persons to act as family dispute resolution practitioners under section 52, and the matters to be taken into account when doing so; and  
”;
- (e) by deleting paragraph (d) and inserting instead —  
“  
(d) the manner of authorising persons to act as family consultants under section 61, and the matters to be taken into account when doing so; and  
”;
- (f) by deleting paragraph (e) and inserting instead —  
“  
(e) the registration of awards made in section 65M arbitration and relevant property or financial arbitration; and  
”;
- (g) after each of paragraphs (a), (ba), (bb) and (f) by inserting —  
“ and ”.



**Subdivision 2 — Transitional provisions**

**127. Interpretation**

In this Division —

“**commencement**” means the day on which this Division comes into operation.

**128. Arbitration awards registered under section 60A or 60B are taken to be registered under section 65P**

If —

- (a) at any time before commencement, an award in an arbitration had been registered under section 60A or 60B of the *Family Court Act 1997*; and
- (b) the award is still registered immediately before commencement,

the registration of the award continues to have effect after commencement as if it had been done under section 65P of that Act.

**129. Powers under Part 4C Division 4 of the *Family Court Act 1997* may be exercised in relation to section 60A arbitration and private arbitration**

For the purposes of sections 65O, 65P, 65Q and 65R —

- (a) a reference to section 65M arbitration includes a reference to section 60A arbitration (within the meaning of the *Family Court Act 1997* as in force immediately before commencement); and
- (b) a reference to relevant property or financial arbitration includes a reference to private arbitration of a dispute (within the meaning of the *Family Court Act 1997* as in force immediately before commencement).

**130. Request for counselling under section 52**

If, at commencement, a notice filed under section 52 of the *Family Court Act 1997* has not been acted on, an appropriate officer of the court in which the notice is filed must arrange for the parties to the proceedings to which the notice relates (and the child and any other persons the officer thinks appropriate) to be interviewed by a family counsellor to assess whether counselling is appropriate in all the circumstances, and, if it is —

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

**131. Orders under section 72(2)**

If, at commencement, an order under section 72(2) of the *Family Court Act 1997* has not yet been complied with, the order is taken to have been complied with if the parties to which the order relate attend a conference with a family counsellor (within the meaning of the *Family Court Act 1997* as amended by this Division).

**132. Reports under section 73**

If, at commencement, a family and child counsellor or welfare officer (within the meaning of the *Family Court Act 1997* as in force immediately before commencement) has been directed to give a report under section 73(2) of that Act and has not yet given that report —

- (a) the person must still provide the report; and
- (b) references in section 73 of that Act (as amended by this Division) to a family consultant are taken to be references to the person who provides the report.

**133. Pre-parenting order counselling for the purposes of section 72**

If, before commencement, parties to proceedings attended a conference with a family and child counsellor or a welfare officer to discuss the matter to which the proceedings relate, the attendance at that conference is taken to satisfy the requirement in section 72(2) of the *Family Court Act 1997* (as amended by this Division) to attend a conference with a family counsellor.

**134. Supervision etc. of parenting orders**

If —

- (a) under a court order made before commencement under section 95 of the *Family Court Act 1997*, a person is required to do either or both of the following —
  - (i) supervise compliance with a parenting order;
  - (ii) give any party to the parenting order such assistance as is reasonably requested by that party in relation to compliance with, and the carrying out of, the parenting order;

and

- (b) immediately after commencement, the person is not a family consultant within the meaning of the *Family Court Act 1997* as amended by this Division,

then the court may make another order substituting a family consultant for the person.

**135. Transitional regulations**

- (1) If this Division does not provide sufficiently for a matter or issue of a transitional nature that arises as a result of the amendments made by this Division, the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed for providing for that matter or issue.

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- (2) If regulations made under subsection (1) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than commencement, the regulations have effect according to their terms.
- (3) In subsection (2) —  
“**specified**” means specified or described in the regulations.
- (4) If regulations contain a provision referred to in subsection (2), the provision does not operate so as —
- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication.

**Division 5 — Amendments about representation of child's interests by independent children's lawyer**

**136. Section 5 amended**

Section 5(1) (as so designated by section 80(a) of this Act) is amended as follows:

- (a) by deleting the definition of “child representative”;
- (b) by inserting in the appropriate alphabetical position —

“

**(FLA s. 4(1))**

“**independent children's lawyer**”, for a child, means a certificated practitioner (within the meaning of the *Legal Practice Act 2003*) who represents the child's interests in proceedings under an appointment made under a court order under section 164(2);

”.

**137. Part 5 Division 9 replaced**

Part 5 Division 9 is repealed and the following Division is inserted instead —

“

**Division 9 — Independent representation of  
child's interests**

**164. Court order for independent representation of  
child's interests — FLA s. 68L**

- (1) This section applies to proceedings under this Act in which a child's best interests are, or a child's welfare is, the paramount, or a relevant, consideration.
- (2) If it appears to a court that the child's interests in the proceedings ought to be independently represented by a lawyer, the court —
  - (a) may order that the child's interests in the proceedings are to be independently represented by a lawyer; and
  - (b) may make such other orders as it considers necessary to secure that independent representation of the child's interests.
- (3) A court may make an order for the independent representation of the child's interests in the proceedings by a lawyer —
  - (a) on its own initiative; or
  - (b) on the application of —
    - (i) the child; or
    - (ii) an organisation concerned with the welfare of children; or
    - (iii) any other person.
- (4) Without limiting subsection (2)(b), the court may make an order under that paragraph for the purpose of

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allowing the lawyer who is to represent the child's interests to find out what the child's views are on the matters to which the proceedings relate.

- (5) Subsection (4) does not apply if complying with that subsection would be inappropriate because of —
- (a) the child's age or maturity; or
  - (b) some other special circumstance.

**165. Role of independent children's lawyer — FLA s. 68LA**

- (1) This section applies if an independent children's lawyer is appointed for a child in relation to proceedings under this Act.
- (2) The independent children's lawyer must —
- (a) form an independent view, based on the evidence available to the independent children's lawyer, of what is in the best interests of the child; and
  - (b) act in relation to the proceedings in what the independent children's lawyer believes to be the best interests of the child.
- (3) The independent children's lawyer must, if satisfied that the adoption of a particular course of action is in the best interests of the child, make a submission to the court suggesting the adoption of that course of action.
- (4) The independent children's lawyer —
- (a) is not the child's legal representative; and
  - (b) is not obliged to act on the child's instructions in relation to the proceedings.
- (5) The independent children's lawyer must —
- (a) act impartially in dealings with the parties to the proceedings; and

- (b) ensure that any views expressed by the child in relation to the matters to which the proceedings relate are fully put before the court; and
  - (c) if a report or other document that relates to the child is to be used in the proceedings —
    - (i) analyse the report or other document to identify those matters in the report or other document that the independent children's lawyer considers to be the most significant ones for determining what is in the best interests of the child; and
    - (ii) ensure that those matters are properly drawn to the court's attention;and
  - (d) endeavour to minimise the trauma to the child associated with the proceedings; and
  - (e) facilitate an agreed resolution of matters at issue in the proceedings to the extent to which doing so is in the best interests of the child.
- (6) Subject to subsection (7), the independent children's lawyer —
- (a) is not under an obligation to disclose to the court; and
  - (b) cannot be required to disclose to the court,
- any information that the child communicates to the independent children's lawyer.
- (7) The independent children's lawyer may disclose to the court any information that the child communicates to the independent children's lawyer if the independent children's lawyer considers the disclosure to be in the best interests of the child.

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- (8) Subsection (7) applies even if the disclosure is made against the wishes of the child.

**166. Order that child be made available for examination — FLA s. 68M**

- (1) This section applies if an independent children's lawyer is appointed to independently represent a child's interests in relation to proceedings under this Act.
- (2) A court may, on application by the independent children's lawyer, order a person mentioned in subsection (3) to make the child available, as specified in the order, for an examination to be made for the purpose of preparing a report about the child for use by the independent children's lawyer in connection with the proceedings.
- (3) The order may be directed to —
- (a) a parent of the child; or
  - (b) a person with whom the child is to live under a parenting order; or
  - (c) a person with whom the child is to spend time under a parenting order; or
  - (d) a person with whom the child is to communicate under a parenting order; or
  - (e) a person who has parental responsibility for the child.

”.



**138. Section 195 amended**

Section 195(2)(b)(ii) is deleted and the following subparagraph is inserted instead —

“

- (ii) an independent children's lawyer representing the child's interests under an order made under section 164.

”.

**139. Section 201 amended**

Section 201(3)(b)(ii) is deleted and the following subparagraph is inserted instead —

“

- (ii) an independent children's lawyer representing the relevant child's interests.

”.

**140. Section 237 amended**

(1) Section 237(4) is amended as follows:

- (a) by deleting “a child representative” and inserting instead —

“ an independent children's lawyer for a child ”;

- (b) by deleting “the child representative” and inserting instead —

“ the independent children's lawyer ”.

(2) Section 237(5) is amended as follows:

- (a) by deleting “a child representative” and inserting instead —

“ an independent children's lawyer for a child ”;

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- (b) by deleting “the child representative” in both places where it occurs and inserting instead —  
“ the independent children’s lawyer ”.
- (3) Section 237(6) is amended as follows:
  - (a) by deleting “a child representative” and inserting instead —  
“ an independent children’s lawyer ”;
  - (b) by deleting “the child representative” and inserting instead —  
“ the independent children’s lawyer ”.

**141. Transitional provisions**

- (1) In this section —
  - “**commencement**” means the day on which this Division comes into operation;
  - “**new provision**” means section 164 of the *Family Court Act 1997* as in force after commencement;
  - “**old provision**” means section 171 of the *Family Court Act 1997* as in force immediately before commencement.
- (2) The amendments effected by this Division apply to proceedings initiated under Part 5 of the *Family Court Act 1997* before, on or after commencement.
- (3) If —
  - (a) a court made an order under the old provision for separate representation of a child; and
  - (b) immediately before commencement, the proceedings in which the order was made have not been concluded,then —
  - (c) the person who was appointed as the child’s representative under the old provision is taken to be

- appointed as the independent children's lawyer under the new provision; and
- (d) the order under the old provision for separate representation of the child is taken to be an order under the new provision for independent representation of the child's interests.

### **Division 6 — Amendments about family violence**

#### **142. Part 5 Division 10 replaced and consequential amendment**

- (1) Part 5 Division 10 is repealed and the following Division is inserted instead —

“

#### **Division 10 — Family violence**

##### **173. Purposes of this Division — FLA s. 68N**

The purposes of this Division are —

- (a) to resolve inconsistencies between —
- (i) family violence orders; and
  - (ii) certain orders, injunctions and arrangements made under this Act that provide for a child to spend time with a person or require or authorise a person to spend time with a child;
- and
- (b) to ensure that orders, injunctions and arrangements of the kind referred to in paragraph (a)(ii) do not expose people to family violence; and
- (c) to achieve the objects and principles in section 66.

**174. Obligations of court making an order or granting an injunction under this Act that is inconsistent with an existing family violence order — FLA s. 68P**

- (1) This section applies if —
  - (a) a court —
    - (i) makes a parenting order that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; or
    - (ii) makes a recovery order (as defined in section 149) or any other order under this Act that expressly or impliedly requires or authorises a person to spend time with a child; or
    - (iii) grants an injunction under section 235 or 235A that expressly or impliedly requires or authorises a person to spend time with a child;
  - and
  - (b) the order made or injunction granted is inconsistent with an existing family violence order.
- (2) The court must, to the extent to which the order or injunction provides for the child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with the child —
  - (a) specify in the order or injunction that it is inconsistent with an existing family violence order; and
  - (b) give a detailed explanation in the order or injunction of how the contact that it provides for is to take place; and

- (c) explain (or arrange for someone else to explain) the order or injunction to —
- (i) the applicant and respondent in the proceedings for the order or injunction; and
  - (ii) the person against whom the family violence order is directed (if that person is not the applicant or respondent); and
  - (iii) the person protected by the family violence order (if that person is not the applicant or respondent);
- and
- (d) include (or arrange to be included) in the explanation, in language those persons are likely to readily understand —
- (i) the purpose of the order or injunction; and
  - (ii) the obligations created by the order or injunction, including how the contact that it provides for is to take place; and
  - (iii) the consequences that may follow if a person fails to comply with the order or injunction; and
  - (iv) the court's reasons for making an order or granting an injunction that is inconsistent with a family violence order; and
  - (v) the circumstances in which a person may apply for variation or revocation of the order or injunction.

- (3) As soon as practicable after making the order or granting the injunction (and no later than 14 days after making or granting it), the court must give a copy to —
- (a) the applicant and respondent in the proceedings for the order or injunction; and
  - (b) the person against whom the family violence order is directed (if that person is not the applicant or respondent); and
  - (c) the person protected by the family violence order (if that person is not the applicant or respondent); and
  - (d) the registrar, executive manager or other appropriate officer of the court that last made or varied the family violence order; and
  - (e) the Commissioner or head (however described) of the police force of the State or Territory in which the person protected by the family violence order resides; and
  - (f) a child welfare officer in relation to the State or Territory in which the person protected by the family violence order resides.
- (4) Failure to comply with this section does not affect the validity of the order or injunction.

**175. Relationship of order or injunction made under this Act with existing inconsistent family violence order — FLA s. 68Q**

- (1) To the extent to which —
- (a) an order or injunction mentioned in section 174(1)(a) is made or granted that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; and

- (b) the order or injunction is inconsistent with an existing family violence order,  
the family violence order is invalid.
- (2) An application for a declaration that the order or injunction is inconsistent with the family violence order may be made, to a court that has jurisdiction under this Part, by —
  - (a) the applicant or respondent in the proceedings for the order or injunction mentioned in section 174(1)(a); or
  - (b) the person against whom the family violence order is directed (if that person is not the applicant or respondent); or
  - (c) the person protected by the family violence order (if that person is not the applicant or respondent).
- (3) The court must hear and determine the application and make such declarations as it considers appropriate.

**176. Power of court making a family violence order to revive, vary, discharge or suspend an existing order, injunction or arrangement under this Act — FLA s. 68R**

- (1) In proceedings to make or vary a family violence order, a court may revive, vary, discharge or suspend —
  - (a) a parenting order, to the extent to which it provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with the child; or
  - (b) a recovery order (as defined in section 149) or any other order under this Act, to the extent to which it expressly or impliedly requires or

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authorises a person to spend time with a child;  
or

- (c) an injunction granted under section 235 or 235A, to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child; or
  - (d) to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child —
    - (i) an undertaking given to, and accepted by, a court; or
    - (ii) a registered parenting plan within the meaning of section 76(6); or
    - (iii) a bond entered into under an order under this Act.
- (2) The court may do so —
- (a) on its own initiative; or
  - (b) on application by any person.
- (3) The court must not do so unless —
- (a) it also makes or varies a family violence order in the proceedings (whether or not by interim order); and
  - (b) if the court proposes to revive, vary, discharge or suspend an order or injunction mentioned in subsection (1)(a), (b) or (c), the court has before it material that was not before the court that made that order or injunction.
- (4) The court must not exercise its power under subsection (1) to discharge an order, injunction or arrangement in proceedings to make an interim family violence order or an interim variation of a family violence order.



- (5) In exercising its power under subsection (1), the court must —
- (a) have regard to the purposes of this Division (stated in section 173); and
  - (b) have regard to whether contact with both parents is in the best interests of the child concerned; and
  - (c) if varying, discharging or suspending an order or injunction mentioned in subsection (1)(a), (b) or (c) that, when made or granted, was inconsistent with an existing family violence order, be satisfied that it is appropriate to do so because a person has been exposed, or is likely to be exposed, to family violence as a result of the operation of that order or injunction.
- (6) The regulations may require a copy of the court's decision to revive, vary, discharge or suspend an order, injunction or arrangement to be registered in accordance with the regulations.
- (7) Failure to comply with any requirement of the regulations referred to in subsection (6) does not affect the validity of the court's decision.

**177. Application of Act and rules when exercising section 176 power — FLA s. 68S**

- (1) The following provisions do not apply to a court exercising the power under section 176 —
- (a) section 88;
  - (b) section 91(2);
  - (c) section 66G;
  - (d) section 43;

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- (e) any provisions (for example, section 66A) that would otherwise make the best interests of the child the paramount consideration;
  - (f) any provisions of this Act or the rules specified in the regulations.
- (2) If a court is exercising the power under section 176 in proceedings to make an interim family violence order or an interim variation of a family violence order —
- (a) the court has a discretion about whether to apply section 66C(3)(a); and
  - (b) any provisions of this Act or the rules specified in the regulations do not apply.
- (3) A court exercising the power under section 176 may, as it thinks appropriate, dispense with any otherwise applicable rules.

**178. Special provisions relating to proceedings to make an interim (or interim variation of) family violence order — FLA s. 68T**

- (1) If, in proceedings to make an interim family violence order or an interim variation of a family violence order, the court revives, varies or suspends an order, injunction or arrangement under section 176, that revival, variation or suspension ceases to have effect at the earlier of —
- (a) the time the interim order stops being in force; and
  - (b) the end of the period of 21 days starting when the interim order was made.
- (2) No appeal lies in relation to the revival, variation or suspension.

”.

- (2) Section 41 is amended by deleting “section 180” and inserting instead —

“ section 176 ”.

**143. Transitional provisions**

- (1) In this section —  
“**commencement**” means the day on which this Division comes into operation.
- (2) The amendments effected by this Division —
- (a) apply to orders made after commencement; and
  - (b) do not apply to orders made before commencement.

**Division 7 — Amendments about removal of references to  
“residence” and “contact”**

**144. Section 5 amended**

Section 5(1) (as so designated by section 80(a)) is amended as follows:

- (a) by deleting the definitions of “contact order”, “has”, “made in favour”, “residence order” and “specific issues order”;
- (b) by inserting in the appropriate alphabetical positions —

“

**(FLA s. 4(1))**

“**made in favour**”, in relation to a parenting order (other than a child maintenance order), has the meaning given by section 84(6);

**(FLA s. 4(1))**

“**State child order**” means an order made under the law of a State that —

- (a) however it is expressed, has the effect of determining the person or persons with

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whom a child who is under 18 is to live, or that provides for a person or persons to have custody of a child who is under 18; or

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

”.

**145. Section 71 amended**

Section 71(2)(b) is amended by deleting “residence order” and inserting instead —

“

parenting order that deals with whom a child is to live with

”.

**146. Section 76 amended**

- (1) Section 76(4) is repealed and the following subsection is inserted instead —

“

- (4) Provisions of a parenting plan that deal with matters other than the maintenance of a child are child welfare provisions.

”.

- (2) Section 76(5) is amended by deleting “(c)” and inserting instead —

“ (f) ”.

**147. Section 80 amended**

Section 80(3) is repealed and the following subsection is inserted instead —

“

- (3) The child welfare provisions have effect, subject to subsections (5) and (6), as if they were provisions of a parenting order.

”.

**148. Section 92 amended**

Section 92(1) is repealed and the following subsections are inserted instead —

“

- (1) This section applies if —
- (a) a court proposes to make a parenting order that deals with whom a child is to live with; and
  - (b) under the order, the child would not live with a parent, grandparent or other relative of the child; and
  - (c) the court proposes to make that order with the consent of all the parties to the proceedings.

- (1a) This section also applies if —

- (a) a court proposes to make a parenting order that deals with the allocation of parental responsibility for a child; and
- (b) under the order, no parent, grandparent or other relative of the child would be allocated parental responsibility for the child; and
- (c) the court proposes to make that order with the consent of all the parties to the proceedings.

”.

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**149. Section 94 amended**

- (1) Section 94(1)(a) is deleted and the following is inserted instead —

“

- (a) parenting order is in force that provides that a child is to live with one of the child’s parents; and

”.

- (2) Section 94(3) is repealed and the following subsection is inserted instead —

“

- (3) The surviving parent, or another person (subject to section 88), may apply for a parenting order that deals with the person or persons with whom the child is to live.

”.

**150. Heading to Part 5 Division 6 Subdivision 3 replaced**

The heading to Part 5 Division 6 Subdivision 3 is deleted and the following heading is inserted instead —

“

**Subdivision 3 — General obligations created by certain parenting orders**

”.

**151. Section 96 amended**

Section 96(1) is repealed and the following subsection is inserted instead —

“

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order deals with whom the child is to live with.

”.



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**98A. General obligations created by parenting order that allocates parental responsibility — FLA s. 65P**

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order allocates parental responsibility for the child to a person (the “**carer**”).
- (2) A person must not hinder the carer in, or prevent the carer from, discharging that responsibility.

”.

**153. Section 99 amended**

Section 99(1)(a) and (b) are deleted and the following is inserted instead —

“

- (a) a parenting order provides that —
  - (i) a child is to live with a person; or
  - (ii) a child is to spend time with a person; or
  - (iii) a child is to communicate with a person;and
- (b) a court is satisfied, on application by the person referred to in subsection (1)(a), that there are reasonable grounds for believing that a person (the “**alleged offender**”) has contravened section 96, 97 or 98 in relation to the order; and

”.



**154. Section 106 amended**

Section 106(1) is repealed and the following subsection is inserted instead —

“

(1) In this Subdivision —

**“parenting order to which this Subdivision applies”**

means a parenting order to the extent to which it provides, or would provide, that —

- (a) a child is to live with a person; or
- (b) a child is to spend time with a person; or
- (c) a child is to communicate with a person; or
- (d) a person is to have parental responsibility for a child.

”.

**155. Section 107 amended**

Section 107(1) is amended by deleting “if a residence order, a contact order or a care order” and inserting instead —

“ if a parenting order to which this Subdivision applies ”.

**156. Section 108 amended**

Section 108(1) is amended by deleting “residence order, a contact order or a care order” and inserting instead —

“ parenting order to which this Subdivision applies ”.

**157. Section 109 amended**

Section 109(1)(a) and “and” after it are deleted and the following is inserted instead —

“

- (a) a parenting order to which this Subdivision applies is in force; and

”.

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**158. Section 110 amended**

Section 110(1)(a) is amended by deleting “residence order, a contact order or a care order” and inserting instead —

“ parenting order to which this Subdivision applies ”.

**159. Section 144 amended**

Section 144(a) to (c) are deleted and the following is inserted instead —

“

- (a) a person with whom the child is to live under a parenting order; or
- (b) a person with whom the child is to spend time under a parenting order; or
- (c) a person with whom the child is to communicate under a parenting order; or
- (caa) a person who has parental responsibility for the child under a parenting order; or

”.

**160. Section 149 amended**

- (1) Section 149(a)(ii) and (iii) and “or” after subparagraph (ii) are deleted and the following is inserted instead —

“

- or
- (ii) a person with whom the child is to live under a parenting order; or
- (iii) a person with whom the child is to spend time under a parenting order; or
- (iv) a person with whom the child is to communicate under a parenting order; or

or

- (v) a person who has parental responsibility for the child;

”.

- (2) Section 149(d)(ii) to (iv) and “or” after subparagraph (iii) are deleted and the following is inserted instead —

“

or

- (ii) a person described in paragraph (a)(ii), (iii), (iv) or (v); or
- (iii) some other person on behalf of a person described in this paragraph;

”.

**161. Section 152 amended**

Section 152(a) to (c) are deleted and the following are inserted instead —

“

- (a) a person with whom the child is to live under a parenting order; or
- (b) a person with whom the child is to spend time under a parenting order; or
- (c) a person with whom the child is to communicate under a parenting order; or
- (caa) a person who has parental responsibility for the child under a parenting order; or

”.

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**162. Section 198 amended**

Section 198(2) is amended as follows:

(a) by deleting paragraph (c) and inserting instead —

“

(c) a person who, under a parenting order, has responsibility for the child’s long-term or day-to-day care, welfare and development.

”;

(b) after paragraph (a) by inserting —

“ or ”.

**163. Section 199 amended**

Section 199(1) is amended as follows:

(a) by deleting paragraph (c) and inserting instead —

“

(c) a person who, under a parenting order, has responsibility for the child’s long-term or day-to-day care, welfare and development.

”;

(b) after paragraph (a) by inserting —

“ or ”.

**164. Section 205ZH amended**

Section 205ZH(3) is amended as follows:

(a) by deleting paragraphs (b) and (c) and “or” after paragraph (b) and inserting instead —

“

(b) a parenting order provides that the child is to live with the person; or

(c) a parenting order provides that the person has parental responsibility for the child.

”;

- (b) after paragraph (a) by inserting —  
“ or ”.

**165. Section 205ZV amended**

Section 205ZV(2) is amended as follows:

- (a) by deleting paragraphs (b) and (c) and “or” after paragraph (b) and inserting instead —  
“
  - (b) a parenting order provides that the child is to live with the person; or
  - (c) a parenting order provides that the person has parental responsibility for the child.”;

- (b) after paragraph (a) by inserting —  
“ or ”.

**166. Section 206 amended**

Section 206(1)(b)(i) and “or” after it are deleted and the following is inserted instead —

- (i) a parenting order, other than a child maintenance order; or

**167. Section 209 amended**

Section 209(2)(c) and (d) are deleted and the following paragraphs are inserted instead —

- (c) a person with whom the child is to live under a parenting order;
- (d) a person who has parental responsibility for the child under a parenting order;

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**168. Section 235 amended**

Section 235(1)(b) is amended as follows:

- (a) by deleting subparagraphs (ii) and (iii) and “or” after subparagraph (i) and inserting instead —

“

- (ii) a person with whom the child is to live under a parenting order; or
- (iii) a person with whom the child is to spend time under a parenting order; or
- (iv) a person with whom the child is to communicate under a parenting order; or
- (v) a person who has parental responsibility for the child;

or

”;

- (b) after paragraph (a) and subparagraph (i) by inserting —

“ or ”.

**169. Section 238 amended**

Section 238(1) is amended as follows:

- (a) by deleting paragraph (a) and inserting instead —

“

- (a) a court has found, for the purposes of Part 5 Division 13, that a person has, by taking a child away from another person or by refusing or failing to deliver a child to another person, contravened a parenting order to the extent to which the order provides that —

- (i) a child is to live with a person; or
- (ii) a child is to spend time with a person; or

(iii) a child is to communicate with a person;  
or

”;

(b) after paragraph (b) by inserting —  
“ or ”.

**Division 8 — Amendments about the relocation of defined terms used in Part 5 of the *Family Court Act 1997***

**170. Section 5 amended**

Section 5(1) (as so designated by section 80(a)) is amended as follows:

- (a) by deleting the definitions of “adopted”, “child”, “member of the family”, “parental responsibility”, “parenting plan” and “recovery order”;
- (b) by inserting in the appropriate alphabetical positions —

“

**(FLA s. 4(1))**

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

**(FLA s. 4(1))**

**“alleged contravention”** in Part 5 Division 6 Subdivision 4, means the alleged contravention because of which the alleged offender is arrested;

**(FLA s. 4(1))**

**“alleged offender”** in Part 5 Division 6 Subdivision 4, means the person who is arrested;

**(FLA s. 4(1))**

**“arresting person”** means the person who arrests the alleged offender;

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**(FLA s. 4(1))**

**“captain”**, in relation to an aircraft or vessel, means the person in charge or command of the aircraft or vessel;

**(FLA s. 4(1))**

**“child”** —

- (a) in Part 5, includes an adopted child and a stillborn child; and
- (b) in Part 5 Division 6 Subdivision 5, means a person who has not attained the age of 18 years (including a person who is an adopted child);

**(FLA s. 4(1))**

**“childbirth maintenance period”**, in relation to the birth of a child, means the period that begins on the day mentioned in paragraph (a) or (b) and ends 3 months after the child’s birth —

- (a) if the mother —
  - (i) works in paid employment; and
  - (ii) is advised by a medical practitioner to stop working for medical reasons related to her pregnancy; and
  - (iii) stops working after being so advised and more than 2 months before the child is due to be born,the period begins on the day on which she stops working; or
- (b) in any other case, the period begins on the day that is 2 months before the child is due to be born;



**(FLA s. 4(1))**

**“child welfare officer”** in relation to a State or Territory, means —

- (a) a person who, because he or she holds, or performs the duties of, a prescribed office of the State or Territory, has responsibilities in relation to a child welfare law of the State or Territory; or
- (b) a person authorised in writing by such a person for the purposes of Part 5;

**(FLA s. 4(1))**

**“community service order”** has the meaning given by section 205SC;

**(FLA s. 4(1))**

**“contravened an order”**, in Part 5 Division 13, has the meaning given by section 205C;

**(FLA s. 4(1))**

**“department”** means a department of the Public Service;

**(FLA s. 4(1))**

**“information about a child’s location”**, in the context of a location order made or to be made by a court in relation to a child, means information about —

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

**(FLA s. 4(1))**

**“location order”** has the meaning given by section 143(1);

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**(FLA s. 4(1))**

**“medical expenses”** includes medical, surgical, dental, diagnostic, hospital, nursing, pharmaceutical and physiotherapy expenses;

**(FLA s. 4(1))**

**“member of the family”**, in relation to a person, has for the purposes of the definition of step-parent, sections 66C(3)(j) and (k) and 66F, the meaning given by section 6;

**(FLA s. 4(1))**

**“order under this Act affecting children”**, in relation to a court, means —

- (a) a parenting order; or
  - (b) an injunction granted by a court —
    - (i) under section 235; or
    - (ii) under section 235A insofar as the injunction is for the protection of a child;
- or
- (c) an undertaking given to, and accepted by, the court —
    - (i) that relates to, or to the making of, an order or injunction referred to in paragraph (a) or (b) or a community service order referred to in paragraph (f); or
    - (ii) that relates to a bond referred to in paragraph (g);
- or
- (d) a subpoena issued under the rules of Court —
    - (i) that relates to, or to the making of, an order or injunction referred to in

paragraph (a) or (b) or a community service order referred to in paragraph (f); or

(ii) that relates to a bond referred to in paragraph (g),

being a subpoena issued to a party to the proceedings for the order, injunction or bond, as the case may be; or

(e) a registered parenting plan within the meaning of section 76(6); or

(f) a community service order made under section 205SB(2)(a); or

(g) a bond entered into —

(i) under a parenting order; or

(ii) under section 205SB(2)(b); or

(iii) for the purposes of section 205SG(6),

and includes an order, injunction, plan or bond that —

(iv) is an order under this Act affecting children made by another court because of paragraph (a), (b), (e) or (g); and

(v) has been registered in the first-mentioned court;

**(FLA s. 4(1))**

**“parent”**, when used in Part 5 in relation to a child who has been adopted, means an adoptive parent of the child;

**(FLA s. 4(1))**

**“parenting plan”** has the meaning given by section 76;

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**(FLA s. 4(1))**

**“parental responsibility”**, in Part 5, has the meaning given by section 68;

**(FLA s. 4(1))**

**“pending”**, in Part 5 Division 6 Subdivision 5, has a meaning affected by section 106(2);

**(FLA s. 4(1))**

**“primary order”** means an order under this Act affecting children and includes such order as varied;

**“principal officer”** —

- (a) in relation to a department or an organisation within the meaning of the *Public Sector Management Act 1994*, means the chief executive officer or chief employee (as those terms are defined in the *Public Sector Management Act 1994*) of the department or organisation; and
- (b) in relation to any other State entity, means a person who is the chief executive officer of the State entity;

**(FLA s. 4(1))**

**“reasonable excuse for contravening”**, in relation to an order, includes the meanings given by section 205E;

**(FLA s. 4(1))**

**“recovery order”** has the meaning given by section 149;

**(FLA s. 4(1))**

**“Registrar”** means —

- (a) in relation to the Court, means the Principal Registrar, a Deputy Registrar or a Registrar; and

- (b) in relation to the Magistrates Court, means a registrar of that court at the place where that court was held;

**“State entity”** means —

- (a) a department or an organisation within the meaning of the *Public Sector Management Act 1994*; or
- (b) a body corporate, other than such an organisation or a local government, established for a public purpose by a written law;

**“State information order”** has the meaning given by section 143(2);

”;

- (c) by deleting before each definition listed in the Table to this provision, “(FLA s. 60D(1))” and inserting instead —

“ **(FLA s. 4(1))** ”.

**Table**

abuse	interests
birth	medical practitioner
child maintenance provisions	parentage testing order
child welfare law	parentage testing procedure
child welfare provisions	parenting order
education	professional ethics
family violence order	step-parent

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**171. Sections 6 and 7 replaced by sections 6, 7 and 7A**

Sections 6 and 7 are repealed and the following sections are inserted instead —

“

**6. Meaning of “member of the family” — FLA s. 4(1AB)**

For the purposes of —

- (a) the definitions of “family violence” and “step-parent” in section 5(1); and
- (b) section 66C(3)(j) and (k); and
- (c) section 66F,

a person (the “**first person**”) is a member of the family of another person (the “**second person**”) if —

- (d) the first person is or has been married to, or in a de facto relationship with, the second person; or
- (e) the first person is or has been a relative of the second person (as defined in section 7); or
- (f) an order under this Act described in subparagraph (i) or (ii) is or was (at any time) in force —
  - (i) a parenting order (other than a child maintenance order) that relates to a child who is either the first person or the second person and that is in favour of the other of those persons;
  - (ii) an order providing for the first person or the second person to have custody or guardianship of, or a right of access to, the other of those persons;

or

- (g) an order under a law of a State or Territory described in subparagraph (i) or (ii) is or was (at any time) in force —
    - (i) an order determining that the first person or the second person is or was to live with the other of those persons, or is or was to have custody or guardianship of the other of those persons;
    - (ii) an order providing for contact between the first person and the second person, or for the first person or the second person to have a right of access to the other of those persons;
- or
- (h) the first person ordinarily or regularly resides or resided with the second person, or with another member of the family of the second person; or
  - (i) the first person is or has been a member of the family of a child of the second person.

**7. Meaning of “relative” — FLA s. 4(1AC)**

For the purposes of section 6, a relative of a person is —

- (a) a father, mother, grandfather, grandmother, step-father or step-mother of the person; or
- (b) a son, daughter, grandson, grand-daughter, step-son or step-daughter of the person; or
- (c) a brother, sister, half-brother, half-sister, step-brother or step-sister of the person; or
- (d) an uncle or aunt of the person; or
- (e) a nephew or niece of the person; or
- (f) a cousin of the person; or

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

**7A. Meaning of “major long-term issues” — FLA s. 4(1)**

- (1) For the purposes of this Act —
  - “**major long-term issues**”, in relation to a child, means issues about the care, welfare and development of the child of a long-term nature and includes (but is not limited to) issues of that nature about —
    - (a) the child's education (both current and future); and
    - (b) the child's religious and cultural upbringing; and
    - (c) the child's health; and
    - (d) the child's name; and
    - (e) changes to the child's living arrangements that make it significantly more difficult for the child to spend time with a parent.
- (2) To avoid doubt, a decision by a parent of a child to form a relationship with a new partner is not, of itself, a major long-term issue in relation to the child, however, the decision will involve a major long-term issue if, for example, the relationship with the new partner involves the parent moving to another area and the move will



make it significantly more difficult for the child to  
spend time with the other parent.

”.

**172. Section 33 amended**

Section 33(1) is amended by deleting the definition of  
“Registrar”.

**173. Section 100 amended**

- (1) Section 100 is amended by deleting the subsection designation  
“(1)”.
- (2) Section 100(2) is repealed.

**174. Section 134 repealed**

Section 134 is repealed.

**175. Section 142 repealed**

Section 142 is repealed.

**176. Section 203 repealed**

Section 203 is repealed.

**177. Section 220A amended**

Section 220A(1)(a) is amended by deleting “(within the  
meaning of Part 5 Division 13)”.

**Part 4 — Amendments about the interaction between  
family law and bankruptcy law**

**178. Section 5 amended**

Section 5(1) is amended as follows:

- (a) by inserting in the appropriate alphabetical positions —  
“

**(FLA s. 4(1))**

“**bankrupt**” has the same meaning as in the  
Bankruptcy Act;

“**Bankruptcy Act**” means the *Bankruptcy Act 1966* of  
the Commonwealth;

**(FLA s. 4(1))**

“**bankruptcy trustee**”, in relation to a bankrupt,  
means the trustee of the bankrupt’s estate;

**(FLA s. 4(1))**

“**debtor subject to a personal insolvency  
agreement**” has the meaning given by section 7B;

**(FLA s. 4(1))**

“**personal insolvency agreement**” has the same  
meaning as in the Bankruptcy Act;

**(FLA s. 4(1))**

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

**(FLA s. 4(1))**

“**property settlement proceedings**” means  
proceedings with respect to —

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

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

**(FLA s. 4(1))**

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

**(FLA s. 4(1))**

**“vested bankruptcy property”**, in relation to a bankrupt, means property, within the meaning of the Bankruptcy Act, of the bankrupt that has vested in the bankruptcy trustee under that Act;

”;

- (b) by deleting the definition of “Part 5A proceedings” and inserting instead —

“

**“Part 5A proceedings”** means proceedings under Part 5A for orders with respect to —

- (a) the property of de facto partners, or either of them; or
  - (b) the vested bankruptcy property in relation to a bankrupt de facto partner; or
  - (c) the maintenance of a de facto partner,
- but does not include any proceedings specified in the regulations for the purposes of this definition;

”.

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**179. Section 7B inserted**

Before section 8 the following section is inserted —

“

**7B. Meaning of “debtor subject to a personal insolvency agreement” — FLA s. 4A**

For the purposes of this Act, if —

- (a) a person who is a debtor (within the meaning of Part X of the Bankruptcy Act) executes a personal insolvency agreement; and
- (b) the agreement has not ended (within the meaning of the Bankruptcy Act),

the person is a debtor subject to the personal insolvency agreement.

”.

**180. Section 45 amended**

- (1) Section 45 is amended by inserting before “Where” the subsection designation “(1)”.
- (2) At the end of section 45 the following subsection is inserted —

“

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

”.

**181. Section 205T amended**

Section 205T is amended as follows:

- (a) at the end of the definition of “income tested pension, allowance or benefit” by deleting the semicolon and inserting instead a full stop;
- (b) by deleting the definition of “property”.

**182. Section 205W amended**

After section 205W(2) the following subsection is inserted —

“

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

”.

**183. Section 205ZC amended**

(1) Section 205ZC is amended as follows:

- (a) by inserting before “A de facto partner” the subsection designation “(1)”;

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- (b) by deleting “party” and inserting instead —  
“ partner ”.
- (2) At the end of section 205ZC the following subsection is  
inserted —  
“
  - (2) The liability under subsection (1) of a bankrupt  
de facto partner to maintain the other de facto partner  
may be satisfied, in whole or in part, by way of the  
transfer of vested bankruptcy property in relation to the  
bankrupt partner if the court makes an order under this  
Part for the transfer.”.

**184. Section 205ZCA inserted**

After section 205ZC the following section is inserted —

“

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

- (1) In proceedings with respect to the maintenance of a  
de facto partner, the court may make such order as it  
considers proper for the provision of maintenance in  
accordance with this Division.
- (2) If —
  - (a) an application is made for an order under this  
section in proceedings between de facto  
partners with respect to the maintenance of one  
of the partners; and
  - (b) either of the following subparagraphs apply to  
one of the de facto partners —
    - (i) when the application was made, the  
de facto partner was a bankrupt; and
    - (ii) after the application was made but  
before the proceedings are finally

determined, the de facto partner became  
a bankrupt;

and

- (c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and
- (d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings,

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

- (3) If a bankruptcy trustee is a party to proceedings with respect to the maintenance of a de facto partner, then, except with the leave of the court, the bankrupt de facto partner is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.
- (4) The court must not grant leave under subsection (3) unless the court is satisfied that there are exceptional circumstances.
- (5) If —
  - (a) an application is made for an order under this section in proceedings between de facto partners with respect to the maintenance of one of the de facto partners; and
  - (b) either of the following subparagraphs apply to one of the de facto partners (the “**debtor party**”) —
    - (i) when the application was made, the de facto partner was a debtor subject to a personal insolvency agreement; or
    - (ii) after the application was made but before it is finally determined, the

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de facto partner becomes a debtor  
subject to a personal insolvency  
agreement;

and

- (c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and
- (d) the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings,

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

- (6) If the trustee of a personal insolvency agreement is a party to proceedings with respect to the maintenance of a de facto partner then, except with the leave of the court, the de facto partner who is the debtor subject to the agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.
- (7) The court must not grant leave under subsection (6) unless the court is satisfied that there are exceptional circumstances.
- (8) For the purposes of subsections (2) and (5), an application for an order under this section is taken to be finally determined when —
  - (a) the application is withdrawn or dismissed; or
  - (b) an order (other than an interim order) is made as a result of the application.

”.

**185. Section 205ZD amended**

- (1) Section 205ZD(1) is repealed.



(2) Section 205ZD(3) is amended as follows:

- (a) in paragraph (d)(ii) by deleting “party” and inserting instead —  
“ partner ”;
- (b) in paragraph (e) by deleting “party” and inserting instead —  
“ de facto partner ”;
- (c) in paragraph (f) by deleting “party” in both places where it occurs and inserting instead —  
“ de facto partner ”;
- (d) in paragraph (h) —
  - (i) by deleting “party” in the first place where it occurs and inserting instead —  
“ de facto partner ”; and
  - (ii) by deleting “that party” in both places where it occurs and inserting instead —  
“ that partner ”;
- (e) after paragraph (h) by inserting —  
“
  - (ha) the effect of any proposed order on the ability of a creditor of a de facto partner to recover the creditor’s debt, so far as that effect is relevant; and”;
- (f) in paragraph (i) by deleting “party” in both places where it occurs and inserting instead —  
“ de facto partner ”;
- (g) in paragraph (j) by deleting “party” and inserting instead —  
“ de facto partner ”;

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- (h) in paragraph (k) by deleting “party” and inserting  
instead —  
“ de facto partner ”;
- (i) in paragraph (l) by deleting “party” and inserting  
instead —  
“ de facto partner ”;
- (j) in paragraph (m) by deleting “section 205ZG in relation  
to the property of the parties;” and inserting instead —  
“  
    section 205ZG in relation to —  
    (i) the property of the de facto partners; or  
    (ii) vested bankruptcy property in relation  
        to a bankrupt de facto partner;  
”;
- (k) in paragraph (p) by deleting “parties.” and inserting  
instead —  
“ de facto partners. ”;
- (l) after each of paragraphs (a) to (h) and (i) to (n) by  
inserting —  
“ and ”.

**186. Section 205ZG amended**

- (1) Section 205ZG(1) is repealed and the following subsection is  
inserted instead —  
“  
    (1) In property settlement proceedings, the court may  
        make such order as it considers appropriate —  
        (a) in the case of proceedings with respect to the  
            property of the de facto partners, or either of  
            them, altering the interests of the partners in the  
            property; or

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

including —

- (c) an order for a settlement of property in substitution for any interest in the property; and
- (d) an order requiring —
  - (i) either or both of the de facto partners; or
  - (ii) the relevant bankruptcy trustee (if any),to make, for the benefit of either or both of the de facto partners or a child of the de facto partner, such settlement or transfer of property as the court determines.

”.

(2) Section 205ZG(2) is amended as follows:

- (a) by deleting “proceedings with respect to the property of de facto partners, or either of them” and inserting instead —  
“ property settlement proceedings ”;
- (b) by deleting “a partner to the proceedings,” and inserting instead —  
“ one of the de facto partners, ”.

(3) Section 205ZG(4) is amended by deleting “proceedings with respect to any property of de facto partners, or either of them,” and inserting instead —

“ property settlement proceedings ”.

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(4) Section 205ZG(5) is amended as follows:

(a) by deleting “proceedings with respect to the property of the de facto partners, or either of them,” and inserting instead —

“ property settlement proceedings ”;

(b) by deleting paragraph (b) and inserting the following paragraph instead —

“

(b) that an order that the court could make with respect to —

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

(ii) the vested bankruptcy property in relation to a bankrupt de facto partner,

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

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

(iv) the vested bankruptcy property in relation to a bankrupt de facto partner,

”;

(c) by inserting after “either de facto partner” —

“ or the relevant bankruptcy trustee (if any) ”;

(d) by inserting after “that de facto partner” —

“

or the relevant bankruptcy trustee, as the case may be

”.

- (5) Section 205ZG(6) is amended by deleting “with respect to any of the property of the de facto partners or of either of them.” and inserting instead —

“

with respect to —

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

”.

- (6) Section 205ZG(8) is amended as follows:

- (a) by deleting “proceedings with respect to the property of de facto partners, or either of them are completed, either party to the proceedings” and inserting instead —

“

property settlement proceedings are completed, either de facto partner

”;

- (b) after paragraph (a) by inserting —

“ and ”;

- (c) in paragraph (b) by deleting “with respect to any of the property of the de facto partners, or either of them; and” and inserting instead —

“

with respect to —

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

and

”.

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- (7) Section 205ZG(9) is amended by deleting “proceedings with respect to the property of de facto partners, or either of them” and inserting instead —
- “ property settlement proceedings ”.
- (8) After section 205ZG(9) the following subsections are inserted —
- “
- (10) The following are entitled to become a party to proceedings in which an application is made for an order under this section —
- (a) a creditor of a party to the proceedings if the creditor may be able to recover his or her debt if the order were made;
- (b) any other person whose interests would be affected by the making of the order.
- (11) Subsection (10) does not apply to a creditor of a party to the proceedings —
- (a) if the party is a bankrupt, to the extent to which the debt is a provable debt (within the meaning of the Bankruptcy Act); or
- (b) if the party is a debtor subject to a personal insolvency agreement, to the extent to which the debt is covered by the personal insolvency agreement.
- (12) If —
- (a) an application is made for an order under this section in proceedings between the de facto partners with respect to the property of the de facto partners, or either of them; and

- (b) either of the following subparagraphs apply to a de facto partner —
  - (i) when the application was made, the partner was a bankrupt;
  - (ii) after the application was made but before it is finally determined, the partner became a bankrupt;and
- (c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and
- (d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings,

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

- (13) If a bankruptcy trustee is a party to property settlement proceedings, then, except with the leave of the court, the bankrupt de facto partner is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.
- (14) The court must not grant leave under subsection (13) unless the court is satisfied that there are exceptional circumstances.
- (15) If —
  - (a) an application is made for an order under this section in proceedings between de facto partners with respect to the property of the de facto partners, or either of them; and

- (b) either of the following subparagraphs apply to a de facto partner (the “**debtor party**”) —
    - (i) when the application was made, the de facto partner was a debtor subject to a personal insolvency agreement; or
    - (ii) after the application was made but before it is finally determined, the de facto partner becomes a debtor subject to a personal insolvency agreement;
- and
- (c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and
  - (d) the court is satisfied that the interests of the debtor party’s creditors may be affected by the making of an order under this section in the proceedings,

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

- (16) If the trustee of a personal insolvency agreement is a party to property settlement proceedings, then, except with the leave of the court, the de facto partner who is the debtor subject to the agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.
- (17) The court must not grant leave under subsection (16) unless the court is satisfied that there are exceptional circumstances.
- (18) For the purposes of subsections (12) and (15), an application for an order under this section is taken to be finally determined when —
  - (a) the application is withdrawn or dismissed; or



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

”.

**187. Section 205ZH amended**

- (1) Section 205ZH(1) is amended by deleting “proceedings with respect to the property of de facto partners, or either of them,” and inserting instead —

“ property settlement proceedings, ”.

- (2) Section 205ZH(2) is amended by deleting “proceedings with respect to the property of de facto partners, or either of them,” and inserting instead —

“ property settlement proceedings, ”.

- (3) Section 205ZH(5) is amended by deleting “party to the proceedings” and inserting instead —

“ de facto partner ”.

- (4) After section 205ZH(6) the following subsections are inserted —

“

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

- (8) For the purposes of this section, if —

- (a) an order is made by a court under section 205ZG in proceedings with respect to the property of de facto partners or either of them; and

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(b) either of the following subparagraphs apply to a de facto partner —

- (i) when the order was made, the de facto partner was a bankrupt;
- (ii) after the order was made, the de facto partner became a bankrupt,

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

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

- (a) a de facto partner is a bankrupt; and
- (b) an order is made by a court under section 205ZG in proceedings with respect to the vested bankruptcy property in relation to the bankrupt party,

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

(10) For the purposes of this section, if —

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

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

”.

**188. Sections 205ZHE, 205ZHF, 205ZHG and 205ZHH inserted**

Before section 205ZI the following sections are inserted —

“

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

The rules may specify the circumstances in which a person who —

- (a) applies for an order under this Part; or
- (b) is a party to proceedings for an order under this Part,

is to give notice of the application to a person who is not a party to the proceedings.

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

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

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

- (1) The rules may make provision for a person who —
  - (a) is a de facto partner; and
  - (b) is a party to a proceeding for an application under section 205ZA, 205ZCA, 205ZG or 205ZH; and

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- (c) before that application is finally determined,  
becomes a bankrupt,

to notify a court exercising jurisdiction under this Act  
that the person has become a bankrupt.

- (2) The rules may make provision for a person who —

- (a) is a de facto partner; and
- (b) is a party to a proceeding for an application  
under section 205ZA, 205ZCA, 205ZG or  
205ZH; and
- (c) before that application is finally determined,  
becomes a debtor subject to a personal  
insolvency agreement,

to notify a court exercising jurisdiction under this Act  
that the person has become a debtor subject to a  
personal insolvency agreement.

- (3) The rules may make provision for a person who —

- (a) is a de facto partner; and
- (b) is a party to a proceeding for an application  
under section 205ZA, 205ZCA, 205ZG or  
205ZH; and
- (c) before that application is finally determined,  
becomes a party to a proceeding before the  
Federal Court or the Federal Magistrates Court  
under the Bankruptcy Act that relates to —
  - (i) the bankruptcy of the person; or
  - (ii) the person's capacity as a debtor subject  
to a personal insolvency agreement,

to notify a court exercising jurisdiction under this Act  
of the institution of the proceeding under the  
Bankruptcy Act.

- (4) The rules may make provision for a person who —
- (a) is the bankruptcy trustee of a bankrupt de facto partner; and
  - (b) applies under section 139A of the Bankruptcy Act for an order under Division 4A of Part VI of that Act,

to notify a court exercising jurisdiction under this Act of the making of the application.

- (5) For the purposes of this section, an application for an order under section 205ZCA, 205ZG or 205ZH is taken to be finally determined when —
- (a) the application is withdrawn or dismissed; or
  - (b) an order (other than an interim order) is made as a result of the application.
- (6) For the purposes of this section, an application for a declaration under section 205ZA is taken to be finally determined when —
- (a) the application is withdrawn or dismissed; or
  - (b) a declaration is made as a result of the application.

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

The rules may make provision for a person who —

- (a) is the bankruptcy trustee of a bankrupt de facto partner; and
- (b) applies under section 139A of the Bankruptcy Act for an order under Division 4A of Part VI of that Act in relation to an entity (other than the other de facto partner),

to notify the other de facto partner of the making of the application.

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**189. Section 205ZI amended**

After section 205ZI(3) the following subsections are inserted —

“

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

”.

**190. Section 205ZL amended and transitional provision**

- (1) Section 205ZL(1) is amended by deleting “In proceedings with respect to the maintenance of a de facto partner, if there is in force an order with respect to the maintenance of that person by the de facto partner of that person” and inserting instead —

“

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

”.

- (2) After section 205ZL(1) the following subsection is inserted —

“

- (1a) The court’s jurisdiction under subsection (1) may be exercised —
  - (a) in any case, in proceedings with respect to the maintenance of a de facto partner; or
  - (b) if there is a bankrupt de facto partner, on the application of the bankruptcy trustee; or

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

”.

- (3) Section 205ZL(5) is amended by inserting after “a de facto partner” —

“ , or by the bankruptcy trustee of a de facto partner ”.

- (4) Section 205ZL(1) of the *Family Court Act 1997*, as amended by subsection (1), applies to an order made before, on or after the commencement of this Part.

**191. Section 205ZP amended**

- (1) Section 205ZP(1)(a) is amended by deleting “parties” and inserting instead —

“ de facto partners ”.

- (2) Section 205ZP(1)(b) is amended by deleting “parties” and inserting instead —

“ de facto partners ”.

**192. Section 205ZPA inserted**

After section 205ZP the following section is inserted —

“

**205ZPA. Need for separation declaration for certain provisions of financial agreement to take effect —  
FLA s. 90DA**

- (1) A financial agreement between 2 people, to the extent to which it deals with —
- (a) how, in the event of the breakdown of the de facto relationship, all or any of the property or financial resources of either or both of them at the time when the agreement is made, or at a

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later time and during the de facto relationship,  
is to be dealt with; or

- (b) the maintenance of either of them after the  
de facto relationship has ended,

is of no force or effect until a separation declaration is  
made.

- (2) A separation declaration is a written declaration that  
complies with subsections (3) and (4).
- (3) The declaration must be signed by at least one of the  
parties to the financial agreement.
- (4) The declaration must state that —
  - (a) the de facto partners have separated and are  
living separately and apart at the declaration  
time; and
  - (b) in the opinion of the de facto partners making  
the declaration, there is no reasonable  
likelihood of cohabitation being resumed.

- (5) In this section —

**“declaration time”** means the time when the  
declaration was signed by a party to the financial  
agreement (or last signed by a party to the  
agreement, if both parties to the agreement have  
signed);

**“separated”** has the same meaning in relation to a  
de facto relationship as it has for the purposes of  
section 48 of the Family Law Act, as affected by  
section 49 of that Act, in relation to a marriage.

”.



**193. Section 222 amended**

(1) After section 222(1) the following subsections are inserted —

“

(1a) If —

- (a) a de facto partner is a bankrupt; and
- (b) the bankrupt trustee is a party to proceedings under this Act,

the court may set aside or restrain the making of an instrument or disposition —

- (c) which is made or proposed to be made by or on behalf of, or by direction or in the interests of, the bankrupt; and
- (d) which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.

(1b) If —

- (a) a de facto partner is a debtor subject to a personal insolvency agreement; and
- (b) the trustee of the agreement is a party to proceedings under this Act,

the court may set aside or restrain the making of an instrument or disposition —

- (c) which is made or proposed to be made by or on behalf of, or by direction or in the interest of, the debtor; and
- (d) which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.

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- (2) Section 222(2) is amended by deleting “such instrument or disposition” and inserting instead —

“

instrument or disposition referred to in subsection (1),  
(1a) or (1b)

”.

- (3) After section 222(4) the following subsection is inserted —

“

- (4aa) An application may be made to the court for an order under this section by —
- (a) a party to the proceedings; or
  - (b) a creditor to the party to the proceedings if the creditor may not be able to recover his or her debt if the instrument or disposition were made; or
  - (c) any other person whose interests would be affected by the making of the instrument or disposition.

”.

**194. Section 235A amended**

After section 235A(3) the following subsections are inserted —

“

- (4) If a de facto partner is a bankrupt, a court may, on the application of the other de facto partner, by interlocutory order, grant an injunction under subsection (3) restraining the bankruptcy trustee from declaring and distributing dividends amongst the bankrupt’s creditors.
- (5) Subsection (4) does not limit subsection (3).
- (6) If a de facto partner is a debtor subject to a personal insolvency agreement, a court may, on the application of the other de facto partner, by interlocutory order,

grant an injunction under subsection (3) restraining the trustee of the agreement from disposing of (whether by sale, gift or otherwise) property subject to the agreement.

(7) Subsection (6) does not limit subsection (3).

”.

**195. Transitional provisions**

(1) In this section —

“**commencement**” means the day on which this Part comes into operation;

“**relevant provisions**” means the following provisions of the *Family Court Act 1997*, as amended by this Part —

- (a) section 205ZCA(2), (3) and (4); and
- (b) section 205ZCA(8), to the extent to which it relates to section 205ZCA(2); and
- (c) the definitions in section 5(1), to the extent to which those definitions relate to section 205ZCA(2), (3) and (4); and
- (d) section 205ZG(11), (12) and (13); and
- (e) section 205ZG(17), to the extent to which it relates to section 205ZG(11); and
- (f) the definitions in section 5(1) to the extent to which those definitions relate to section 205ZG(11), (12) and (13).

(2) Subject to subsection (3), the *Family Court Act 1997*, as amended by this Part, to the extent to which it relates to bankruptcies or personal insolvency agreements —

- (a) applies in relation to —
  - (i) bankruptcies for which the date of the bankruptcy is after the commencement; and

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- (ii) personal insolvency agreements, whether  
executed before, at or after the commencement;  
and
  - (b) does not apply in relation to bankruptcies for which the  
date of the bankruptcy is before the commencement.
- (3) The relevant provisions apply to proceedings instituted after the  
commencement, whether the date of the bankruptcy is before,  
on or after the commencement.

**Part 5 — Child Support (Adoption of Laws) Act 1990****196. Purpose of Part**

The purpose of this Part is to provide that the adoption by the *Child Support (Adoption of Laws) Act 1990* of —

- (a) the *Child Support (Registration and Collection) Act 1988* of the Commonwealth extends to that Act as amended by —
  - (i) the *Financial Framework Legislation Amendment Act 2005*; and
  - (ii) the *Child Support Legislation Amendment (Reform of the Child Support Scheme — Initial Measures) Act 2006*; and
  - (iii) the *Family Law Amendment (Shared Parental Responsibility) Act 2006*; and
  - (iv) the *Financial Framework Legislation Amendment Act (No. 1) 2006*; and
  - (v) the *Jurisdiction of Courts (Family Law) Act 2006*; and
  - (vi) the *Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2006*,  
of the Commonwealth; and
- (b) the *Child Support (Assessment) Act 1989* of the Commonwealth extends to that Act as amended by —
  - (i) the *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005*; and
  - (ii) the *Child Support Legislation Amendment (Reform of the Child Support Scheme — Initial Measures) Act 2006*; and
  - (iii) the *Jurisdiction of Courts (Family Law) Act 2006*; and
  - (iv) the *Family Law Amendment (Shared Parental Responsibility) Act 2006*,  
of the Commonwealth.

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**197. The Act amended**

The amendments in this Part are to the *Child Support (Adoption of Laws) Act 1990*\*.

[\* *Reprint 1 as at 2 May 2003.*]

**198. Section 3 amended**

Section 3(a) of the *Child Support (Adoption of Laws) Act 1990* is amended by deleting “1 July 2002” and inserting instead —

“ 1 July 2006 ”.

**199. Section 4 amended**

Section 4(b) of the *Child Support (Adoption of Laws) Act 1990* is amended by deleting “1 July 2002” and inserting instead —

“ 1 July 2006 ”.

## Part 6 — Consequential amendments to other Acts

### Division 1 — *Children and Community Services Act 2004* amended

#### 200. The Act amended

The amendments in this Division are to the *Children and Community Services Act 2004*\*.

[\* *Act No. 34 of 2004.*

*For subsequent amendments see Western Australian  
Legislation Information Tables for 2005, Table 1, p. 61.]*

#### 201. Section 104 amended

- (1) Section 104(1) is amended by deleting the definitions of “residence order” and “specific issues order” and inserting in the appropriate alphabetical position —

“

**“parenting order”** means a parenting order made under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997* which deals with —

- (a) the person or persons with whom a child is to live; or
- (b) the time a child is to spend with another person or other persons; or
- (c) the communication a child is to have with another person or other persons; or
- (d) the allocation of parental responsibility for a child;

”.

- (2) Section 104(2)(d) is amended by deleting “residence order or specific issues” and inserting instead —

“ parenting ”.

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**Part 6** Consequential amendments to other Acts

**Division 1** Children and Community Services Act 2004 amended

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- (3) Section 104(2)(e) is amended by deleting “residence order or specific issues” and inserting instead —

“ parenting ”.

**202. Section 198 amended**

Section 198(2) is amended as follows:

- (a) by deleting paragraph (b) and inserting instead —

“

- (b) care provided to a child by a person in accordance with a parenting order under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997*; or

”;

- (b) after each of paragraphs (a) and (c) to (e) by inserting —

“ or ”.

**203. Section 238 amended**

Section 238(6)(d) is deleted and the following paragraph is inserted instead —

“

- (d) if the proceedings are in the Family Court —
- (i) a family consultant, as defined in the *Family Court Act 1997*; or
  - (ii) any other person required or directed to prepare a report on matters relevant to the proceedings, under that Act or the *Family Law Act 1975* of the Commonwealth;

”.



**Division 2 — *Guardianship and Administration Act 1990* amended**

**204. The Act amended**

The amendments in this Division are to the *Guardianship and Administration Act 1990*\*.

[\* *Reprint 3 as at 1 April 2005.*

*For subsequent amendments see Acts Nos. 34, 59 and 84 of 2004.]*

**205. Section 45 amended**

Section 45(1)(a) and (b) and “and” after paragraph (a) are deleted and the following is inserted instead —

“

- (a) a parenting order which allocates parental responsibility for a child; and
- (b) a parenting order which provides that a person is to share parental responsibility for a child,

”.

**Division 3 — *Restraining Orders Act 1997* amended**

**206. The Act amended**

The amendments in this Division are to the *Restraining Orders Act 1997*\*.

[\* *Reprinted as at 6 October 2000.*

*For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 387 and Acts Nos. 34 and 38 of 2004.]*

**207. Section 5 amended**

- (1) Section 5(1)(a) and (b) are deleted and the following paragraph is inserted instead —

“

- (a) a parenting order made under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997*, as is relevant to the case, that deals with —
- (i) the person or persons with whom a child is to live; or
  - (ii) the time a child is to spend with another person or other persons; or
  - (iii) the communication a child is to have with another person or other persons;

”.

- (2) Section 5(2) is amended as follows:

- (a) in paragraph (a) by deleting “, a specific issues order”;
- (b) in paragraph (d) by deleting “registered” and inserting instead —  
“ , whether registered or not ”;
- (c) in paragraph (e) by deleting “recognisance” and inserting instead —  
“ bond ”;
- (d) after each of paragraphs (a) to (c) by inserting —  
“ or ”.

**208. Section 62 amended**

Section 62(1)(a) is amended by deleting “primary dispute resolution method, as defined in section 47 of” and inserting instead —

“ process of family dispute resolution, as defined in ”.

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