Western Australia

Family Court Act 1997

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Defined terms

Western Australia

Family Court Act 1997

An Act to continue the Family Court of Western Australia, to repeal the *Family Court Act 1975* and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Family Court Act 1997*.

2. Commencement

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

3. Contents of this Act

This Act —

(a) provides for the Family Court of Western Australia and for certain other State courts to exercise the federal jurisdiction invested in them by or under the *Family Law Act 1975* of the Commonwealth; and

(b) provides for the Family Court of Western Australia and for certain other State courts to exercise the non-federal jurisdictions conferred on them by or under this Act; and

(c) provides for the Family Court of Western Australia to exercise jurisdiction under any other written law, or for the purposes of any other Commonwealth law.

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

(1) A reference to "FLA" followed by a section designation —

(a) in the heading to a section of this Act is a reference to the section of the *Family Law Act 1975* of the Commonwealth with which the section in this Act is comparable; or

(b) immediately before a definition in this Act is a reference to the section in the *Family Law Act 1975* of the Commonwealth containing a definition with which the definition in this Act is comparable.

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

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

[Section 4 amended: No. 49 of 2024 s. 4.]

5. Terms used

(1) In this Act, unless the contrary intention appears —

(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))

abuse, in relation to a child, means —

(a) an assault, including a sexual assault, of the child; or

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

(c) causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or

(d) serious neglect of the child;

(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 14 Subdivision 2, means the alleged contravention because of which the alleged offender is arrested;

(FLA s. 4(1))

alleged offender in Part 5 Division 14 Subdivision 2, means the person who is arrested;

(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))

arbitration has the meaning given by section 56;

(FLA s. 4(1))

arbitrator has the meaning given by section 57;

(FLA s. 4(1))

arresting person means the person who arrests the alleged offender;

(FLA s. 4(1))

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

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

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

(FLA s. 4(1))

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

(FLA s. 4(1))

birth includes stillbirth;

(FLA s. 4(1))

captain, in relation to an aircraft or vessel, means the person in charge or command of the aircraft or vessel;

case guardian —

(a) means a person appointed by a court under the rules to manage and conduct a case for a child or a person with a disability; and

(b) includes a next friend, guardian ad litem, tutor or litigation guardian;

CEO means the CEO as defined in section 3 of the *Children and Community Services Act 2004*;

Chief Judge means the judge appointed under section 11(2) to be the Chief Judge of the Court;

(FLA s. 4(1))

child —

(a) in Part 5, includes an adopted child, a child whose parentage has been transferred under the *Surrogacy Act 2008* 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 or a child whose parentage has been transferred under the *Surrogacy Act 2008*);

child bearing expenses means a matter in respect of which a payment may be ordered to be made under Subdivision 2 of Division 8 of Part 5;

(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 maintenance order has the meaning given by section 84(5);

(FLA s. 4(1))

child maintenance provisions, in relation to a parenting plan, has the meaning given by section 76(5);

(FLA s. 4(1))

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

(FLA s. 4(1))

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

Child Support (Assessment) Act means the *Child Support (Assessment) Act 1989* (Commonwealth);

Note for this definition:

See the *Child Support (Commonwealth Powers) Act 2019*.

Child Support (Registration and Collection) Act means the *Child Support (Registration and Collection) Act 1988* (Commonwealth);

Note for this definition:

See the *Child Support (Commonwealth Powers) Act 2019*.

(FLA s. 4(1))

child welfare law means this Act, the *Adoption Act 1994*, the *Children and Community Services Act 2004*, the *Young Offenders Act 1994* and any other written law providing for —

(a) the imprisonment, detention or residence of a child; or

(b) the care, treatment and protection of a child who has a mental illness;

(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))

child welfare provisions, in relation to a parenting plan, has the meaning given by section 76(4);

Commissioner of Police means the Commissioner of Police appointed under section 5 of the *Police Act 1892*;

(FLA s. 4(1))

communicate — see section 236A(1);

(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))

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

(FLA s. 4(1))

conveyance includes a vehicle, a vessel and an aircraft;

Court or ***Family Court of Western Australia*** means the Family Court of Western Australia continued by this Act;

court has a meaning affected by section 8;

(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))

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

(FLA s. 4(1))

department means a department of the Public Service;

(FLA s. 4(1))

designated family report — see section 65AB;

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

(FLA s. 4(1))

education includes apprenticeship or vocational training;

(FLA s. 4(1))

exposed to family violence, in relation to a child, has the meaning given in section 9A(3);

(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;

Family Law Act means the *Family Law Act 1975* of the Commonwealth and includes rules, regulations and proclamations for the time being in force under that Act;

family law magistrate means a person who is both a magistrate appointed under the *Magistrates Court Act 2004* and either the Principal Registrar or a registrar of the Family Court of Western Australia;

(FLA s. 4(1))

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

(FLA s. 4(1))

family report writer — see section 65AA;

(FLA s. 4(1))

family violence has the meaning given in section 9A(1);

(FLA s. 4(1))

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

(FLA s. 4(1))

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

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

income tested pension, allowance or benefit has the meaning given by the Family Law Act;

(FLA s. 4(1))

independent children's lawyer, for a child, means a legal practitioner who represents the child's interests in proceedings under an appointment made under a court order under section 164(2);

(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))

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

judge or ***Family Court judge*** means a judge of the Court;

(FLA s. 4(1))

location order has the meaning given by section 143(1);

(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))

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

(FLA s. 4(1))

medical expenses includes medical, surgical, dental, diagnostic, hospital, nursing, pharmaceutical and physiotherapy expenses;

(FLA s. 4(1))

medical practitioner means a person registered or licensed as a medical practitioner under a law of a State or a Territory that provides for the registration or licensing of medical practitioners and who has current entitlement to practise in that State or Territory;

(FLA s. 4(1))

member of the family has the meaning given in section 6;

metropolitan region has the meaning given to that term in the *Planning and Development Act 2005* section 4;

order means an order of a court and includes a judgment and an order dismissing an application or refusing to make an order;

(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))

parentage testing order has the meaning given by section 195(1);

(FLA s. 4(1))

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

(FLA s. 4(1))

parental responsibility, in Part 5, has the meaning given by section 68;

(FLA s. 4(1))

parenting order has the meaning given by section 84(1);

(FLA s. 4(1))

parenting plan has the meaning given by section 76;

Part 5 Order means an order made under Part 5;

(FLA s. 4(1))

Part 5A proceedings means proceedings under Part 5A for orders with respect to the maintenance of a de facto partner or to the property of de facto partners, but does not include any proceedings specified in the regulations for the purposes of this definition;

(FLA s. 4(1))

pending, in Part 5 Division 6 Subdivision 5, has a meaning affected by section 106(2);

(FLA s. 4(1))

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

(FLA s. 4(1))

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

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))

proceedings —

(a) means a proceeding in a court, whether between parties or not, and includes cross-proceedings or an incidental

proceeding in the course of or in connection with a proceeding; and

(b) in Part 11A, includes a part of proceedings;

(FLA s. 4(1))

professional ethics includes —

(a) rules of professional conduct; and

(b) rules of professional etiquette; and

(c) a code of ethics; and

(d) standards of professional conduct;

(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))

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

(FLA s. 4(1))

public — see section 236A(2);

(FLA s. 4(1))

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

(FLA s. 4(1))

recovery order has the meaning given by section 149;

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

(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;

(FLA s. 4(1))

Registry Manager means —

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

(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;

(FLA s. 4(1))

regulator — see section 65AC(2)(b);

(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; or

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

and

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

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

(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);

(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 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;

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);

(FLA s. 4(1))

step-parent, in relation to a child, means a person who —

(a) is not a parent of the child; and

(b) is or has been married to, or in a de facto relationship with, a parent of the child; and

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

(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.

(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.

(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.

[Section 5 amended: No. 25 of 2002 s. 4 and 29; No. 28 of 2003 s. 50(1); No. 34 of 2004 Sch. 2 cl. 10(2); No. 59 of 2004 s. 91; No. 38 of 2005 s. 15; No. 35 of 2006 s. 4, 17, 42(1), 63, 80, 104, 108, 136, 144 and 170; No. 21 of 2008 s. 663(2); No. 47 of 2008 s. 59; No. 13 of 2013 s. 4; No. 7 of 2019 s. 8; No. 9 of 2022 s. 424; No. 28 of 2022 s. 4; No. 49 of 2024 s. 5.]

6. Meaning of *member of the family* — FLA s. 4(1AB)

For the purposes of —

(a) the definition of ***step-parent*** in section 5(1); and

(ba) section 9A; and

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

(c) sections 66F, 66HA and 66HB,

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 within the meaning of section 7(1); or

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

(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.

[Section 6 inserted: No. 35 of 2006 s. 171; amended: No. 13 of 2013 s. 5; No. 49 of 2024 s. 6.]

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

(1) For the purposes of section 6(e), a relative of a person is —

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

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

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

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

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

(f) a cousin of the person; or

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

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

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

[Section 7 inserted: No. 35 of 2006 s. 171; amended: No. 49 of 2024 s. 7.]

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.

[Section 7A inserted: No. 35 of 2006 s. 171.]

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

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

(a) the person is a debtor (within the meaning of the Bankruptcy Act Part X); and

(b) the person executes a personal insolvency agreement; and

(c) the agreement has not come to an end (as defined in the Bankruptcy Act section 5(1)).

[Section 7B inserted: No. 28 of 2022 s. 5.]

8. Meaning of *court*

Unless the contrary intention appears, a reference in Parts 4, 4A, 4AA, 4B, 4C, 5, 5A, 6, 8, 9, 10, 10A, 11 and 12 and Schedule 2 to a court is a reference to —

(a) the Court; and

(b) the Magistrates Court constituted so as to be able, under section 39, to exercise the Court's non-federal jurisdictions.

[Section 8 amended: No. 25 of 2002 s. 30; No. 59 of 2004 s. 95; No. 49 of 2024 s. 8.]

9A. Meaning of *family violence* etc. — FLA s. 4AB

(1) For the purposes of this Act, ***family violence*** means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the ***family member***), or causes the family member to be fearful.

(2) Examples of behaviour that may constitute family violence include (but are not limited to) —

(a) an assault; or

(b) a sexual assault or other sexually abusive behaviour; or

(c) stalking; or

(d) repeated derogatory taunts; or

(e) intentionally damaging or destroying property; or

(f) intentionally causing death or injury to an animal; or

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

(h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family

member is entirely or predominantly dependent on the person for financial support; or

(i) preventing the family member from making or keeping connections with his or her family, friends or culture; or

(j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.

(3) For the purposes of this Act, a child is ***exposed*** to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.

(4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child —

(a) overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or

(b) seeing or hearing an assault of a member of the child's family by another member of the child's family; or

(c) comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or

(d) cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or

(e) being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

[Section 9A inserted: No. 13 of 2013 s. 6.]

9B. *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Pt. 2 applies

The *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Part 2 applies to this Act.

[Section 9B inserted: No. 34 of 2020 s. 59.]

Part 2 — Family Court of Western Australia

Division 1 — The Family Court

9. Family Court continued

(1) The Family Court of Western Australia, established by the *Family Court Act 1975*, is continued.

(2) The Court is a court of record and is to have an official seal of which judicial notice must be taken.

10. Constitution etc. of Court

(1) The Court consists of —

(a) the Chief Judge; and

(b) the other judges appointed under section 11; and

(c) acting judges appointed under section 21 or 22.

(2) The jurisdiction of the Court is exercisable by one judge who may sit and exercise the jurisdiction of the Court at the same time as any other Court constituted by a judge is sitting and exercising the jurisdiction of the Court.

(3) Sittings of the Court are to be held from time to time as required.

Division 2 — Judges

11. Appointment of judges

(1) The Governor, by commission under the Public Seal of the State, may appoint as many persons as are needed for the purposes of this Act to be Family Court judges.

(2) The Governor is to appoint one of the judges to be the Chief Judge of the Court and may, at any time, revoke the appointment as Chief Judge.

(3) A person is not eligible for appointment as a Family Court judge unless the person —

(a) is a lawyer and has had not less than 8 years' legal experience; and

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

(3a) In subsection (3)(a) —

legal experience means —

(a) standing and practice as a legal practitioner; or

(b) judicial service (including service as a judge of a court, a magistrate or other judicial officer) in the State or elsewhere in a common law jurisdiction; or

(c) a combination of both kinds of legal experience mentioned in paragraphs (a) and (b).

(4) A person so appointed is a judge for the whole of the State and can constitute the Court sitting at any place in the State.

[Section 11 amended: No. 21 of 2008 s. 663(3); No. 9 of 2022 s. 424.]

12. Seniority

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

(2) The judges other than the Chief Judge have seniority next to the Chief Judge according to the dates on which their appointments as judges took effect but where 2 or more of those appointments took effect on the same day, they have such seniority in relation to each other as is assigned to them by the Governor.

13. Oath of office

Before a person who is appointed to be a judge performs any function of the office, he or she shall take before the Governor, a Supreme Court judge, or some person authorised for the

purpose by the Governor, an oath or affirmation in the form set out in Schedule 1.

[Section 13 inserted: No. 24 of 2005 s. 22.]

14. Style and title of judges

(1) The Chief Judge, in relation to that office, is entitled to the style and title to which a puisne judge of the Supreme Court is entitled.

(2) Each judge other than the Chief Judge, in relation to the judge's office, is entitled to the style and title of "His Honour" or "Her Honour".

15. Salaries and allowances of judges

(1) The Chief Judge is entitled to be paid salary and to receive allowances or reimbursements at the same rate as a puisne judge of the Supreme Court.

(2) Each judge other than the Chief Judge is entitled to be paid salary and to receive allowances or reimbursements at the same rate as a District Court judge other than the Chief Judge of the District Court.

16. Leave of judge

A judge is entitled to the same conditions in respect of leave of absence as a judge of the Supreme Court.

17. Judges may continue certain superannuation scheme

If a person was a contributor within the meaning of the *Superannuation and Family Benefits Act 1938* [1] immediately before the person's appointment as a judge then the person may continue to be a contributor, or member, under the respective Act, despite the appointment.

[Section 17 amended: No. 43 of 2000 s. 43(1).]

18. Tenure of office

(1) A judge must retire from office on attaining 70 years of age.

(2) A judge may resign from office by giving written notice to the Governor and the resignation takes effect on the day on which the notice is received by the Governor or on such later day as is specified in the notice.

(3) Subject to subsections (1) and (2), the commission of a judge continues in force during good behaviour but the Governor may, upon the address of both Houses of Parliament, remove any judge from office and revoke the judge's commission.

19. *Judges' Salaries and Pensions Act 1950* applies to Family Court judges

The provisions of the *Judges' Salaries and Pensions Act 1950* that relate to pensions apply, with such modifications as circumstances require, to and in relation to —

(a) a Family Court judge; and

(b) after the judge's death, the judge's surviving spouse, de facto partner or children,

in the same manner as they apply to and in relation to a judge of the Supreme Court appointed after the commencement of that Act and to and in relation to the surviving spouse, de facto partner or children of a judge of the Supreme Court after that judge's death, and for that purpose ***judge*** in that Act includes a Family Court judge.

[Section 19 amended: No. 28 of 2003 s. 51.]

20. Next senior judge may act if Chief Judge unable to act, or office vacant

Whenever —

(a) the Chief Judge is temporarily unable for any reason to perform the functions of the office of Chief Judge; or

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

and no judge has been specifically appointed under section 21 to act in the office of Chief Judge for the period of such inability or vacancy, the next senior judge who is able and willing to do so is to perform the Chief Judge's functions and may exercise the Chief Judge's powers.

21. Acting Chief Judge

(1) If —

(a) the Chief Judge is, or is expected to be, absent from duty or unable for any reason to perform the functions of the office of Chief Judge; or

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

then the Governor may appoint a judge to act in the office of Chief Judge for the period specified in the instrument of appointment.

(2) A judge who is appointed under subsection (1) to act in the office of Chief Judge is entitled, for so long as the appointment is effective —

(a) to be paid salary and to receive allowances or reimbursements at the same rate as if the judge had been substantively appointed to the office of Chief Judge under section 11(2); and

(b) to the style and title of the Chief Judge.

22. Acting judges

(1) If a judge including the Chief Judge is, or is expected to be, temporarily unable for any reason to perform the functions of the office of judge then the Governor may, by commission under the Public Seal of the State, appoint a person who is eligible to be appointed as a judge to act as a judge for the period of the first-mentioned judge's inability.

(2) If for any reason the conduct of the business of the Court, in the opinion of the Governor, requires the appointment of an acting judge then the Governor may appoint a person who is eligible to be appointed as a judge to act as a judge for such period as the Governor thinks fit and specifies in the instrument of appointment.

(3) The appointment of an acting judge authorises the acting judge to complete the hearing and determination of any proceedings that may be pending before the acting judge at the expiration of that period.

(4) Before a person who is appointed to be an acting judge performs any function of the office, he or she shall take before the Governor, a Supreme Court judge, or some person authorised for the purpose by the Governor to do so, an oath or affirmation in the form set out in Schedule 1.

[Section 22 amended: No. 24 of 2005 s. 23.]

23. Effect of acting as judge

(1) A person appointed to be an acting judge, other than an acting Chief Judge, is entitled, for so long as the appointment is effective —

(a) to be paid salary and to receive allowances or reimbursements at the same rate as if the person had been substantively appointed as a judge other than the Chief Judge; and

(b) to the style and title of a judge other than the Chief Judge.

(2) Section 18 applies to an acting judge as if the acting judge were a judge for the purposes of that section.

(3) If an acting judge is appointed a judge then, for the purposes of the *Judges' Salaries and Pensions Act 1950*, the period of service as an acting judge is to be treated as service as a judge.

(4) An acting judge has the same functions, rights and immunities as a judge has and is subject to the same rules and conditions as a judge would be subject to in performing those functions.

(5) Neither the appointment of an acting judge nor any act, matter or thing done in the performance of an acting judge's functions is to be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

24. Dual appointments

A person may, at the same time, be a judge of the Federal Circuit and Family Court of Australia and a judge of the Family Court of Western Australia but —

(a) while the person is entitled to be paid salary and to receive allowances or reimbursements as a judge of the Federal Circuit and Family Court of Australia, the person is not entitled to be paid salary or to receive allowances or reimbursements under this Act except to the extent that the salary and allowances or reimbursements that would be payable to the person under this Act apart from this section exceeds the salary and allowances or reimbursements payable to the person as a judge of the Federal Circuit and Family Court of Australia; and

(b) while the person is, and the person's surviving spouse, de facto partner or children after the person's death are, entitled to receive a pension under the *Judges' Pensions Act 1968* of the Commonwealth, the person is not, and the person's surviving spouse, de facto partner or children after the person's death are not, entitled to receive a pension under the *Judges' Salaries and Pensions Act 1950* except to the extent that the pension that would be payable to the person, and the person's surviving spouse, de facto partner or children after the person's death, under that State Act exceeds the pension payable to the person and the person's surviving spouse,

de facto partner or children after the person's death, under that Commonwealth Act; and

(c) if, after ceasing to be a judge of the Family Court of Western Australia, the person remains a judge of the Federal Circuit and Family Court of Australia, any pension to which the person is otherwise entitled under the *Judges' Salaries and Pensions Act 1950* is not payable except to the extent, if any, that it exceeds the salary payable to the person as a judge of the Federal Circuit and Family Court of Australia; and

(d) if, after ceasing to be a judge of the Federal Circuit and Family Court of Australia, the person remains a judge of the Family Court of Western Australia, the salary to which the person is otherwise entitled under this Act is not payable except to the extent, if any, that it exceeds any pension payable to the person under the *Judges' Pensions Act 1968* of the Commonwealth.

[Section 24 amended: No. 28 of 2003 s. 52; No. 49 of 2024 s. 9.]

Division 3 — Officers of the Court and staff

25. Officers of Court

(1) Subject to subsection (4), the Attorney General is to appoint persons to the following offices of Court —

(a) the Principal Registrar of the Court; and

(b) registrars of the Court, in such number as is necessary for the performance of the functions of registrars under this Act; and

(c) the executive manager; and

(d) the Director of Court Counselling; and

(e) the Marshal of the Court.

(2) Subject to subsection (4), the Attorney General may appoint persons to the following offices of Court —

(a) deputy registrars of the Court, in such number as is necessary for the performance of the functions of deputy registrars under this Act; and

(b) the Director of Mediation; and

(c) the Collector of Maintenance of the Court and assistant collectors of maintenance of the Court in such number as is necessary for the performance of the functions of the Collector of Maintenance under this Act.

(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) If there is a vacancy in an office referred to in subsection (1) or (2) then, subject to subsection (4), the Attorney General may appoint a person to act in the office during the period of the vacancy and the person so appointed to act in the office has during that period the functions of a person appointed to the office.

(4) A person cannot be authorised to act as an officer of the court, or appointed to, or to act in, an office of the Court under subsection (1), (2) , (2a) or (3) unless the person is also appointed under Part 3 of the *Public Sector Management Act 1994* and the person may hold office as such in conjunction with any other office in the Public Service.

(5) If an officer of the Court other than the executive manager or the Director of Court Counselling is, or is expected to be, temporarily unable for any reason to perform the functions of office then the Chief Judge may appoint another officer of the

Court to act in the place of the first-mentioned officer during the period of that officer's inability, and the officer so appointed by the Chief Judge has during that period the functions of the first-mentioned officer.

(6) If the executive manager is, or is expected to be, temporarily unable for any reason to perform the functions of office then the Chief Judge may appoint a person who has been appointed under Part 3 of the *Public Sector Management Act 1994* to act in the place of the executive manager during the period of the executive manager's inability, and the person so appointed by the Chief Judge has during that period the functions of the executive manager.

(7) If the Director of Court Counselling (the ***Director***) is, or is expected to be, temporarily unable for any reason to perform the functions of office then the Chief Judge may appoint a person who has been appointed under Part 3 of the *Public Sector Management Act 1994* as a court counsellor to act in the place of the Director during the period of the Director's inability, and the person so appointed by the Chief Judge has during that period the functions of the Director.

(8) If there is a vacancy in the office of Principal Registrar and no person has been specifically appointed under subsection (3) to act in the office of Principal Registrar for the period of the vacancy then the Chief Judge may appoint a registrar to act in the office of the Principal Registrar during the period of the vacancy and the registrar so appointed by the Chief Judge has during that period the functions of the Principal Registrar.

[Section 25 amended: No. 35 of 2006 s. 109.]

26. Principal Registrar and registrars may be magistrates

(1) Nothing in section 25 prevents the Principal Registrar or any registrar from being appointed and holding office as a magistrate under the *Magistrates Court Act 2004*.

(2) During any period when a person who is the Principal Registrar or a registrar is a magistrate, the person is not a member of the Public Service and references in this Act to the Public Service and to Part 3 of the *Public Sector Management Act 1994* do not apply to that person.

(3) If the Principal Registrar and any one or more registrars hold office as magistrates, the Principal Registrar is the senior of them.

(4) This Act does not prevent a family law magistrate from constituting the Magistrates Court at a place in or outside the metropolitan region.

[Section 26 amended: No. 59 of 2004 s. 92.]

27. Personal staff for judges

(1) The Attorney General, on the recommendation of the Chief Judge, is to appoint as personal staff for the judges such associates, orderlies and other assistants as the Attorney General considers necessary.

(2) Persons appointed under subsection (1) are not to be appointed under Part 3 of the *Public Sector Management Act 1994* but nothing in this subsection prevents a person who has been appointed under Part 3 of that Act from being appointed under subsection (1).

28. Other Court staff

(1) Subject to section 27 and subsection (2), there are to be appointed under Part 3 of the *Public Sector Management Act 1994* such persons as are necessary for the performance of the Court's functions and a person so appointed may hold office as such in conjunction with any other office in the Public Service.

(2) The Attorney General, on the recommendation of the Chief Judge, may employ or engage a person other than a person

appointed under Part 3 of the *Public Sector Management Act 1994* to work in or for the Court.

29. Marshal

(1) The Marshal —

(a) is charged with the service and execution of all writs, orders, decrees, warrants, precepts, processes, and commands directed to the Marshal by —

(i) the Court; or

(ii) a court of summary jurisdiction constituted by a family law magistrate;

and

(b) must take, receive, and detain any person who is committed to the Marshal's custody by a court referred to in paragraph (a) and must discharge all such persons when directed by such court or required by law.

(2) The Marshal may authorise such persons as the Marshal thinks fit to assist the Marshal in the performance of any of the Marshal's functions.

[Section 29 amended: No. 59 of 2004 s. 95.]

30. Functions under federal jurisdiction

In respect of the federal jurisdiction of the Court, the officers of the Court and the other persons appointed for the purposes of this Act have such functions as are authorised by or under the Family Law Act or any other Commonwealth Act and any subsidiary legislation in force under such an Act, or as are provided for under this Act.

31. Functions under non-federal jurisdictions

In respect of the non-federal jurisdictions of the Court, the officers of the Court and the other persons appointed for the purposes of this Act have such functions as are provided for under this Act or any other written law.

32. Judicial notice of signatures

Judicial notice must be taken of the official signature of every person who is, or has at any time been, an officer or acting officer of the Court and of the office or acting office held by that person.

33. Delegation of powers to registrars — FCFCAA s. 98

(1) In this section —

delegated power means a power delegated under subsection (2).

(2) Subject to this section, rules may provide for and in relation to the delegation to the registrars, or to any class of registrar, of all or any of the powers of the Court, except this power of delegation.

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

(a) the power to make a divorce order in proceedings that are defended;

(b) the power to make a decree of nullity of marriage;

(c) the power to make a declaration as to the validity of —

(i) a marriage; or

(ii) a divorce; or

(iii) the annulment of a marriage;

(d) the power to make an excluded child order as defined in subsection (4A);

(e) the power to make an order setting aside a registered award under section 65Q or 65R.

(4A) In subsection (3)(d) —

excluded child order means —

(a) a parenting order to the extent that it provides that —

(i) a child is to live with a person; or

(ii) a child is to spend time with a person; or

(iii) a child is to communicate with a person; or

(iv) a person is to have parental responsibility for a child;

or

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

other than —

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

(c) an order until further order; or

(d) an order made in undefended proceedings; or

(e) an order made with the consent of all the parties to the proceedings.

(4) A delegated power exercised by a registrar is to be treated as having been exercised by the Court or a judge, as the case requires.

(5) A power may be exercised by the Court or a judge despite it being a delegated power.

(6) The provisions of any written law, or law of the Commonwealth, that relate to the exercise by the Court of a power that is a delegated power, apply in relation to the exercise of the delegated power by a registrar as if references in those provisions to the Court or to a court exercising jurisdiction under this Act were references to a registrar.

(7) Despite any other provision of this Act, the *Public Sector Management Act 1994* or any other written law, a registrar is not subject to the direction or control of any person or body in relation to the manner in which the registrar exercises a delegated power.

(8) A party to proceedings in which a registrar has exercised a delegated power may, within the time prescribed by, or within such further time as is allowed in accordance with, rules made for the purposes of this subsection, apply to the Court to review the exercise of the delegated power.

(9) The Court may, on application under subsection (8) or of its own motion, review the exercise by a registrar of a delegated power and may make any order it considers appropriate with respect to the matter to which the exercise of the delegated power related.

(10) Where —

(a) an application is to be, or is being, heard by a registrar exercising a delegated power; but

(b) the registrar considers that it is not appropriate for the application to be determined in that case by a registrar,

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

(11) Where —

(a) a delegated power is proposed to be exercised in a particular case by a registrar; but

(b) the registrar has not commenced to exercise the delegated power in that case,

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

(12) Where an application is made to a judge under subsection (11) seeking an order that, in a particular case, a delegated power be exercised by a judge, the registrar must not commence to exercise the delegated power in that case until the application has been determined.

[Section 33 amended: No. 25 of 2002 s. 31; No. 35 of 2006 s. 110 and 172; No. 46 of 2009 s. 7; No. 49 of 2024 s. 10.]

33A. Engagement of consultants and other persons

(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.

[Section 33A inserted: No. 35 of 2006 s. 111.]

33B. Protection of registrars

(1) In conducting a conference relating to a matter relevant to a proceeding, a registrar of the Court has the same protection and immunity as a judge has in performing the functions of a judge.

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

[Section 33B inserted: No. 49 of 2024 s. 11.]

Division 4 — Administration of Court's family services

[Heading inserted: No. 35 of 2006 s. 112.]

34. Director of Court Counselling has functions of family consultants — FCFCAA s. 278

(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.

[Section 34 inserted: No. 35 of 2006 s. 112.]

34A. Director of Court Counselling may delegate powers and functions that relate to family consultants — FCFCAA s. 279

(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.

[Section 34A inserted: No. 35 of 2006 s. 112.]

34B. Director of Court Counselling may give directions that relate to family services functions — FCFCAA s. 280

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.

[Section 34B inserted: No. 35 of 2006 s. 112.]

34C. Director of Court Counselling may authorise officer or staff member to act as family counsellor or family dispute resolution practitioner — FCFCAA s. 281

(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.

[Section 34C inserted: No. 35 of 2006 s. 112.]

34D. Director of Court Counselling may engage persons to perform family counselling services or family dispute resolution services

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.

[Section 34D inserted: No. 35 of 2006 s. 112.]

Part 3 — Jurisdiction of courts and transfer, staying and dismissal of proceedings

Division 1 — Jurisdiction of the Family Court

35. Federal jurisdiction of Court

The Court has throughout the State the federal jurisdiction with which it is invested by or under the Family Law Act or any other Commonwealth Act and any subsidiary legislation in force under such an Act.

36. Non-federal jurisdictions of Court

(1) The Court has throughout the State the non-federal jurisdictions conferred on it by or under this or any other Act.

(2) Without limiting subsection (1), the Court has non-federal jurisdiction throughout the State, subject to the Family Law Act, the *Adoption Act 1994*, the *Surrogacy Act 2008* and the *Children and Community Services Act 2004*, to make —

(a) parenting orders in respect of; and

(b) orders in respect of the welfare of; and

(c) orders under section 71 in respect of the appointment and removal of the guardian of; and

(d) orders in relation to child bearing expenses and other expenses specified in this Act incurred with respect to,

any child of a marriage and any child whose parents were not married to each other at the time of the birth of the child or subsequently, whether or not the child is a member of a family.

(3) Subject to this Act, the Court has non-federal jurisdiction under this Act to make —

(a) a parenting order, other than a child maintenance order, in relation to a child; or

(b) an order with respect to the welfare of a child,

if —

(c) the child in respect of whom the order is sought is then present in the State; and

(d) the applicant or the respondent in the proceedings in which the order is sought is resident in the State.

(4) Subject to this Act, the Court in exercising its non-federal jurisdiction under this Act may make —

(a) a child maintenance order; or

(b) any other order that is neither a parenting order in relation to a child nor an order with respect to the welfare of a child,

if —

(c) the person against whom the order is sought; or

(d) the person for whose benefit the order is sought,

is resident in this State.

(4a) Without limiting subsection (1), the Court has jurisdiction under Part 5A to —

(a) make declarations and to revoke declarations that it has made;

(b) hear and decide all other matters under that Part,

and in particular the Court has jurisdiction to hear and decide the following —

(c) applications for orders with respect to property;

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

(d) applications for orders for the provision of maintenance.

(5) Subject to this section, the Court has non-federal jurisdiction to make an order under this Act whether or not the facts or circumstances, or any of them, the existence or occurrence of

which is necessary for the making of the order took place or arose before the coming into operation of this Act or outside the State.

(6) Where a child the subject of proceedings appears to be a child in need of protection within the meaning of the *Children and Community Services Act 2004* the Court has, in relation to the child, in addition to the powers conferred by this Act, all the powers of the Children's Court.

[(7) deleted]

(8) Non-federal jurisdiction conferred on the Court is exclusive of any other court except as provided under section 39 or where an appeal lies to the Supreme Court.

[Section 36 amended: No. 25 of 2002 s. 32; No. 34 of 2004 Sch. 2 cl. 10(3)-(5); No. 47 of 2008 s. 60; No. 28 of 2022 s. 6.]

37. Principles to be applied, and matters to be considered, by Court in its non-federal jurisdiction — FLA s. 43

(1) The Court must, in the exercise of its non-federal jurisdiction under this Act, have regard, as is applicable to each case, to —

(a) the need to preserve and protect the institution of marriage as the union of 2 people to the exclusion of all others voluntarily entered into for life; and

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

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

(d) the need to ensure protection from family violence; and

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

(2) Subject to this Act, in exercising its non-federal jurisdictions with respect to a child the Court may —

(a) make such order as it thinks proper; or

(b) make an order until further order; or

(c) discharge or vary an order or suspend any part of an order and may revive the operation of any part of an order so suspended.

[Section 37 amended: No. 13 of 2013 s. 7; No. 49 of 2024 s. 12.]

Division 2 — Jurisdiction of courts of summary jurisdiction

38. Federal jurisdiction of courts of summary jurisdiction

A court of summary jurisdiction constituted by a magistrate or a family law magistrate has the federal jurisdiction with which it is invested by or under the Family Law Act.

[Section 38 amended: No. 59 of 2004 s. 95.]

39. Non-federal jurisdictions of courts of summary jurisdiction

Subject to Division 4 —

(a) the Magistrates Court, constituted by a magistrate, sitting at a place outside the metropolitan region; and

(b) the Magistrates Court, constituted by a family law magistrate, sitting at any place in the State,

may exercise all the non-federal jurisdictions of the Family Court of Western Australia except the functions of the Court under the *Adoption Act 1994* or the *Surrogacy Act 2008* and, in exercising such jurisdiction, the court must have regard to the principles and matters set out in section 37, where applicable.

[Section 39 amended: No. 25 of 2002 s. 33; No. 59 of 2004 s. 95; No. 47 of 2008 s. 61.]

40. Functions of officers of courts of summary jurisdiction

(1) In respect of the federal jurisdiction of courts of summary jurisdiction referred to in section 38, the officers of such courts have such functions as are authorised by the Family Law Act or as are provided for under this Act.

(2) In respect of the non-federal jurisdictions of the Magistrates Court referred to in section 39(a), a registrar of that Court has the Principal Registrar's functions under this Act, other than —

(a) any judicial function; or

[(b) deleted]

(c) the function of conducting a conciliation or other conference.

[Section 40 amended: No. 59 of 2004 s. 95; No. 35 of 2006 s. 113.]

Division 3 — Jurisdiction of other courts

41. Courts making family violence orders have certain jurisdiction under this Act

If, under another written law, a court has jurisdiction to make a family violence order then, for the purposes of this Act, the court has jurisdiction in relation to matters arising under section 176.

[Section 41 amended: No. 35 of 2006 s. 142(2).]

Division 4 — Transfer, staying and dismissal of proceedings

*[**42.** Deleted: No. 59 of 2004 s. 95.]*

43. Transfer of proceedings from Magistrates Court in parenting cases

(1) This section applies if —

(a) proceedings for a parenting order (other than a child maintenance order) or an order relating to the welfare of a child are instituted in or transferred to the Magistrates Court (the ***court***); and

(b) the court is not constituted by a family law magistrate; and

(c) the respondent, in answer to the application by which the proceedings were instituted, seeks an order different from that sought in the application.

(2) The court must, before going on to hear and determine the proceedings, inform the parties that, unless each of them consents to the court hearing and determining the proceedings, the court is required to transfer the proceedings to the Court.

(3) If the parties do not consent to the court hearing and determining the proceedings, the court must transfer the proceedings accordingly.

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

(4) If the parties consent to the court hearing and determining the proceedings —

(a) a party is not entitled, without leave of the court, subsequently to object to the proceedings being heard and determined by the court; but

(b) the court may, on its own initiative, transfer the proceedings to the Court.

[(4a), (4b) deleted]

(5) If the court subsequently gives leave to a party to object to the proceedings being heard and determined by the court, the court must transfer the proceedings to the Court.

(6) The Court must deal with the proceedings transferred to it as if the proceedings had been instituted in the Court.

(7) Failure by the court to comply with this section in relation to proceedings does not invalidate any order made by the court in the proceedings.

(8) Subsection (7) does not affect the duty of the court to comply with this section.

[(9) deleted]

[Section 43 amended: No. 25 of 2002 s. 34; No. 59 of 2004 s. 93 and 95; No. 35 of 2006 s. 36; No. 49 of 2024 s. 13.]

43A. Transfer of proceedings from Magistrates Court in cases in relation to property — FLA s. 46

(1) This section applies if —

(a) proceedings in relation to property of a total value exceeding $20 000, or such higher amount, if any, as is prescribed in the regulations, are instituted in or transferred to the Magistrates Court (the ***court***); and

(b) the court is not constituted by a family law magistrate; and

(c) the respondent, in answer to the application by which the proceedings were instituted, seeks an order different from that sought in the application.

(1a) The court must, before going on to hear and determine the proceedings, inform the parties that, unless each of them consents to the court hearing and determining the proceedings, the court is required to transfer the proceedings to the Court.

(1b) If the parties do not consent to the court hearing and determining the proceedings, the court must transfer the proceedings to the Court.

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

(3) In determining the value of any property for the purposes of subsection (1), any mortgage, lien, charge or other security over the property is to be disregarded.

(4) If proceedings referred to in subsection (1) are instituted in or transferred to the court and the parties consent to the proceedings being heard and determined by that court, a party is not entitled, without the leave of the court, subsequently to object to the proceedings being so heard and determined but, where the court subsequently gives leave to a party to object to the proceedings being so heard and determined, the court is to transfer the proceedings to the Court.

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

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

(7) Where proceedings are transferred or removed to the Court in pursuance of this section, the Court must proceed as if the proceedings had been originally instituted in the Court.

(8) Failure by the court to comply with this section does not invalidate any order of the court in the proceedings.

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

[Section 43A inserted: No. 25 of 2002 s. 35; amended: No. 59 of 2004 s. 94; No. 49 of 2024 s. 14.]

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

If proceedings under this Act are pending in the Magistrates Court, and the Magistrates Court is not constituted by a family law magistrate, the Court may, on the application of a party or

of its own motion, order that the proceedings be removed to the Court.

[Section 43B inserted: No. 49 of 2024 s. 15.]

44. Transfer of proceedings to another court — FLA s. 45(2)

(1) Without limiting section 43, if in the exercise of its jurisdiction it appears to the Court or to the Magistrates Court that it is in the interests of justice, or of convenience to the parties, that the proceedings before it be dealt with in another court, the Court or the Magistrates Court, as the case may be, may, on its own motion or otherwise, transfer the proceedings to the other court.

(2) A transfer under subsection (1) may be made on the application of any party to the proceedings.

[Section 44 amended: No. 25 of 2002 s. 53; No. 59 of 2004 s. 95.]

45. Stay or dismissal of proceedings

(1) Where proceedings are before the Court or the Magistrates Court in the exercise of a non-federal jurisdiction and it appears to the Court or the court that —

(a) related proceedings, being proceedings within or outside the State, are pending in another court; and

(b) it is in the interests of justice to stay or dismiss the proceedings in the Court or the Magistrates Court,

the Court or the Magistrates Court may stay the proceedings before it for such time as it thinks fit or it may dismiss those proceedings.

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

[Section 45 amended: No. 59 of 2004 s. 95; No. 28 of 2022 s. 7.]

46. Orders on transfer or staying proceedings

(1) Subject to subsection (2), before transferring or staying proceedings under this Division a court may adjourn the proceedings and may make such orders pending the disposal of the proceedings as it considers necessary including orders directing —

(a) the parties to attend a conference with a family counsellor or family dispute resolution practitioner to discuss matters affecting the welfare of any child affected by the proceedings and to resolve the difference (if any) between the parties; and

(b) that a report in accordance with section 73 be obtained from a family consultant; and

(c) the payment of child bearing expenses, or, if it is not practicable to so direct, the payment of such periodic or other sums as the court thinks desirable; and

(d) that a party attend a conciliation conference with the Principal Registrar, a registrar or a deputy registrar.

(2) In addition to the orders referred to in subsection (1), the Magistrates Court, if constituted by a family law magistrate, may —

(a) make such interim orders under Part 5A Division 2; or

(b) make such interim orders, or grant such injunctions, under section 235A,

as it considers necessary.

[Section 46 amended: No. 25 of 2002 s. 36; No. 59 of 2004 s. 95; No. 35 of 2006 s. 114.]

46A. Change of venue — FCFCAA s. 65

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.

[Section 46A inserted: No. 35 of 2006 s. 59.]

Part 4 — Non-court based family services

[Heading inserted: No. 35 of 2006 s. 115.]

Division 1 — Family counselling

[Heading inserted: No. 35 of 2006 s. 115.]

47. Term used: 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;

or

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

[Section 47 inserted: No. 35 of 2006 s. 115; amended: No. 49 of 2024 s. 16.]

48. Term used: 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.

[Section 48 inserted: No. 35 of 2006 s. 115.]

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.

[Section 49 inserted: No. 35 of 2006 s. 115.]

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.

[Section 50 inserted: No. 35 of 2006 s. 115.]

Division 2 — Family dispute resolution

[Heading inserted: No. 35 of 2006 s. 115.]

51. Term used: 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 —

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

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

and

(b) in which the practitioner is independent of all of the parties involved in the process.

[Section 51 inserted: No. 35 of 2006 s. 115; amended: No. 49 of 2024 s. 17.]

52. Term used: 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.

[Section 52 inserted: No. 35 of 2006 s. 115.]

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.

(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.

[Section 53 inserted: No. 35 of 2006 s. 115.]

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 subsection (1)(b)) must inform the professional of the effect of this section.

[Section 54 inserted: No. 35 of 2006 s. 115.]

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 $1 100 in respect of offences against regulations made for the purposes of subsection (1).

[Section 55 inserted: No. 35 of 2006 s. 115.]

Division 3 — Arbitration

[Heading inserted: No. 35 of 2006 s. 115.]

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.

[Section 56 inserted: No. 35 of 2006 s. 115.]

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

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

[Section 57 inserted: No. 35 of 2006 s. 115.]

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.

[Section 58 inserted: No. 35 of 2006 s. 115.]

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.

[Section 59 inserted: No. 35 of 2006 s. 115.]

Division 4 — Post-separation parenting programs

[Heading inserted: No. 49 of 2024 s. 18.]

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

(1) Evidence of anything said, or of any admission made, by a person attending a post-separation parenting program is not admissible —

(a) in any court (whether of a kind referred to in section 8(a) or (b) or otherwise); or

(b) in any proceedings before a person authorised by a law of the Commonwealth, of a State or of a Territory, or by the consent of the parties, to hear evidence.

(2) Subsection (1) does not apply to an admission or disclosure referred to in subsection (3) unless, in the opinion of the court or person authorised to hear evidence referred to in subsection (1), there is sufficient evidence of the admission or disclosure available to the court from other sources.

(3) For the purposes of subsection (2), the admissions and disclosures are the following —

(a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse;

(b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse.

[Section 59A inserted: No. 49 of 2024 s. 18.]

Part 4A — Family consultants

[Heading inserted: No. 35 of 2006 s. 115.]

Division 1 — About family consultants

[Heading inserted: No. 35 of 2006 s. 115.]

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.

[Section 60 inserted: No. 35 of 2006 s. 115.]

*[**60A-60F.** Deleted: No. 35 of 2006 s. 115.]*

61. Term used: 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.

[Section 61 inserted: No. 35 of 2006 s. 115.]

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 a child who has not attained the age of 18 years has been abused or is at risk of abuse.

(4) Subsection (3) does not apply if, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

[Section 62 inserted: No. 35 of 2006 s. 115; amended: No. 49 of 2024 s. 19.]

*[**62A.** Deleted: No. 35 of 2006 s. 115.]*

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

(1) A family consultant has, in performing their functions as a family consultant, the same protection and immunity as a judge has in performing the functions of a judge.

(2) However, if a family consultant is also a family report writer, that protection and immunity —

(a) does not relieve the family consultant of their obligations under regulations made for the purposes of section 65AC; and

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

[Section 63 inserted: No. 35 of 2006 s. 115; amended: No. 49 of 2024 s. 20.]

Division 2 — Courts' use of family consultants

[Heading inserted: No. 35 of 2006 s. 115.]

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.

[Section 64 inserted: No. 35 of 2006 s. 115.]

65. Court may order parties to attend, or arrange for child to attend, appointments with family consultant — FLA s. 11F

(1) A court exercising jurisdiction in proceedings under this Act may make either or both of the following kinds of order —

(a) an order directing one or more parties to the proceedings to attend an appointment (or a series of appointments) with a family consultant;

(b) an order directing one or more parties to the proceedings to arrange for a child to attend an appointment (or a series of appointments) with a family consultant.

(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.

[Section 65 inserted: No. 35 of 2006 s. 115; amended: No. 13 of 2013 s. 23.]

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.

(2A) If —

(a) a person fails to comply with an order under section 65 that he or she arrange for a child to attend an appointment with a family consultant; or

(b) a child fails to attend an appointment with a family consultant as arranged in compliance with an order under section 65,

the consultant must report the failure to the court.

(2) On receiving a report under subsection (1) or (2A), 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.

[Section 65A inserted: No. 35 of 2006 s. 115; amended: No. 13 of 2013 s. 24.]

Part 4AA — Family report writers

[Heading inserted: No. 49 of 2024 s. 21.]

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

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

[Section 65AA inserted: No. 49 of 2024 s. 21.]

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

(1) A report that relates to a child is a ***designated family report*** if —

(a) the report is prepared following a family assessment (which usually includes the report's preparer meeting with the child and others significant to the child's care, welfare and development and, if appropriate, advising of the child's views); and

(b) the report sets out the expert views and advice of the report's preparer on parenting arrangements for the purposes of parenting orders being made by a court in relation to the child; and

(c) the report is both —

(i) covered by subsection (2); and

(ii) not excluded by regulations made for the purposes of this paragraph.

(2) This subsection covers the following reports —

(a) a report prepared for the court by a family consultant in relation to an appointment (or a series of appointments) a party to proceedings has been directed to attend, or to arrange for a child to attend, with the family consultant under section 65;

(b) a report prepared by a family consultant at the direction of the court under section 73(2);

(c) a report about a child prepared for the use of an independent children's lawyer as mentioned in section 166(2);

(d) any other report prepared for parties to proceedings before a court, or for a court for the purposes of proceedings before the court.

[Section 65AB inserted: No. 49 of 2024 s. 21.]

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

(1) The regulations may make provision for, and in relation to —

(a) standards and requirements that family report writers, or a class or classes of family report writers, must comply with in connection with the role of preparing designated family reports; and

(b) consequences of non-compliance with prescribed standards and requirements.

(2) Without limiting subsection (1)(a), regulations made for the purposes of that paragraph may deal with any or all of the following matters —

(a) recognition, monitoring and enforcement of compliance with prescribed standards and requirements;

(b) the person or persons responsible for that recognition, monitoring and enforcement (each such person is a ***regulator***);

(c) duties of family report writers, and persons intending to become family report writers, in relation to establishing and maintaining recognition of their compliance, including duties in relation to providing information and documents to a regulator;

(d) circumstances in which a regulator may collect, use and share information and documents for the purposes of meeting the regulator's responsibilities;

(e) review of decisions that affect recognition of a family report writer's compliance;

(f) processes for dealing with persons who make false or misleading representations about a family report writer's compliance;

(g) processes for handling complaints involving family report writers;

(h) training for family report writers;

(i) the charging of fees, to family report writers, for services provided to them in connection with recognition, and maintenance of recognition, of their compliance;

(j) publication of the names of family report writers who are recognised as complying with prescribed standards and requirements;

(k) publication of information about the named family report writers for the purposes of informing the court, parties to proceedings and the public about any or all of the following —

(i) their qualifications, training and experience;

(ii) their availability;

(iii) the fees they charge;

(iv) their compliance status, including in relation to particular standards or requirements;

(v) any relevant memberships of professional associations, registration or employment;

(vi) any other matters relevant to their role of preparing designated family reports;

(l) standards and requirements in relation to the content of designated family reports.

(3) Regulations dealing with the matter mentioned in subsection (2)(k) must not require or allow the publication of

personal information (as defined in the *Privacy Act 1988* (Commonwealth) section 6(1)) about any child or other individual to whom a report relates.

(4) Without limiting subsection (1)(b), regulations made for the purposes of that paragraph may do any or all of the following —

(a) prescribe offences, the penalties for which do not exceed $9 390;

(b) provide for suspension or cancellation of recognition of compliance;

(c) provide that, if a family report writer is not recognised, or if recognition of a family report writer's compliance is suspended or cancelled, a court must not have regard to designated family reports prepared by the family report writer;

(d) prohibit the preparation of designated family reports by family report writers who are not recognised.

[Section 65AC inserted: No. 49 of 2024 s. 21.]

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

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

(a) a designated family report prepared for or at the direction of the court, or for a party to proceedings before the court;

(b) a final order made by the court in proceedings for which a designated family report was prepared.

[Section 65AD inserted: No. 49 of 2024 s. 21.]

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

A regulator is not liable in civil or criminal proceedings for or in relation to anything done or omitted to be done, in good faith, in the performance or exercise, or purported performance or

exercise, of the regulator's functions or powers under regulations made for the purposes of section 65AC.

[Section 65AE inserted: No. 49 of 2024 s. 21.]

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

[Heading inserted: No. 35 of 2006 s. 115.]

Division 1 — Introduction

[Heading inserted: No. 35 of 2006 s. 115.]

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.

[Section 65B inserted: No. 35 of 2006 s. 115.]

Division 2 — Kind of information to be provided

[Heading inserted: No. 35 of 2006 s. 115.]

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.

[Section 65C inserted: No. 35 of 2006 s. 115.]

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.

[Section 65D inserted: No. 35 of 2006 s. 115.]

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.

[Section 65E inserted: No. 35 of 2006 s. 115.]

Division 3 — Who must provide information and when

[Heading inserted: No. 35 of 2006 s. 115.]

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.

(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.

[Section 65F inserted: No. 35 of 2006 s. 115.]

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; and

(c) section 65E.

(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.

[Section 65G inserted: No. 35 of 2006 s. 115; amended: No. 49 of 2024 s. 22.]

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.

[Section 65H inserted: No. 35 of 2006 s. 115.]

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

[Heading inserted: No. 35 of 2006 s. 115.]

Division 1 — Introduction

[Heading inserted: No. 35 of 2006 s. 115.]

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

(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.

[Section 65I inserted: No. 35 of 2006 s. 115.]

Division 2 — Help with reconciliation

[Heading inserted: No. 35 of 2006 s. 115.]

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.

[Section 65J inserted: No. 35 of 2006 s. 115.]

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

[Heading inserted: No. 35 of 2006 s. 115.]

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.

[Section 65K inserted: No. 35 of 2006 s. 115.]

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.

[Section 65L inserted: No. 35 of 2006 s. 115.]

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

[Heading inserted: No. 35 of 2006 s. 115.]

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.

[Section 65M inserted: No. 35 of 2006 s. 115.]

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.

[Section 65N inserted: No. 35 of 2006 s. 115.]

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.

[Section 65O inserted: No. 35 of 2006 s. 115.]

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.

[Section 65P inserted: No. 35 of 2006 s. 115.]

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.

[Section 65Q inserted: No. 35 of 2006 s. 115.]

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.

[Section 65R inserted: No. 35 of 2006 s. 115.]

Part 5 — Children

Division 1 — Introductory

Subdivision 1 — Objects

[Heading inserted: No. 35 of 2006 s. 81; amended: No. 49 of 2024 s. 23.]

66. Objects of Part — FLA s. 60B

The objects of this Part are —

(a) to ensure that the best interests of children are met, including by ensuring their safety; and

(b) to give effect to the Convention on the Rights of the Child done at New York on 20 November 1989 as ratified by Australia at 17 December 1990.

Note for this section:

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

[Section 66 inserted: No. 49 of 2024 s. 24.]

Subdivision 2 — Best interests of the child: court proceedings

[Heading inserted: No. 13 of 2013 s. 9.]

66A. Child's best interests paramount consideration in making 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.

[Section 66A inserted: No. 35 of 2006 s. 83.]

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.

[Section 66B inserted: No. 35 of 2006 s. 83.]

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

(1) Subject to subsection (4), in determining what is in the child's best interests, the court must —

(a) consider the matters set out in subsection (2); and

(b) if the child is an Aboriginal or Torres Strait Islander child — also consider the matters set out in subsection (4).

(2) For the purposes of subsection (1)(a), the court must consider the following matters —

(a) what arrangements would promote the safety (including safety from being subjected to, or exposed to, family violence, abuse, neglect, or other harm) of —

(i) the child; and

(ii) each person who has care of the child (whether or not a person has parental responsibility for the child);

(b) any views expressed by the child;

(c) the developmental, psychological, emotional and cultural needs of the child;

(d) the capacity of each person who has or is proposed to have parental responsibility for the child to provide for the child's developmental, psychological, emotional and cultural needs;

(e) the benefit to the child of being able to have a relationship with the child's parents, and other people who are significant to the child, where it is safe to do so;

(f) anything else that is relevant to the particular circumstances of the child.

(3) In considering the matters set out in subsection (2)(a), the court must include consideration of —

(a) any history of family violence, abuse or neglect involving the child or a person caring for the child (whether or not the person had parental responsibility for the child); and

(b) any family violence order that applies or has applied to the child or a member of the child's family.

(4) For the purposes of subsection (1)(b), the court must consider the following matters —

(a) the child's right to enjoy the child's Aboriginal or Torres Strait Islander culture, by having the support, opportunity and encouragement necessary —

(i) to connect with, and maintain their connection with, members of their family and with their community, culture, country and language; and

(ii) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and

(iii) to develop a positive appreciation of that culture;

(b) the likely impact any proposed parenting order under this Part will have on that right.

(5) If the court is considering whether to make an order with the consent of all the parties to the proceedings, the court may, but is not required to, have regard to all or any of the matters set out in subsection (2) or (4).

[Section 66C inserted: No. 49 of 2024 s. 25.]

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

(1) A court required under section 66C(2)(b) 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.

[Section 66D inserted: No. 35 of 2006 s. 83; amended: No. 49 of 2024 s. 26.]

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.

[Section 66E inserted: No. 35 of 2006 s. 83.]

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.

[Section 66F inserted: No. 35 of 2006 s. 83.]

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.

[Section 66G inserted: No. 35 of 2006 s. 83.]

66HA. Informing court of care arrangements under child welfare laws — FLA s. 60CH

(1) If a party to the proceedings is aware that the child, or another child who is a member of the child's family, is under the care (however described) of a person under a child welfare law, that party must inform the court of the matter.

(2) If a person who is not a party to the proceedings is aware that the child, or another child who is a member of the child's family, is under the care (however described) of a person under a child welfare law, that person may inform the court of the matter.

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

(4) However, subsection (3) does not limit the operation of section 202.

[Section 66HA inserted: No. 13 of 2013 s. 11.]

66HB. Informing court of notifications to, and investigations by, information sharing agencies — FLA s. 60CI

[(1) deleted]

(2) If —

(a) a party to the proceedings is aware that the child, or another child who is a member of the child's family, is or has been the subject of —

(i) a notification or report (however described) to an information sharing agency; or

(ii) an investigation, inquiry or assessment (however described) by an information sharing agency;

and

(b) the notification, report, investigation, inquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse,

that party must inform the court of the matter.

(3) If —

(a) a person who is not a party to the proceedings is aware that the child, or another child who is a member of the child's family, is or has been the subject of —

(i) a notification or report (however described) to an information sharing agency; or

(ii) an investigation, inquiry or assessment (however described) by an information sharing agency;

and

(b) the notification, report, investigation, inquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse,

that person may inform the court of the matter.

(4) Failure to inform the court of the matter does not affect the validity of any order made by the court.

[Section 66HB inserted: No. 13 of 2013 s. 11; amended: No. 49 of 2024 s. 27.]

Subdivision 3A — Best interests of the child: adviser's obligations

[Heading inserted: No. 13 of 2013 s. 12.]

66HC. Adviser's obligations in relation to best interests of child — FLA s. 60D

(1) 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.

(2) If an adviser gives advice or assistance to a person about matters concerning a child and this Part, the adviser must —

(a) inform the person that the person should regard the best interests of the child as the paramount consideration; and

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

[Section 66HC inserted: No. 13 of 2013 s. 12; amended: No. 49 of 2024 s. 28.]

Subdivision 3 — Family dispute resolution

[Heading inserted: No. 35 of 2006 s. 83.]

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

[(1) deleted]

(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.

[(3)-(5) deleted]

(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;

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

(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

(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.

[Section 66H inserted: No. 35 of 2006 s. 83; amended: No. 49 of 2024 s. 29.]

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

(1) Subsection (1A) applies if —

(a) an application is made for a Part 5 Order in relation to a child; and

(b) section 66H(6) does not apply to the application because the court is satisfied that there are reasonable grounds to believe that —

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

(ii) there has been family violence by one of the parties to the proceedings.

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

(2) Subsection (1A) 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) A failure to comply with subsection (1A) in relation to proceedings on an application for a Part 5 Order does not affect the validity of —

(a) those proceedings; or

(b) any order made in those proceedings.

(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.

[Section 66I inserted: No. 35 of 2006 s. 83; amended: No. 49 of 2024 s. 30.]

[66J. *Deleted: No. 13 of 2013 s. 13.]*

Division 2 — Parental responsibility

67. What this Division does — FLA s. 61A

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

(a) what parental responsibility is; and

(b) who has parental responsibility; and

(c) matters relating to appointment of guardians.

68. Term used: parental responsibility — FLA s. 61B

In this Part —

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

69. Each parent has parental responsibility (subject to court orders) — FLA s. 61C

(1) Each of the parents of a child who is under 18 years of age has parental responsibility for the child.

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

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

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

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

(a) to consult each other about major long-term issues in relation to the child; and

(b) in doing so, to have regard to the best interests of the child as the paramount consideration.

[Section 69A inserted: No. 49 of 2024 s. 31.]

70. Parenting orders and parental responsibility — FLA s. 61D

(1) A parenting order confers parental responsibility for a child on a person, but only to the extent to which the order confers on the person duties, powers, responsibilities or authority in relation to the child.

(2) A parenting order in relation to a child does not take away or diminish any aspect of the parental responsibility of any person for the child except to the extent (if any) —

(a) expressly provided for in the order; or

(b) necessary to give effect to the order.

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

[Section 70 amended: No. 49 of 2024 s. 32.]

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

(1) If a parenting order provides for joint decision-making by persons in relation to all or specified major long-term issues in relation to a child, then, except to the extent the order otherwise specifies, the order is taken to require each of the persons —

(a) to consult each other person in relation to each such decision; and

(b) to make a genuine effort to come to a joint decision.

(2) To avoid doubt, this section does not require any other person to establish, before acting on a decision about the child communicated by one of those persons, that the decision has been made jointly.

[Section 70A inserted: No. 49 of 2024 s. 33.]

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

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

(2) For the purposes of subsection (1), this subsection applies to a person who —

(a) has parental responsibility for the child; or

(b) shares parental responsibility for the child with another person.

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

[Section 70B inserted: No. 49 of 2024 s. 33.]

71. Appointment and responsibilities of guardian

(1) A person who is appointed under this section as a child's guardian has parental responsibility for the child.

(2) A court may appoint a person to be the guardian of a child —

(a) if no person has parental responsibility for the child; or

(b) if a parenting order that deals with whom a child is to live with has been made in favour of a person who has subsequently died or who cannot be found or refuses to act.

(3) Subject to subsections (4) and (5), a person who has parental responsibility for a child may, by deed or will, appoint any person or 2 or more persons jointly to be the guardian or guardians of the child after the person's death, and an appointment so made has effect after the person's death in accordance with the appointment.

(4) If a court has declared that a person must not exercise the power in subsection (3) or that any exercise of the power is of no effect then —

(a) the person cannot make an appointment under subsection (3); and

(b) if the person purports to make the appointment, the appointment is of no effect.

(5) An appointment under subsection (3) has effect after the appointor's death —

(a) if at the time of the appointer's death the appointer was the only person with parental responsibility for the child; and

(b) subject to any order of a court.

(6) A court may, on being satisfied that it is in the best interests of a child, remove from office any guardian, whether appointed under the provisions of this Act or by will or otherwise and may also, if it considers it to be in the best interests of the child, appoint another guardian in place of the guardian so removed.

[Section 71 amended: No. 35 of 2006 s. 145.]

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.

[Section 71A inserted: No. 35 of 2006 s. 85.]

Division 3 — Reports relating to children under 18

[Heading inserted: No. 35 of 2006 s. 116.]

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.

[Section 72 inserted: No. 35 of 2006 s. 117.]

73. Reports by family consultants — FLA s. 62G

(1) This section applies if, in proceedings under this Act, the care, welfare and development of a child who is under 18 years of age is relevant.

(2) A court may direct a family consultant to give the court a report on such matters relevant to proceedings under this Act as the court thinks desirable.

(3) If a court gives a direction under subsection (2), it may, if it thinks it necessary, adjourn the proceedings until the report has been given to the court.

(3a) A family consultant who is directed to give the court a report on a matter under subsection (2) must —

(a) ascertain the views of the child in relation to that matter; and

(b) include the views of the child on that matter in the report.

(3b) Subsection (3a) does not apply if complying with that subsection would be inappropriate because of —

(a) the child's age or maturity; or

(b) some other special circumstance.

(4) The family consultant may include in the report, in addition to the matters required to be included in it, any other matters that relate to the care, welfare or development of the child.

(5) For the purposes of the preparation of the report, the court may make any other orders, or give any other directions, that the court considers appropriate (including orders or directions that one or more parties to the proceedings attend, or arrange for the child to attend, an appointment or a series of appointments with a family consultant).

(6) If —

(a) a person fails to comply with an order or direction under subsection (5); or

(b) a child fails to attend an appointment with a family consultant as arranged in compliance with an order or direction under subsection (5),

the family consultant must report the failure to the court.

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

(8) A report given to a court in accordance with a direction under subsection (2) may be received in evidence in any proceedings under this Act.

[Section 73 amended: No. 35 of 2006 s. 86 and 118; No. 13 of 2013 s. 25.]

Division 4 — Parenting plans

74. What this Division does — FLA s. 63A

This Division explains what parenting plans are.

[Section 74 amended: No. 35 of 2006 s. 5.]

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

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

[Section 75 inserted: No. 35 of 2006 s. 6.]

76. Meaning of *parenting plan* and related terms — FLA s. 63C

(1) A ***parenting plan*** is an agreement that —

(a) is in writing; and

(b) is or was made between the parents of a child; and

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

(bb) is dated; and

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

(1a) An agreement is not a parenting plan 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;

(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.

(3) An agreement may be a parenting plan —

(a) whether made before or after the commencement of this section; and

(b) whether made inside or outside Western Australia; and

(c) whether other persons as well as a child's parents are also parties; and

(d) whether it deals with other matters as well as matters mentioned in subsection (2).

(4) Provisions of a parenting plan that deal with matters other than the maintenance of a child are child welfare provisions.

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

(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.

[Section 76 amended: No. 35 of 2006 s. 7, 87 and 146.]

77. Parenting plans may include child support provisions — FLA s. 63CAA

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

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

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

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.

[Section 78 inserted: No. 35 of 2006 s. 8.]

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

(1A) The obligations of an adviser under this section are in addition to the adviser's obligations under section 66HC.

(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)-(c) deleted]

(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), (4) deleted]

(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.

[Section 78A inserted: No. 35 of 2006 s. 88; amended: No. 13 of 2013 s. 14; No. 49 of 2024 s. 34.]

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.

[Section 78B inserted: No. 35 of 2006 s. 9.]

79. Registration of revocation of 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 66C(2) and (3).

[Section 79 inserted: No. 35 of 2006 s. 10; amended: No. 35 of 2006 s. 89.]

80. Child welfare provisions of registered parenting plans — FLA s. 63F

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

(2) A court may, by order, vary the child welfare provisions in the plan if it considers the variation is required in the best interests of a child.

(3) The child welfare provisions have effect, subject to subsections (5) and (6), as if they were provisions of a parenting order.

(4) If provisions of the plan have effect under subsection (3) as a court order, a person who is a party to the plan is to be treated (for example, for the purposes of section 107) as a party to the proceedings in which the order was made.

(5) Subsection (3) does not apply to the plan (whenever registered) to the extent (if at all) that the plan purports to determine that the child concerned is to live with a person who is not a parent of the child.

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

[Section 80 amended: No. 35 of 2006 s. 11 and 147.]

81. Child maintenance provisions of registered parenting plans — FLA s. 63G

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

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

(3) Unless the plan provides otherwise, the child maintenance provisions (other than provisions for the periodic payment of maintenance) continue to operate despite the death of a party to the plan and operate in favour of, and are binding on, the legal personal representative of that party.

(4) If the child maintenance provisions include provisions (the ***periodic provisions***) for the periodic payment of maintenance —

(a) the periodic provisions continue to operate, if the plan so provides, despite the death of a party to the plan who is liable to make the periodic payments, and are binding on the legal personal representative of that party; but

(b) the periodic provisions do not continue to operate, despite anything in the plan, after the death of the person entitled to receive the periodic payments.

(5) The child maintenance provisions have no effect, and are not enforceable in any way, at any time when an application could properly be made under the Child Support (Assessment) Act by one of the parties to the plan for administrative assessment of child support (within the meaning of that Act) for the child concerned seeking payment of child support by the other party to the plan.

(6) Subsection (5) has effect whether or not an application for administrative assessment of child support for the child has in fact been made by a party to the plan.

[Section 81 amended: No. 35 of 2006 s. 12.]

82. Court's powers to set aside, discharge, vary, suspend or revive registered parenting plans — FLA s. 63H

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

(1) A court may set aside a registered parenting plan (the ***plan***), and its registration, if the court is satisfied —

(a) that the concurrence of a party was obtained by fraud, duress or undue influence; or

(b) that the parties want the plan set aside; or

(c) that it is in the best interests of a child to set aside the plan.

(2) In proceedings under subsection (1), to the extent that they are proceedings on the ground mentioned in subsection (1)(c), the best interests of the child concerned are the paramount consideration.

(3) Other provisions of this Act under which provisions of the plan may be set aside or otherwise affected are —

(a) section 80(2), under which a court may vary child welfare provisions in the plan; and

(b) section 89(2), under which a court may make a parenting order that discharges, varies, suspends or revives provisions of the plan that have effect as if they were a parenting order (other than a child maintenance order); and

(c) section 128, under which a court may discharge, suspend, revive or vary provisions of the plan that have effect as if they were a child maintenance order; and

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

(4) Except as permitted by subsection (1) or by a provision mentioned in subsection (3), a court must not set aside, discharge, vary, suspend or revive the whole or a part of the plan.

[Section 82 amended: No. 35 of 2006 s. 13.]

Division 5 — Parenting orders — what they are

83. What this Division does — FLA s. 64A

This Division explains what parenting orders are.

84. Meaning of *parenting order* and related terms — FLA s. 64B

(1) A parenting order is —

(a) an order under this Part (including an order until further order) dealing with a matter mentioned in subsection (2); or

(b) an order under this Part discharging, varying, suspending or reviving an order, or part of an order, described in paragraph (a).

(1A) However, a declaration or order under Division 11 Subdivision 4 is not a parenting order.

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

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

(b) the time a child is to spend with another person or other persons;

(c) the allocation of parental responsibility for a child;

(d) if 2 or more persons are to share parental responsibility for a child, the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility;

(e) the communication a child is to have with another person or other persons;

(f) maintenance of a child;

(g) the steps to be taken before an application is made to a court for a variation of the order to take account of the changing needs or circumstances of —

(i) a child to whom the order relates; or

(ii) the parties to the proceedings in which the order is made;

(h) the process to be used for resolving disputes about the terms or operation of the order;

(i) any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.

(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.

(5) To the extent (if at all) that a parenting order deals with the matter mentioned in subsection (2)(f), the order is a ***child maintenance order***.

(6) For the purposes of this Act —

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

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

(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.

[Section 84 amended: No. 35 of 2006 s. 90; No. 13 of 2013 s. 26.]

85. Parenting orders may be made in favour of parents or other persons — FLA s. 64C

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

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.

[Section 85A inserted: No. 35 of 2006 s. 91.]

Division 6 — Parenting orders other than child maintenance orders

Subdivision 1 — Introductory

86. What this Division does — FLA s. 65A

(1) This Division deals with —

(a) applying for and making parenting orders, other than child maintenance orders (Subdivision 2); and

[(b), (c) deleted]

(d) the obligations under parenting orders, other than child maintenance orders, relating to taking or sending children from Western Australia to places outside Australia (Subdivision 5).

(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).

[Section 86 amended: No. 35 of 2006 s. 92; No. 49 of 2024 s. 35.]

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.

[Section 86A inserted: No. 35 of 2006 s. 93.]

87. Division does not apply to child maintenance orders — FLA s. 65B

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

Subdivision 2 — Applying for and making parenting orders

88. Who may apply for a parenting order — FLA s. 65C

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

(a) either or both of the child's parents; or

(b) the child; or

(ba) a grandparent of the child; or

(c) any other person concerned with the care, welfare or development of the child; or

(d) any guardian, whether appointed under this Act or by will or otherwise; or

(e) any person acting in a fiduciary capacity who is, under any will, gift, settlement, or otherwise by law, possessed of any fund for the maintenance or education of the child, or any fund a portion of which may be applied for the maintenance or education of the child.

[Section 88 amended: No. 25 of 2002 s. 55.]

89. Court's power to make parenting order — FLA s. 65D

(1) In proceedings for a parenting order, a court may, subject to section 89AB and this Division, make such parenting order as it thinks proper.

(2) Without limiting the generality of subsection (1) and subject to section 89AB and this Division, a court may make a parenting order that discharges, varies, suspends or revives some or all of an earlier parenting order.

[(3) deleted]

[Section 89 amended: No. 25 of 2002 s. 7; No. 35 of 2006 s. 94 and 100; No. 49 of 2024 s. 36.]

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

(1) If a final parenting order is in force in relation to a child, a court must not reconsider the final parenting order unless —

(a) the court has considered whether there has been a significant change of circumstances since the final parenting order was made; and

(b) the court is satisfied that, in all the circumstances (and taking into account whether there has been a significant change of circumstances since the final parenting order was made), it is in the best interests of the child for the final parenting order to be reconsidered.

(2) For the purposes of determining whether the court is satisfied as mentioned in subsection (1)(b), and without limiting section 66C, the court may have regard to any matters that the court considers relevant, including the following —

(a) the reasons for the final parenting order and the material on which it was based;

(b) whether there is any material available that was not available to the court that made the final parenting order;

(c) the likelihood that, if the final parenting order is reconsidered, the court will make a new parenting order that affects the operation of the final parenting order in a significant way (whether by varying, discharging or suspending the final parenting order, in whole or in part, or in some other way);

(d) any potential benefit, or detriment, to the child that might result from reconsidering the final parenting order.

(3) Despite subsection (1), the court may reconsider a final parenting order with the agreement or consent of all the parties to that order.

(4) The failure of a court to comply with subsection (1) does not affect the validity of any order made by the court.

[Section 89AAA inserted: No. 49 of 2024 s. 37.]

*[**89AA.** Deleted: No. 49 of 2024 s. 38.]*

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.

[Section 89AB inserted: No. 35 of 2006 s. 95.]

*[**89AC, 89AD.** Deleted: No. 49 of 2024 s. 39.]*

89A. Parenting orders — FLA s. 65DA

(1) This section applies when a court makes a parenting order.

(2) It is the duty of the court to include in the order particulars of —

(a) the obligations that the order creates; and

(b) the consequences that may follow if a person contravenes the order.

(3) If any of the persons to whom the order is directed is not represented by a legal practitioner, it is also the duty of the court to explain to the person, or to each of the persons —

(a) the availability of programs to help people to understand their responsibilities under parenting orders; and

(b) the availability and use of location and recovery orders to ensure that parenting orders are complied with.

(4) The court may cause to be prepared, and given to persons to whom a parenting order is directed, a document setting out particulars of the matters mentioned in subsection (3)(a) and (b).

(5) If a person to whom the order is directed is represented by a legal practitioner, the court may request the practitioner —

(a) to assist in explaining to the person the matters mentioned in subsection (2)(a) and (b); and

(b) to explain to the person the matters mentioned in subsection (3)(a) and (b).

(6) If a request is made by the court to a legal practitioner under subsection (5)(a) or (b), it is the duty of the practitioner to comply with the request.

(7) Failure to comply with a requirement of, or with a request made under, this section does not affect the validity of a parenting order.

(8) Any matter that is required by this section to be included in a parenting order or any explanation that is required by this section to be given to a person is to be expressed in language that is likely to be readily understood by the person to whom the order is directed or the explanation is given.

[Section 89A inserted: No. 25 of 2002 s. 8.]

*[**90.** Deleted: No. 35 of 2006 s. 96.]*

91. General requirements for counselling before parenting order made — FLA s. 65F

[(1) deleted]

(2) Subject to subsection (3), a court must not make a parenting order in relation to a child unless —

(a) the parties to the proceedings have attended family counselling to discuss the matter to which the proceedings relate; or

(b) the court is satisfied that there is an urgent need for the parenting order, or there is some other special circumstance (such as family violence), that makes it appropriate to make the order even though the parties to the proceedings have not attended counselling as mentioned in paragraph (a); or

(c) the court is satisfied that it is not practicable to require the parties to the proceedings to attend counselling as mentioned in paragraph (a).

(3) Subsection (2) does not apply to the making of a parenting order if —

(a) it is made with the consent of all the parties to the proceedings; or

(b) it is an order until further order.

[(4) deleted]

[Section 91 amended: No. 35 of 2006 s. 46 and 119; No. 49 of 2024 s. 40.]

92. Special conditions for making parenting order about whom child lives with or allocation of parental responsibility by consent in favour of non-parent — FLA s. 65G

(1) This section applies if —

(a) a court proposes to make a parenting order that deals with whom a child is to live with; and

(b) under the order, the child would not live with a parent, grandparent or other relative of the child; and

(c) the court proposes to make that order with the consent of all the parties to the proceedings.

(1a) This section also applies if —

(a) a court proposes to make a parenting order that deals with the allocation of parental responsibility for a child; and

(b) under the order, no parent, grandparent or other relative of the child would be allocated parental responsibility for the child; and

(c) the court proposes to make that order with the consent of all the parties to the proceedings.

(2) A court must not make the proposed order unless —

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

(b) the court is satisfied that there are circumstances that make it appropriate to make the proposed order even though paragraph (a) has not been complied with.

[Section 92 amended: No. 35 of 2006 s. 97 and 148.]

93. Children who are 18 or over or who have married or entered de facto relationships — FLA s. 65H

(1) A parenting order must not be made in relation to a child who —

(a) is 18 or more years of age; or

(b) is or has been married; or

(c) is in a de facto relationship.

(2) A parenting order in relation to a child stops being in force if the child turns 18, marries or enters into a de facto relationship.

(3) A court may make a declaration to the effect that the child is in, or has entered into, a de facto relationship.

(4) A declaration under subsection (3) has effect for the purposes of this Act but does not have effect for any other purpose.

94. What happens when parenting order that deals with whom child lives with does not make provision in relation to death of parent with whom child lives — FLA s. 65K

(1) This section applies if —

(a) a parenting order is in force that provides that a child is to live with one of the child's parents; and

(b) that parent dies; and

(c) the parenting order does not provide for what is to happen on that parent's death.

(2) The surviving parent cannot require the child to live with him or her.

(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.

(4) In an application under subsection (3) by a person who does not, at the time of the application, have any parental responsibility for the child, any person who, at that time, has any parental responsibility for the child is entitled to be a party to the proceedings.

[Section 94 amended: No. 35 of 2006 s. 149.]

95. Family consultants may be required to supervise or assist compliance with parenting orders — FLA s. 65L

(1) If a court makes a parenting order in relation to a child, the court may also, subject to subsection (2), make either or both of the following orders —

(a) an order requiring compliance with the parenting order, as far as practicable, to be supervised by a family consultant;

(b) an order requiring a family consultant to give any party to the parenting order such assistance as is reasonably requested by that party in relation to compliance with, and the carrying out of, the parenting order.

(2) In deciding whether to make a particular order under subsection (1) in relation to a child, a court must regard the best interests of the child as the paramount consideration.

[Section 95 amended: No. 35 of 2006 s. 120.]

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

(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) 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 —

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.

[Section 95A inserted: No. 35 of 2006 s. 22; amended: No. 35 of 2006 s. 121.]

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.

[Section 95B inserted: No. 35 of 2006 s. 122.]

[Subdivisions 3 and 4 (s. 96-105) deleted: No. 49 of 2024 s. 41.]

Subdivision 5 — Obligations under parenting orders relating to taking or sending children from Western Australia to places outside Australia

106. Term used: parenting order to which this Subdivision applies — FLA s. 65X

(1) In this Subdivision —

parenting order to which this Subdivision applies means a parenting order to the extent to which it provides, or would provide, that —

(a) a child is to live with a person; or

(b) a child is to spend time with a person; or

(c) a child is to communicate with a person; or

(d) a person is to have parental responsibility for a child.

(2) For the purposes of this Subdivision, if an appeal against a decision of a court in proceedings has been instituted and is pending, the proceedings are to be treated as pending and sections 108, 108A and 110 (rather than sections 107, 107A and 109) apply.

[Section 106 amended: No. 35 of 2006 s. 154; No. 49 of 2024 s. 42.]

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

(1) A person commits a crime if —

(a) a parenting order to which this Subdivision applies is in force in relation to a child; and

(b) the person intentionally or recklessly takes or sends, or attempts to take or send, the child from the State to a place outside Australia; and

(c) the child is not taken or sent, or attempted to be taken or sent, from the State to a place outside Australia —

(i) with the consent in writing (authenticated as prescribed) of each person in whose favour the parenting order was made; or

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

and

(d) the person —

(i) is or was a party to the proceedings in which the parenting order was made; or

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

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

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

(2) Subsection (1) does not apply if —

(a) the person (whether or not the person is or was the party to the proceedings) takes or sends, or attempts to take or send, the child from the State to a place outside Australia because the person believes the conduct is necessary to prevent family violence; and

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

[Section 107 inserted: No. 49 of 2024 s. 43.]

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

(1) A person commits a crime if —

(a) a parenting order to which this Subdivision applies is in force in relation to a child; and

(b) the child has been taken or sent from the State to a place outside Australia, by or on behalf of a party to the proceedings in which the parenting order was made —

(i) with the consent in writing (authenticated as prescribed) of each person in whose favour the parenting order was made; or

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

and

(c) the person intentionally or recklessly retains, or attempts to retain, the child outside Australia otherwise than in accordance with a consent or order of a kind mentioned in paragraph (b) (whether or not the person took or sent the child as mentioned in that paragraph); and

(d) the person —

(i) was a party to the proceedings in which the parenting order was made; or

(ii) is retaining, or attempting to retain, the child on behalf of, or at the request of, such a party.

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

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

(2) Subsection (1) does not apply if —

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

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

[Section 107A inserted: No. 49 of 2024 s. 43.]

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

(1) A person commits a crime if —

(a) proceedings (the ***Part 5 proceedings***) are pending for the making of a parenting order to which this Subdivision applies in relation to a child; and

(b) the person intentionally or recklessly takes or sends, or attempts to take or send, the child from the State to a place outside Australia; and

(c) the child is not taken or sent, or attempted to be taken or sent, from the State to a place outside Australia —

(i) with the consent in writing (authenticated as prescribed) of each other party to the Part 5 proceedings; or

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

and

(d) the person is —

(i) a party to the Part 5 proceedings; or

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

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

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

(2) Subsection (1) does not apply if —

(a) the person (whether or not the person is the party to the Part 5 proceedings) takes or sends, or attempts to take or send, the child from the State to a place outside Australia because the person believes the conduct is necessary to prevent family violence; and

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

[Section 108 inserted: No. 49 of 2024 s. 43.]

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

(1) A person commits a crime if —

(a) proceedings (the ***Part 5 proceedings***) for the making, in relation to a child, of a parenting order to which this Subdivision applies are pending; and

(b) the child has been taken or sent from the State to a place outside Australia by or on behalf of a party to the Part 5 proceedings —

(i) with the consent in writing (authenticated as prescribed) of each other party to the Part 5 proceedings; or

(ii) in accordance with an order of a court (whether of a kind referred to in section 8(a) or (b) or otherwise) made, under this Part, under the

Family Law Act Part VII or under a law of any other State or a Territory, after the institution of the Part 5 proceedings;

and

(c) the person intentionally or recklessly retains, or attempts to retain, the child outside Australia otherwise than in accordance with a consent or order of a kind mentioned in paragraph (b) (whether or not the person took or sent the child as mentioned in that paragraph); and

(d) the person is a party to the Part 5 proceedings, or is retaining, or attempting to retain, the child on behalf of, or at the request of, such a party.

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

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

(2) Subsection (1) does not apply if —

(a) the person (whether or not the person is the party to the Part 5 proceedings) retains, or attempts to retain, the child as mentioned in subsection (1)(c) because the person believes the conduct is necessary to prevent family violence; and

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

[Section 108A inserted: No. 49 of 2024 s. 43.]

109. Obligations of owners etc. of aircraft and vessels if certain parenting orders made — FLA s. 65ZA

(1) A person (the ***first person***) commits an offence if —

(a) a parenting order to which this Subdivision applies is in force in relation to a child; and

(b) the first person is a captain, owner or charterer of an aircraft or vessel; and

(c) another person (the ***carer***) in whose favour the parenting order was made has served on the first person a statutory declaration that —

(i) relates to the parenting order; and

(ii) complies with subsection (4);

and

(d) the statutory declaration was made by the carer not earlier than 7 days before the date of service; and

(e) the first person intentionally or recklessly, and without reasonable excuse, permits the child to leave a place in the State in the aircraft or vessel; and

(f) the destination of the aircraft or vessel is outside Australia; and

(g) the child does not leave —

(i) in the company, or with the consent in writing (authenticated as prescribed), of the carer; or

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

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

[(2), (3) deleted]

(4) The statutory declaration must contain —

(a) full particulars of the relevant order referred to in subsection (1)(a), including —

(i) the full name and the date of birth of the child to whom the order relates; and

(ii) the full names of the parties to the proceedings in which the order was made; and

(iii) the terms of the order;

and

(b) such other matters (if any) as are prescribed.

[Section 109 amended: No. 25 of 2002 s. 75; No. 35 of 2006 s. 157; No. 49 of 2024 s. 44.]

110. Obligations of owners etc. of aircraft and vessels if proceedings for making of certain parenting orders are pending — FLA s. 65ZB

(1) A person (the ***first person***) commits an offence if —

(a) proceedings (the ***Part 5 proceedings***) are pending for the making of a parenting order to which this Subdivision applies in relation to a child; and

(b) the first person is a captain, owner or charterer of an aircraft or vessel; and

(c) a party (the ***carer***) to the Part 5 proceedings has served on the captain, owner or charterer a statutory declaration that —

(i) relates to the Part 5 proceedings; and

(ii) complies with subsection (4);

and

(d) the statutory declaration was made by the carer not earlier than 7 days before the date of service; and

(e) the first person intentionally or recklessly, and without reasonable excuse, permits the child to leave a place in the State in the aircraft or vessel; and

(f) the destination of the aircraft or vessel is outside Australia; and

(g) the child does not leave —

(i) in the company, or with the consent in writing (authenticated as prescribed), of the carer; or

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

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

[(2), (3) deleted]

(4) The statutory declaration must contain —

(a) full particulars of the Part 5 proceedings, including —

(i) the full name and the date of birth of the child to whom the proceedings relate; and

(ii) the full names of the parties to the proceedings; and

(iii) the name of the court, the nature of the proceedings and the date of institution of the proceedings; and

(iv) if an appeal has been instituted in the proceedings, the name of the court in which the appeal was instituted and the date on which it was instituted;

and

(b) a statement that the Part 5 proceedings are pending at the date of the statutory declaration; and

(c) such other matters (if any) as are prescribed.

[Section 110 amended: No. 25 of 2002 s. 75; No. 35 of 2006 s. 158; No. 49 of 2024 s. 45.]

111. General provisions applicable to sections 109 and 110 — FLA s. 65ZC(1) and (2)

(1) A statutory declaration referred to in section 109 or 110 may be served on the owner or charterer of an aircraft or vessel, or on

the agent of the owner of an aircraft or vessel, by sending the statutory declaration by registered post addressed to the owner, charterer or agent at the principal place of business of the owner, charterer or agent.

(2) The captain, owner or charterer of an aircraft or vessel, or the agent of the owner of an aircraft or vessel, is not liable in any civil or criminal proceedings in respect of anything done in good faith for the purpose of complying with section 109 or 110.

[Section 111 amended: No. 49 of 2024 s. 46.]

112. No double jeopardy — FLA s. 65ZC(3)

If an act or omission by a person that constitutes an offence under this Subdivision is also an offence against any other written law, the person may be prosecuted for, and convicted of, the offence under the other written law but nothing in this section renders a person liable to be punished twice in respect of the same act or omission.

Division 7 — Child maintenance orders

Subdivision 1 — What this Division does

113. What this Division does — FLA s. 66A

This Division —

(a) contains statements of objects and principles relevant to the making of child maintenance orders (Subdivision 2); and

(b) deals with the relationship between this Division and the Child Support (Assessment) Act (Subdivision 3); and

(c) deals with applying for and making child maintenance orders (Subdivision 4); and

(d) deals with other aspects of courts' powers in relation to child maintenance orders (Subdivision 5); and

(da) deals with varying the maintenance of certain children (Subdivision 5A); and

(e) deals with when child maintenance orders stop being in force (Subdivision 6); and

(f) deals with the recovery of amounts paid under maintenance orders (Subdivision 7).

[Section 113 amended: No. 25 of 2002 s. 56; No. 13 of 2013 s. 27.]

Subdivision 2 — Objects and principles

114. Objects — FLA s. 66B

(1) The principal object of this Division is to ensure that children receive a proper level of financial support from their parents.

(2) Particular objects of this Division include ensuring —

(a) that children have their proper needs met from reasonable and adequate shares in the income, earning capacity, property and financial resources of both of their parents; and

(b) that parents share equitably in the support of their children.

115. Principles: parents have primary duty to maintain — FLA s. 66C

(1) The parents of a child have, subject to this Division, the primary duty to maintain the child.

(2) Without limiting the generality of subsection (1), the duty of a parent to maintain a child —

(a) is not of lower priority than the duty of the parent to maintain any other child or another person; and

(b) has priority over all commitments of the parent other than commitments necessary to enable the parent to support —

(i) himself or herself; or

(ii) any other child or another person that the parent has a duty to maintain;

and

(c) is not affected by —

(i) the duty of any other person to maintain the child; or

(ii) any entitlement of the child or another person to an income tested pension, allowance or benefit.

116. Principles: when step-parents have duty to maintain — FLA s. 66D

(1) The step-parent of a child has, subject to this Division, the duty of maintaining the child if, and only if, a court, by order under section 124, determines that it is proper for the step-parent to have that duty.

(2) Any duty of a step-parent to maintain a step-child —

(a) is a secondary duty subject to the primary duty of the parents of the child to maintain the child; and

(b) does not derogate from the primary duty of the parents to maintain the child.

Subdivision 3 — Relationship with Child Support (Assessment) Act

117. Child maintenance order not to be made etc. if application for administrative assessment of child support could be made — FLA s. 66E

(1) A court must not, at any time, make, revive or vary a child maintenance order in relation to a child on the application of a person (the ***applicant***) against, or in favour of, a person (the ***respondent***) if an application could properly be made, at that time, under the Child Support (Assessment) Act for

administrative assessment of child support (within the meaning of that Act) —

(a) by the applicant seeking payment of child support for the child from the respondent; or

(b) by the respondent seeking payment of child support for the child from the applicant.

(2) Subsection (1) has effect whether or not an application for administrative assessment of child support for the child has in fact been made (whether by the applicant, the respondent or another person).

Subdivision 4 — Applying for and making child maintenance orders

118. Who may apply for child maintenance order — FLA s. 66F

(1) Unless subsection (2) applies, a child maintenance order in relation to a child may be applied for by —

(a) either or both of the child's parents; or

(b) the child; or

(ba) a grandparent of the child; or

(c) any other person concerned with the care, welfare or development of the child.

(2) A child maintenance order in relation to a child who is under the control or in the care (however described), of a person under a child welfare law may only be applied for by —

(a) the child; or

(b) a parent of the child who has the daily care of the child; or

(c) a relative of the child who has the daily care of the child; or

(d) a person who, under a child welfare law, has responsibility for the control or care (however described) of the child.

[Section 118 amended: No. 25 of 2002 s. 57.]

119. Court's power to make child maintenance order — FLA s. 66G

In proceedings for a child maintenance order, a court may, subject to this Division, make such child maintenance order as it thinks proper.

120. Approach to be taken in proceedings for child maintenance order — FLA s. 66H

In proceedings for the making of a child maintenance order in relation to a child, a court must —

(a) consider the financial support necessary for the maintenance of the child (this is expanded on in section 121); and

(b) determine the financial contribution, or respective financial contributions, towards the financial support necessary for the maintenance of the child, that should be made by a party, or by parties, to the proceedings (this is expanded on in section 122).

121. Matters to be taken into account in considering financial support necessary for maintenance of child — FLA s. 66J

(1) In considering the financial support necessary for the maintenance of a child, a court must take into account these (and no other) matters —

(a) the matters mentioned in section 114; and

(b) the proper needs of the child (this is expanded on in subsection (2)); and

(c) the income, earning capacity, property and financial resources of the child (this is expanded on in subsection (3)).

(2) In taking into account the proper needs of the child a court —

(a) must have regard to —

(i) the age of the child; and

(ii) the manner in which the child is being, and in which the parents expected the child to be, educated or trained; and

(iii) any special needs of the child;

and

(b) may have regard, to the extent to which the court considers appropriate in the circumstances of the case, to any relevant findings of published research in relation to the maintenance of children.

(3) In taking into account the income, earning capacity, property and financial resources of the child, a court must —

(a) have regard to the capacity of the child to earn or derive income, including any assets of, under the control of or held for the benefit of the child that do not produce, but are capable of producing, income; and

(b) disregard —

(i) the income, earning capacity, property and financial resources of any other person unless, in the special circumstances of the case, the court considers it appropriate to have regard to them; and

(ii) any entitlement of the child or any other person to an income tested pension, allowance or benefit.

(4) Subsections (2) and (3) do not limit, by implication, the matters to which a court may have regard in taking into account the matters referred to in subsection (1).

122. Matters to be taken into account in determining contribution that should be made by party etc. — FLA s. 66K

(1) In determining the financial contribution, or respective financial contributions, towards the financial support necessary for the maintenance of a child that should be made by a party, or by parties, to the proceedings, a court must take into account these (and no other) matters —

(a) the matters mentioned in sections 114, 115 and 116; and

(b) the income, earning capacity, property and financial resources of the party or each of those parties (this is expanded on in subsection (2)); and

(c) the commitments of the party, or each of those parties, that are necessary to enable the party to support —

(i) himself or herself; or

(ii) any other child or another person that the person has a duty to maintain;

and

(d) the direct and indirect costs incurred by the parent or other person with whom the child lives in providing care for the child (this is expanded on in subsection (3)); and

(e) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

(2) In taking into account the income, earning capacity, property and financial resources of a party to the proceedings, a court must have regard to the capacity of the party to earn and derive income, including any assets of, under the control of or held for the benefit of the party that do not produce, but are capable of producing, income.

(3) In taking into account the direct and indirect costs incurred by the parent or other person with whom the child lives in providing care for the child, a court must have regard to the

income and earning capacity forgone by the parent or other person in providing that care.

(4) In determining the financial contribution, or respective financial contributions, that should be made by a party, or by parties, to the proceedings, a court must disregard —

(a) any entitlement of the child, or the person with whom the child lives, to an income tested pension, allowance or benefit; and

(b) the income, earning capacity, property and financial resources of any person who does not have a duty to maintain the child, or has such a duty but is not a party to the proceedings, unless, in the special circumstances of the case, the court considers it appropriate to have regard to them.

(5) In determining the financial contribution, or respective financial contributions, that should be made by a party, or by parties, to the proceedings, a court must consider the capacity of the party, or each of those parties, to provide maintenance by way of periodic payments before considering the capacity of the party, or each of those parties, to provide maintenance —

(a) by way of lump sum payment; or

(b) by way of transfer or settlement of property; or

(c) in any other way.

(6) Subsections (2) to (5) do not limit, by implication, the matters to which a court may have regard in taking into account the matters referred to in subsection (1).

123. Children who are 18 or over — FLA s. 66L

(1) A court must not make a child maintenance order in relation to a child who is 18 or more years of age unless the court is satisfied that the provision of the maintenance is necessary —

(a) to enable the child to complete the child's education; or

(b) because of a mental or physical disability of the child.

(1a) The court may make a child maintenance order referred to in subsection (1), in relation to a child who is 17 years of age, to take effect when or after the child attains the age of 18 years.

(2) A court must not make a child maintenance order in relation to a child that extends beyond the day on which the child will turn 18 years of age unless the court is satisfied that the provision of the maintenance beyond that day is necessary —

(a) to enable the child to complete the child's education; or

(b) because of a mental or physical disability of the child.

(3) A child maintenance order in relation to a child stops being in force when the child turns 18 years of age unless the order is expressed to continue in force after then.

[Section 123 amended: No. 25 of 2002 s. 58.]

124. When step-parents have duty to maintain — FLA s. 66M

(1) As stated in section 116, the step-parent of a child has a duty of maintaining the child if, and only if, there is an order in force under this section.

(2) A court may, by order, determine that it is proper for a step-parent to have a duty of maintaining a stepchild.

(3) In making an order under subsection (2), a court must have regard to these (and no other) matters —

(a) the matters referred to in sections 114 and 115; and

(b) the length and circumstances of the step-parent's marriage to, or de facto relationship with, the relevant parent of the child; and

(c) the relationship that has existed between the step-parent and the child; and

(d) the arrangements that have existed for the maintenance of the child; and

(e) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

[Section 124 amended: No. 25 of 2002 s. 45.]

125. Determining financial contribution of step-parent — FLA s. 66N

In determining the financial contribution towards the financial support necessary for the maintenance of the child that should be made by a party to the proceedings who is a step-parent of the child, a court must take into account —

(a) the matters referred to in sections 114, 115, 116 and 122; and

(b) the extent to which the primary duty of the parents to maintain the child is being, and can be fulfilled.

Subdivision 5 — Other aspects of court powers

126. General powers of court — FLA s. 66P

(1) In proceedings for a child maintenance order, a court may do all or any of the following —

(a) order payment of a lump sum, whether in one amount or by instalments;

(b) order payment of a weekly, monthly, yearly or other periodic amount;

(c) order that a specified transfer or settlement of property be made by way of maintenance for a child;

(d) order that payment of an amount ordered to be paid be wholly or partly secured as the court specifies;

(e) order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;

(f) order that payment be made to a specified person or public authority or into court;

(g) make a permanent order, an order pending the disposal of proceedings, an order for a fixed period, an order until a child attains a specified age or an order until further order;

(h) make an order imposing terms and conditions;

(i) make an order by consent;

(j) make any other order (whether or not of the same nature as those referred to in paragraphs (a) to (i)) that it considers appropriate;

(k) make an order under this Division at any time.

(2) The making of an order of a kind referred to in subsection (1)(c), or of any other order under this Division, in relation to the maintenance of a child does not prevent a court from making a subsequent order in relation to the maintenance of the child.

(3) The rules may make provision with respect to the making of orders under this Division (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.

127. Urgent child maintenance orders — FLA s. 66Q

If, in proceedings for a child maintenance order in relation to a child —

(a) a court considers that the child is in immediate need of financial assistance; but

(b) it is not practicable in the circumstances to determine immediately what order (if any) should be made,

the court may order the payment, pending the disposal of the proceedings, of such periodic or other amount as the court considers appropriate.

128. Modification of child maintenance orders — FLA s. 66S

(1) This section applies if —

(a) there is in force an order (the ***first order***), for the maintenance of a child (whether or not made under this Act) —

(i) made by a court; or

(ii) made by a court other than a court exercising jurisdiction under this Act and registered in a court under this Act;

and

(b) a person (being someone who could apply for a child maintenance order in relation to the child) or persons (each of whom could do that) apply to a court for an order under this section in relation to the first order.

(1a) With the consent of all the parties to the first order, a court may make an order —

(a) discharging the first order; or

(b) suspending its operation wholly or in part and either until further order or until a fixed time or the happening of a future event; or

(c) if the operation of the order has been suspended under paragraph (b) or subsection (2)(b), reviving its operation wholly or in part; or

(d) varying the order —

(i) so as to increase or decrease any amount ordered to be paid by the order; or

(ii) in any other way.

(1b) However, a court must not make an order under subsection (1a) that allows any entitlement of a child or another person to an income tested pension, allowance or benefit, to affect the duty of that child's parents to maintain the child.

(2) In any other case, a court may, by order —

(a) discharge the first order if there is just cause for so doing; or

(b) suspend the first order's operation wholly or in part and either until further order or until a fixed time or the happening of a future event; or

(c) if the operation of the first order has been suspended under paragraph (b) or subsection (1a)(b), revive the first order's operation wholly or in part; or

(d) subject to subsection (3), vary the first order —

(i) so as to increase or decrease any amount ordered to be paid by the first order; or

(ii) in any other way.

(3) A court must not vary the first order so as to increase or decrease any amount ordered to be paid by the order unless it is satisfied —

(a) that, since the first order was made or last varied —

(i) the circumstances of the child have changed so as to justify the variation; or

(ii) the circumstances of the person liable to make payments under the first order have changed so as to justify the variation; or

(iii) the circumstances of the person entitled to receive payments under the first order have changed so as to justify the variation; or

(iv) in the case of a first order that operates in favour of, or is binding on, a legal personal representative, the circumstances of the estate are such as to justify the variation;

or

(b) that, since the first order was made or last varied, the cost of living has changed to such an extent as to justify

its so doing (this is expanded on in subsections (4) and (5)); or

(c) if the first order was made by consent, that the amount ordered to be paid is not proper or adequate (this is expanded on in subsection (6)); or

(d) that material facts were withheld from the court that made the first order or from a court that varied the order, or material evidence previously given before such a court was false.

(4) In satisfying itself for the purposes of subsection (3)(b), a court must have regard to any changes that have occurred in the Consumer Price Index published by the Australian Statistician.

(5) A court must not, in considering the variation of a first order, have regard to a change in the cost of living unless at least 12 months have elapsed since the first order was made or last varied having regard to a change in the cost of living.

(6) In satisfying itself for the purposes of subsection (3)(c), a court must have regard to any payments, and any transfer or settlement of property, previously made to the child, or to any other person for the benefit of the child, by the person against whom the first order was made.

(7) An order decreasing a periodic amount payable under the first order, or discharging the first order, may be expressed to be retrospective to such day as a court considers appropriate.

(8) If an order (the ***subsequent order***) decreasing a periodic amount payable under the first order is expressed to be retrospective, amounts paid under the first order that are not payable under the first order as varied by the subsequent order may be recovered in a court.

(9) If an order discharging the first order is expressed to be retrospective to a specified day, amounts paid under the first order since the specified day may be recovered in a court.

(10) For the purposes of this section, a court must have regard to the provisions of Subdivisions 2, 3 and 4 (to the extent applicable).

(11) The discharge of the first order does not affect the recovery of arrears due under the order when the discharge takes effect.

[Section 128 amended: No. 25 of 2002 s. 59.]

Subdivision 5A — Varying the maintenance of certain children

[Heading inserted: No. 25 of 2002 s. 60.]

128A. Varying maintenance of certain children — FLA s. 66SA

(1) This section applies to persons who —

(a) are parties to an agreement (the ***original agreement***) dealing with the maintenance of a child; or

(b) are entitled to receive, or required to pay, maintenance in respect of a child under a court order,

and cannot properly make an application under the Child Support (Assessment) Act for administrative assessment of child support (within the meaning of that Act) for the child seeking payment of child support by the other person.

(2) The persons may, by registering a written agreement in a court, vary or revoke the original agreement or order to the extent that it deals with maintenance of the child.

(3) However, the registered agreement is of no effect to the extent that it allows any entitlement of a child or another person to an income tested pension, allowance or benefit to affect the duty of that child's parents to maintain the child.

(4) If the original agreement or order is varied under subsection (2), it —

(a) continues to operate despite the death of a party to the agreement or of a person entitled to receive, or required to pay, maintenance under the order; and

(b) operates in favour of, and is binding on, the legal representative of that party or person,

unless the agreement or order provides otherwise.

(5) However, despite anything in the agreement or order, it does not continue to operate, to the extent that it requires the periodic payment of maintenance, after the death of the person entitled to receive those payments.

(6) This section applies despite anything in Division 4.

[Section 128A inserted: No. 25 of 2002 s. 60.]

Subdivision 6 — When child maintenance orders stop being in force

129. Effect of child turning 18 — FLA s. 66T

As stated in section 123(3), a child maintenance order in relation to a child stops being in force when the child turns 18 years of age, unless the order is expressed to continue in force after then.

130. Effect of death of child, person liable to pay or person entitled to receive — FLA s. 66U

(1) A child maintenance order in relation to a child stops being in force on the death of the child.

(2) A child maintenance order in relation to a child stops being in force on the death of the person liable to make payments under the order.

(3) A child maintenance order in relation to a child stops being in force on the death of the person entitled to receive payments under the order.

(4) Subsection (3) does not apply to an order if —

(a) the order is expressed to continue in force after the death of the person first entitled to receive payments under the order; and

(b) the order specifies the person who is to receive the payments after that death.

131. Effect of adoption, marriage or entering into de facto relationship — FLA s. 66V

(1) A child maintenance order in relation to a child stops being in force if the child is adopted, marries or enters into a de facto relationship.

(2) If a child to whom a child maintenance order applies dies, is adopted, marries or enters into a de facto relationship, the person entitled to receive payments under the order must, without delay, inform the person liable to make payments under the order.

(3) Any amounts paid under a child maintenance order in relation to a period after the child dies, is adopted, marries or enters into a de facto relationship may be recovered in a court.

(4) A court may make a declaration to the effect that a child is in, or has entered into, a de facto relationship.

(5) A declaration under subsection (4) has effect for the purposes of this Act but does not have effect for any other purpose.

131A. Children who are 18 or over: change of circumstances — FLA s. 66VA

(1) A child maintenance order made under section 123 —

(a) to enable the child to complete the child's education; or

(b) because of a mental or physical disability of the child,

stops being in force if the child ceases that education or ceases to have that disability.

(2) The person to whom the maintenance is payable must, as soon as practicable, inform the person required to pay it of that change in circumstances.

(3) Any amounts of maintenance paid under the child maintenance order after it stops being in force may be recovered in a court.

[Section 131A inserted: No. 25 of 2002 s. 61(1).]

132. Recovery of arrears — FLA s. 66W

(1) Nothing in section 123(3), or in this Subdivision (apart from subsection (2)), affects the recovery of arrears due under a child maintenance order in relation to a child when the order ceases to be in force.

(2) If arrears are due under such an order when the order ceases to be in force, the court may, by order, retrospectively —

(a) discharge the order if there is just cause for doing so; or

(b) vary the order so as to increase or decrease the arrears to be paid under the order if the court is satisfied that —

(i) the circumstances of the person liable to pay the arrears are such as to justify the variation; or

(ii) the circumstances of the person entitled to receive the arrears are such as to justify the variation; or

(iii) in the case of an order that operated in favour of, or that was binding on, a legal personal representative, the circumstances of the estate are such as to justify the variation.

[Section 132 inserted: No. 25 of 2002 s. 62(1).]

Subdivision 7 — Recovery of amounts paid under maintenance orders

[Heading inserted: No. 35 of 2006 s. 62.]

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.

[Section 132A inserted: No. 35 of 2006 s. 62.]

Division 8 — Other matters relating to children

Subdivision 1 — What this Division does

133. What this Division does — FLA s. 67A

This Division deals with —

(a) the liability of a father, or a person who is the parent of a child under section 6A of the *Artificial Conception Act 1985*, to contribute towards child bearing expenses if he is not married to the child's mother (Subdivision 2); and

(b) orders for the location and recovery of children (Subdivision 3); and

(c) the reporting of allegations of child abuse and family violence (Subdivision 4); and

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

(d) other orders about children (Subdivision 5).

[Section 133 amended: No. 3 of 2002 s. 62; No. 13 of 2013 s. 15; No. 49 of 2024 s. 47.]

Subdivision 2 — Liability of parent not married to child's mother to contribute towards child bearing expenses

[Heading amended: No. 3 of 2002 s. 63.]

*[**134.** Deleted: No. 35 of 2006 s. 174.]*

135. Father liable to contribute towards maintenance and expenses of mother — FLA s. 67B

The father of a child who is not married to the child's mother, or a person who is the parent of the child under section 6A of the *Artificial Conception Act 1985*, is, subject to this Division, liable to make a proper contribution towards —

(a) the maintenance of the mother for the childbirth maintenance period in relation to the birth of the child; and

(b) the mother's reasonable medical expenses in relation to the pregnancy and birth; and

(c) if the mother dies and the death is as a result of the pregnancy or birth, the reasonable expenses of the mother's funeral; and

(d) if the child is stillborn, or dies and the death is related to the birth, the reasonable expenses of the child's funeral.

[Section 135 amended: No. 3 of 2002 s. 64.]

136. Matters to be taken into account in proceedings under Subdivision — FLA s. 67C

(1) In proceedings under this Subdivision in relation to the birth of a child, a court must, in determining the contribution that should be made by the father of the child, or the person who is the parent of the child under section 6A of the *Artificial Conception Act 1985*, take into account the following matters only —

(a) the income, earning capacity, property and financial resources of the mother and —

(i) the father of the child; or

(ii) the person who is the parent of the child under section 6A of the *Artificial Conception Act 1985*;

(b) commitments of each of those persons that are necessary to enable the person to support —

(i) himself or herself; or

(ii) any other child or another person that the person has a duty to maintain;

(c) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

(2) In taking into account the income, earning capacity, property and financial resources of a person, a court must have regard to the capacity of the person to earn and derive income, including any assets of, under the control of or held for the benefit of, the person that do not produce, but are capable of producing, income.

(3) In taking into account the income, earning capacity, property and financial resources of the mother, a court must disregard any entitlement of the mother to an income tested pension, allowance or benefit.

(4) Subsections (2) and (3) do not limit the matters to which a court may have regard in taking into account matters referred to in subsection (1).

[Section 136 amended: No. 3 of 2002 s. 65.]

137. Powers of court in proceedings under Subdivision — FLA s. 67D

(1) In proceedings under this Subdivision in relation to the birth of a child, a court may make such order as it thinks proper.

(2) In exercising its powers under this Subdivision, a court may do all or any of the following —

(a) order payment of a lump sum, whether in one amount or by instalments;

(b) order payment of a weekly, monthly or other periodic amount;

(c) order that payment of an amount ordered to be paid be wholly or partly secured as the court specifies;

(d) order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;

(e) order that payment be made to a specified person or public authority or into court;

(f) make a permanent order, an order pending the disposal of proceedings, an order for a fixed period or an order until further order;

(g) make an order imposing terms and conditions;

(h) make an order by consent;

(i) make any other order (whether or not of the same nature as those referred to in paragraphs (a) to (h)) that it considers appropriate;

(j) make an order under this Subdivision at any time (whether before or after the birth of the relevant child).

(3) The rules may make provision with respect to the making of orders under this Subdivision (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of amounts payable under them.

138. Urgent orders — FLA s. 67E

If, in proceedings under this Subdivision in relation to the birth of a child —

(a) a court is of the opinion that the applicant is in immediate need of financial assistance; but

(b) it is not practicable in the circumstances to determine immediately what order (if any) should be made (whether because the applicant has not yet given birth to the child or otherwise),

the court may order the payment, pending the disposal of the proceedings, of such periodic or other amount as the court considers appropriate.

139. Who may institute proceedings — FLA s. 67F

Proceedings under this Subdivision in relation to the birth of a child may be instituted by the mother or by the mother's legal personal representative.

140. Time limit for institution of proceedings — FLA s. 67G

(1) Proceedings under this Subdivision in relation to the birth of a child may be instituted —

(a) at any time during the pregnancy of the mother; or

(b) after the birth of the child, but not later than 12 months after the birth except by leave of a court.

(2) A court must not grant leave under subsection (1)(b) unless it is satisfied that refusal to grant leave would cause hardship to the applicant, the child or another person.

141. Orders for, and unspent, child bearing expenses

(1) An order made under this Subdivision must recite the finding, as is appropriate in the case, that —

(a) the woman is pregnant by a man named in the order as the father of the woman's unborn child, or the person named in the order is the parent of the woman's unborn child under section 6A of the *Artificial Conception Act 1985*; or

(b) the woman has been delivered of a child or a stillborn child of which a person named in the order is, or was, the father, or the parent under section 6A of the *Artificial Conception Act 1985*,

and a reference in subsection (2) to the other parent is a reference to the person named in the relevant order.

(2) If —

(a) money has been paid in accordance with an order made under this Subdivision; and

(b) the pregnancy that is the subject of the order has come to an end but the woman has not given birth to a live child; and

(c) the money has not been spent by the time the pregnancy came to an end,

then, on the application of any party, or of its own motion, a court may direct that the money —

(d) be kept by the woman; or

(e) be repaid to the other parent; or

(f) be divided, in such proportions as the court thinks fit, between the woman and the other parent.

[Section 141 amended: No. 3 of 2002 s. 66.]

Subdivision 3 — Location and recovery of children

*[**142.** Deleted: No. 35 of 2006 s. 175.]*

143. Meaning of *location order* and *State information order* — FLA s. 67J

(1) A location order is an order made by a court requiring —

(a) a person to provide the registrar with information that the person has or obtains about the child's location; or

(b) the principal officer of a State entity or the person who holds an office or position specified in the order in, or in relation to, the State entity, to provide the registrar with information about the child's location that is contained in or comes into the records of the State entity.

(2) A State information order is a location order described in subsection (1)(b).

144. Who may apply for location order — FLA s. 67K

A location order in relation to a child may be applied for by —

(a) a person with whom the child is to live under a parenting order; or

(b) a person with whom the child is to spend time under a parenting order; or

(c) a person with whom the child is to communicate under a parenting order; or

(caa) a person who has parental responsibility for the child under a parenting order; or

(ca) a grandparent of the child; or

(d) any other person concerned with the care, welfare or development of the child.

[Section 144 amended: No. 25 of 2002 s. 63; No. 35 of 2006 s. 159.]

145. Child's best interests paramount consideration in making location order — FLA s. 67L

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

146. Provisions about location orders, other than State information orders — FLA s. 67M

(1) This section applies to location orders other than State information orders.

(2) Subject to section 145, a court may make a location order if it is satisfied that the person to whom the order applies is likely to have information about the child's location.

(3) If the person to whom a location order applies holds an office or position in, or in relation to, a State entity, the order does not apply to information that the person has or obtains because of holding that office or position.

(4) A location order stays in force for 12 months or such longer period as the court considers appropriate.

(5) While a location order is in force, the person to whom it applies must provide the information sought by the order as soon as practicable, or as soon as practicable after the person obtains it.

(6) The person to whom a location order applies must comply with the order despite anything in any other written law.

147. Provisions about State information orders — FLA s. 67N

(1) This section applies to State information orders.

(2) Subject to section 145, a court may make a State information order in respect of a State entity if the court is satisfied that information about the child's location is likely to be contained in, or to come into, the records of the State entity.

(3) A court must not make a State information order unless —

(a) a copy of the application for the order has been served on the person to whom the order will apply; and

(b) the period of 7 days after service of that copy of the application has expired or the court considers that there are special circumstances because of which the order should be made before the end of that period of 7 days.

(4) If an application for a State information order relates to more than one State entity then a court must not make the order in relation to more than one State entity unless the court considers it should do so because of exceptional circumstances.

(5) A court may state that a State information order only applies to records of a particular kind if the court considers that —

(a) the information sought by the order is only likely to be contained in records of that kind; and

(b) to apply the order to all records of the State entity concerned would place an unreasonable burden on the State entity's resources.

(6) A State information order stays in force for 12 months.

(7) While a State information order is in force, the person to whom the order applies must, subject to subsection (9), provide the information sought by the order as soon as practicable, or as soon as practicable after the information comes into the records of the State entity concerned.

(8) If the person (the ***official***) to whom a State information order applies provides another person (in accordance with the order) with information sought by the order, the official must, at the same time, provide the other person with any information about actual or threatened violence to the child concerned, to a parent of the child, or to another person with whom the child lives, that is in the records of the State entity concerned.

(9) A State information order does not require the records of the State entity concerned to be searched for the information sought by the order more often than once every 3 months unless specifically so ordered by a court.

(10) The person to whom a State information order applies must comply with the order despite anything in any other written law.

148. Information provided under location order not to be disclosed except to limited persons — FLA s. 67P

(1) Information provided to a registrar under a location order (including a State information order) must not, intentionally or recklessly, be disclosed by the registrar, or by any other person who obtains the information (whether directly or indirectly and whether under this section or otherwise) because of the provision of the information to the registrar, except —

(a) to the registrar of another court; or

(b) to an officer of the Court for the purpose of that officer's responsibilities or duties; or

(c) to a process-server engaged by a court or by an officer of the Court; or

(d) with the leave of the court that made the location order —

(i) to the legal adviser of the applicant for the order; or

(ii) to a process-server engaged by that legal adviser;

or

(e) if a recovery order that consists of or includes an authorisation or direction described in section 149(b) or (c) is in force, to a person to whom the authorisation or direction is addressed.

Penalty: $13 200.

(2) Nothing in paragraphs (a) to (e) of subsection (1) authorises the disclosure of information to the applicant for the location order.

[Section 148 amended: No. 25 of 2002 s. 75.]

149. Meaning of *recovery order* — FLA s. 67Q

A recovery order is an order made by a court doing all or any of the following —

(a) requiring the return of a child to —

(i) a parent of the child; or

(ii) a person with whom the child is to live under a parenting order; or

(iii) a person with whom the child is to spend time under a parenting order; or

(iv) a person with whom the child is to communicate under a parenting order; or

(v) a person who has parental responsibility for the child;

(b) authorising or directing any person, with such assistance as may be required, and if necessary by force, to stop and search any vehicle, vessel or aircraft, and to enter and search any premises or place, for the purpose of finding a child;

(c) authorising or directing any person, with such assistance as may be required, and if necessary by force, to recover a child;

(d) authorising or directing a person to whom a child is returned, or who recovers a child, to deliver the child to —

(i) a parent of the child; or

(ii) a person described in paragraph (a)(ii), (iii), (iv) or (v); or

(iii) some other person on behalf of a person described in this paragraph;

(e) giving directions about the day-to-day care of a child until the child is returned or delivered to another person;

(f) prohibiting a person from again removing or taking possession of a child;

(g) authorising or directing a person to arrest, without warrant, a person who again removes or takes possession of a child.

[Section 149 amended: No. 25 of 2002 s. 64; No. 35 of 2006 s. 160.]

150. How recovery orders authorise or direct people — FLA s. 67R

(1) An authorisation or direction described in section 149(b), (c) or (d) may be addressed to —

(a) the Marshal; or

(b) the Commissioner of Police; or

(c) every person from time to time holding or acting in an office specified in the order.

(2) Without limiting the generality of subsection (1), an authorisation or direction described in section 149(b), (c) or (d) may be addressed to —

(a) a named person who holds an appointment as a child recovery officer under subsection (3); or

(b) every person from time to time holding or acting in an office of child recovery officer.

(3) The Attorney General may appoint persons to be child recovery officers for the purposes of this Subdivision.

(4) An appointment under subsection (3) may be of —

(a) a named person only; or

(b) every person from time to time holding or acting in an office specified in the appointment.

151. How recovery orders to stop and search etc. name or describe vehicles, places etc. — FLA s. 67S

An authorisation or direction described in section 149(b) may be expressed to apply to —

(a) a vehicle, vessel, aircraft, premises or place named or described either specifically or in general terms; or

(b) any vehicle, vessel, aircraft, premises or place in which there is, at any time, reasonable cause to believe that the child concerned may be found.

152. Who may apply for recovery order — FLA s. 67T

A recovery order in relation to a child may be applied for by —

(a) a person with whom the child is to live under a parenting order; or

(b) a person with whom the child is to spend time under a parenting order; or

(c) a person with whom the child is to communicate under a parenting order; or

(caa) a person who has parental responsibility for the child under a parenting order; or

(ca) a grandparent of the child; or

(d) any other person concerned with the care, welfare or development of the child.

[Section 152 amended: No. 25 of 2002 s. 65; No. 35 of 2006 s. 161.]

153. Court's power to make recovery order — FLA s. 67U

In proceedings for a recovery order, a court may, subject to section 154, make such recovery order as it thinks proper.

154. Child's best interests paramount consideration in making recovery order — FLA s. 67V

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

155. Duration of recovery order — FLA s. 67W

(1) A recovery order remains in force for 12 months or such lesser period as is specified in the order.

(2) To avoid doubt, unless a recovery order specifically provides to the contrary, each term of the order continues to have effect until the end of the period for which it remains in force regardless of whether anything has previously been done in accordance with the order.

[Section 155 amended: No. 25 of 2002 s. 66.]

156. Persons not to prevent or hinder taking of action under recovery order — FLA s. 67X

(1) This section applies to a recovery order that authorises or directs a person or persons to take action as described in section 149(b), (c) or (d).

(2) A person must not prevent or hinder the taking of the action by the person or persons authorised or directed to take the action.

(3) If a court is satisfied that a person has intentionally, and without reasonable excuse, contravened subsection (2), the court may —

(a) order the person to pay a fine not exceeding $1 100; or

(b) order the person to enter into a bond (with or without surety or security) on conditions specified by the court; or

(c) order the person to be imprisoned until the person enters into a bond (with or without surety or security) on conditions specified by the court, or until the person has been imprisoned for 3 months, whichever happens first.

(4) A court that makes an order under subsection (3) may make such other orders as it considers necessary to ensure the person does not again contravene subsection (2).

[Section 156 amended: No. 25 of 2002 s. 74(1) and 75.]

157. Obligation to notify persons of child's return — FLA s. 67Y

(1) This section applies if —

(a) a recovery order that consists of or includes provisions described in section 149(a), (b), (c) or (d) is in force in relation to a child; and

(b) the child returns, or is returned, to the person who applied for the order.

(2) The person who applied for the order must, as soon as practicable after the child's return, give notice of the child's return —

(a) to the registrar of the court that issued the recovery order; and

(b) if a location order in relation to the child is in force and was applied for by the person, to the person to whom the location order applies.

Subdivision 4 — Allegations of child abuse and family violence

[Heading inserted: No. 13 of 2013 s. 16.]

158. Meaning of *registrar*

In this Subdivision —

registrar —

(a) in relation to the Court, means the Principal Registrar, a registrar or a deputy registrar; and

(b) in relation to the Magistrates Court, means a registrar of that court at the place where that court was held.

[Section 158 amended: No. 59 of 2004 s. 95.]

159. Where interested person in proceedings makes allegation of child abuse — FLA s. 67Z

(1A) In this section —

interested person, in proceedings under this Act, means —

(a) a party to the proceedings; or

(b) an independent children's lawyer who represents the interests of a child in the proceedings; or

(c) any other person prescribed by the regulations for the purposes of this paragraph;

prescribed form means the form approved by the Chief Judge of the Court for the purposes of this section.

(1) If an interested person in proceedings under this Act alleges that a child to whom the proceedings relate has been abused or is at risk of being abused then the interested person must —

(a) file a notice in the prescribed form in the court hearing the proceedings; and

(b) serve a copy of the notice upon the person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.

(2) If a notice under subsection (1) is filed in a court, the registrar of the court must, as soon as practicable, notify the CEO.

(3) If a registrar notifies the CEO under subsection (2) the registrar may make such disclosures of other information as the registrar

reasonably believes are necessary to enable the CEO to properly manage the matter the subject of the notification.

[Section 159 amended: No. 34 of 2004 Sch. 2 cl. 10(7); No. 13 of 2013 s. 17.]

160. Where member of Court personnel, family counsellor, family dispute resolution practitioner or arbitrator suspects child abuse etc. — FLA s. 67ZA

(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; or

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

(2) If a person referred to in subsection (1) has reasonable grounds for suspecting that a child has been abused, or is at risk of being abused, the person must, as soon as practicable, notify the CEO of the suspicion and the basis for the suspicion.

(3) If a person referred to in subsection (1) has reasonable grounds for suspecting that a child —

(a) has been ill treated, or is at risk of being ill treated; or

(b) has been exposed or subjected, or is at risk of being exposed or subjected, to behaviour which psychologically harms the child,

the person may notify the CEO of the suspicion and the basis for the suspicion.

(4) If a person mentioned in subsection (1) knows that the CEO has previously been notified under subsection (2) or section 159(2) that a child has been abused or is at risk of being abused —

(a) the person need not notify the CEO of a suspicion that the child has been abused or is at risk of being abused; but

(b) the person may notify the CEO of the suspicion.

(5) If notice under this section is given orally, written notice confirming the oral notice is to be given to the CEO as soon as practicable after the oral notice.

(6) If a person referred to in subsection (1) notifies the CEO under this section the person may make such disclosures of other information as the person reasonably believes are necessary to enable the CEO to properly manage the matter the subject of the notification.

[Section 160 amended: No. 25 of 2002 s. 46; No. 34 of 2004 Sch. 2 cl. 10(7); No. 35 of 2006 s. 123; No. 49 of 2024 s. 48.]

161. No liability for notification under section 159 or 160 — FLA s. 67ZB

(1) A person —

(a) must notify the CEO under section 159(2) or 160(2); or

(b) may notify the CEO under section 160(3) or (4); or

(c) may disclose other information under section 159(3) or 160(6),

despite any obligation of confidentiality imposed on the person by this Act, any other written law, any other law or anything else (including a contract or professional ethics).

(2) A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of a notification under section 159(2) or 160(2).

(3) A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of a notification under section 160(3) or (4), or a disclosure under section 159(3) or 160(6), if the notification or disclosure is made in good faith.

(4) Evidence of a notification under section 159(2) or section 160(2), (3) or (4), or a disclosure under section 159(3) or 160(6), is not admissible in any court except where that evidence is given by the person who made the notification or disclosure.

(5) In this section —

court means a court (whether of a kind referred to in section 8(a) or (b) or otherwise) and includes a board, tribunal or other body concerned with professional ethics.

[Section 161 amended: No. 34 of 2004 Sch. 2 cl. 10(7).]

162A. Where interested person makes allegation of family violence — FLA s. 67ZBA

(1) In this section —

interested person, in proceedings for an order under this Part in relation to a child, means —

(a) a party to the proceedings; or

(b) an independent children's lawyer who represents the interests of the child in the proceedings; or

(c) any other person prescribed by the regulations for the purposes of this paragraph;

prescribed form means the form approved by the Chief Judge of the Court for the purposes of this section.

(2) This section applies if an interested person in proceedings for an order under this Part in relation to a child alleges, as a consideration that is relevant to whether the court should make or refuse to make the order, that —

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

(b) there is a risk of family violence by one of the parties to the proceedings.

(3) The interested person must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the party referred to in subsection (2)(a) or (b).

(4) If the alleged family violence (or risk of family violence) is abuse of a child (or a risk of abuse of a child) —

(a) the interested person making the allegation must either file and serve a notice under subsection (3) or under section 159(1) (but does not have to file and serve a notice under both those provisions); and

(b) if the notice is filed under subsection (3), the registrar must deal with the notice as if it had been filed under section 159(1).

[Section 162A inserted: No. 13 of 2013 s. 18.]

162B. Court to take prompt action in relation to allegations of child abuse or family violence — FLA s. 67ZBB

(1) This section applies if —

(a) a notice is filed under section 159(1) or 162A(3) in proceedings for an order under this Part in relation to a child; and

(b) the notice alleges, as a consideration that is relevant to whether the court should make or refuse to make the order, that —

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

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

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

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

(2) The court must —

(a) consider what interim or procedural orders (if any) should be made —

(i) to enable appropriate evidence about the allegation to be obtained as expeditiously as possible; and

(ii) to protect the child or any of the parties to the proceedings;

and

(b) make such orders of that kind as the court considers appropriate; and

(c) deal with the issues raised by the allegation as expeditiously as possible.

(3) The court must take the action required by subsection (2)(a) and (b) —

(a) as soon as practicable after the notice is filed; and

(b) if it is appropriate having regard to the circumstances of the case — within 8 weeks after the notice is filed.

(4) Without limiting subsection (2)(a)(i), the court must consider whether orders should be made under section 162D or 162E to

obtain particulars, documents or information from information sharing agencies in relation to the allegation.

(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 does not affect the validity of any order made in the proceedings for the order.

[Section 162B inserted: No. 13 of 2013 s. 18; amended: No. 49 of 2024 s. 49.]

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

[Heading inserted: No. 49 of 2024 s. 50.]

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

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

[Section 162C inserted: No. 49 of 2024 s. 50.]

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

(1) A court may make an order, in child-related proceedings, requiring an information sharing agency to —

(a) inform the court whether the agency has in its possession or control any documents or information relating to a matter mentioned in subsection (2); and

(b) if it has — give the court particulars of the documents or information.

(2) The matters are the following —

(a) abuse, neglect or family violence to which a child to whom the proceedings relate has been, or is suspected to have been, subjected or exposed;

(b) family violence to which a party to the proceedings has been exposed, or in which a party to the proceedings has engaged, to the extent it may affect a child to whom the proceedings relate;

(c) any risk or potential risk of a child to whom the proceedings relate being subjected or exposed to abuse, neglect or family violence;

(d) any risk or potential risk of a party to the proceedings being subjected to, or engaging in, family violence, to the extent any such family violence may affect a child to whom the proceedings relate.

(3) The order may (but is not required to) include descriptions of the kinds of documents or information that the court considers the agency may have in its possession or control relating to a matter mentioned in subsection (2).

(4) Any descriptions mentioned in subsection (3) do not limit the scope of the order.

(5) The following are examples of descriptions of kinds of documents or information that may be included in an order —

(a) notifications to the agency of suspected abuse of a child to whom the proceedings relate;

(b) notifications to the agency of suspected abuse, by a party to the proceedings, of any child.

(6) The agency may, on its own initiative —

(a) produce to the court any documents the particulars of which are required by the order; or

(b) give to the court any information the particulars of which are required by the order; or

(c) give to the court any other particulars that the agency considers useful to characterise documents or information particulars of which are required by the order.

(7) If the agency produces a document or gives information or particulars on its own initiative under subsection (6), the agency must consider —

(a) redacting the document if the document contains protected material; or

(b) not providing the information or particulars to the extent that the information is, or the particulars would reveal, protected material.

(8) A written law has no effect to the extent that it would, apart from this subsection, hinder or prevent the agency —

(a) complying with the order; or

(b) providing documents, information or particulars on its own initiative under subsection (6).

[Section 162D inserted: No. 49 of 2024 s. 50.]

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

(1) A court may make an order, in child-related proceedings, requiring an information sharing agency to produce to the court any documents, and give the court any information, in the agency's possession or control relating to a matter mentioned in subsection (2).

(2) The matters are the following —

(a) abuse, neglect or family violence to which a child to whom the proceedings relate has been, or is suspected to have been, subjected or exposed;

(b) family violence to which a party to the proceedings has been exposed, or in which a party to the proceedings has engaged, to the extent it may affect a child to whom the proceedings relate;

(c) any risk or potential risk of a child to whom the proceedings relate being subjected or exposed to abuse, neglect or family violence;

(d) any risk or potential risk of a party to the proceedings being subjected to, or engaging in, family violence, to the extent any such family violence may affect a child to whom the proceedings relate.

(3) The order may (but is not required to) include descriptions of the kinds of documents or information that the court considers the agency may have in its possession or control relating to a matter mentioned in subsection (2).

(4) Any descriptions mentioned in subsection (3) do not limit the scope of the order.

(5) The following are examples of descriptions of kinds of documents or information that may be included in an order —

(a) notifications to the agency of suspected abuse of a child to whom the proceedings relate;

(b) notifications to the agency of suspected abuse, by a party to the proceedings, of any other child.

(6) The agency may, on its own initiative —

(a) produce to the court other documents, or give the court other information, in the agency's possession or control that, in the agency's opinion, relates to a matter mentioned in subsection (2); or

(b) give to the court particulars of those other documents or information.

(7) If the agency produces a document or gives information or particulars on its own initiative under subsection (6), the agency must consider —

(a) redacting the document if the document contains protected material; or

(b) not providing the information or particulars to the extent that the information is, or the particulars would reveal, protected material.

(8) A written law has no effect to the extent that it would, apart from this subsection, hinder or prevent the agency —

(a) complying with the order; or

(b) providing documents, information or particulars on its own initiative under subsection (6).

[Section 162E inserted: No. 49 of 2024 s. 50.]

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

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

(a) give the court particulars of a document or information, to the extent that the particulars would reveal protected material; or

(b) produce a document to the court, to the extent that the document contains protected material; or

(c) give the court information that is protected material.

(2) If the agency does not give the court particulars or information, or does not produce a document, on the grounds that the particulars would reveal, or the document contains or the information is, protected material, the agency must inform the court —

(a) that the agency has not provided, or, that in the agency's opinion it is not required to provide, certain particulars, documents or information; and

(b) in the agency's opinion, which of subsections (3)(a) to (c) apply to the particulars, document or information.

(3) ***Protected material*** is information —

(a) that is the subject of legal professional privilege; or

(b) that discloses, or would enable a person to ascertain, the identity of a person who communicated information to the agency in confidence; or

(c) the disclosure of which would —

(i) endanger a person's life or present an unreasonable risk of harm to a person; or

(ii) prejudice legal proceedings (including proceedings in a tribunal and a coronial inquiry, investigation and inquest); or

(iii) contravene a court order or law that, disregarding sections 162D(8) and 162E(8), would restrict the publication or other disclosure of information in connection with legal proceedings; or

(iv) be contrary to the public interest.

[Section 162F inserted: No. 49 of 2024 s. 50.]

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

(1) This section applies if, under an order made under section 162D or 162E, or under section 162D(6) or 162E(6), an information sharing agency —

(a) gives the court particulars of a document or information; or

(b) produces documents to the court; or

(c) gives the court information.

(2) The agency must advise the court about any risks the court should consider when disclosing the particulars, documents or information, including any risk to —

(a) a party to the proceedings; or

(b) a child to whom the proceedings relate; or

(c) a person who communicated information to the agency in confidence; or

(d) any other person.

[Section 162G inserted: No. 49 of 2024 s. 50.]

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

(1) The court must admit into evidence any particulars, documents or information provided under an order made under section 162D or 162E, or under section 162D(6) or 162E(6), on which the court intends to rely.

(2) Subsection (3) applies if a particular, a document or information is or relates to —

(a) a notification to the agency of suspected child abuse or family violence; or

(b) an assessment by the agency of investigations into a notification of that kind or the findings or outcomes of those investigations; or

(c) a report commissioned by the agency in the course of investigating a notification of that kind.

(3) Despite subsection (1), the court must not disclose the identity of the person (the ***notifier***) who made the notification, or information that could identify the notifier, unless —

(a) the notifier consents to the disclosure; or

(b) the notifier is a party to the proceedings; or

(c) the court is satisfied that the notifier's identity, or information that could identify the notifier, is critically important to the proceedings and that failure to make the disclosure would prejudice the proper administration of justice.

(4) Before making a disclosure for the reasons set out in subsection (3)(b) or (c), the court must —

(a) ensure that the agency is notified about the intended disclosure and given an opportunity to respond; and

(b) have regard to any advice given to the court under section 162G.

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

[Section 162H inserted: No. 49 of 2024 s. 50.]

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

(1) An information sharing agency must, when providing particulars, documents or information under an order made under section 162D or 162E, or under section 162D(6) or 162E(6), have regard to the matters prescribed by the regulations for the purposes of this subsection (the ***information sharing safeguards***).

(2) The court must have regard to the information sharing safeguards when using particulars, documents or information provided by an information sharing agency under an order made under section 162D or 162E, or under section 162D(6) or 162E(6).

(3) For the purposes of subsection (2), ***use*** includes handle, store and access.

[Section 162I inserted: No. 49 of 2024 s. 50.]

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

(1) A court may make an order under section 162D or 162E at any time after the commencement of child-related proceedings and before making final orders.

(2) A court may make an order under section 162E in relation to an information sharing agency without first making an order under section 162D in relation to that agency.

[Section 162J inserted: No. 49 of 2024 s. 50.]

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

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

[Section 162K inserted: No. 49 of 2024 s. 50.]

Subdivision 5 — Other orders about children

162. Orders relating to welfare of children — FLA s. 67ZC

(1) In addition to the jurisdiction that a court has under this Act in relation to children, a court also has jurisdiction to make orders relating to the welfare of children.

(2) In deciding whether to make an order under subsection (1) in relation to a child, a court must regard the best interests of the child as the paramount consideration.

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

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

(a) any Australian travel document (as defined in the *Australian Passports Act 2005* (Commonwealth)

section 6(1)) that has been issued to the child or any other person concerned;

(b) any passport or other travel document that has been issued to the child or any other person concerned by or on behalf of the government of a foreign country.

[Section 163 inserted: No. 49 of 2024 s. 51.]

Division 9 — Independent representation of child's interests

[Heading inserted: No. 35 of 2006 s. 137.]

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), (5) deleted]

[Section 164 inserted: No. 35 of 2006 s. 137; amended: No. 49 of 2024 s. 52.]

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.

(5A) Subject to subsection (5C), the independent children's lawyer must perform the following duties (not necessarily at the same time) —

(a) meet with the child;

(b) provide the child with an opportunity to express any views in relation to the matters to which the proceedings relate.

(5B) The independent children's lawyer has discretion in relation to the following matters (subject to any order or direction of the court with respect to the matter, for example under section 164(2)(b) or subsection (5E)(b) of this section) —

(a) when, how often and how meetings with the child take place;

(b) when, how often and how the child is provided with an opportunity to express views.

(5C) The independent children's lawyer is not required to perform a duty if —

(a) the child is under 5 years of age; or

(b) the child does not want to meet with the independent children's lawyer, or express their views (as the case requires); or

(c) there are exceptional circumstances that justify not performing the duty.

(5D) Without limiting subsection (5C)(c), exceptional circumstances for the purposes of that paragraph include that performing the duty would —

(a) expose the child to a risk of physical or psychological harm that cannot be safely managed; or

(b) have a significant adverse effect on the wellbeing of the child.

(5E) If the independent children's lawyer proposes not to perform a duty because of subsection (5C)(c), the court must do the following before making final orders —

(a) determine whether it is satisfied that exceptional circumstances exist that justify not performing the duty;

(b) if the court determines that those circumstances do not exist — make an order requiring the independent children's lawyer to meet with the child or provide the child with an opportunity to express their views (as the case requires).

(6) Subject to subsection (7), the independent children's lawyer —

(a) is not under an obligation to disclose to the court; and

(b) cannot be required to disclose to the court,

any information that the child communicates to the independent children's lawyer.

(7) The independent children's lawyer may disclose to the court any information that the child communicates to the independent children's lawyer if the independent children's lawyer considers the disclosure to be in the best interests of the child.

(8) Subsection (7) applies even if the disclosure is made against the wishes of the child.

[Section 165 inserted: No. 35 of 2006 s. 137; amended: No. 49 of 2024 s. 53.]

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.

[Section 166 inserted: No. 35 of 2006 s. 137.]

*[**167-172.** Deleted: No. 35 of 2006 s. 137.]*

Division 10 — Family violence

[Heading inserted: No. 35 of 2006 s. 142(1).]

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 in section 66.

[Section 173 inserted: No. 35 of 2006 s. 142(1); amended: No. 49 of 2024 s. 54.]

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.

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

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

(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.

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

(4) Failure to comply with this section does not affect the validity of the order or injunction.

[Section 174 inserted: No. 35 of 2006 s. 142(1); amended: No. 49 of 2024 s. 55.]

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.

[Section 175 inserted: No. 35 of 2006 s. 142(1).]

176. Power of court making 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 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 spending time with both parents is in the best interests of the child concerned; and

(c) if varying, discharging or suspending an order or injunction mentioned in 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.

[Section 176 inserted: No. 35 of 2006 s. 142(1); amended: No. 49 of 2024 s. 56.]

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;

(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(2)(b); 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.

[Section 177 inserted: No. 35 of 2006 s. 142(1); amended: No. 49 of 2024 s. 57.]

178. Special provisions relating to proceedings to make 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 earliest of —

(a) the time the interim order stops being in force; and

(b) the time specified in the interim order as the time at which the revival, variation or suspension ceases to have effect; and

(c) the time the order, injunction or arrangement is affected by an order (however described) made by a court (whether of a kind referred to in section 8(a) or (b) or otherwise), under section 176 or otherwise, after the revival, variation or suspension.

(2) No appeal lies in relation to the revival, variation or suspension.

[Section 178 inserted: No. 35 of 2006 s. 142(1); amended: No. 49 of 2024 s. 58.]

*[**179-182.** Deleted: No. 35 of 2006 s. 142(1).]*

Division 11 — Proceedings, parentage presumptions and evidence and jurisdiction as to child welfare laws

Subdivision 1 — What this Division does

183. What this Division does — FLA s. 69A

This Division deals with —

(a) the institution of proceedings (Subdivision 2); and

(b) presumptions of parentage (Subdivision 3); and

(c) parentage evidence (Subdivision 4); and

(d) jurisdiction in relation to child welfare laws (Subdivision 5).

Subdivision 2 — Institution of proceedings

184. Certain proceedings to be instituted only under this Act — FLA s. 69B

(1) Proceedings that may be instituted under this Act must not be instituted otherwise than under this Act.

(2) Subsection (1) does not apply in relation to the institution of proceedings under the Child Support (Assessment) Act.

185. Who may institute proceedings — FLA s. 69C

(1) Sections 88, 118, 139, 144, 152 and 180(5) are express provisions dealing with who may institute particular kinds of proceedings in relation to children.

(2) Any other kind of proceedings under this Act in relation to a child may, unless a contrary intention appears, be instituted by —

(a) either or both of the child's parents; or

(b) the child; or

(c) a grandparent of the child; or

(d) any other person concerned with the care, welfare or development of the child.

186. Institution of maintenance proceedings by certain persons — FLA s. 69D

(1) The Collector of Maintenance or an assistant collector of maintenance may, on behalf of a child —

(a) institute and conduct proceedings with respect to the maintenance of the child; and

(b) institute and conduct proceedings for the purpose of enforcing a child maintenance order made with respect to the child.

(2) Proceedings instituted on behalf of a child under subsection (1) are to be treated, for the purposes of section 185 and the provisions referred to in it, as having been instituted by the child.

187. Applicant may be in contempt — FLA s. 69F

A court may proceed with the hearing of proceedings in relation to a child even though the person who instituted the proceedings has failed to comply with an order of the court or of another court.

Subdivision 3 — Presumptions of parentage

188. Presumptions of parentage arising from marriage — FLA s. 69P

(1) If a child is born to a woman while she is married, the child is presumed to be a child of the woman and her husband.

(2) If —

(a) at a particular time —

(i) a marriage to which a woman is a party is ended by death; or

(ii) a purported marriage to which a woman is a party is annulled;

and

(b) a child is born to the woman within 44 weeks after that time,

the child is presumed to be a child of the woman and the husband or purported husband.

(3) If —

(a) the parties to a marriage separated at any time; and

(b) after the separation, they resumed cohabitation on one occasion; and

(c) within 3 months after the resumption of cohabitation, they separated again and lived separately and apart; and

(d) a child is born to the woman within 44 weeks after the end of the cohabitation, but after the divorce of the parties,

the child is presumed to be a child of the woman and the husband.

[Section 188 amended: No. 49 of 2024 s. 59.]

189. Presumption of paternity arising from cohabitation — FLA s. 69Q

If —

(a) a child is born to a woman; and

(b) at any time during the period beginning not earlier than 44 weeks and ending not less than 20 weeks before the birth, the woman cohabited with a man to whom she was not married,

the child is presumed to be a child of the man.

190. Presumption of parentage arising from registration of birth — FLA s. 69R

If a person's name is entered as a parent of a child in a register of births or parentage information kept under a law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction, the person is presumed to be a parent of the child.

191. Presumptions of parentage arising from findings of courts — FLA s. 69S

(1) If —

(a) during the lifetime of a particular person, a court has —

(i) found expressly that the person is a parent of a particular child; or

(ii) made a finding that it could not have made unless the person was a parent of a particular child;

and

(b) the finding has not been altered, set aside or reversed,

the person is conclusively presumed to be a parent of the child.

(2) If —

(a) after the death of a particular person, a court has —

(i) found expressly that the person was a parent of a particular child; or

(ii) made a finding that it could not have made unless the person was a parent of a particular child;

and

(b) the finding has not been altered, set aside or reversed,

the person is presumed to have been a parent of the child.

(3) For the purposes of this section —

court means a federal court, a court of a State or a Territory or a court of a prescribed overseas jurisdiction.

192. Presumption of paternity arising from acknowledgments — FLA s. 69T

If —

(a) under the law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction, a man has executed an instrument acknowledging that he is the father of a specified child; and

(b) the instrument has not been annulled or otherwise set aside,

the man is presumed to be the father of the child.

193. Rebuttal of presumptions etc. — FLA s. 69U

(1) A presumption arising under this Subdivision is rebuttable by proof on a balance of probabilities.

(2) Where —

(a) 2 or more presumptions arising under this Subdivision are relevant in any proceedings; and

(b) those presumptions, or some of those presumptions, conflict with each other and are not rebutted in the proceedings,

the presumption that appears to a court to be the more or most likely to be correct prevails.

(3) This section does not apply to a presumption arising under section 191(1).

Subdivision 4 — Parentage evidence

194. Evidence of parentage — FLA s. 69V

If the parentage of a child is a question in issue in proceedings under this Act, the court hearing the proceedings may make an order requiring any person to give such evidence as is material to the question.

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

As well as deciding, after receiving evidence, the issue of the parentage of a child for the purposes of proceedings, the court may also issue a declaration of parentage that is conclusive evidence of parentage for the purposes of all laws of the State.

[Section 194A inserted: No. 49 of 2024 s. 60.]

195. Orders for conducting parentage testing procedures — FLA s. 69W

(1) If the parentage of a child is a question in issue in proceedings under this Act, the court hearing the proceedings may make an

order (a ***parentage testing order***) requiring a parentage testing procedure to be conducted in relation to a person mentioned in subsection (3) for the purpose of obtaining information to assist in determining the parentage of the child.

(2) The court hearing the proceedings referred to in subsection (1) may make a parentage testing order —

(a) on its own initiative; or

(b) on the application of —

(i) a party to the proceedings; or

(ii) an independent children's lawyer representing the child's interests under an order made under section 164.

(3) A parentage testing order may be made in relation to —

(a) the child; or

(b) a person known to be the mother of the child; or

(c) any other person, if the court hearing the proceedings referred to in subsection (1) is of the opinion that, if the parentage testing procedure were to be conducted in relation to the person, the information that could be obtained might assist in determining the parentage of the child.

(4) A parentage testing order may be made subject to terms and conditions.

(5) This section does not affect the generality of section 194.

[Section 195 amended: No. 35 of 2006 s. 138.]

196. Orders associated with parentage testing orders — FLA s. 69X

(1) If a court makes a parentage testing order, it may also make orders under subsection (2) or (4).

(2) The court referred to in subsection (1) may make such orders as it considers necessary or desirable —

(a) to enable the parentage testing procedure to be conducted; or

(b) to make the parentage testing procedure more effective or reliable.

(3) Some examples of the kinds of orders a court may make under subsection (2) are as follows —

(a) an order requiring a person to submit to a medical procedure;

(b) an order requiring a person to provide a bodily sample;

(c) an order requiring a person to provide information relevant to the person's medical or family history.

(4) The court referred to in subsection (1) may make such orders as it considers just in relation to costs incurred in relation to —

(a) conducting the parentage testing procedure or other orders made by the court in relation to the parentage testing procedure; or

(b) the preparation of reports relating to the information obtained as a result of conducting the parentage testing procedure.

197. Orders directed to persons 18 or over — FLA s. 69Y

(1) If a person who is 18 or more years of age contravenes a parentage testing order or an order under section 196, the person is not liable to any penalty in relation to the contravention.

(2) A court may draw such inferences from the contravention as appear just in the circumstances.

198. Orders directed to children under 18 — FLA s. 69Z

(1) This section applies if a parentage testing order, or an order under section 196, requires a medical procedure or other act to be carried out in relation to a child who is under 18 years of age.

(2) The procedure or act must not be carried out in relation to the child under the order without the consent of —

(a) a parent of the child; or

(b) a guardian of the child; or

(c) a person who, under a parenting order, has responsibility for the child's long-term or day-to-day care, welfare and development.

(3) A court may draw such inferences from a failure or refusal to consent as mentioned in subsection (2) as appear just in the circumstances.

[Section 198 amended: No. 35 of 2006 s. 162.]

199. No liability if parent etc. consents — FLA s. 69ZA

(1) A person who conducts, or who assists in conducting, a medical procedure or other act in relation to a child under a parentage testing order is not liable to any civil or criminal action in relation to the proper conducting of the procedure or act if it is done with the consent of —

(a) a parent of the child; or

(b) a guardian of the child; or

(c) a person who, under a parenting order, has responsibility for the child's long-term or day-to-day care, welfare and development.

(2) Subsection (1) does not affect any liability of a person for an act done negligently, or negligently omitted to be done, in relation to conducting the medical procedure or act.

[Section 199 amended: No. 35 of 2006 s. 163.]

200. Regulations about conducting, and reporting on, parentage testing procedures — FLA s. 69ZB

The regulations may provide for —

(a) the conduct of parentage testing procedures under parentage testing orders; and

(b) the preparation of reports relating to the information obtained as the result of conducting such procedures.

201. Reports of information obtained may be received in evidence — FLA s. 69ZC

(1) A report made in accordance with regulations under section 200(b) may be received in evidence in any proceedings under this Act.

(2) If, under subsection (1), a report is received in evidence in proceedings under this Act, the court hearing the proceedings may make an order requiring the person who made the report, or any person whose evidence may be relevant in relation to the report, to appear before the court and give evidence in relation to the report.

(3) The court hearing proceedings under this Act may make an order under subsection (2) —

(a) on its own initiative; or

(b) on the application of —

(i) a party to the proceedings; or

(ii) an independent children's lawyer representing the relevant child's interests.

[Section 201 amended: No. 35 of 2006 s. 139.]

Subdivision 5 — Child welfare laws not affected

202. Child welfare laws not affected — FLA s. 69ZK

(1) A court must not make an order under this Act (other than an order under Division 7) in relation to a child who is under the control or in the care (however described), of a person under a child welfare law unless —

(a) the order is expressed to come into effect when the child ceases to be under that control or in that care; or

(b) the order is made in proceedings relating to the child in respect of the institution or continuation of which the written consent has been obtained from a person who, under the relevant child welfare law, has responsibility for the control or care (however described) of the child.

(2) Nothing in this Act, and no decree under this Act, affects —

(a) the jurisdiction of a court (whether of a kind referred to in section 8(a) or (b) or otherwise), or the power of an authority, under a child welfare law to make an order, or to take any other action, by which a child is placed under control or in the care (however described) of a person under a child welfare law; or

(b) any such order made or action taken; or

(c) the operation of a child welfare law in relation to a child.

(3) If it appears to a court that another court (whether of a kind referred to in section 8(a) or (b) or otherwise) or an authority proposes to make an order, or to take any other action, of the kind referred to in subsection (2)(a) in relation to a child, the first-mentioned court may adjourn any proceedings before it that relate to the child.

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

[Heading inserted: No. 49 of 2024 s. 61.]

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

(1) A court may give reasons in short form for a decision it makes in relation to an interim parenting order.

(2) Subsection (1) does not otherwise affect the obligation of a court to give reasons for a decision it makes in relation to any matter arising under this Act.

[Section 202AA inserted: No. 49 of 2024 s. 61.]

Division 11A — Principles for conducting child-related proceedings

[Heading inserted: No. 35 of 2006 s. 105.]

Subdivision 1 — Proceedings to which this Division applies

[Heading inserted: No. 35 of 2006 s. 105.]

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).

[Section 202A inserted: No. 35 of 2006 s. 105.]

Subdivision 2 — Principles for conducting child-related proceedings

[Heading inserted: No. 35 of 2006 s. 105.]

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 from being subjected to, or exposed to, abuse, neglect or family violence; 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.

[Section 202B inserted: No. 35 of 2006 s. 105; amended: No. 13 of 2013 s. 19.]

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.

[Section 202C inserted: No. 35 of 2006 s. 105.]

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.

[Section 202D inserted: No. 35 of 2006 s. 105.]

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

[Heading inserted: No. 35 of 2006 s. 105.]

202E. General duties — FLA s. 69ZQ

(1) In giving effect to the principles in section 202B, the court must —

(aa) ask each party to the proceedings —

(i) whether the party considers that the child concerned has been, or is at risk of being, subjected to, or exposed to, abuse, neglect or family violence; and

(ii) whether the party considers that he or she, or another party to the proceedings, has been, or is at risk of being, subjected to family violence;

and

(a) decide which of the issues in the proceedings require full investigation and hearing and which may be disposed of summarily; and

(b) decide the order in which the issues are to be decided; and

(c) give directions or make orders about the timing of steps that are to be taken in the proceedings; and

(d) in deciding whether a particular step is to be taken, consider whether the likely benefits of taking the step justify the costs of taking it; and

(e) make appropriate use of technology; and

(f) if the court considers it appropriate, encourage the parties to use family dispute resolution or family counselling; and

(g) deal with as many aspects of the matter as it can on a single occasion; and

(h) deal with the matter, where appropriate, without requiring the parties' physical attendance at court.

(2) Subsection (1) does not limit section 202B(1).

(3) A failure to comply with subsection (1) does not invalidate an order.

[Section 202E inserted: No. 35 of 2006 s. 105; amended: No. 13 of 2013 s. 20.]

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.

[Section 202F inserted: No. 35 of 2006 s. 105.]

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.

[Section 202G inserted: No. 35 of 2006 s. 105.]

Subdivision 4 — Matters relating to evidence

[Heading inserted: No. 35 of 2006 s. 105.]

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.

[Section 202H inserted: No. 35 of 2006 s. 105.]

*[**202I.** Deleted: No. 13 of 2013 s. 28.]*

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.

[Section 202J inserted: No. 35 of 2006 s. 105.]

*[**202K.** Deleted: No. 49 of 2024 s. 62.]*

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).

[Section 202L inserted: No. 35 of 2006 s. 105.]

Division 12 — State and Territory orders relating to children

*[**203.** Deleted: No. 35 of 2006 s. 176.]*

204. Registration of State child orders — FLA s. 70C and 70D

The rules may make provision for and in relation to the registration in a court of State child orders made in this or another State.

205. Effect of registration — FLA s. 70E

A State child order registered in a court under section 204 has the same force and effect as if it were an order made by that court under this Act.

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

[Heading inserted: No. 49 of 2024 s. 63.]

Subdivision 1 — Preliminary

[Heading inserted: No. 49 of 2024 s. 63.]

205A. Simplified outline — FLA s. 70NAA

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

(2) The court may, at any stage of proceedings (and without having to make a finding about the contravention), make any of the following orders —

(a) a make-up time parenting order;

(b) an order varying or suspending a parenting order;

(c) an order requiring the respondent and any other party to the proceedings to attend a post-separation parenting program.

(3) If the court finds on the balance of probabilities that the respondent contravened the child-related order without having a reasonable excuse, the court may make any of the following orders (having regard to the seriousness of the contravention) —

(a) an order requiring the respondent to enter into a bond;

(b) an order imposing a fine on the respondent for failing to enter into a bond.

(4) If the court is satisfied beyond reasonable doubt that the respondent contravened the child-related order without having a reasonable excuse, the court may also make any of the following orders (having regard to the seriousness of the contravention) —

(a) an order imposing a fine on the respondent;

(b) an order imposing a sentence of imprisonment on the respondent.

(5) This Division also sets out ancillary matters relating to terms of imprisonment, the enforcement of bonds and other miscellaneous matters.

[Section 205A inserted: No. 49 of 2024 s. 63.]

205B. Objects — FLA s. 70NAB

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

(a) supporting compliance with child-related orders; and

(b) resolving difficulties associated with child-related orders that are parenting orders which have contributed to non-compliance with such orders (including by varying or making further orders); and

(c) deterring non-compliance with child-related orders; and

(d) upholding the authority of the court by enforcing compliance with child-related orders where a court considers this necessary and appropriate; and

(e) providing for sanctions for a person who contravenes a child-related order without reasonable excuse.

[Section 205B inserted: No. 49 of 2024 s. 63.]

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

(1) A person ***contravenes*** a child-related order only if —

(a) the person is a person (other than a child) to whom the order applies and —

(i) the person intentionally fails to comply with the order; or

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

or

(b) the person is not a person to whom the order applies, and the person is not a child, but —

(i) the person intentionally prevents compliance with the order by a person to whom the order applies; or

(ii) the person aids or abets a contravention of the order by a person to whom the order applies.

(2) Without limiting subsection (1), a person ***contravenes*** a child-related order if —

(a) the order provides for a matter set out in an item of the Table in column 1; and

(b) the person intentionally does a thing set out in that item in column 2.

Table

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

[Section 205C inserted: No. 49 of 2024 s. 63.]

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

(1) A person has a ***reasonable excuse*** for contravening a child-related order if —

(a) the person contravened the order because at the time of the contravention the person did not understand the obligations imposed by the order; and

(b) a court considers that the person ought to be excused in respect of the contravention.

(2) If a court decides that a person has a reasonable excuse under subsection (1) for contravening a child-related order, the court must explain to the person, in language likely to be readily understood by the person —

(a) the obligations imposed on the person by the order; and

(b) the consequences that may follow if the person contravenes the order again.

(3) A person has a ***reasonable excuse*** for contravening a child-related order if —

(a) the person contravened the order because the person reasonably believed that the person's actions constituting the contravention were necessary to protect the health or safety of the person, a child or any other person; and

(b) the period of the contravention was not longer than necessary to protect the health or safety of the person, child or other person.

(4) This section does not limit the circumstances in which a person may have a reasonable excuse for contravening a child-related order.

[Section 205D inserted: No. 49 of 2024 s. 63.]

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

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

[Section 205E inserted: No. 49 of 2024 s. 63.]

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

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

[Section 205F inserted: No. 49 of 2024 s. 63.]

*[**205FA.** Deleted: No. 35 of 2006 s. 101.]*

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

[Heading inserted: No. 49 of 2024 s. 63.]

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

(1) This Subdivision sets out orders that a court exercising jurisdiction in proceedings under this Act may make if —

(a) an issue arises in the proceedings about whether a person (the ***respondent***) has contravened a child-related order; and

(b) a party to the proceedings makes an application for an order under this Subdivision in relation to the issue.

(2) Each of the following is a ***child-related order*** —

(a) a parenting order;

(b) an injunction granted by a court —

(i) under section 235; or

(ii) under section 235A in so far as the injunction is for the protection of a child;

(c) a bond entered into —

(i) under a parenting order; or

(ii) under section 205K(1)(a); or

(iii) for the purposes of section 205N(3);

(d) an undertaking given to, and accepted by, a court that relates to, or to the making of, an order, injunction or bond referred to in any of paragraphs (a) to (c);

(e) a subpoena issued under the rules that —

(i) relates to, or to the making of, an order, injunction or bond referred to in any of paragraphs (a) to (c); and

(ii) is issued to a party to the proceedings for the order, injunction or bond, as the case may be.

[Section 205G inserted: No. 49 of 2024 s. 63.]

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

(1) If a child does not spend time with a person as required by a child-related order as a result of the alleged contravention mentioned in section 205G(1), then, in lieu of that time, the court may make a parenting order (a ***make-up time parenting order***) that the child spend time with the person.

(2) The court may make a make-up time parenting order at any stage of the proceedings.

(3) To avoid doubt, the amount of time specified in the make-up time parenting order may be different from the amount of time that the child missed with the person as a result of the alleged contravention.

[Section 205H inserted: No. 49 of 2024 s. 63.]

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

(1) The court may, at any stage of the proceedings, vary a child-related order that is a parenting order.

(2) Subsection (1) does not limit the circumstances in which a court having jurisdiction under this Act may vary a child-related order that is a parenting order.

(3) The court may, at any stage of the proceedings, suspend for a specified period of time the operation of, or part of the operation of, a child-related order that is a parenting order.

[Section 205I inserted: No. 49 of 2024 s. 63.]

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

(1) The court may, at any stage of the proceedings, make an order requiring the respondent and, if appropriate, one or more other parties to the proceedings, to attend a post-separation parenting program or other specified program.

(2) The executive manager of the court must advise the provider of the program of the making of an order under subsection (1) as soon as reasonably practicable after the order is made.

(3) The provider of the program must inform the court, and any other party to the proceedings, if —

(a) the provider considers that a person ordered to attend the program is unsuitable to attend the program; or

(b) a person ordered to attend the program fails to attend the entire program, or any part of it.

(4) The court may make any order (other than an order under section 205K(1)(d)) that it considers appropriate if a person ordered to attend a program is considered as being unsuitable to attend the program, or fails to attend any part of the program.

(5) If the court has found that the respondent has contravened the child-related order without having a reasonable excuse, then the court must take into account the seriousness of that contravention when making an order under subsection (4).

[Section 205J inserted: No. 49 of 2024 s. 63.]

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

(1) If the court finds that the respondent has contravened a child-related order without having a reasonable excuse, the court may make any of the following orders —

(a) an order requiring the respondent to enter into a bond in accordance with section 205L;

(b) if an order is made under paragraph (a), and the respondent fails, without having a reasonable excuse, to enter into the bond — an order imposing a fine not exceeding $3 130 on the respondent;

(c) where the contravention resulted in a child not spending time with, or living with, a person (the ***affected person***) for a period — an order requiring the respondent to compensate the affected person for some or all of any expenses the affected person reasonably incurred as a result of the contravention;

(d) where the court is satisfied beyond reasonable doubt that the respondent contravened the order —

(i) an order imposing a fine not exceeding $18 780;

(ii) an order imposing a term of imprisonment.

(2) In making an order mentioned in subsection (1), the court must have regard to —

(a) the likely effects of making the order on any child, or any other person; and

(b) the seriousness of the contravention.

(3) Without limiting the matters the court may take into account, the following matters must be taken into account by the court when having regard to the seriousness of the contravention —

(a) whether a court has previously found that the respondent has contravened a child-related order without having a reasonable excuse;

(b) whether the respondent behaved in a way that showed a serious disregard of the respondent's obligations under the child-related order mentioned in subsection (1);

(c) the behaviour of any person with whom the child is to live or spend time under the child-related order mentioned in subsection (1).

(4) The court may sentence the respondent to imprisonment under subsection (1)(d)(ii) only if the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention in any other way under subsection (1).

[Section 205K inserted: No. 49 of 2024 s. 63.]

Subdivision 3 — Further provisions relating to bonds and imprisonment

[Heading inserted: No. 49 of 2024 s. 63.]

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

(1) This section sets out requirements relating to bonds that the court may require the respondent to enter into under section 205K(1)(a).

(2) A bond is to be for a specified period of up to 2 years.

(3) A bond may be —

(a) with or without surety; and

(b) with or without security.

(4) The conditions that may be imposed on the respondent by a bond include (without limitation) conditions that require the respondent —

(a) to attend a post-separation parenting program; or

(b) to attend an appointment (or a series of appointments) with a family consultant; or

(c) to attend family counselling; or

(d) to attend family dispute resolution; or

(e) to be of good behaviour.

(5) Before requiring the respondent to enter into a bond, the court must explain to the respondent, in language likely to be readily understood by the respondent —

(a) the purpose and effect of the proposed requirement; and

(b) the consequences that may follow if the respondent —

(i) fails to enter into the bond; or

(ii) having entered into the bond — fails to act in accordance with the bond.

[Section 205L inserted: No. 49 of 2024 s. 63.]

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

(1) This section applies if —

(a) the court finds that the respondent has contravened a child-related order without having a reasonable excuse; and

(b) the respondent has entered into a bond in accordance with an order made under section 205K(1)(a); and

(c) the respondent fails, without having a reasonable excuse, to comply with the bond.

(2) The court may —

(a) without prejudice to the continuance of the bond, impose a fine not exceeding $3 130 on the respondent; or

(b) revoke the bond and deal with the respondent in any manner in which the respondent could have been dealt with for the contravention of the child-related order if —

(i) the bond had not been entered into; and

(ii) the respondent was before the court under this Division in respect of the contravention of the child-related order.

(3) Without limiting the matters the court may take into account, the court must take into account the following matters when acting under subsection (2) —

(a) the fact that the bond was entered into;

(b) anything done pursuant to the bond;

(c) any fine imposed, and any other order made, for or in respect of the contravention of the child-related order.

[Section 205M inserted: No. 49 of 2024 s. 63.]

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

(1) This section applies if a sentence of imprisonment is imposed on the respondent under section 205K(1)(d)(ii).

(2) The sentence of imprisonment must be expressed to be —

(a) for a specified period of no more than 12 months; or

(b) for a period ending at the earlier of —

(i) the time when the respondent complies with the child-related order concerned; or

(ii) the time when the respondent has been imprisoned under the sentence for 12 months, or such lesser period as is specified by the court ordering the sentence.

(3) When sentencing the respondent to imprisonment, the court may direct that, after serving a specified part of the term of imprisonment, the respondent be released upon the respondent

entering into a bond (with or without surety or security) that the respondent will be of good behaviour for a specified period of up to 2 years.

(4) The court that sentences the respondent to imprisonment must —

(a) state the reasons why it is satisfied as mentioned in section 205K(4); and

(b) cause those reasons to be entered in the records of the court.

(5) The failure of the court to comply with subsection (4) does not invalidate a sentence.

[Section 205N inserted: No. 49 of 2024 s. 63.]

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

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

(2) The court that sentences the respondent to imprisonment may —

(a) suspend the sentence upon the terms and conditions determined by the court; and

(b) terminate such a suspension.

[Section 205O inserted: No. 49 of 2024 s. 63.]

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

(1) The court must not make an order imposing a sentence of imprisonment on the respondent under section 205K(1)(d)(ii), in respect of a contravention of a child maintenance order made under this Act, unless the court is satisfied that the contravention was intentional or fraudulent.

(2) To avoid doubt, the serving by the respondent of a period of imprisonment imposed under section 205K(1)(d)(ii) for failure to make a payment under a child maintenance order does not affect the respondent's liability to make the payment.

(3) The court must not make an order imposing a sentence of imprisonment on the respondent under section 205K(1)(d)(ii) in respect of —

(a) a contravention of an administrative assessment of child support made under the *Child Support (Assessment) Act 1989* (Commonwealth); or

(b) a breach of a child support agreement made under that Act; or

(c) a contravention of an order made by a court (whether of a kind referred to in section 8(a) or (b) or otherwise) under Part 7 Division 4 of that Act for a departure from such an assessment (including such an order that contains matters mentioned in section 141 of that Act).

[Section 205P inserted: No. 49 of 2024 s. 63.]

Subdivision 4 — Miscellaneous

[Heading inserted: No. 49 of 2024 s. 63.]

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

(1) The court may issue a warrant authorising a person to whom it is addressed to arrest the respondent if —

(a) a child-related order that is a parenting order provides that a child is to live with, spend time with or communicate with a person (the ***complainant***); and

(b) the court is satisfied that there are reasonable grounds for believing that the respondent has contravened the order on any of the grounds mentioned in any of items 1 to 3 of the Table in section 205C(2); and

(c) the issue of the warrant is necessary to ensure that the respondent will attend before the court to be dealt with under this Division for the alleged contravention.

(2) A warrant stops being in force on the date specified in the warrant (which must be no more than 6 months after the issue of the warrant).

[Section 205Q inserted: No. 49 of 2024 s. 63.]

*[**205QA.** Deleted: No. 49 of 2024 s. 63.]*

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

(1) This section applies if —

(a) an act or omission by the respondent —

(i) constitutes an alleged contravention of a child-related order; and

(ii) also constitutes an alleged offence under any law;

and

(b) the respondent is prosecuted in respect of the offence.

(2) The court must —

(a) dismiss proceedings in relation to the alleged contravention of the child-related order; or

(b) adjourn those proceedings until the prosecution has been completed.

(3) Nothing in this Division renders a person liable to be punished twice in respect of the same act or omission.

[Section 205R inserted: No. 49 of 2024 s. 63.]

Division 14 — Dealing with people who have been arrested

[Heading inserted: No. 49 of 2024 s. 63.]

Subdivision 1 — What this Division does

[Heading inserted: No. 49 of 2024 s. 63.]

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

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

[Section 205S inserted: No. 49 of 2024 s. 63.]

Subdivision 2 — Dealing with people who have been arrested

[Heading inserted: No. 49 of 2024 s. 63.]

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

This Subdivision applies if a person —

(a) is arrested under a warrant issued under section 205Q(1); or

(b) is arrested without warrant under a recovery order.

[Section 205SA inserted: No. 49 of 2024 s. 63.]

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

(1) The arresting person must —

(a) ensure that the alleged offender is brought before a court before the end of the holding period applicable under subsection (4); and

(b) take all reasonable steps to ensure that, before the alleged offender is brought before a court, the person who applied for the warrant or recovery order is aware —

(i) that the alleged offender has been arrested; and

(ii) of the court before which the alleged offender is to be brought.

(2) The alleged offender must not be released before the end of the holding period except under an order of a court.

(3) This section does not authorise the holding in custody of the alleged offender after the end of the holding period.

(4) In this section —

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

(a) if a Saturday, Sunday or public holiday starts within 24 hours after the arrest of the alleged offender, the longer of the following periods —

(i) the period starting with the arrest and ending 48 hours later;

(ii) the period starting with the arrest and ending at the end of the next day after the day of the arrest that is not a Saturday, Sunday or public holiday;

or

(b) in any other case, the period starting with the arrest and ending 24 hours later.

[Section 205SB inserted: No. 49 of 2024 s. 63.]

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

(1) This section applies if —

(a) the alleged offender is brought before a court under section 205SB; and

(b) there is an application before the court for the alleged offender to be dealt with under Division 13 for the alleged contravention.

(2) The court must, without delay, proceed to hear and determine the application.

[Section 205SC inserted: No. 49 of 2024 s. 63.]

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

(1) This section applies if —

(a) the alleged offender is brought before a court under section 205SB; and

(b) there is no application, or no longer any application, before the court for the alleged offender to be dealt with under Division 13 for the alleged contravention; and

(c) the court is aware that there is an application before another court for the alleged offender to be dealt with under Division 13 for the alleged contravention.

(2) The court must, without delay —

(a) order that the alleged offender is to be released from custody on entering into a recognisance (with or without surety or security) that the alleged offender will attend before the other court on a date, at a time and at a place specified by the court; or

(b) order the arresting person to arrange for the alleged offender to be brought before the other court on such date and at such time as the court specifies, being a date and time such that the alleged offender is to be brought before the other court as soon as practicable, and in any event not more than 72 hours, after the order is made.

(3) If a court makes an order under subsection (2)(b) for the alleged offender to be brought before another court —

(a) subject to paragraph (c), the alleged offender may be kept in custody until brought before the other court; and

(b) if the alleged offender is brought before the other court as required by the order, the other court must, without delay, proceed to hear and determine the application mentioned in subsection (1)(c); and

(c) if the alleged offender is not brought before the other court as required by the order, the alleged offender must be released without delay.

[Section 205SD inserted: No. 49 of 2024 s. 63.]

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

(1) This section applies if —

(a) the alleged offender is brought before a court under section 205SB; and

(b) there is no application, or no longer any application, before the court for the alleged offender to be dealt with under Division 13 for the alleged contravention; and

(c) so far as the court is aware, there is no application, or no longer any application, before any other court for the alleged offender to be dealt with under Division 13 for the alleged contravention.

(2) The court must, without delay, order the release of the alleged offender.

[Section 205SE inserted: No. 49 of 2024 s. 63.]

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

(1) If a court hearing an application as required by section 205SC(2) or 205SD(3)(b) adjourns the hearing, the court must —

(a) order the alleged offender to be kept in such custody as the court considers appropriate during the adjournment; or

(b) order that the alleged offender is to be released from custody, either on entering into a recognisance (with or without surety or security) that the alleged offender will attend before the court on the resumption of the hearing or otherwise.

(2) This section does not authorise the holding in custody of the alleged offender during an adjournment of proceedings that —

(a) is expressed to be for a period of more than 24 hours; or

(b) continues for more than 24 hours.

[Section 205SF inserted: No. 49 of 2024 s. 63.]

[205SG, 205SH. *Deleted: No. 49 of 2024 s. 63.]*

Part 5A — De facto relationships

[Heading inserted: No. 25 of 2002 s. 47.]

Division 1 — Introductory

[Heading inserted: No. 25 of 2002 s. 47.]

205T. Terms used

In this Part —

child, of a de facto relationship, includes —

(a) a biological child of both of the de facto partners born before the commencement of the de facto relationship; or

(b) a child adopted since the commencement of the de facto relationship by the de facto partners or by either of them with the consent of the other; or

(ca) a child whose parentage has, since the commencement of the de facto relationship, been transferred under the *Surrogacy Act 2008* to the de facto partners; or

(c) a child of a de facto partner whose de facto partner is presumed or proved to be the other parent of the child under a Commonwealth, State or Territory law,

and includes a child of a de facto relationship that has ended;

(FLA s. 4(1))

financial agreement means a financial agreement within the meaning of section 205ZN, 205ZO or 205ZP;

(FLA s. 4(1))

financial matters, in relation to de facto partners, means matters with respect to —

(a) the maintenance of one of the de facto partners; or

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

(c) the maintenance of children of the de facto partners;

former financial agreement means an agreement made before the commencement of this Part between de facto partners with respect to any of the matters mentioned in sections 205ZN(2)(a) or (b), 205ZO(2)(a) or (b) or 205ZP(2)(a) or (b), or matters incidental or ancillary to those matters;

(FLA s. 4(1))

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

[Section 205T inserted: No. 25 of 2002 s. 47; amended: No. 47 of 2008 s. 62; No. 28 of 2022 s. 8.]

205U. Application of Part generally

(1) This Part applies to de facto relationships.

(2) However, this Part does not apply to a de facto relationship that ended before the commencement of this Part.

(3) This Part does not authorise anything that would otherwise be unlawful.

[Section 205U inserted: No. 25 of 2002 s. 47.]

205V. Right to certain civil proceedings limited

A de facto partner who is, or was, eligible to apply for an order with respect to property under Division 2 may not apply to the Supreme Court in its equitable jurisdiction for relief in respect of that property.

[Section 205V inserted: No. 25 of 2002 s. 47.]

Division 2 — Property adjustment orders and maintenance orders

[Heading inserted: No. 25 of 2002 s. 47.]

Subdivision 1 — Introductory

[Heading inserted: No. 25 of 2002 s. 47.]

205W. This Division does not apply to certain matters covered by binding financial agreements or former financial agreements — FLA s. 71A

(1) This Division does not apply to —

(a) financial matters to which a financial agreement that is binding on the parties to the agreement applies; or

(b) financial resources to which a financial agreement that is binding on the parties to the agreement applies.

(2) This Division does not apply to —

(a) financial matters to which a former financial agreement that is binding on the parties to the agreement applies; or

(b) financial resources to which a former financial agreement that is binding on the parties to the agreement applies.

(3) Subsections (1) and (2) do not apply in relation to —

(a) proceedings between the following persons with respect to the maintenance of the person referred to in subparagraph (i) —

(i) a de facto partner; and

(ii) the bankruptcy trustee of a bankrupt de facto partner;

or

(b) proceedings between a de facto partner and the bankruptcy trustee of a bankrupt de facto partner, with respect to any vested bankruptcy property in relation to

the bankrupt partner, being proceedings arising out of the de facto relationship.

[Section 205W inserted: No. 25 of 2002 s. 47; amended No. 28 of 2022 s. 9.]

205X. People to whom this Part applies — connection with WA

Despite section 36(5), before making an order under section 205ZCA, 205ZE or 205ZG, or a declaration under section 205ZA(1), a court must be satisfied —

(a) that one or both of the de facto partners to whom the application relates were resident in Western Australia on the day on which the application was made; and

(b) that —

(i) both de facto partners have resided in Western Australia for at least one third of the duration of their de facto relationship; or

(ii) substantial contributions of the kind referred to in section 205ZG(4)(a), (b) or (c) have been made in the State by the applicant.

[Section 205X inserted: No. 25 of 2002 s. 47; amended: No. 28 of 2022 s. 10.]

205Y. Court not otherwise limited by connection with WA referred to in section 205X

Where a court is satisfied as to the matters specified in section 205X(a) and (b), it may make an order or declaration under this Division by reason of facts and circumstances even if those facts and circumstances, or some of them, took place before the day on which the application was made or outside the State.

[Section 205Y inserted: No. 25 of 2002 s. 47; amended: No. 28 of 2022 s. 11.]

205Z. Where court may make order under this Division

(1) A court may make an order in relation to a de facto relationship only if satisfied —

(a) there has been a de facto relationship between the partners for at least 2 years; or

(b) there is a child of the de facto relationship who has not yet attained the age of 18 years and failure to make the order would result in serious injustice to the partner caring or responsible for the child; or

(c) the de facto partner who applies for the order made substantial contributions of a kind mentioned in section 205ZG(4)(a), (b) or (c) and failure to make the order would result in serious injustice to the partner.

(2) In deciding whether there has been a de facto relationship between the partners for at least 2 years, the court must consider whether there was any break in the continuity of the relationship and, if so, the length of the break and the extent of the breakdown in the relationship.

(3) Subsection (2) does not limit the matters the court may consider.

[Section 205Z inserted: No. 25 of 2002 s. 47.]

205ZA. Declaration of interests in property — FLA s. 78

(1) In a proceeding between de facto partners with respect to existing title or rights in respect of property, a court may declare the title or rights, if any, that a partner has in respect of the property.

(2) Where a court makes a declaration under subsection (1), it may make consequential orders to give effect to the declaration, including orders as to sale or partition and interim or permanent orders as to possession.

[Section 205ZA inserted: No. 25 of 2002 s. 47; amended: No. 28 of 2022 s. 12.]

Subdivision 2 — Alteration of property interests, and maintenance

[Heading inserted: No. 25 of 2002 s. 47.]

205ZB. Applications, and notifications to spouses

(1) Subject to subsection (2), a de facto partner whose de facto relationship has ended may apply for an order under section 205ZCA, 205ZE or 205ZG, or a declaration under section 205ZA(1), only if —

(a) the application is made within the period (the ***standard application period***) of —

(i) 2 years after the end of the de facto partner's de facto relationship; or

(ii) 12 months after a financial agreement or former financial agreement between the de facto partners was set aside, or found to be invalid, as the case may be;

or

(b) both de facto partners consent to the application.

(1A) However, if proceedings are instituted by an application made with the consent of both de facto partners, the court may dismiss the proceedings if it is satisfied that, because the consent was obtained by fraud, duress or unconscionable conduct, allowing the proceedings to continue would amount to a miscarriage of justice.

(2) The court may grant the de facto partner leave to apply after the end of the standard application period if the court is satisfied that hardship would be caused to the de facto partner or a child if leave were not granted.

(3) If a de facto partner who is a party to an application under this Division has a spouse, that person is to give that spouse notification of the application in accordance with the rules.

[Section 205ZB inserted: No. 25 of 2002 s. 47; amended: No. 35 of 2006 s. 72; No. 28 of 2022 s. 13.]

205ZC. Right of de facto partner to maintenance — FLA s. 72

(1) A de facto partner is liable to maintain the other de facto partner, to the extent that the first-mentioned partner is reasonably able to do so, if, and only if, that other partner is unable to support themselves adequately whether —

(a) by reason of having the care and control of a child of the de facto relationship who has not attained the age of 18 years; or

(b) by reason of age or physical or mental incapacity for appropriate gainful employment; or

(c) for any other adequate reason,

having regard to any relevant matter referred to in section 205ZD.

(2) The liability under subsection (1) of a bankrupt de facto partner to maintain the other de facto partner may be satisfied, in whole or in part, by way of the transfer of vested bankruptcy property in relation to the bankrupt partner if the court makes an order under this Division for the transfer.

[Section 205ZC inserted: No. 25 of 2002 s. 47; amended: No. 28 of 2022 s. 14.]

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

(1) In proceedings with respect to the maintenance of a de facto partner, the court may make such order as it considers proper for the provision of maintenance in accordance with this Division.

(2) Subsection (3) applies if —

(a) an application is made for an order under this section in proceedings between de facto partners with respect to the maintenance of 1 of the partners; and

(b) either of the following subparagraphs apply to 1 of the de facto partners —

(i) when the application was made, the de facto partner was a bankrupt;

(ii) after the application was made but before it is finally determined, the de facto partner became a bankrupt;

and

(c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and

(d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings.

(3) The court must join the bankruptcy trustee as a party to the proceedings.

(4) If a bankruptcy trustee is a party to proceedings with respect to the maintenance of a de facto partner, then, except with the leave of the court, the bankrupt de facto partner is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt partner.

(5) The court must not grant leave under subsection (4) unless the court is satisfied that there are exceptional circumstances.

(6) Subsection (7) applies if —

(a) an application is made for an order under this section in proceedings between de facto partners with respect to the maintenance of 1 of the partners; and

(b) either of the following subparagraphs apply to 1 of the de facto partners (the ***debtor party***) —

(i) when the application was made, the de facto partner was a debtor subject to a personal insolvency agreement;

(ii) after the application was made but before it is finally determined, the de facto partner becomes a debtor subject to a personal insolvency agreement;

and

(c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and

(d) the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings.

(7) The court must join the trustee of the agreement as a party to the proceedings.

(8) If the trustee of a personal insolvency agreement is a party to proceedings with respect to the maintenance of a de facto partner then, except with the leave of the court, the de facto partner who is the debtor subject to the personal insolvency agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.

(9) The court must not grant leave under subsection (8) unless the court is satisfied that there are exceptional circumstances.

(10) For the purposes of subsections (2) and (6), an application for an order under this section is taken to be finally determined when —

(a) the application is withdrawn or dismissed; or

(b) an order (other than an interim order) is made as a result of the application.

[Section 205ZCA inserted: No. 28 of 2022 s. 15.]

205ZD. Matters to be taken into consideration in relation to maintenance — FLA s. 75

[(1) deleted.]

(2) In exercising jurisdiction under section 205ZCA, the court must take into account only the matters referred to in subsection (3).

(3) The matters to be taken into account are —

(a) the age and state of health of each of the de facto partners; and

(b) the income, property and financial resources of each of the de facto partners and the physical and mental capacity of each of them for appropriate gainful employment; and

(c) whether either de facto partner has the care or control of a child of the de facto relationship who has not attained the age of 18 years; and

(d) commitments of each of the de facto partners that are necessary to enable the partner to support —

(i) himself or herself; and

(ii) a child or another person that the partner has a duty to maintain;

and

(e) the responsibilities of either de facto partner to support any other person; and

(f) subject to subsection (4), the eligibility of either de facto partner for a pension, allowance or benefit under —

(i) any law of the Commonwealth, of a State or Territory or of another country; or

(ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia,

and the rate of any such pension, allowance or benefit being paid to either de facto partner; and

(g) a standard of living that in all the circumstances is reasonable; and

(h) the extent to which the payment of maintenance to the de facto partner whose maintenance is under consideration would increase the earning capacity of that partner by enabling that partner to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income; and

(ha) the effect of any proposed order on the ability of a creditor of a de facto partner to recover the creditor's debt, so far as that effect is relevant; and

(i) the extent to which the de facto partner whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other de facto partner; and

(j) the duration of the de facto relationship and the extent to which it has affected the earning capacity of the de facto partner whose maintenance is under consideration; and

(k) the need to protect a de facto partner who wishes to continue that partner's role as a parent; and

(l) if either de facto partner is cohabiting with another person, the financial circumstances relating to the cohabitation; and

(m) the terms of any order made or proposed to be made under section 205ZG in relation to —

(i) the property of the de facto partners; or

(ii) vested bankruptcy property in relation to a bankrupt de facto partner;

and

(ma) the terms of any order or declaration made or proposed to be made under the Family Law Act Part VIIIC in relation to a de facto partner; and

(n) any child support under the Child Support (Assessment) Act that a de facto partner has provided, is to provide, or might be liable to provide in the future, for a child of the de facto relationship; and

(o) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; and

(p) the terms of any financial agreement or former financial agreement that is binding on the de facto partners; and

(q) without limiting paragraph (p), the terms of any superannuation agreement between the de facto partners that is in force (as those terms are defined in the Family Law Act section 90YD).

(4) In exercising its jurisdiction under section 205ZCA, a court must disregard any entitlement of the de facto partner whose maintenance is under consideration to an income tested pension, allowance or benefit.

[Section 205ZD inserted: No. 25 of 2002 s. 47; amended: No. 28 of 2022 s. 16.]

205ZE. Urgent de facto partner maintenance cases — FLA s. 77

Where, in proceedings with respect to the maintenance of a de facto partner, it appears to the court that the partner is in immediate need of financial assistance, but it is not practicable in the circumstances to determine immediately what order, if any, should be made, the court may order the payment, pending

the disposal of the proceedings, of such periodic sum or other sums as the court considers reasonable.

[Section 205ZE inserted: No. 25 of 2002 s. 47.]

205ZF. Specifications in orders of payments etc. for de facto maintenance purposes — FLA s. 77A

(1) Where —

(a) a court makes an order under this Act (whether or not the order is made in proceedings in relation to the maintenance of a de facto partner, is made by consent or varies an earlier order), and the order has the effect of requiring —

(i) payment of a lump sum, whether in one amount or by instalments; or

(ii) the transfer or settlement of property;

and

(b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a de facto partner,

the court must —

(c) express the order to be an order to which this section applies; and

(d) specify the portion of the payment, or the value of the portion of the property, attributable to the provision of maintenance for the partner.

(2) Where —

(a) a court makes an order of a kind referred to in subsection (1)(a); and

(b) the order —

(i) is not expressed to be an order to which this section applies; or

(ii) is expressed to be an order to which this section applies, but does not comply with subsection (1)(d),

any payment, transfer or settlement of a kind referred to in subsection (1)(a), that the order has the effect of requiring, is to be taken not to make provision for the maintenance of a de facto partner to the relevant de facto relationship.

[Section 205ZF inserted: No. 25 of 2002 s. 47.]

205ZG. Alteration of property interests — FLA s. 79

(1) In property settlement proceedings, the court may make such order as it considers appropriate —

(a) in the case of proceedings with respect to the property of the de facto partners, or either of them — altering the interests of the partners in the property; or

(b) in the case of proceedings with respect to the vested bankruptcy property in relation to a bankrupt de facto partner — altering the interests of the bankruptcy trustee in the vested bankruptcy property.

(1A) An order made under subsection (1) may include —

(a) an order for a settlement of property in substitution for any interest in the property; and

(b) an order requiring either or both of the de facto partners, or the relevant bankruptcy trustee (if any), to make, for the benefit of either or both of the de facto partners or a child of the de facto relationship, such settlement or transfer of property as the court determines.

(2) An order made under subsection (1) in property settlement proceedings may, after the death of 1 of the de facto partners, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(3) The court must not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

(4) In considering what order (if any) should be made under this section in property settlement proceedings the court must take into account —

(a) the financial contribution made directly or indirectly by or on behalf of a de facto partner or a child of the de facto relationship to the acquisition, conservation or improvement of any of the property of the de facto partners, or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the de facto partners or either of them; and

(b) the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a de facto partner or a child of the de facto relationship to the acquisition, conservation or improvement of any of the property of the de facto partners or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the de facto partners or either of them; and

(c) the contribution made by a de facto partner to the welfare of the family constituted by the de facto partners and any children of the de facto partners, including any contribution made in the capacity of homemaker or parent; and

(d) the effect of any proposed order upon the earning capacity of either de facto partner; and

(e) the matters referred to in section 205ZD(3) so far as they are relevant; and

(f) any other order made under this Act affecting a de facto partner or a child of the de facto relationship; and

(g) any child support under the Child Support (Assessment) Act that a de facto partner has provided, is to provide, or might be liable to provide in the future, for a child of the de facto relationship.

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

(a) that there is likely to be a significant change in the financial circumstances of the de facto partners, or either of them and that, having regard to the time when that change is likely to take place, it is reasonable to adjourn the proceedings; and

(b) that, if that significant change in financial circumstances occurs, an order that the court could make with respect to the following matters is more likely to do justice as between the de facto partners than an order that the court could make immediately with respect to those following matters —

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

(ii) the vested bankruptcy property in relation to a bankrupt de facto partner.

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

(6) Where a court proposes to adjourn proceedings as provided by subsection (5A), the court may, before so adjourning the proceedings, make such interim order or orders or such other order or orders (if any) as it considers appropriate with respect to —

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

(b) any of the vested bankruptcy property in relation to a bankrupt de facto partner.

(7) The court may, in forming an opinion for the purposes of subsection (5) as to whether there is likely to be a significant change in the financial circumstances of either or both of the de facto partners, have regard to any change in the financial circumstances of a de facto partner that may occur by reason that the partner —

(a) is a contributor to a superannuation fund or scheme, or participates in any scheme or arrangement that is in the nature of a superannuation scheme; or

(b) may become entitled to property as the result of the exercise in his or her favour, by the trustee of a discretionary trust, of a power to distribute trust property,

but nothing in this subsection is to be taken to limit the circumstances in which the court may form the opinion that there is likely to be a significant change in the financial circumstances of a de facto partner.

(8) Where, before property settlement proceedings are completed, either de facto partner dies —

(a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable rules 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 that it would have made an order with respect to property if the deceased party had not died, and that it is still appropriate to make an order with respect to property, the court may make such order as it considers appropriate with respect to —

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

(ii) any of the vested bankruptcy property in relation to a bankrupt de facto partner;

and

(c) an order made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(9) A court must not make an order under this section in property settlement proceedings (other than an order until further order or an order made with the consent of all the parties to the proceedings) unless —

(a) the parties to the proceedings have attended a conference in relation to the matter to which the proceedings relate with the Principal Registrar, a registrar or a deputy registrar; or

(b) the court is satisfied that, having regard to the need to make an order urgently, or to any other special circumstance, it is appropriate to make the order notwithstanding that the parties to the proceedings have not attended a conference as mentioned in paragraph (a); or

(c) the court is satisfied that it is not practicable to require the parties to the proceedings to attend a conference as mentioned in paragraph (a).

(10) The following are entitled to become a party to proceedings in which an application is made for an order under this section —

(a) a creditor of a party to the proceedings if the creditor may not be able to recover the creditor's debt if the order were made;

(b) any other person whose interests would be affected by the making of the order.

(11) Subsection (10) does not apply to a creditor of a party to the proceedings —

(a) if the party is a bankrupt, to the extent to which the debt is a provable debt (within the meaning of the Bankruptcy Act); or

(b) if the party is a debtor subject to a personal insolvency agreement, to the extent to which the debt is covered by the personal insolvency agreement.

(12) Subsection (13) applies if —

(a) an application is made for an order under this section in proceedings between de facto partners with respect to the property of the de facto partners, or either of them; and

(b) either of the following subparagraphs apply to a de facto partner —

(i) when the application was made, the de facto partner was a bankrupt;

(ii) after the application was made but before it is finally determined, the de facto partner became a bankrupt;

and

(c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and

(d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings.

(13) The court must join the bankruptcy trustee as a party to the proceedings.

(14) If a bankruptcy trustee is a party to property settlement proceedings, then, except with the leave of the court, the bankrupt de facto partner is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt partner.

(15) The court must not grant leave under subsection (14) unless the court is satisfied that there are exceptional circumstances.

(16) Subsection (17) applies if —

(a) an application is made for an order under this section in proceedings between de facto partners with respect to the property of the de facto partners, or either of them; and

(b) either of the following subparagraphs apply to a de facto partner (the ***debtor party***) —

(i) when the application was made, the de facto partner was a debtor subject to a personal insolvency agreement;

(ii) after the application was made but before it is finally determined, the de facto partner becomes a debtor subject to a personal insolvency agreement;

and

(c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and

(d) the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings.

(17) The court must join the trustee of the agreement as a party to the proceedings.

(18) If the trustee of a personal insolvency agreement is a party to property settlement proceedings, then, except with the leave of the court, the de facto partner who is the debtor subject to the personal insolvency agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.

(19) The court must not grant leave under subsection (18) unless the court is satisfied that there are exceptional circumstances.

(20) For the purposes of subsections (12) and (16), an application for an order under this section is taken to be finally determined when —

(a) the application is withdrawn or dismissed; or

(b) an order (other than an interim order) is made as a result of the application.

[Section 205ZG inserted: No. 25 of 2002 s. 47; amended: No. 28 of 2022 s. 17.]

205ZH. Setting aside of orders altering property interests — FLA s. 79A

(1) Where, on application by a person affected by an order made by a court under section 205ZG in property settlement proceedings, the court is satisfied that —

(a) there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence (including failure to disclose relevant information), the giving of false evidence or any other circumstance; or

(b) in the circumstances that have arisen since the order was made it is impracticable for the order to be carried out or impracticable for a part of the order to be carried out; or

(c) a person has defaulted in carrying out an obligation imposed on the person by the order and, in the circumstances that have arisen as a result of that default, it is just and equitable to vary the order or to set the order aside and make another order in substitution for the order; or

(d) in the circumstances that have arisen since the making of the order, being circumstances of an exceptional nature relating to the care, welfare and development of a child of the de facto relationship, the child or, where the applicant has caring responsibility for the child (within the meaning of subsection (3)), the applicant, will suffer hardship if the court does not vary the order or set the order aside and make another order in substitution for the order; or

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

the court may, in its discretion, vary the order or set the order aside and, if it considers appropriate, make another order under section 205ZG in substitution for the order so set aside.

(2) A court may, on application by a person affected by an order made by a court under section 205ZG in property settlement proceedings and with the consent of all the parties to the proceedings in which the order was made, vary the order or set the order aside and, if it considers appropriate, make another order under section 205ZG in substitution for the order so set aside.

(3) For the purposes of subsection (1)(d), a person has caring responsibility for a child if —

(a) the person is a parent of the child with whom the child lives; or

(b) a parenting order provides that the child is to live with the person; or

(c) a parenting order provides that the person has parental responsibility for the child.

(4) An order varied or made under subsection (1) or (2) may, after the death of a party to the proceedings in which the order was so varied or made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(5) Where, before proceedings under this section in relation to an order made under section 205ZG are completed, either de facto partner dies —

(a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the 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 subsection (1) or (2) in relation to the order if the deceased party had not died; and

(ii) that it is still appropriate to exercise its powers under subsection (1) or (2) in relation to the order,

the court may vary the order, set the order aside, or set the order aside and make another order under section 205ZG in substitution for the order so set aside; and

(c) an order varied or made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(6) In the exercise of its powers under subsection (1), (2) or (5), a court is to have regard to the interests of, and shall make any order proper for the protection of, a bona fide purchaser or other person interested.

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

(8) Subsection (9) applies if —

(a) an order is made by a court under section 205ZG in proceedings with respect to the property of de facto partners or either of them; and

(b) either of the following subparagraphs apply to a de facto partner —

(i) when the order was made, the de facto partner was a bankrupt;

(ii) after the order was made, the de facto partner became a bankrupt.

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

(10) Subsection (11) applies if —

(a) a de facto partner is a bankrupt; and

(b) an order is made by a court under section 205ZG in proceedings with respect to the vested bankruptcy property in relation to the bankrupt partner.

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

(12) Subsection (13) applies if —

(a) an order is made by a court under section 205ZG in proceedings with respect to the property of de facto partners or either of them; and

(b) either of the following subparagraphs apply to a de facto partner —

(i) when the order was made, the de facto partner was a debtor subject to a personal insolvency agreement;

(ii) after the order was made, the de facto partner became a debtor subject to a personal insolvency agreement.

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

[Section 205ZH inserted: No. 25 of 2002 s. 47; amended: No. 35 of 2006 s. 43 and 164; No. 28 of 2022 s. 18.]

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.

[Section 205ZHA inserted: No. 35 of 2006 s. 44.]

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.

[Section 205ZHB inserted: No. 35 of 2006 s. 44.]

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) a 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.

[Section 205ZHC inserted: No. 35 of 2006 s. 44; amended: No. 28 of 2022 s. 19.]

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.

[Section 205ZHD inserted: No. 35 of 2006 s. 44.]

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

(1) Subsection (2) applies in relation to a person who —

(a) applies for an order under this Division; or

(b) is a party to proceedings for an order under this Division.

(2) The rules may specify the circumstances in which a person referred to in subsection (1) is to give notice of the application to a person who is not a party to the proceedings.

[Section 205ZHE inserted: No. 28 of 2022 s. 20.]

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.

[Section 205ZHF inserted: No. 28 of 2022 s. 20.]

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

(1) Subsection (2) applies in relation to a person who —

(a) is a de facto partner; and

(b) is a party to a proceeding for an application under section 205ZA, 205ZCA, 205ZG or 205ZH; and

(c) before that application is finally determined, becomes a bankrupt.

(2) The rules may make provision for a person referred to in subsection (1) to notify a court exercising jurisdiction under this Act that the person has become a bankrupt.

(3) Subsection (4) applies in relation to a person who —

(a) is a de facto partner; and

(b) is a party to a proceeding for an application under section 205ZA, 205ZCA, 205ZG or 205ZH; and

(c) before that application is finally determined, becomes a debtor subject to a personal insolvency agreement.

(4) The rules may make provision for a person referred to in subsection (3) to notify a court exercising jurisdiction under this Act that the person has become a debtor subject to a personal insolvency agreement.

(5) Subsection (6) applies in relation to a person who —

(a) is a de facto partner; and

(b) is a party to a proceeding for an application under section 205ZA, 205ZCA, 205ZG or 205ZH; and

(c) before that application is finally determined, becomes a party to a proceeding before a court (whether of a kind

referred to in section 8(a) or (b) or otherwise) under the Bankruptcy Act that relates to —

(i) the bankruptcy of the person; or

(ii) the person's capacity as a debtor subject to a personal insolvency agreement.

(6) The rules may make provision for a person referred to in subsection (5) to notify a court exercising jurisdiction under this Act of the institution of the proceeding under the Bankruptcy Act.

(7) Subsection (8) applies in relation to a person who —

(a) is the bankruptcy trustee of a bankrupt de facto partner; and

(b) applies under the Bankruptcy Act section 139A for an order under Part VI Division 4A of that Act.

(8) The rules may make provision for a person referred to in subsection (7) to notify a court exercising jurisdiction under this Act of the making of the application.

(9) For the purposes of this section, an application for an order under section 205ZCA, 205ZG or 205ZH is taken to be finally determined when —

(a) the application is withdrawn or dismissed; or

(b) an order (other than an interim order) is made as a result of the application.

(10) For the purposes of this section, an application for a declaration under section 205ZA is taken to be finally determined when —

(a) the application is withdrawn or dismissed; or

(b) a declaration is made as a result of the application.

[Section 205ZHG inserted: No. 28 of 2022 s. 20.]

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

(1) Subsection (2) applies in relation to a person who —

(a) is the bankruptcy trustee of a bankrupt de facto partner; and

(b) applies under the Bankruptcy Act section 139A for an order under Part VI Division 4A of that Act in relation to an entity (other than the other de facto partner).

(2) The rules may make provision for a person referred to in subsection (1) who is aware that either de facto partner is a party to proceedings under this Act, to notify the other de facto partner of the making of the application.

[Section 205ZHH inserted: No. 28 of 2022 s. 20.]

205ZI. General powers of court — FLA s. 80

(1) The court, in exercising its powers under this Division, may do any or all of the following —

(a) order payment of a lump sum, whether in one amount or by instalments;

(b) order payment of a weekly, monthly, yearly or other periodic sum;

(c) order that a specified transfer or settlement of property be made by way of maintenance for a de facto partner;

(d) order that payment of any sum ordered to be paid be wholly or partly secured in such manner as the court directs;

(e) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;

(f) appoint or remove trustees;

(g) order that payments be made direct to a de facto partner, to a trustee to be appointed or into court or to a public authority for the benefit of the de facto partner;

(h) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for a life or during joint lives or until further order;

(i) impose terms and conditions;

(j) make an order by consent;

(k) make any other order (whether or not of the same nature as those mentioned in the preceding paragraphs), which it thinks it is necessary to make to do justice;

(l) subject to this Act and the rules, make an order under this Division at any time.

(2) The making of an order of a kind referred to in subsection (1)(c), or of any other order under this Division, in relation to the maintenance of a de facto partner does not prevent a court from making a subsequent order in relation to the maintenance of the partner.

(3) The rules may make provision with respect to the making of orders under this Division in relation to the maintenance of de facto partners (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.

(4) If a bankruptcy trustee is a party to a proceeding before the court, the court may make an order under subsection (1)(e) directed to the bankrupt.

(5) If the trustee of a personal insolvency agreement is a party to a proceeding before the court, the court may make an order under subsection (1)(e) directed to the debtor subject to the personal insolvency agreement.

(6) Subsections (4) and (5) do not limit subsection (1)(e).

[Section 205ZI inserted: No. 25 of 2002 s. 47; amended: No. 28 of 2022 s. 21.]

205ZJ. Duty of court to end financial relations of de facto partners — FLA s. 81

In considering what order to make in a proceeding under this Division, other than under section 205ZA, a court must, as far as practicable, make such orders as will finally determine the financial relationships between de facto partners who are no longer in a de facto relationship and avoid further proceedings between them.

[Section 205ZJ inserted: No. 25 of 2002 s. 47.]

205ZK. Cessation of de facto maintenance orders — FLA s. 82

(1) An order with respect to the maintenance of a de facto partner ceases to have effect upon the death of the partner or the person liable to make payments under the order.

(2) Nothing in this section affects the recovery of arrears due under an order at the time when the order ceased to have effect.

(3) An order with respect to the maintenance of a de facto partner ceases to have effect on the marriage of the person unless in special circumstances a court otherwise orders.

(4) Where a marriage referred to in subsection (3) takes place, it is the duty of the person for whose benefit the order was made to inform without delay the person liable to make payments under the order of the date of the marriage.

(5) Any money paid in respect of a period after the event referred to in subsection (3) may be recovered in a court.

[Section 205ZK inserted: No. 25 of 2002 s. 47.]

205ZL. Modification of de facto maintenance orders — FLA s. 83

(1) If there is in force an order, whenever made, with respect to the maintenance of a de facto partner made by a court, the court may, by order —

(a) discharge the order if there is any just cause for so doing; or

(b) suspend its operation wholly or in part and either until further order or until a fixed time or the happening of a future event; or

(c) revive wholly or in part an order suspended under paragraph (b); or

(d) subject to subsection (2), vary the order —

(i) so as to increase or decrease any amount ordered to be paid; or

(ii) in any other manner.

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

(a) in any case — in proceedings with respect to the maintenance of a de facto partner; or

(b) if there is a bankrupt de facto partner — on the application of the bankruptcy trustee; or

(c) if a de facto partner is a debtor subject to a personal insolvency agreement — on the application of the trustee of the agreement.

(2) A court must not make an order increasing or decreasing an amount ordered to be paid by an order unless it is satisfied —

(a) that, since the order was made or last varied —

(i) the circumstances of a person for whose benefit the order was made have so changed; or

(ii) the circumstances of the person liable to make payments under the order have so changed; or

(iii) in the case of an order that operates in favour of, or is binding on, a legal personal representative, the circumstances of the estate are such,

as to justify doing so; or

(b) that, since the order was made, or last varied, the cost of living has changed to such an extent as to justify its so doing (this is expanded on in subsections (3) and (4)); or

(c) in a case where the order was made by consent, that the amount ordered to be paid is not proper or adequate (this is expanded on in subsection (5)); or

(d) that material facts were withheld from the court that made the order or from a court that varied the order or material evidence previously given before such a court was false.

(3) In satisfying itself for the purposes of subsection (2)(b), a court must have regard to any changes that have occurred in the Consumer Price Index published by the Australian Statistician.

(4) A court must not, in considering the variation of an order, have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or was last varied having regard to a change in the cost of living.

(5) In satisfying itself for the purposes of subsection (2)(c), a court must have regard to any payments, and any transfer or settlement of property, previously made by a de facto partner, or by the bankruptcy trustee of a de facto partner, to —

(a) the other de facto partner; or

(b) any other person for the benefit of the other de facto partner.

(6) An order decreasing the amount of a periodic sum payable under an order or discharging an order may be expressed to be retrospective to such date as the court considers appropriate.

(7) Where, as provided by subsection (6), an order decreasing the amount of a periodic sum payable under an order is expressed to be retrospective to a specified date, any moneys paid under the second-mentioned order since the specified date, being moneys that would not have been required to be paid under the second-mentioned order as varied by the first-mentioned order, may be recovered in a court.

(8) Where, as provided by subsection (6), an order discharging an order is expressed to be retrospective to a specified date, any moneys paid under the second-mentioned order since the specified date may be recovered in a court.

(9) For the purposes of this section, the court must have regard to sections 205ZC and 205ZD.

(10) The discharge of an order does not affect the recovery of arrears due under the order at the time as at which the discharge takes effect.

[Section 205ZL inserted: No. 25 of 2002 s. 47; amended: No. 28 of 2022 s. 22.]

Division 2A — Orders and injunctions binding third parties

[Heading inserted: No. 35 of 2006 s. 34.]

Subdivision 1 — Introductory

[Heading inserted: No. 35 of 2006 s. 34.]

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.

[Section 205ZLA inserted: No. 35 of 2006 s. 34.]

205ZLB. Term used: third party — 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.

[Section 205ZLB inserted: No. 35 of 2006 s. 34.]

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).

[Section 205ZLC inserted: No. 35 of 2006 s. 34.]

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.

[Section 205ZLD inserted: No. 35 of 2006 s. 34.]

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.

[Section 205ZLE inserted: No. 35 of 2006 s. 34.]

Subdivision 2 — Orders under section 205ZG

[Heading inserted: No. 35 of 2006 s. 34.]

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.

[Section 205ZLF inserted: No. 35 of 2006 s. 34.]

Subdivision 3 — Orders or injunctions under section 235A

[Heading inserted: No. 35 of 2006 s. 34.]

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.

[Section 205ZLG inserted: No. 35 of 2006 s. 34.]

Subdivision 4 — Other matters

[Heading inserted: No. 35 of 2006 s. 34.]

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.

[Section 205ZLH inserted: No. 35 of 2006 s. 34.]

205ZLI. Protection for 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.

[Section 205ZLI inserted: No. 35 of 2006 s. 34.]

205ZLJ. Service of documents on 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.

[Section 205ZLJ inserted: No. 35 of 2006 s. 34.]

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.

[Section 205ZLK inserted: No. 35 of 2006 s. 34.]

Division 3 — Financial agreements

[Heading inserted: No. 25 of 2002 s. 47.]

205ZM. Term used: dealt with — FLA s. 90A

In this Division —

dealt with includes the meaning given by section 205ZR(2).

[Section 205ZM inserted: No. 25 of 2002 s. 47.]

205ZN. Financial agreements before beginning de facto relationship — FLA s. 90B

(1) If —

(a) people who are contemplating entering into a de facto relationship with each other make a written agreement with respect to any of the matters mentioned in subsection (2); and

(b) at the time of the making of the agreement, no other agreement (whether made under this section or section 205ZO or 205ZP) is in force between the parties with respect to any of those matters; and

(c) the agreement is expressed to be made under this section,

the agreement is a financial agreement.

(2) The matters referred to in subsection (1)(a) are the following —

(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 later time and before the breakdown of the relationship, is to be dealt with;

(b) the maintenance of either of them —

(i) during the de facto relationship; or

(ii) after the de facto relationship has ended; or

(iii) both during the de facto relationship and after the de facto relationship has ended.

(3) A financial agreement made as mentioned in subsection (1) may contain matters incidental or ancillary to those mentioned in subsection (2).

(4) A financial agreement made as mentioned in subsection (1) may terminate a previous financial agreement made as mentioned in that subsection, or former financial agreement, between the same parties.

[Section 205ZN inserted: No. 25 of 2002 s. 47.]

205ZO. Financial agreements during de facto relationship — FLA s. 90C

(1) If —

(a) de facto partners in a de facto relationship make a written agreement with respect to any of the matters mentioned in subsection (2); and

(b) at the time of the making of the agreement, no other agreement (whether made under this section or section 205ZN or 205ZP) is in force between the partners with respect to any of those matters; and

(c) the agreement is expressed to be made under this section,

the agreement is a financial agreement.

(2) The matters referred to in subsection (1)(a) are the following —

(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 later time and during the de facto relationship, is to be dealt with;

(b) the maintenance of either of them —

(i) during the de facto relationship; or

(ii) after the de facto relationship has ended; or

(iii) both during the de facto relationship and after the de facto relationship has ended.

(3) A financial agreement made as mentioned in subsection (1) may contain matters incidental or ancillary to those mentioned in subsection (2).

(4) A financial agreement made as mentioned in subsection (1) may terminate a previous financial agreement made as mentioned in that subsection, a financial agreement made as mentioned in section 205ZN(1), or a former financial agreement, between the same parties.

[Section 205ZO inserted: No. 25 of 2002 s. 47.]

205ZP. Financial agreements after de facto relationship ends — FLA s. 90D

(1) If —

(a) after a de facto relationship is ended, the parties to the former de facto relationship make a written agreement with respect to any of the matters mentioned in subsection (2); and

(b) at the time of the making of the agreement, no other agreement (whether made under this section or section 205ZN or 205ZO) is in force between the parties with respect to any of those matters; and

(c) the agreement is expressed to be made under this section,

the agreement is a financial agreement.

(2) The matters referred to in subsection (1)(a) are the following —

(a) how all or any of the property or financial resources that either or both of them had or acquired during the former de facto relationship is to be dealt with;

(b) the maintenance of either of them.

(3) A financial agreement made as mentioned in subsection (1) may contain matters incidental or ancillary to those mentioned in subsection (2).

(4) A financial agreement made as mentioned in subsection (1) may terminate a previous financial agreement made as mentioned in that subsection, a financial agreement made as mentioned in section 205ZN(1) or 205ZO(1), or a former financial agreement, between the same parties.

[Section 205ZP inserted: No. 25 of 2002 s. 47.]

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

(1) A financial agreement may include an agreement that deals with superannuation interests (as defined in the Family Law Act section 90YD) of either or both of the parties to the financial agreement as if those interests were property.

(2) For the purposes of subsection (1), it does not matter whether or not the superannuation interests are in existence at the time the agreement is made.

Note for this section:

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

[Section 205ZPA inserted: No. 28 of 2022 s. 23.]

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

(1) A financial agreement or former financial agreement that is binding on the parties to the agreement, to the extent to which it deals with how, in the event of the breakdown of the de facto relationship, all or any of the property or financial resources of either or both of the parties at the time when the agreement is

made, or at a later time and during the de facto relationship, is to be dealt with, is of no force or effect until a separation declaration is made.

(2) Subsection (1) ceases to apply if either or both of the parties die.

(3) A separation declaration is a written declaration that complies with subsections (4) and (5), and may be included in the financial agreement to which it relates.

(4) The declaration must be signed by at least 1 of the parties to the financial agreement or former financial agreement.

(5) The declaration must state that —

(a) the parties lived in a de facto relationship; and

(b) the parties have separated and are living separately and apart at the declaration time; and

(c) in the opinion of the party (or parties) making the declaration, there is no reasonable likelihood of cohabitation being resumed.

(6) For the purposes of subsection (5)(b), the parties to the de facto relationship can have separated and be living separately and apart even if —

(a) their cohabitation was brought to an end by the action or conduct of 1 only of them; or

(b) they have continued to reside in the same residence; or

(c) either of them has rendered some household services to the other.

(7) In subsection (5)(b) —

declaration time means the time when the declaration was signed by a party to the financial agreement or former financial agreement.

[Section 205ZPB inserted: No. 28 of 2022 s. 23.]

205ZQ. Requirements with respect to provisions in financial agreements relating to maintenance of de facto partner or child or children — FLA s. 90E

A provision of a financial agreement that relates to the maintenance of a party to the agreement or a child or children is void unless the provision specifies —

(a) the party, or the child or children, for whose maintenance provision is made; and

(b) the amount provided for, or the value of the portion of the relevant property attributable to, the maintenance of the party, or of the child or each child, as the case may be.

[Section 205ZQ inserted: No. 25 of 2002 s. 47.]

205ZR. Certain provisions in agreements — FLA s. 90F

(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.

(2) To avoid doubt, a provision in an agreement made as mentioned in section 205ZO(1) or 205ZP(1) that provides for property or financial resources owned by a party to the agreement to continue in the ownership of that party is taken, for the purposes of that section, to be a provision with respect to how the property or financial resources are to be dealt with.

[Section 205ZR inserted: No. 25 of 2002 s. 47; amended: No. 35 of 2006 s. 31.]

205ZS. When financial agreements and former financial agreements are binding — FLA s. 90G

(1) A financial agreement is binding on the parties to the agreement if, and only if —

(a) the agreement is signed by both parties; and

(b) the agreement contains, in relation to each party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, as certified in an annexure to the agreement, with independent legal advice from a legal practitioner as to the following matters —

(i) the effect of the agreement on the rights of that party; and

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

and

(c) the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and

(d) the agreement has not been terminated and has not been set aside by a court; and

(e) after the agreement is signed, the original agreement is given to one of the parties and a copy is given to the other.

(2) A former financial agreement is binding on the parties to the agreement if, and only if —

(a) the agreement is signed by both parties; and

(b) the agreement has not been terminated and has not been set aside by a court.

(3) A court may make such orders for the enforcement of a financial agreement, or a former financial agreement, that is binding on the parties to the agreement as it thinks necessary.

[Section 205ZS inserted: No. 25 of 2002 s. 47; amended: No. 35 of 2006 s. 32.]

205ZT. Effect of death of party to financial agreement — FLA s. 90H

A financial agreement that is binding on the parties to the agreement continues to operate despite the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party.

[Section 205ZT inserted: No. 25 of 2002 s. 47.]

205ZU. Termination of financial agreement and former financial agreement — FLA s. 90J

(1) The parties to a financial agreement or a former financial agreement may terminate the agreement only by —

(a) including a provision to that effect in another financial agreement as mentioned in section 205ZN(4), 205ZO(4) or 205ZP(4); or

(b) making a written agreement (a ***termination agreement***) to that effect.

(2) A termination agreement is binding on the parties if, and only if —

(a) the agreement is signed by both parties to the agreement; and

(b) the agreement contains, in relation to each party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, as certified in an annexure to the agreement, with independent legal

advice from a legal practitioner as to the following matters —

(i) the effect of the agreement on the rights of that party;

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

and

(c) the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and

(d) the agreement has not been set aside by a court; and

(e) after the agreement is signed, the original agreement is given to one of the parties and a copy is given to the other.

(3) A court may, on an application by a person who was a party to the financial agreement, or the former financial agreement, that has been terminated, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that agreement and any other interested persons.

[Section 205ZU inserted: No. 25 of 2002 s. 47; amended: No. 35 of 2006 s. 33.]

205ZV. Circumstances in which court may set aside financial agreement, termination agreement or former financial agreement — FLA s. 90K

(1) A court may, on an application by a person who was a party to the financial agreement, termination agreement or former financial agreement, or by any other interested person, make an order setting aside a financial agreement, a termination

agreement or a former financial agreement if, and only if, the court is satisfied that —

(a) the agreement was obtained by fraud (including non-disclosure of a material matter); or

(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

(b) the agreement is void, voidable or unenforceable; or

(c) in the circumstances that have arisen since the agreement was made it is impracticable for the agreement or a part of the agreement to be carried out; or

(d) since the making of the agreement, a material change in circumstances has occurred (being circumstances relating to the care, welfare and development of a child of the de facto relationship) and, as a result of the change, the child or, if the applicant has caring responsibility for the child (within the meaning of subsection (2)), a party to the agreement will suffer hardship if the court does not set the agreement aside; or

(e) in respect of the making of a financial agreement or former financial agreement, a party to the agreement engaged in conduct that was, in all the circumstances, unconscionable; or

(f) a payment flag is operating under the Family Law Act Part VIIIC on a superannuation interest (as defined in section 90YD of that Act) covered by the agreement and there is no reasonable likelihood that the operation of the

flag will be terminated by a flag lifting agreement under that Part.

(2) For the purposes of subsection (1)(d), a person has caring responsibility for a child if —

(a) the person is a parent of the child with whom the child lives; or

(b) a parenting order provides that the child is to live with the person; or

(c) a parenting order provides that the person has parental responsibility for the child.

(3) A court may, on an application by a person who was a party to the financial agreement or former 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 or former 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 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, termination agreement or former financial agreement on the grounds specified in subsection (1)(aa) includes —

(a) either or both of the parties to the 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.

[Section 205ZV inserted: No. 25 of 2002 s. 47; amended: No. 35 of 2006 s. 29 and 165; No. 28 of 2022 s. 24.]

205ZW. Validity, enforceability and effect of financial agreements, termination agreements and former financial agreements — FLA s. 90KA

The question of whether a financial agreement, a termination agreement or a former financial agreement is valid, enforceable or effective is to be determined by a court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts, and, in proceedings relating to such an agreement, a court —

(a) subject to paragraph (b), has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the Supreme Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the Supreme Court has original jurisdiction; and

(b) has power to make an order for the payment, by a party to the agreement to another party to the agreement, of interest on an amount payable under the agreement, from the time when the amount became or becomes due and payable, at a rate not exceeding the rate prescribed by the rules; and

(c) in addition to, or instead of, making an order or orders under paragraph (a) or (b), may order that the agreement, or a specified part of the agreement, be enforced as if it were an order of the court.

[Section 205ZW inserted: No. 25 of 2002 s. 47.]

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.

[Section 205ZX inserted: No. 35 of 2006 s. 45.]

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.

[Section 205ZY inserted: No. 35 of 2006 s. 45.]

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) a 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.

[Section 205ZZ inserted: No. 35 of 2006 s. 45.]

205ZZA. Intervention by DPP — FLA s. 90Q

(1) The DPP may intervene in any proceedings under Division 2 in relation to which a court is notified under section 205ZX, or in

any proceedings under section 205ZY or 205ZZ 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.

[Section 205ZZA inserted: No. 35 of 2006 s. 45.]

Part 6 — Intervention

206. Intervention by Attorney General — FLA s. 91

(1) The Attorney General may intervene in, and contest or argue any question arising in —

(a) any proceedings in a court relating to any non-federal jurisdiction under this Act where the court hearing the proceedings requests the Attorney General to do so or a matter arises that affects the public interest; or

(b) any proceedings in a court relating to any non-federal jurisdiction under this Act for or in relation to —

(i) a parenting order, other than a child maintenance order; or

(ii) an order relating to the welfare of a child.

(2) If the Attorney General intervenes in proceedings the Attorney General is to be treated as a party to the proceedings with all the rights, duties, and liabilities of a party.

[Section 206 amended: No. 35 of 2006 s. 166.]

207. Intervention by CEO — FLA s. 91B

(1) In any proceedings under this Act that affect, or may affect, the welfare of a child, the court hearing the proceedings may request the CEO to intervene in the proceedings and the CEO may intervene in those proceedings on that request.

(2) If a child the subject of proceedings under this Act appears to be a child in need of protection within the meaning of the *Children and Community Services Act 2004* the CEO may intervene in any proceedings with respect to the child.

(3) If the CEO intervenes in proceedings the CEO is to be treated as a party to the proceedings with all the rights, duties and liabilities of a party.

[Section 207 amended: No. 34 of 2004 Sch. 2 cl. 10(6) and (7).]

208. Intervention by other persons — FLA s. 92

(1) Any person may apply for leave to intervene in any proceedings under this Act, and the court hearing the proceedings may make an order entitling that person to intervene in the proceedings.

(2) An order under this section may be made upon such conditions as the court hearing the proceedings thinks fit.

(3) If a person intervenes in proceedings by leave of a court the person is, unless the court otherwise orders, to be treated as a party to the proceedings with all the rights, duties and liabilities of a party.

209. Intervention in child abuse cases — FLA s. 92A

(1) This section applies to proceedings under this Act in which it has been alleged that a child has been abused or is at risk of being abused.

(2) Each of the following persons is entitled to intervene in the proceedings referred to in subsection (1) —

(a) a guardian of the child;

(b) a parent of the child with whom the child lives;

(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;

(e) any other person responsible for the child's care, welfare and development;

(f) the CEO;

(g) a person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.

(3) If a person intervenes under this section in proceedings the person is, unless the court hearing the proceedings otherwise orders, to be treated as a party to the proceedings with all the rights, duties and liabilities of a party.

[Section 209 amended: No. 34 of 2004 Sch. 2 cl. 10(7); No. 35 of 2006 s. 167.]

Part 7 — Appeals

209A. Terms used

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.

[Section 209A inserted: No. 35 of 2006 s. 37.]

210. Federal jurisdiction

In respect of the federal jurisdiction of the Family Court of Western Australia, and of the courts of summary jurisdiction referred to in section 38, the appeal provisions of the Family Law Act, the *Federal Circuit and Family Court of Australia Act 2021* (Commonwealth) and the Bankruptcy Act apply.

[Section 210 amended: No. 28 of 2022 s. 26.]

210A. Non-federal jurisdictions — appeal from decree of Magistrates Court constituted by 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.

[Section 210A inserted: No. 35 of 2006 s. 38.]

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.

[Section 210AA inserted: No. 35 of 2006 s. 38.]

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.

[Section 210AB inserted: No. 35 of 2006 s. 38.]

211. Non-federal jurisdictions

(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.

(2) In respect of the non-federal jurisdictions of the Magistrates Court an appeal lies from a decree of the court to the Family Court of Western Australia and upon any such appeal the Court —

(a) must proceed by way of a re-hearing, but may receive as evidence any record of evidence given, including any affidavit filed or exhibit received, in the Magistrates Court; and

(b) may make such decrees as it thinks fit, including a decree affirming, reversing or varying the decree the subject of the appeal.

(3) In respect of the non-federal jurisdictions of the Family Court of Western Australia an appeal lies from a decree of the Family Court of Western Australia given in its original or appellate jurisdiction to the Court of Appeal and upon any such appeal the Court of Appeal may affirm, reverse, or vary the decree the subject of the appeal and may make such decree as, in the opinion of the Court of Appeal, ought to have been made in the first instance.

(4) Appeals under subsection (2) to the Family Court of Western Australia are to be made in the manner and within the time prescribed by the rules.

(5) Appeals under subsection (3) to the Court of Appeal are to be made in the manner and within the time prescribed by the Rules of the Supreme Court.

(6) If, in dismissing an appeal under subsection (2), the Family Court of Western Australia is of the opinion that the appeal does not raise any question of general principle, it may give reasons for its decision in short form.

[Section 211 amended: No. 45 of 2004 s. 37; No. 59 of 2004 s. 95; No. 84 of 2004 s. 80; No. 35 of 2006 s. 39; No. 28 of 2022 s. 27.]

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.

[Section 211A inserted: No. 35 of 2006 s. 40.]

211B. Appeal may be dismissed if no reasonable prospect of success

(1) Subsection (1A) applies if —

(a) an appeal has been instituted in a court under this Part; and

(b) it appears to the court that the appeal has no reasonable prospect of success.

(1A) The court may, at any time, order that the proceedings on the appeal be dismissed.

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

[Section 211B inserted: No. 13 of 2013 s. 32; amended: No. 28 of 2022 s. 28.]

Part 8 — Procedure and evidence

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

[Heading inserted: No. 49 of 2024 s. 64.]

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

(1) The overarching purpose of the family law practice and procedure provisions is to facilitate the just resolution of disputes —

(a) in a way that ensures the safety of families and children; and

(b) in relation to proceedings under this Act in which the best interests of a child are the paramount consideration — in a way that promotes the best interests of the child; and

(c) according to law; and

(d) as quickly, inexpensively and efficiently as possible.

(2) Without limiting subsection (1), the overarching purpose includes the following objectives in relation to proceedings under this Act —

(a) the just determination of all such proceedings;

(b) the efficient use of the judicial and administrative resources available for the purposes of courts exercising jurisdiction in such proceedings;

(c) the efficient disposal of the overall caseload of courts exercising jurisdiction in such proceedings;

(d) the disposal of all such proceedings in a timely manner;

(e) the resolution of disputes at a cost that is proportionate to the importance and complexity of the matters in dispute.

(3) The family law practice and procedure provisions must be interpreted and applied, and any power conferred or duty imposed by them (including the power to make rules) must be exercised or carried out, in the way that best promotes the overarching purpose.

(4) The ***family law practice and procedure provisions*** are the following, so far as they apply in relation to proceedings under this Act —

(a) the rules;

(b) any other provision made by or under this Act, or any other written law, with respect to the practice and procedure of a court (whether of a kind referred to in section 8(a) or (b) or otherwise).

[Section 211C inserted: No. 49 of 2024 s. 64.]

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

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

(2) A party's lawyer must, in the conduct of proceedings under this Act on the party's behalf (including in the conduct of negotiations for settlement of the dispute to which the proceedings relate) —

(a) take account of the duty imposed on the party by subsection (1); and

(b) assist the party to comply with the duty.

(3) In proceedings under this Act a court may, for the purpose of enabling a party to comply with the duty imposed by subsection (1), require the party's lawyer to give the party an estimate of —

(a) the likely duration of the proceedings or part of the proceedings; and

(b) the likely amount of costs that the party will have to pay in connection with the proceedings or part of the proceedings (including the costs that the lawyer will charge to the party).

(4) In exercising the discretion to award costs in proceedings under this Act, a court must take account of any failure to comply with the duty imposed by subsection (1) or (2).

(5) Without limiting the exercise of that discretion, a court may order a party's lawyer to bear costs personally.

(6) If a court orders a lawyer to bear costs personally because of a failure to comply with the duty imposed by subsection (2), the lawyer must not recover the costs from the lawyer's client.

[Section 211D inserted: No. 49 of 2024 s. 64.]

Division 1 — General matters concerning procedure and evidence

[Heading inserted: No. 35 of 2006 s. 18.]

212. Proceedings generally to be in open court — FLA s. 97

(1) Subject to this Act, all proceedings are to be heard in open court.

(2) In any proceedings under this Act, a court may, of its own motion or on the application of a party to the proceedings, make one or more of the following orders —

(a) an order that a specified person is not, or specified persons are not, to be present in court during the proceedings or during a specified part of the proceedings;

(b) an order that persons included in a specified class of persons are not to be present in court during the

proceedings or during a specified part of the proceedings;

(c) an order that only the parties to the proceedings, their legal representatives and such other persons (if any) as are specified by the court may be present in court during the proceedings or during a specified part of the proceedings.

(3) In any proceedings under this Act, a court must proceed without undue formality and endeavour to ensure that the proceedings are not protracted.

(4) Judges, magistrates and counsel are not to robe for proceedings under this Act.

(5) The regulations or rules may authorise proceedings under this Act to be heard by a judge, Principal Registrar, registrar or magistrate sitting in Chambers.

[Section 212 amended: No. 35 of 2006 s. 73; No. 49 of 2024 s. 65.]

213. Power to give directions

(1) The Court or the Principal Registrar may give such directions in relation to proceedings under this Act generally as are desirable or necessary for the purposes of this Act.

(2) A court may, in a particular case, give such directions in relation to the proceedings for that case as are desirable or necessary for the purposes of this Act.

*[**214.** Deleted: No. 35 of 2006 s. 106.]*

214A. Children swearing affidavits, being called as witnesses or being present in court — FLA s. 100B

(1) A child, other than a child who is or is seeking to become a party to proceedings, must not swear an affidavit for the purposes of proceedings, unless a court makes an order allowing the child to do so.

(2) A child must not be called as a witness in, or be present during, proceedings in a court, unless a court makes an order allowing the child to be called as a witness or to be present (as the case may be).

(3) In this section —

child means a child under 18 years of age.

[Section 214A inserted: No. 25 of 2002 s. 67.]

214B. Oaths and affirmations

(1) The executive manager may, in writing, authorise —

(a) a registrar; or

(b) a member of the staff of the Court or the Magistrates Court,

to administer oaths and affirmations for the purposes of the Court and the Magistrates Court.

(2) The following persons are authorised to administer oaths and affirmations for the purposes of the Court or the Magistrates Court —

(a) a person who is authorised to administer oaths and affirmations in that court under the *Oaths, Affidavits and Statutory Declarations Act 2005*;

(b) a person authorised under subsection (1).

(3) This section does not limit the *Oaths, Affidavits and Statutory Declarations Act 2005*.

(4) This section applies to the Magistrates Court exercising —

(a) its federal jurisdiction under section 38; or

(b) its non-federal jurisdictions under section 39; or

(c) any other jurisdiction under a law of the Commonwealth, where that law confers jurisdiction on both the Court and the Magistrates Court.

[Section 214B inserted: No. 13 of 2013 s. 33.]

214C. Swearing or affirming of affidavits

(1) An affidavit to be used in a proceeding in the Court or the Magistrates Court may be sworn or affirmed in Australia before —

(a) a person before whom that affidavit may be sworn or affirmed under the *Oaths, Affidavits and Statutory Declarations Act 2005*; or

(b) a person authorised under section 214B(1); or

(c) a person to whom the *Federal Circuit and Family Court of Australia Act 2021* (Commonwealth) section 72(1) applies.

(2) An affidavit to be used in a proceeding in the Court or the Magistrates Court may be sworn or affirmed outside Australia before —

(a) a person before whom that affidavit may be sworn or affirmed under the *Oaths, Affidavits and Statutory Declarations Act 2005*; or

(b) a person to whom the *Federal Circuit and Family Court of Australia Act 2021* (Commonwealth) section 72(2) applies.

(3) This section does not limit the *Oaths, Affidavits and Statutory Declarations Act 2005*.

(4) This section applies to the Magistrates Court exercising —

(a) its federal jurisdiction under section 38; or

(b) its non-federal jurisdictions under section 39; or

(c) any other jurisdiction under a law of the Commonwealth, where that law confers jurisdiction on both the Court and the Magistrates Court.

[Section 214C inserted: No. 13 of 2013 s. 33; amended: No. 49 of 2024 s. 66.]

215. Protection of witnesses — FLA s. 101

(1) A court must forbid the asking of, or excuse a witness from answering, a question that the court regards as offensive, scandalous, insulting, abusive or humiliating, unless the court is satisfied that it is essential in the interests of justice that the question be answered.

(2) A court must forbid an examination of a witness that the court regards as oppressive, repetitive or hectoring, or excuse a witness from answering questions asked during such an examination, unless the court is satisfied that it is essential in the interests of justice for the examination to continue or for the questions to be answered.

216. Certificates etc. of birth, death or marriage — FLA s. 102

In proceedings under this Act, a court may receive as evidence of the facts stated in it a document purporting to be either the original or a certified copy of —

(a) a certificate, entry or record of a birth, death or marriage alleged to have taken place whether in Australia or elsewhere; or

(b) an entry in a register of parentage information kept under the law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction.

217. Admissibility of evidence after medical examination etc. of children — FLA s. 102A(1), (2), (4) and (5)

(1) Subject to this section, where a child is examined in proceedings under this Act without the leave of the court hearing the proceedings, the evidence resulting from the examination which relates to the abuse of, or the risk of abuse of, the child is not admissible in the proceedings.

(2) Where a person causes a child to be examined for the purpose of deciding —

(a) to bring proceedings under this Act involving an allegation that the child has been abused or is at risk of being abused; or

(b) to make an allegation in proceedings under this Act that the child has been abused or is at risk of being abused,

subsection (1) does not apply in relation to evidence resulting from the first examination which the person caused the child to undergo.

(3) In proceedings under this Act, the court hearing the proceedings may admit evidence which is otherwise inadmissible under this section if the court is satisfied that —

(a) the evidence relates to relevant matters on which the evidence already before the court is inadequate; and

(b) the court will not be able to determine the proceedings properly unless the evidence is admitted; and

(c) the welfare of the child concerned is likely to be served by the admission of the evidence.

(4) In this section —

examined, in relation to a child, means —

(a) subjected to a medical procedure; or

(b) examined or assessed by a psychiatrist or psychologist (other than by a family counsellor or family consultant).

[Section 217 amended: No. 35 of 2006 s. 124.]

218. Leave for child to be examined medically etc. — FLA s. 102A(3)

(1) A person may apply to a court to obtain the court's leave for a child to be examined within the meaning of section 217(4).

(2) On an application under subsection (1), in considering whether to give leave for a child to be examined, a court must have regard to the following matters —

(a) whether the proposed examination is likely to provide relevant information that is unlikely to be obtained otherwise;

(b) whether the person who will conduct the proposed examination is suitably qualified to conduct the examination;

(c) whether any distress likely to be caused to the child by the proposed examination will be outweighed by the value of the information that might be obtained from the examination;

(d) any distress already caused to the child by any previous examination associated with the proceedings or with related proceedings;

(e) any other matter that the court thinks is relevant.

219. Assessors — FLA s. 102B

In any proceedings under this Act the court hearing the proceedings may, in accordance with any relevant rules, seek the assistance of an assessor in the hearing and determination of the proceedings, or any part of them or any matter arising under them.

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

[Heading inserted: No. 35 of 2006 s. 19.]

219AA. *Evidence Act 1906* not excluded

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

[Section 219AA inserted: No. 35 of 2006 s. 19.]

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.

[Section 219AB inserted: No. 35 of 2006 s. 19.]

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.

[Section 219AC inserted: No. 35 of 2006 s. 19.]

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.

[Section 219AD inserted: No. 35 of 2006 s. 19.]

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.

(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.

[Section 219AE inserted: No. 35 of 2006 s. 19.]

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.

[Section 219AF inserted: No. 35 of 2006 s. 19.]

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.

[Section 219AG inserted: No. 35 of 2006 s. 19.]

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.

[Section 219AH inserted: No. 35 of 2006 s. 19.]

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

This Division does not affect the operation of the *Trans-Tasman Proceedings Act 2010* (Commonwealth).

[Section 219AI inserted: No. 35 of 2006 s. 19; amended: No. 49 of 2024 s. 67.]

Division 3 — Cross-examination of parties where allegations of family violence

[Heading inserted: No. 16 of 2021 s. 4.]

219AJ. Application of Division

(1) In this section —

commencement day means the day on which the *Family Court Amendment Act 2021* section 4 comes into operation;

specified day means the day after the period of 90 days beginning on commencement day.

(2) This Division applies to cross-examinations occurring on or after the specified day in proceedings instituted before, on or after the commencement day.

[Section 219AJ inserted: No. 16 of 2021 s. 4.]

219AK. Mandatory protections for parties in certain cases — FLA s. 102NA

(1) The requirements of subsection (2) apply if, in proceedings under this Act —

(a) a party (the ***examining party***) intends to cross-examine another party (the ***witness party***); and

(b) there is an allegation of family violence between the examining party and the witness party; and

(c) any of the following are satisfied —

(i) either party has been convicted of, or is charged with, an offence involving violence, or a threat of violence, to the other party;

(ii) a family violence order (other than an interim order) applies to both parties;

(iii) an injunction under section 235 or 235A for the personal protection of either party is directed against the other party;

(iv) the court makes an order that the requirements of subsection (2) are to apply to the cross-examination.

(2) Both of the following requirements apply to the cross-examination —

(a) the examining party must not cross-examine the witness party personally;

(b) the cross-examination must be conducted by a legal practitioner acting on behalf of the examining party.

(3) The court may make an order under subsection (1)(c)(iv) —

(a) on its own initiative; or

(b) on the application of —

(i) the witness party; or

(ii) the examining party; or

(iii) if an independent children's lawyer has been appointed for a child in relation to the proceedings — that lawyer.

[Section 219AK inserted: No. 16 of 2021 s. 4; amended: No. 9 of 2022 s. 424.]

219AL. Court-ordered protections in other cases — FLA s. 102NB

(1) Subsection (2) applies if, in proceedings under this Act —

(a) a party (the ***examining party***) intends to cross-examine another party (the ***witness party***) personally; and

(b) there is an allegation of family violence between the examining party and the witness party; and

(c) section 219AK does not apply to prevent the examining party cross-examining the witness party personally.

(2) The court must ensure that during the cross-examination there are appropriate protections for the party who is the alleged victim of the family violence.

[Section 219AL inserted: No. 16 of 2021 s. 4.]

Part 8A — Suppression and non-publication orders

[Heading inserted: No. 49 of 2024 s. 68.]

Division 1 — Preliminary

[Heading inserted: No. 49 of 2024 s. 68.]

219AM. Terms used — FLA s. 102P

In this Part —

information includes any document;

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

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

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

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

(a) publication in a book, newspaper, magazine or other written publication; or

(b) broadcast by radio or television; or

(c) public exhibition; or

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

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

[Section 219AM inserted: No. 49 of 2024 s. 68.]

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

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

[Section 219AN inserted: No. 49 of 2024 s. 68.]

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

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

[Section 219AO inserted: No. 49 of 2024 s. 68.]

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

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

[Section 219AP inserted: No. 49 of 2024 s. 68.]

Division 2 — Suppression and non-publication orders

[Heading inserted: No. 49 of 2024 s. 68.]

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

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

[Section 219AQ inserted: No. 49 of 2024 s. 68.]

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

(1) A court exercising jurisdiction in proceedings under this Act may, by making a suppression order or non-publication order on

grounds permitted by this Part, prohibit or restrict the publication or other disclosure of —

(a) information tending to reveal the identity of or otherwise concerning any party to or witness in the proceedings or any person who is related to or otherwise associated with any party to or witness in the proceedings; or

(b) information that relates to the proceedings and is —

(i) information that comprises evidence or information about evidence; or

(ii) information obtained by the process of discovery; or

(iii) information produced under a subpoena; or

(iv) information lodged with or filed in the court.

(2) The court may make such orders as it thinks appropriate to give effect to an order under subsection (1).

[Section 219AR inserted: No. 49 of 2024 s. 68.]

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

(1) The court may make a suppression order or non-publication order on one or more of the following grounds —

(a) the order is necessary to prevent prejudice to the proper administration of justice;

(b) the order is necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;

(c) the order is necessary to protect the safety of any person;

(d) the order is necessary to avoid causing undue distress or embarrassment to a party to or witness in criminal proceedings involving an offence of a sexual nature (including an act of indecency).

(2) A suppression order or non-publication order must specify the ground or grounds on which the order is made.

[Section 219AS inserted: No. 49 of 2024 s. 68.]

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

(1) The court may make a suppression order or non-publication order on its own initiative or on the application of —

(a) a party to the proceedings concerned; or

(b) any other person considered by the court to have a sufficient interest in the making of the order.

(2) Each of the following persons is entitled to appear and be heard by the court on an application for a suppression order or non-publication order —

(a) the applicant for the order;

(b) a party to the proceedings concerned;

(c) the Government (or an agency of the Government);

(d) the government (or an agency of the government) of the Commonwealth or another State or a Territory;

(e) a news publisher;

(f) any other person who, in the court's opinion, has a sufficient interest in the question of whether a suppression order or non-publication order should be made.

(3) A suppression order or non-publication order may be made at any time during proceedings or after proceedings have concluded.

(4) A suppression order or non-publication order may be made subject to such exceptions and conditions as the court thinks fit and specifies in the order.

(5) A suppression order or non-publication order must specify the information to which the order applies with sufficient

particularity to ensure that the court order is limited to achieving the purpose for which the order is made.

[Section 219AT inserted: No. 49 of 2024 s. 68.]

219AU. Interim orders — FLA s. 102PH

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

(2) If an order is made as an interim order, the court must determine the application as a matter of urgency.

[Section 219AU inserted: No. 49 of 2024 s. 68.]

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

(1) A suppression order or non-publication order operates for the period decided by the court and specified in the order.

(2) In deciding the period for which an order is to operate, the court is to ensure that the order operates for no longer than is reasonably necessary to achieve the purpose for which it is made.

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

[Section 219AV inserted: No. 49 of 2024 s. 68.]

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

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

(a) in connection with the conduct of proceedings or the recovery or enforcement of any penalty imposed in proceedings; or

(b) in compliance with any procedure adopted by the court for informing a news publisher of the existence and content of a suppression order or non-publication order made by the court.

[Section 219AW inserted: No. 49 of 2024 s. 68.]

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

(1) A person commits an offence if —

(a) the person does an act or omits to do an act; and

(b) the act or omission contravenes an order made by a court under section 219AR.

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

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

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

(4) If an act or omission constitutes both an offence under this section and a contempt of court, the offender is not liable to be punished twice.

(5) Part 10 does not apply in relation to a contravention of an order made by a court under section 219AR.

[Section 219AX inserted: No. 49 of 2024 s. 68.]

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

[Heading inserted: No. 49 of 2024 s. 68.]

Division 1 — Preliminary

[Heading inserted: No. 49 of 2024 s. 68.]

219AY. Terms used — FLA s. 102Q

(1) In this Part —

appropriate court official means —

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

(b) in relation to any other court — the principal officer (however described) of the court;

Australian court or tribunal means a court or tribunal of the Commonwealth, a State or a Territory;

harmful proceedings order means an order made under section 219AZB(1);

institute, in relation to proceedings, includes —

(a) for civil proceedings — the taking of a step or the making of an application that may be necessary before proceedings can be started against a party; and

(b) for proceedings before a tribunal — the taking of a step or the making of an application that may be necessary before proceedings can be started before the tribunal; and

(c) for criminal proceedings — the making of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and

(d) for civil or criminal proceedings or proceedings before a tribunal — the taking of a step or the making of an application that may be necessary to start an appeal in

relation to the proceedings or to a decision made in the course of the proceedings;

proceedings —

(a) in relation to a court — has the meaning given by section 5(1); and

(b) in relation to a tribunal — means a proceeding in the tribunal, whether between parties or not, and includes an incidental proceeding in the course of, or in connection with, a proceeding;

proceedings of a particular type includes —

(a) proceedings in relation to a particular matter; and

(b) proceedings against a particular person;

vexatious proceedings includes —

(a) proceedings that are an abuse of the process of a court or tribunal; and

(b) proceedings instituted in a court or tribunal to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and

(c) proceedings instituted or pursued in a court or tribunal without reasonable ground; and

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

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

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

[Section 219AY inserted: No. 49 of 2024 s. 68.]

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

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

(a) each other; or

(b) any other power that a court has to deal with proceedings.

[Section 219AZ inserted: No. 49 of 2024 s. 68.]

Division 2 — Summary decrees

[Heading inserted: No. 49 of 2024 s. 68.]

219AZA. Summary decrees — FLA s. 102QAB

(1) In proceedings under this Act, the court hearing the proceedings may make a decree for one party (the ***first party***) against another in relation to the whole or any part of the proceedings if —

(a) the first party is prosecuting the proceedings or that part of the proceedings; and

(b) the court is satisfied that the other party has no reasonable prospect of successfully defending the proceedings or that part of the proceedings.

(2) In proceedings under this Act, the court hearing the proceedings may make a decree for one party (the ***first party***) against another in relation to the whole or any part of the proceedings if —

(a) the first party is defending the proceedings or that part of the proceedings; and

(b) the court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceedings or that part of the proceedings.

(3) For the purposes of this section, a defence or proceedings or part of proceedings need not be hopeless or bound to fail to have no reasonable prospect of success.

(4) In proceedings under this Act, the court hearing the proceedings may dismiss all or part of the proceedings at any stage if it is satisfied that the proceedings or the part is frivolous, vexatious or an abuse of process.

(5) To avoid doubt, proceedings or a part of proceedings are not frivolous, vexatious or an abuse of process merely because an application relating to the proceedings or the part is made and later withdrawn.

(6) If the court makes a decree, or dismisses all or part of proceedings, under this section, the court may make such order as to costs as the court considers just.

(7) The court may take action under this section on its own initiative or on application by a party to the proceedings.

[Section 219AZA inserted: No. 49 of 2024 s. 68.]

Division 3 — Harmful proceedings orders

[Heading inserted: No. 49 of 2024 s. 68.]

Subdivision 1 — Making harmful proceedings orders

[Heading inserted: No. 49 of 2024 s. 68.]

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

(1) A court exercising jurisdiction in proceedings under this Act may make an order (a ***harmful proceedings order***) prohibiting a party (the ***first party***) to the proceedings from instituting proceedings under this Act against another party to the proceedings without the leave of the court under section 219AZF, if the court is satisfied that there are reasonable grounds to believe that —

(a) the other party would suffer harm if the first party instituted further proceedings against the other party; or

(b) in the case of child-related proceedings — the child who is the subject of the proceedings would suffer harm if the

first party instituted further proceedings against the other party.

(2) For the purposes of subsection (1), harm may include, but is not limited to, the following —

(a) psychological harm or oppression;

(b) major mental distress;

(c) a detrimental effect on the other party's capacity to care for a child;

(d) financial harm.

(3) In determining whether to make an order under subsection (1), the court may have regard to —

(a) the history of the proceedings under this Act between the first party and the other party; and

(b) whether the first party has frequently instituted or conducted proceedings against the other party in any Australian court or tribunal (including proceedings instituted (or attempted to be instituted) or conducted, and orders made, before the commencement of the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 68); and

(c) the cumulative effect, or any potential cumulative effect, of any harm resulting from the proceedings referred to in paragraphs (a) and (b).

(4) The court may make a harmful proceedings order on its own initiative or on application by a party to the proceedings.

(5) The court must not make a harmful proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.

(6) An order made under subsection (1) is a final order.

(7) If the court makes an order under subsection (1), the court must also make an order as to whether the court is to notify the other

party, in the event that the first party makes an application under section 219AZD for leave to institute proceedings against the other party, of either or both of the following —

(a) that the application has been made;

(b) if the application is dismissed — that the application has been dismissed.

(8) The court must have regard to the wishes of the other party in making an order under subsection (7).

[Section 219AZB inserted: No. 49 of 2024 s. 68.]

Subdivision 2 — Consequences of harmful proceedings orders

[Heading inserted: No. 49 of 2024 s. 68.]

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

(1) If a person is subject to a harmful proceedings order prohibiting the person from instituting proceedings under this Act in a court having jurisdiction under this Act —

(a) the person must not institute proceedings in the court without the leave of the court under section 219AZF; and

(b) another person must not, acting in concert with the person, institute proceedings in the court without the leave of the court under section 219AZF.

(2) If proceedings are instituted in contravention of subsection (1), the proceedings are stayed.

(3) Without limiting subsection (2), the court may make —

(a) an order declaring proceedings are proceedings to which subsection (2) applies; and

(b) any other order in relation to the stayed proceedings it considers appropriate, including an order for costs.

(4) The court may make an order under subsection (3) on its own initiative or on the application of a person a party to the proceedings.

[Section 219AZC inserted: No. 49 of 2024 s. 68.]

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

(1) This section applies to a person (the ***applicant***) who is —

(a) subject to a harmful proceedings order prohibiting the person from instituting further proceedings under this Act in a court having jurisdiction under this Act; or

(b) acting in concert with another person who is subject to an order mentioned in paragraph (a).

(2) The applicant may apply to the court for leave to institute proceedings that are subject to the order.

(3) The applicant must file an affidavit with the application that —

(a) lists all the occasions on which the applicant has applied for leave under this section; and

(b) discloses all relevant facts about the application, whether supporting or adverse to the application, that are known to the applicant.

(4) The applicant must —

(a) not serve a copy of the application or affidavit on a person unless an order is made under section 219AZF; and

(b) if the order is made — serve the copy in accordance with the order.

[Section 219AZD inserted: No. 49 of 2024 s. 68.]

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

(1) The court may make an order dismissing an application under section 219AZD for leave to institute proceedings if it considers

the affidavit does not substantially comply with section 219AZD(3).

(2) The court must make an order dismissing an application under section 219AZD for leave to institute proceedings if it considers the proceedings are vexatious proceedings.

(3) The court may dismiss the application without an oral hearing (either with or without the consent of the applicant).

(4) The court may make an order under this section in Chambers.

[Section 219AZE inserted: No. 49 of 2024 s. 68.]

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

(1) The court may make an order granting the application for leave only if it is satisfied that the proceedings are not frivolous, vexatious or an abuse of process, and have reasonable prospects of success.

(2) An order under subsection (1) may be made subject to the conditions the court considers appropriate.

[Section 219AZF inserted: No. 49 of 2024 s. 68.]

Division 4 — Vexatious proceedings orders

[Heading inserted: No. 49 of 2024 s. 68.]

Subdivision 1 — Making vexatious proceedings orders

[Heading inserted: No. 49 of 2024 s. 68.]

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

(1) This section applies if a court exercising jurisdiction in proceedings under this Act is satisfied —

(a) a person has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals; or

(b) a person, acting in concert with another person who is subject to a vexatious proceedings order or who is covered by paragraph (a), has instituted or conducted vexatious proceedings in an Australian court or tribunal.

(2) The court may make any or all of the following orders —

(a) an order staying or dismissing all or part of any proceedings in the court already instituted by the person;

(b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act;

(c) any other order the court considers appropriate in relation to the person.

(3) The court may make a vexatious proceedings order on its own initiative or on the application of any of the following —

(a) the Attorney General;

(b) the appropriate court official;

(c) a person against whom another person has instituted or conducted vexatious proceedings;

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

(4) The court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.

(5) An order made under subsection (2)(a) or (b) is a final order.

(6) For the purposes of subsection (1), the court may have regard to the following, including in relation to proceedings instituted (or attempted to be instituted) or conducted, and orders made, before the commencement of the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 68 —

(a) proceedings instituted (or attempted to be instituted) or conducted in any Australian court or tribunal;

(b) orders made by any Australian court or tribunal;

(c) the person's overall conduct in proceedings conducted in any Australian court or tribunal (including the person's compliance with orders made by that court or tribunal).

[Section 219AZG inserted: No. 49 of 2024 s. 68.]

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

(1) A person may request the appropriate court official of a court for a certificate stating whether a person named in the request is or has been the subject of a vexatious proceedings order made by the court.

(2) If a person makes a request under subsection (1) and the person named in the request is or has been the subject of a vexatious proceedings order made by the court, the appropriate court official must issue to the person making the request a certificate —

(a) specifying the date of the order; and

(b) specifying any other information prescribed by the rules.

(3) This section is subject to any written law, law of the Commonwealth or order of the court restricting the publication or disclosure of the name of a party to proceedings in the court.

[Section 219AZH inserted: No. 49 of 2024 s. 68.]

Subdivision 2 — Consequences of vexatious proceedings orders

[Heading inserted: No. 49 of 2024 s. 68.]

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

(1) If a person is subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act —

(a) the person must not institute proceedings, or proceedings of that type, in the court without the leave of the court under section 219AZL; and

(b) another person must not, acting in concert with the person, institute proceedings, or proceedings of that type, in the court without the leave of the court under section 219AZL.

(2) If proceedings are instituted in contravention of subsection (1), the proceedings are stayed.

(3) Without limiting subsection (2), the court may make —

(a) an order declaring proceedings are proceedings to which subsection (2) applies; and

(b) any other order in relation to the stayed proceedings it considers appropriate, including an order for costs.

(4) The court may make an order under subsection (3) on its own initiative or on the application of any of the following —

(a) the Attorney General;

(b) the appropriate court official;

(c) a person against whom another person has instituted or conducted vexatious proceedings;

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

[Section 219AZI inserted: No. 49 of 2024 s. 68.]

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

(1) This section applies to a person (the ***applicant***) who is —

(a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act; or

(b) acting in concert with another person who is subject to an order mentioned in paragraph (a).

(2) The applicant may apply to the court for leave to institute proceedings that are subject to the order.

(3) The applicant must file an affidavit with the application that —

(a) lists all the occasions on which the applicant has applied for leave under this section; and

(b) lists all other proceedings the applicant has instituted in any Australian court or tribunal, including proceedings instituted before the commencement of the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 68; and

(c) discloses all relevant facts about the application, whether supporting or adverse to the application, that are known to the applicant.

(4) The applicant must —

(a) not serve a copy of the application or affidavit on a person unless an order is made under section 219AZL(1)(a); and

(b) if the order is made — serve the copy in accordance with the order.

[Section 219AZJ inserted: No. 49 of 2024 s. 68.]

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

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

(2) The court must make an order dismissing an application under section 219AZJ for leave to institute proceedings if it considers the proceedings are vexatious proceedings.

(3) The court may dismiss the application without an oral hearing (either with or without the consent of the applicant).

(4) The court may make an order under this section in Chambers.

[Section 219AZK inserted: No. 49 of 2024 s. 68.]

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

(1) Before the court makes an order granting an application under section 219AZJ for leave to institute proceedings, it must —

(a) order that the applicant serve the following people with a copy of the application and affidavit and a notice that the person is entitled to be heard on the application —

(i) the person against whom the applicant proposes to institute the proceedings;

(ii) any other person specified in the order;

and

(b) give the applicant and each person described in paragraph (a)(i) or (ii), on appearance, an opportunity to be heard at the hearing of the application.

(2) At the hearing of the application, the court may receive as evidence any record of evidence given, or affidavit filed, in any proceedings in any Australian court or tribunal in which the applicant is, or at any time was, involved either as a party or as a person acting in concert with a party.

(3) The court may make an order granting the application.

(4) An order made under subsection (3) may be made subject to the conditions the court considers appropriate.

(5) The court may grant leave only if it is satisfied the proceedings are not vexatious proceedings.

[Section 219AZL inserted: No. 49 of 2024 s. 68.]

Part 9 — Enforcement of decrees

219A. Maintenance orders — more than 12 months old — FLA s. 106

In determining whether to make an order enforcing a maintenance order, a court must not require that there be special circumstances that justify enforcing the maintenance order merely because the maintenance payable under it is more than 12 months old.

[Section 219A inserted: No. 25 of 2002 s. 68.]

220. Enforcement of orders as to child maintenance or child bearing expenses

(1) An order that is —

(a) a child maintenance order; or

(b) an order for the payment of child bearing expenses,

may be enforced as if it were an order made by the Court under the Family Law Act.

(2) The provisions of Part XIII of the Family Law Act and any relevant rule or regulation for the time being in force under the Family Law Act apply to and in relation to an order referred to in subsection (1), with such modifications as are necessary.

220A. Rules relating to enforcement — FLA s. 109A

(1) The power of the judges, or a majority of them, under section 244 to make rules extends to making rules for or in relation to, or for or in relation to anything incidental to, the enforcement by a court of —

(a) a child-related order; or

(b) an order under this Act (within the meaning of section 223); or

(c) the Child Support (Registration and Collection) Act; or

(d) the Child Support (Assessment) Act.

(2) Without limiting the generality of subsection (1), the rules may make provision for and in relation to —

(a) requiring a person to do any one or more of the following —

(i) to attend before a court or registrar and answer questions or produce documents;

(ii) to deliver a document or article to, or to a person specified by, a court or registrar;

(iii) to transfer the ownership of specified property to another person;

(iv) to give another person possession (including exclusive possession) of specified property;

(v) to deliver a specified chattel to another person;

(vi) to do, or abstain from doing, any other act;

and

(b) prescribing the practice and procedure to be followed for a hearing before a court or registrar for the purpose of giving effect to a requirement made under paragraph (a)(i); and

(c) taking any one or more of the actions mentioned in subsection (3) in respect of a person who —

(i) fails to pay the amount of a fine imposed under Part 5 Division 13 or under Part 10 Division 2; or

(ii) fails to pay an amount payable under a bond entered into under Part 5 Division 13 or under Part 10 Division 2; or

(iii) fails to pay under section 123 an amount of maintenance for a person who is 18 or more years of age; or

(iv) fails to pay an amount payable under a registered maintenance liability under the Child Support

(Registration and Collection) Act or the Child Support (Assessment) Act; or

(v) fails to comply with a requirement made as referred to in paragraph (a);

and

(d) delegating to a registrar all or any of the powers conferred on a court by rules referred to in this section.

(3) Subject to subsection (4), the actions in respect of a person the taking of which may be provided for by rules as mentioned in subsection (2)(c) are as follows —

(a) the issue of a warrant for the arrest of the person;

(b) the issue of a warrant of execution against property of the person;

(c) the making of an order authorising the taking of possession of property of the person;

(d) the making of an order for the sequestration, and if necessary the sale, of property of the person;

(e) the making of an order for the attachment, by garnishment or attachment of earnings, of debts owed to the person;

(f) the appointment of a receiver of property of the person.

(4) A reference in subsection (2)(c) to a failure to pay an amount is a reference to any such failure irrespective of the length of the period during which the failure has continued, and includes a reference to a failure to pay part of an amount.

(5) In this section —

property means real or personal property;

registrar means —

(a) in relation to the Court, the Principal Registrar, a registrar or a deputy registrar; and

(b) in relation to the Magistrates Court, means the registrar of that court at the place where that court was held.

[Section 220A inserted: No. 25 of 2002 s. 13; amended: No. 59 of 2004 s. 95; No. 35 of 2006 s. 177; No. 49 of 2024 s. 69.]

221. Execution of instruments by order of court — FLA s. 106A

(1) If —

(a) an order under this Act directs a person to execute a deed or instrument and the person has refused or neglected to comply with the direction; or

(b) a provision of a registered parenting plan requires a person to execute a deed or instrument and the person has refused or neglected to comply with the provision; or

(c) for any other reason, a court thinks it necessary to do so,

then a court may appoint an officer of the court or other person specified in the order to execute the deed or instrument in the name of the person directed under the order, or required under the provision, to do all acts and things necessary to give effect to the deed or instrument.

(2) A deed or instrument executed by a person appointed under subsection (1) has effect as if it had been executed by the person directed under the order, or required under the parenting plan provision, to execute the deed or instrument.

(3) A court may make such order as it thinks just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

[Section 221 amended: No. 35 of 2006 s. 16.]

222. Transactions to defeat claim — FLA s. 106B

(1) In proceedings under this Act, the court hearing the proceedings may set aside or restrain the making of an instrument or disposition by or on behalf of, or by direction or in the interest of, a party which is made or proposed to be made to defeat an

existing or anticipated order under this Act or which, irrespective of intention, is likely to defeat any such order.

(1A) If a de facto partner is a bankrupt and the bankruptcy trustee is a party to proceedings under this Act, the court hearing the proceedings may set aside or restrain the making of an instrument or disposition —

(a) which is made or proposed to be made by or on behalf of, or by direction or in the interest of, the bankrupt; and

(b) which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.

(1B) If a de facto partner is a debtor subject to a personal insolvency agreement and the trustee of the agreement is a party to proceedings under this Act, the court hearing the proceedings may set aside or restrain the making of an instrument or disposition —

(a) which is made or proposed to be made by or on behalf of, or by direction or in the interest of, the debtor; and

(b) which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.

(2) A court referred to in subsection (1), (1A) or (1B) may order that any money or real or personal property dealt with by any instrument or disposition referred to in subsection (1), (1A) or (1B) may be taken in execution or charged with the payment of such sums for costs or maintenance as the court directs, or that the proceeds of a sale are to be paid into court to abide its order.

(3) A court referred to in subsection (1), (1A) or (1B) must have regard to the interests of, and must make any order proper for

the protection of, a bona fide purchaser or other person interested.

(4) A party or a person acting in collusion with a party may be ordered to pay the costs of any other party, or of a bona fide purchaser or other person interested, of and incidental to any such instrument or disposition and the setting aside or restraining of the instrument or disposition.

(4AA) An application may be made to a court for an order under this section by —

(a) a party to the proceedings; or

(b) a creditor of a party to the proceedings if the creditor may not be able to recover their debt if the instrument or disposition were made; or

(c) any other person whose interests would be affected by the making of the instrument or disposition.

(4a) In addition to the powers a court referred to in subsection (1), (1A) or (1B) has under this section, the court may also do any or all of the things listed in section 205ZI(1).

(5) In this section —

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.

[Section 222 amended: No. 35 of 2006 s. 60 and 74; No. 28 of 2022 s. 29.]

222A. People not to be imprisoned for failure to comply with certain orders — FLA s. 107

(1) A person must not be imprisoned or otherwise placed in custody because of a contravention of an order made under this Act for the payment of money.

(2) This section does not affect the operation of —

(a) Part 5 Division 13; or

(b) Part 10 Division 2; or

(c) Part 10A.

[Section 222A inserted: No. 25 of 2002 s. 14; amended: No. 35 of 2006 s. 75.]

Part 10 — Sanctions for failure to comply with orders, and other obligations, that do not affect children

[Heading inserted: No. 25 of 2002 s. 15.]

Division 1 — Interpretation

223. Terms used — FLA s. 112AA

In this Part —

maintenance order, in relation to a court, means an order made by a court —

(a) under Part 5 Division 8 Subdivision 2; or

(b) under this Act that deals with the maintenance of a person;

order under this Act, in relation to a court, means —

(a) an order (however described) made under this Act by a court (other than a parenting order);

(b) an injunction granted by a court under section 235A except in so far as the injunction is for the protection of a child;

(c) an undertaking given to, and accepted by, a court in proceedings under this Act other than proceedings that relate wholly or partly to, or to the making of, a parenting order;

(d) a subpoena issued under the rules in proceedings under this Act other than a subpoena issued in, and so issued to a party to, proceedings that relate wholly or partly to, or to the making of, a parenting order;

(e) a bond —

(i) entered into under an order of a court under this Act other than an order under Part 5 Division 13; or

(ii) entered into, for the purposes of section 227(5), on the direction of the court,

and includes an order, injunction or bond that —

(f) is an order under this Act made by another court because of paragraph (a), (b) or (e); and

(g) has been registered in the first-mentioned court in accordance with the regulations.

[Section 223 inserted: No. 25 of 2002 s. 16.]

224. Meaning of *contravene an order* — FLA s. 112AB

(1) For the purposes of this Part, a person is to be treated as having contravened an order under this Act if, and only if —

(a) where the person is bound by the order, the person has —

(i) intentionally failed to comply with the order; or

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

or

(b) in any other case, the person 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.

[(2) deleted]

[Section 224 amended: No. 25 of 2002 s. 17.]

225. Meaning of *reasonable excuse for contravening an order* — FLA s. 112AC

(1) The circumstances in which a person may be treated as having had, for the purposes of this Part, a reasonable excuse for contravening an order under this Act include, but are not limited to, the circumstances set out in subsection (2).

(2) A person (the ***respondent***) is to be treated as having a reasonable excuse for contravening an order under this Act if —

(a) the respondent contravened the order because, or substantially because, the respondent 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.

[Section 225 amended: No. 25 of 2002 s. 18.]

Division 2 — Sanctions for failure to comply with orders

226. Sanctions for failure to comply with orders — FLA s. 112AD

(1) If —

(a) a court is satisfied that a person has contravened an order under this Act; and

(b) the person does not prove on the balance of probabilities that the person had a reasonable excuse for contravening the order,

then the court may make an order for the imposing, in respect of the person, of one or more of the sanctions available to be imposed under subsection (3) that it considers to be appropriate in the circumstances.

(2) The power given to a court under subsection (1) in respect of a contravention of a maintenance order applies even if the order has been complied with before the matter of the contravention comes before the court.

(3) The sanctions that are available to be imposed by a court are —

(a) to require the person to enter into a bond in accordance with section 228; or

(b) to impose a sentence by order on the person, or make an order directed to the person, in accordance with section 229; or

(c) 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

(d) subject to subsection (4), to impose a sentence of imprisonment on the person in accordance with section 227.

(4) A court must not impose a sentence of imprisonment on a person under subsection (3)(d) in respect of the contravention of a maintenance order unless the court is satisfied that the contravention was intentional or fraudulent.

(5) An order under subsection (1) may be expressed to take effect immediately, or at the end of a specified period or on the occurrence of a specified event.

(6) Where a court makes an order under subsection (1), the court may make such other orders as the court considers necessary to ensure compliance with the order that was contravened.

[Section 226 amended: No. 25 of 2002 s. 19; No. 35 of 2006 s. 53 and 76.]

227. Sentences of imprisonment — FLA s. 112AE

(1) A sentence of imprisonment imposed on a person under section 226(3)(d) must 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 226(3)(d) unless the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention under any of the other paragraphs of section 226(3).

(3) If a court sentences a person to imprisonment under section 226(3)(d), 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.

(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).

(5) A court, when sentencing a person to imprisonment under section 226(3)(d) may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a bond described in subsection (6) after the person has served a specified part of the term of imprisonment.

(6) A bond for the purposes of subsection (5) is a bond (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.

(7) Without limiting the circumstances in which a court may discharge an order under section 231, a court that has sentenced a person to imprisonment for a period referred to in subsection (1)(b) may order the release of the person if it is satisfied that the person will, if released, comply with the order concerned.

(8) To avoid doubt, the serving by a person of a period of imprisonment under a sentence imposed on the person under section 226(3)(d) for failure to make a payment under a child maintenance order does not affect the person's liability to make the payment.

[Section 227 amended: No. 25 of 2002 s. 20; No. 35 of 2006 s. 54.]

228. Bonds — FLA s. 112AF

(1) This section provides for bonds that a court may require a person to enter into under section 226(3)(a).

(2) A bond must be for a specified period of up to 2 years.

(3) A bond may be —

(a) with or without surety; and

(b) with or without security.

(4) The conditions that may be imposed on a person by a bond include a condition requiring the person to be of good behaviour.

(5) Where 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.

[Section 228 inserted: No. 25 of 2002 s. 21.]

229. Sentencing alternatives — FLA s. 112AG

(1) In this section —

Sentencing Act means the *Sentencing Act 1995*.

(2) A sentencing alternative imposed on a person under section 226(3)(b) 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 chief executive officer; 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 226(3)(b), a court proposes to impose a sentencing alternative 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 sentencing alternative; and

(b) the requirements, obligations and conditions applicable to that person under the proposed sentencing alternative; and

(c) the consequences that may follow if the person fails to comply with the proposed sentencing alternative or with any requirement, obligation or condition applicable to that person under the proposed sentencing alternative; and

(d) how the proposed sentencing alternative 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.

[Section 229 amended: No. 25 of 2002 s. 22.]

230. Failure to comply with sentencing alternative imposed under s. 226(3)(b) — FLA s. 112AH

(1) This section applies where a court has, under section 226(3)(b), imposed a sentencing alternative on a person (the ***court***).

(2) Sections 62(3) and 69(4) of the *Sentencing Act 1995* do not apply for the purposes of this Act.

(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).

[(4)-(8) deleted]

(9) The court —

(a) without prejudice to the continuance of the sentencing alternative, may impose a fine not exceeding $1 100 on the person; or

(b) may revoke the sentencing alternative and, subject to subsection (10), deal with the person, in respect of the contravention for which the sentencing alternative was imposed, in any manner in which the person could have been dealt with in respect of that contravention if —

(i) the sentencing alternative had not been imposed; and

(ii) the person was before the court under section 226 in respect of the contravention.

(10) In dealing with the person as mentioned in subsection (9)(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 sentencing alternative was imposed; and

(b) anything done under the sentencing alternative; and

(c) any fine imposed, and any other order made, for or in respect of the contravention.

[Section 230 amended: No. 25 of 2002 s. 23, 74(1) and 75; No. 35 of 2006 s. 56.]

231. Variation and discharge of orders — FLA s. 112AK

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

(2) A variation of an order made under section 226 must be such that the order, as varied, is an order that could have been made under that section in respect of the contravention in respect of which the first-mentioned order was made.

(3) If a court discharges an order made under section 226 it may, subject to this Division, make another order under that section in respect of the contravention in respect of which the first-mentioned order was made.

(4) Where a court varies or discharges an order made under section 226 the court may give such directions as to the effect of the variation or discharge as the court considers appropriate.

[Section 231 amended: No. 49 of 2024 s. 70.]

232. Relationship between Division and other laws — FLA s. 112AM

(1) This section applies where an act or omission by a person —

(a) constitutes a contravention of an order under this Act; and

(b) is also an offence under a written law (an ***offence***).

(2) If a person is prosecuted in respect of an offence then a court in which proceedings brought under section 226 in respect of the contravention of the order are pending must either —

(a) adjourn those proceedings until the prosecution has been completed; or

(b) dismiss those proceedings.

(3) A person may be prosecuted for, and convicted of, an offence.

(4) Nothing in this section renders a person liable to be punished twice in respect of the same act or omission.

[Section 232 amended: No. 25 of 2002 s. 24.]

233. Division does not affect enforcement of child maintenance orders etc. — FLA s. 112AO

Nothing in this Division is intended to limit the operation of section 220.

[Division heading deleted: No. 25 of 2002 s. 26.]

Part 10A — Contempt of court

[Heading inserted: No. 25 of 2002 s. 26.]

233A. Terms used

In this Part —

contravene an order has the same meaning as in section 224;

maintenance order has the same meaning as in section 223;

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

[Section 233A inserted: No. 25 of 2002 s. 26; amended: No. 49 of 2024 s. 71.]

234. Contempt — FLA s. 112AP

(1) Subject to subsection (1a), this section applies to a contempt of a court that —

(a) does not constitute a contravention of a relevant order; or

(b) constitutes a contravention of a relevant order and involves a flagrant challenge to the authority of the court.

(1a) This section does not apply to a contempt that constitutes a contravention of a maintenance order if the order has been complied with before the matter of the contravention comes before the court.

(2) Despite any other law, a court may punish a person for contempt of that court.

(3) The rules may provide for practice and procedure as to charging a person with contempt of court, the hearing of the charge and dealing with a person so charged.

(4) Where a natural person is in contempt of a court, the court may punish the contempt by committal to prison or fine or both.

(5) Where a corporation is in contempt of a court, the court may punish the contempt by sequestration or fine or both.

(6) For the purposes of this section, a court may make an order for —

(a) punishment on terms; or

(b) suspension of punishment; or

(c) the giving of security for good behaviour.

(7) Where a person is committed to prison for a term for contempt of a court, the court may order the person's discharge before the expiry of that term.

(8) To avoid doubt, the serving by a person of a period of imprisonment as a result of a contempt of a court arising out of a failure by the person to make a payment in respect of the maintenance of another person does not affect the first-mentioned person's liability to make the payment.

[Section 234 amended: No. 25 of 2002 s. 27; No. 49 of 2024 s. 72.]

Part 11 — Injunctions

235. Injunctions — FLA s. 68B

(1) A person may institute proceedings in a court for an injunction in relation to a child and the court hearing the proceedings may make an order or grant an injunction as it considers proper for the welfare of the child, including —

(a) an injunction for the personal protection of the child; or

(b) an injunction for the personal protection of —

(i) a parent of the child; or

(ii) a person with whom the child is to live under a parenting order; or

(iii) a person with whom the child is to spend time under a parenting order; or

(iv) a person with whom the child is to communicate under a parenting order; or

(v) a person who has parental responsibility for the child;

or

(c) an injunction restraining a person from entering or remaining in —

(i) a place of residence, employment or education of the child; or

(ii) a specified area that contains a place of a kind referred to in subparagraph (i);

or

(d) an injunction restraining a person from entering or remaining in —

(i) a place of residence, employment or education of a person referred to in paragraph (b); or

(ii) a specified area that contains a place of a kind referred to in subparagraph (i).

(2) In any proceedings under this Act (other than proceedings to which subsection (1) applies) the court hearing the proceedings may grant an injunction with respect to a matter to which the proceedings relate, by interlocutory order or otherwise, in any case in which it appears to the court to be just or convenient to do so.

(3) An injunction or order under this section may be granted unconditionally or on such terms and conditions as a court considers appropriate.

[Section 235 amended: No. 35 of 2006 s. 168.]

235A. Injunctions relating to de facto relationships — FLA s. 114

(1) A person may institute proceedings in a court for an injunction in relation to a matter arising out of a de facto relationship and the court hearing the proceedings may make an order or grant an injunction as it considers proper with respect to the proceedings, including —

(a) an injunction for the personal protection of a de facto partner; or

(b) an injunction restraining a de facto partner from entering or remaining in —

(i) the home previously shared by the de facto partners; or

(ii) a de facto partner's principal place of residence; or

(iii) a place of residence or work of a de facto partner; or

(iv) a specified area that contains a place of a kind referred to in this paragraph;

or

(c) an injunction in relation to the property of a de facto partner; or

(d) an injunction relating to the use or occupancy of the home previously shared by the de facto partner.

(2) In any proceedings under this Act (other than proceedings to which subsection (1) applies) the court hearing the proceedings may grant an injunction with respect to a matter to which the proceedings relate, by interlocutory order or otherwise, in any case in which it appears to the court to be just or convenient to do so.

(3) An injunction or order under this section may be granted unconditionally or on such terms and conditions as a court considers appropriate.

(4) If a de facto partner is a bankrupt, a court may, on the application of the other de facto partner, by interlocutory order, grant an injunction under this section restraining the bankruptcy trustee from declaring and distributing dividends amongst the bankrupt's creditors.

(5) If a de facto partner is a debtor subject to a personal insolvency agreement, a court may, on the application of the other de facto partner, by interlocutory order, grant an injunction under this section restraining the trustee of the agreement from disposing of (whether by sale, gift or otherwise) property subject to the agreement.

(6) Subsections (4) and (5) do not limit the rest of this section.

[Section 235A inserted: No. 25 of 2002 s. 48; amended: No. 28 of 2022 s. 30.]

236. Powers of arrest where injunction breached — FLA s. 68C and s. 114AA

(1) If —

(a) an injunction is in force under section 235 or 235A for the personal protection of a person (the ***protected person***); and

(b) a member of the Police Force believes, on reasonable grounds, that the person (the ***respondent***) against whom the injunction is directed has breached the injunction by causing, or threatening to cause, bodily harm to the protected person or by harassing, molesting or stalking the protected person,

then the member of the Police Force may arrest the respondent without warrant.

(2) For the purposes of subsection (1), an injunction granted under section 235 or 235A is an injunction for the personal protection of a person if, and only if, it is expressed to be for the personal protection of the person.

(3) Where a respondent is arrested under subsection (1) —

(a) the member of the Police Force must —

(i) ensure that the respondent is brought before either the court that granted the injunction or another court before the end of the holding period; and

(ii) take all reasonable steps to ensure that, before the respondent is so brought before a court, the protected person is aware that the respondent has been arrested and of the court before which the respondent is to be brought;

and

(b) the respondent must not be released before the end of the holding period except under an order of either the court that granted the injunction or another court,

but nothing in this subsection authorises the keeping of the respondent in custody after the end of the holding period.

(4) Where a respondent is brought before a court in accordance with subsection (3), the court must —

(a) if there is an application before the court for the respondent to be dealt with for breach of the injunction, forthwith proceed to hear and determine that application; or

(b) if there is no application before the court as mentioned in paragraph (a), order that the respondent be released forthwith.

(5) Where —

(a) a respondent is brought before a court in accordance with subsection (3); and

(b) the court proceeds to hear and determine an application for the respondent to be dealt with for breach of an injunction as mentioned in subsection (4)(a); and

(c) at the end of the holding period the proceedings have not been determined,

the respondent may be kept in custody after the end of the holding period until —

(d) the court gives its decision on the proceedings; or

(e) the court orders that the respondent be released; or

(f) the court adjourns the hearing for a period of more than 24 hours,

whichever happens first.

(6) In this section —

holding period, in relation to a person's arrest, means the period starting when the person is arrested and ending at the close of business on the next day that is not a Saturday, Sunday or public holiday.

[Section 236 amended: No. 25 of 2002 s. 49 and 69.]

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

[Heading inserted: No. 49 of 2024 s. 73.]

236A. Terms used — FLA s. 114P

(1) In this Part —

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

(a) publication in a book, newspaper, magazine or other written publication;

(b) broadcast by radio or television;

(c) public exhibition;

(d) broadcast or publication or other communication by means of the internet.

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

public includes a section of the public.

[Section 236A inserted: No. 49 of 2024 s. 73.]

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

(1) A person commits a crime if —

(a) the person communicates to the public an account of proceedings under this Act; and

(b) the account identifies —

(i) a party to the proceedings; or

(ii) a witness in the proceedings; or

(iii) a person who is related to, or is associated with, a party to the proceedings; or

(iv) a person who is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate.

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

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

(2) Subsection (1) does not apply if the communication is —

(a) in accordance with a direction of a court; or

(b) otherwise approved by a court.

(3) For the purposes of subsection (1)(b), an account of proceedings is taken to identify a person if the account includes material that is sufficient to identify the person to a member of the public.

(4) Examples of material referred to in subsection (3) might include the following —

(a) a picture, recording, or physical description of the person;

(b) a name or title that identifies the person;

(c) an address or location where the person resides or works;

(d) details of the person's employment, paid or voluntary;

(e) the relationship or other connection between the person and an identified person or business;

(f) the person's political, philosophical or religious beliefs;

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

[Section 236B inserted: No. 49 of 2024 s. 73.]

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

(1) A person commits a crime if the person communicates to the public a list of proceedings, identified by reference to the names of the parties to the proceedings, that are to be dealt with by any of the following under this Act —

(a) a court;

(b) an officer of a court investigating or dealing with a matter in accordance with this Act, the regulations or the rules;

(c) a tribunal established by or under a law of this State or of the Commonwealth or of any other State or a Territory.

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

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

(2) Subsection (1) does not apply if —

(a) the communication is the publication, by the court, officer or tribunal, of a list of proceedings the court, officer or tribunal is to deal with; or

(b) the communication is —

(i) in accordance with a direction of a court or otherwise approved by a court; or

(ii) in accordance with the rules.

[Section 236C inserted: No. 49 of 2024 s. 73.]

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

(1) For the purposes of sections 236B(1)(a) and 236C(1), a communication to a person or body is not a communication to the public if —

(a) the person or body has a significant and legitimate interest in the subject matter of the communication; and

(b) that interest is substantially greater than, or different from, the interests of members of the public generally.

(2) Without limiting subsection (1), none of the following is a communication to the public —

(a) a private communication between a party to proceedings and one or more persons who are members of the party's family or friends of the party;

(b) a communication of a pleading, transcript of evidence, or other document for use in connection with any of the following proceedings, to a person concerned in those proceedings —

(i) proceedings in a court;

(ii) proceedings before an officer of a court investigating or dealing with a matter in accordance with this Act, the regulations or the rules;

(iii) proceedings in a tribunal established by or under a law of this State or of the Commonwealth or of any other State or a Territory;

(c) a communication of a pleading, transcript of evidence, or other document, to a prescribed authority of a State or Territory that has responsibilities relating to the welfare of children;

(d) a communication of a pleading, transcript of evidence, or other document, to —

(i) a body that is responsible for disciplining members of a profession in a State or Territory; or

(ii) a person concerned in disciplinary proceedings against a member of a profession in a State or Territory (being proceedings before a body that is responsible for disciplining members of that profession in that State or Territory);

(e) a communication of a pleading, transcript of evidence, or other document, to a body that grants assistance by way of legal aid for the purpose of facilitating a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case;

(f) a communication of material intended primarily for use by the members of any profession (being part of a series of law reports or any other publication of a technical character);

(g) a communication of an account of proceedings to a member of a profession in connection with —

(i) the person's practice of that profession; or

(ii) any form of professional training in which that person is involved;

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

[Section 236D inserted: No. 49 of 2024 s. 73.]

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

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

[Section 236E inserted: No. 49 of 2024 s. 73.]

Part 12 — Miscellaneous

237. Costs — FLA s. 117

(1) Subject to subsection (2) and section 219AZA(6), each party to proceedings under this Act must bear the party's own costs.

(2) If, in proceedings under this Act, the court hearing the proceedings is of the opinion that there are circumstances that justify it in doing so, the court may, subject to subsections (3), (5), (6A), (6) and (7) and in accordance with any relevant rules, make such order as to costs and security for costs, whether by way of interlocutory order or otherwise, as the court thinks just.

(3) In considering what order (if any) should be made under subsection (2), a court must have regard to —

(a) the financial circumstances of each of the parties to the proceedings; and

(b) whether any party to the proceedings is in receipt of assistance by way of legal aid and, if so, the terms of the grant of that assistance to that party; and

(c) the conduct of the parties to the proceedings in relation to the proceedings including, without limiting the generality of the foregoing, the conduct of the parties in relation to pleadings, particulars, discovery, inspection, directions to answer questions, admissions of facts, production of documents and similar matters; and

(d) whether the proceedings were necessitated by the failure of a party to the proceedings to comply with previous orders of a court; and

(e) whether any party to the proceedings has been wholly unsuccessful in the proceedings; and

(f) whether a party to the proceedings has made an offer in writing to another party to the proceedings to settle the proceedings and the terms of any such offer; and

(g) such other matters as the court considers relevant.

(4) To avoid doubt, in proceedings in which an independent children's lawyer for a child 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 independent children's lawyer in respect of the proceedings.

(5) However, in proceedings in which an independent children's lawyer for a child 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 independent children's lawyer,

the court must not make an order under subsection (2) against that party in relation to the costs of the independent children's lawyer.

(6A) If —

(a) under section 207, the CEO intervenes in proceedings; and

(b) the CEO acts in good faith in relation to the proceedings,

the court must not, because of the intervention, make an order under subsection (2) of this section against the CEO, the Department (as defined by the *Children and Community Services Act 2004* section 3) or the State.

(6) In considering what order (if any) should be made under subsection (2) in proceedings in which an independent children's lawyer has been appointed, a court must disregard the fact that the independent children's lawyer is funded under a

legal aid scheme or service established under a Commonwealth, State or Territory law or approved under the Family Law Act.

(7) The court must not make an order under subsection (2) against a case guardian unless the court is satisfied that one or more acts or omissions of the case guardian relating to the proceedings are unreasonable or have delayed the proceedings unreasonably.

[Section 237 amended: No. 35 of 2006 s. 49, 77(1) and (2), 102 and 140; No. 13 of 2013 s. 21; No. 49 of 2024 s. 74.]

*[**237A.** Deleted: No. 13 of 2013 s. 22.]*

238. Reparation for certain losses and expenses relating to children — FLA s. 117A

(1) Where —

(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) a person has been convicted of an offence against section 107, 107A, 108 or 108A in respect of a child; or

(c) 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 an injunction granted, or an order made, under section 235; or

(d) a person has been found to be in contempt of a court by reason of taking a child from another person or having refused or failed to deliver a child to another person,

a court may, subject to subsection (2) —

(e) on the application of the Commonwealth or the State Government order the person to make reparation to the Commonwealth or the State Government or to a Commonwealth or State instrumentality, by way of money payment or otherwise, in respect of any loss suffered, or any expense incurred, by the Commonwealth or the State Government or the instrumentality, as the case may be, in recovering the child and returning the child to a person; or

(f) on the application of any other person, order the first-mentioned person to make reparation to that other person, by way of money payment or otherwise, in respect of any loss suffered, or expense incurred, by that other person in recovering the child and, if applicable, returning the child to a person.

(2) Nothing in subsection (1) empowers a court to order a person to make reparation to the Commonwealth or the State Government, to a Commonwealth or State instrumentality or to another person in respect of any loss suffered, or any expense incurred, where a court (whether of a kind referred to in section 8(a) or (b) or otherwise) has, under a written law, ordered the first-mentioned person to make reparation to the Commonwealth or the State Government, to the Commonwealth or State instrumentality or to that other person, as the case may be, in respect of the same loss suffered or expense incurred.

(3) In this section —

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

[Section 238 amended: No. 35 of 2006 s. 78 and 169; No. 49 of 2024 s. 75.]

239. Interest on moneys ordered to be paid — FLA s. 117B

(1) Subject to any order made by a court under subsection (2), where a court makes an order for the payment of money (other than an order for the payment by way of maintenance of a periodic sum), interest is payable, at the rate prescribed by the rules, from —

(a) the date on which the order is made; or

(b) the date on which the order takes effect,

whichever is later, on so much of the money as is from time to time unpaid.

(2) Where a court makes an order for the payment of money as mentioned in subsection (1), it may order that interest is not payable on the money payable under the first-mentioned order or may order —

(a) that interest is payable at a rate specified in the order, being a rate other than the rate prescribed by the rules; or

(b) that interest is payable from the date specified in the order, being a date other than the date from which the interest would be payable under subsection (1).

240. Offers of settlement — FLA s. 117C

(1) This section applies to proceedings under this Act other than the following proceedings —

(a) proceedings under section 235(1) or Division 6 or 12 of Part 5;

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

(2) Subsection (3) applies if —

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

(b) the offer is made in accordance with the rules.

(3) The terms of the offer must not be disclosed to a court in which the proceedings are being heard except for the purposes of the consideration by the court of whether it should make an order as to costs under section 237(2) and the terms of any such order.

[Section 240 inserted: No. 35 of 2006 s. 50; amended: No. 49 of 2024 s. 76.]

241. *Ex parte* orders

(1) In a case of urgency, a court may make, *ex parte* —

(a) an order in accordance with Part 5 concerning any aspect of parental responsibility in relation to a child; or

(b) an order under section 162(1) relating to the welfare of a child; or

(c) where a woman is in immediate need of child bearing expenses, an order for such periodic or other sums as the court considers reasonable; or

(d) an injunction or order under section 235.

(2) An order or injunction made under subsection (1) must be expressed to operate only until a specified time or the further order of the court.

[242, 243. *Deleted: No. 49 of 2024 s. 77.]*

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

(1) This section and section 243B apply to any of the following persons (the ***arrester***) who is authorised by this Act, or by a warrant issued under this Act or under the rules, to arrest another person (the ***arrestee***) —

(a) the Marshal of the Court;

(b) a police officer.

(2) In the course of arresting the arrestee, the arrester —

(a) must not use more force, or subject the arrestee to greater indignity, than is necessary and reasonable to make the arrest or to prevent the arrestee's escape after the arrest; and

(b) must not do anything that is likely to cause the death of, or grievous bodily harm to, the arrestee unless the arrester reasonably believes that doing that thing is necessary to protect life or prevent serious injury to another person (including the arrester); and

(c) if the arrestee is attempting to escape arrest by fleeing — must not do a thing described in paragraph (b) unless —

(i) the arrester reasonably believes that doing that thing is necessary to protect life or prevent serious injury to another person (including the arrester); and

(ii) the arrestee has, if practicable, been called on to surrender and the arrester reasonably believes that the arrestee cannot be arrested in any other way.

(3) When arresting the arrestee, the arrester must inform the arrestee of the grounds for the arrest.

(4) It is sufficient if the arrestee is informed of the substance of those grounds, not necessarily in precise or technical language.

(5) Subsection (3) does not apply if —

(a) it is reasonable, in the circumstances, to assume that the arrestee knows the substance of the grounds for the arrest; or

(b) the arrestee's actions make it impracticable for the arrester to inform the arrestee of those grounds.

[Section 243A inserted: No. 49 of 2024 s. 78.]

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

(1) In this section —

arrestee has the meaning given in section 243A(1);

arrester has the meaning given in section 243A(1);

premises includes a place and a conveyance.

(2) If the arrester reasonably believes the arrestee is on premises, the arrester may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the arrestee or arresting the arrestee.

(3) However, the arrester must not enter a dwelling house between 9 pm one day and 6 am the next day unless the arrester reasonably believes that it would not be practicable to arrest the arrestee there or elsewhere at another time.

(4) If the arrester may enter and search a conveyance under subsection (2) (disregarding subsection (3)), the arrester may, for the purposes of effecting the entry and search, stop and detain the conveyance.

(5) If the arrester stops, detains, enters or searches a conveyance under this section for the purposes of arresting the arrestee, the arrester —

(a) may use such assistance as is necessary; and

(b) must search the conveyance in a public place or in some other place to which members of the public have ready access; and

(c) must not detain the conveyance for longer than is necessary and reasonable to search it; and

(d) may use such force as is necessary and reasonable in the circumstances, but must not damage the conveyance by forcing open a part of the conveyance unless —

(i) the person (if any) apparently in charge of the conveyance has been given a reasonable opportunity to open that part; or

(ii) it is not possible to give that person such an opportunity.

[Section 243B inserted: No. 49 of 2024 s. 78.]

244. Rules

(1) The judges, or a majority of them, may make rules not inconsistent with this Act or regulations made under this Act providing for or in relation to —

(a) the practice and procedure to be followed in the Court or in the Magistrates Court exercising jurisdiction under this Act; and

(b) all matters and things necessary or convenient to be prescribed for the conduct of any business in the Court or in the Magistrates Court exercising jurisdiction under this Act; and

(c) all matters and things incidental to the things specified in this section.

(2) The judges, or a majority of them, may make rules not inconsistent with this Act or regulations made under this Act, prescribing all matters that are required or permitted by this Act to be prescribed by rules.

(3) Without limiting the generality of subsection (1) or (2), the rules may make provision for and in relation to —

(a) the places and times of sitting of the Court or of courts of summary jurisdiction exercising federal jurisdiction or of the Magistrates Court exercising non-federal jurisdictions under this Act; and

(b) the attendance of witnesses; and

(c) the manner of service of process of the Court or of the Magistrates Court exercising jurisdiction under this Act and for and in relation to dispensing with such service; and

(d) trial management; and

(ea) proceedings transferred to the Court under the *Bankruptcy Act 1966* (Commonwealth) sections 35A and 35B; and

(e) the time and manner of institution of appeals to the Court, including the conferral of power to stay the execution of decrees that are subject to appeal; and

(f) the functions of officers of the Court and officers of the Magistrates Court exercising federal jurisdiction or exercising non-federal jurisdictions under this Act; and

(fa) the prevention or termination of vexatious proceedings; and

(g) the seals and stamps to be used in the Court and in the Magistrates Court exercising jurisdiction under this Act; and

(h) matters relating to the costs of proceedings (including solicitor and client costs and party and party costs) and the assessment or taxation of those costs; and

(i) authorising the Court and the Magistrates Court exercising jurisdiction under this Act to refer to an officer of the court for investigation, report and recommendation claims or applications for or relating to any matters before the court; and

(j) 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, 205H, 205J or 205K;

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

(k) the procedure of the Court and the Magistrates Court exercising jurisdiction under this Act upon receiving a report of an officer who has made an investigation referred to in paragraph (i); and

(l) matters relating to expert evidence, including the disclosure, by the furnishing of copies of reports or otherwise, of the nature and substance of the expert evidence to be given, and including the exclusion of expert evidence in case of non-compliance with the rules relating to expert evidence or with any order for the disclosure of the nature and substance of expert evidence; and

(m) the appointment of a case guardian for a party; and

(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

(o) the forfeiture of bonds entered into in pursuance of requirements made under this Act; and

(p) the recovery of any money that may be due to the State under a bond referred to in paragraph (o) or from any person who has become a surety under this Act; and

(q) the attachment of moneys payable by the Commonwealth, the State or another State, a Territory or the Administration of a Territory, or by an authority of the Commonwealth, of the State or another State or of a Territory (other than moneys as to which it is provided by any law of the Commonwealth, of the State or another State or of a Territory that they are not liable to attachment); and

(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

(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

[(s) deleted]

(t) the functions and duties of assessors and of family consultants and arbitrators; and

(u) the making of applications under this Act for arbitration or orders under sections 65M and 65N; and

(v) the disputes, proceedings or matters that may or may not be arbitrated under this Act; and

(va) prescribing the disputes, proceedings or matters in relation to which family consultants may, or must not, perform their functions; and

(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) 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

(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

(zaa) the registration of awards under section 65P; and

(zab) the time and manner of making applications for review of registered awards under section 65Q or for orders setting aside registered awards under section 65R; and

(za) conciliation conferences.

(4) Rules made under this Act may, for the purposes of this Act, adopt or apply any rule for the time being in force under the Family Law Act.

(5) Rules made under this Act may provide that contravention of a rule or a provision of a rule constitutes an offence and provide for penalties not exceeding $5 500.

[Section 244 amended: No. 25 of 2002 s. 28, 50, 74 and 75; No. 59 of 2004 s. 95; No. 35 of 2006 s. 20 and 125; No. 13 of 2013 s. 34; No. 49 of 2024 s. 79.]

244A. Rules for proceedings under *Births, Deaths and Marriages Registration Act 1998*

(1) The judges, or a majority of them, may make rules providing for and in relation to —

(a) the practice and procedure to be followed in the Court exercising jurisdiction conferred on it under the *Births, Deaths and Marriages Registration Act 1998* Part 5A; and

(b) all matters and things necessary or convenient to be prescribed for the conduct of any business in the Court exercising jurisdiction conferred on it under the *Births, Deaths and Marriages Registration Act 1998* Part 5A.

(2) If no provision is made under subsection (1) in relation to a matter for which rules may be made under that subsection, the

rules under section 244 that are most nearly applicable in relation to the matter apply.

[Section 244A inserted: No. 31 of 2024 s. 40.]

245. Regulations

(1) The Governor may make regulations, not inconsistent with this Act or the Family Law Act, prescribing all matters that are required or permitted by this Act to be prescribed by regulations or are necessary or convenient to be prescribed by regulations for giving effect to the purposes of this Act.

(2) Without limiting the generality of subsection (1) the regulations may make provision for or in relation to —

(a) the establishment of registries of the Court; and

(b) court fees to be payable in respect of —

(i) proceedings under this Act; or

(ii) services provided by the Court in circumstances other than where a court orders or directs the provision of the services;

and

(ba) the requirements to be complied with by a person who is, or wishes to become, an arbitrator under section 57; and

(bb) anything in respect of which rules may be made under section 244(3)(t), (u), (v), (va), (w), (x), (y), (ya) or (z); and

(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

(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

(e) the registration of awards made in section 65M arbitration and relevant property or financial arbitration; and

(f) authorising any justice of the peace, any member of the Police Force, the Court or any court of summary jurisdiction exercising federal jurisdiction or the Magistrates Court exercising non-federal jurisdictions under this Act, to grant bail; and

(g) the transcription of proceedings under this Act and the making available of copies of transcripts of those proceedings; and

(h) matters incidental to the matters specified in this section.

(3) Regulations made under this Act may, for the purposes of this Act, adopt or apply any regulation for the time being in force under the Family Law Act.

(4) Regulations made under this Act may provide that contravention of a regulation or a provision of a regulation constitutes an offence and, subject to section 65AC(4)(a) and subsection (5), provide for penalties not exceeding $5 500.

(5) A penalty provided for contravention of a regulation made for the purposes of subsection (2)(d) is not to exceed $1 100.

(6) To the extent of any inconsistency between regulations made under this Act and rules made under this Act, the regulations prevail.

[Section 245 amended: No. 25 of 2002 s. 51, 73 and 75; No. 59 of 2004 s. 95; No. 35 of 2006 s. 126; No. 49 of 2024 s. 80.]

246. Repeal

The *Family Court Act 1975* is repealed.

247. Transitional and savings

(1) Schedule 2 Division 1 has effect in relation to the repeal effected by section 246.

(2) Schedule 2 Division 2 has effect in relation to the amendments made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013*.

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

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

[Section 247 inserted: No. 13 of 2013 s. 35; amended: No. 28 of 2022 s. 31; No. 49 of 2024 s. 81.]

Schedule 1 — Oath and affirmation of office

[s. 13 & 22(4)]

[Heading inserted: No. 24 of 2005 s. 24.]

I, [*name*], [*insert an oath or affirmation according to the Oaths, Affidavits and Statutory Declarations Act 2005*] that I will faithfully serve the people and the State of Western Australia in the office of [*title of office*] of the Family Court of Western Australia and I will do right to all manner of people, according to law, without fear or favour, affection or ill will.

[Schedule 1 inserted: No. 24 of 2005 s. 24.]

Schedule 2 — Transitional and savings

[Section 247]

Division 1 — Provisions for repeal of *Family Court Act 1975*

[Heading inserted: No. 13 of 2013 s. 36.]

1. Terms used

In this Division, unless the contrary intention appears —

commencement day means the day on which section 246 comes into operation;

repealed Act means the *Family Court Act 1975* repealed by section 246.

[Clause 1 amended: No. 13 of 2013 s. 37.]

2. Interpretation Act 1984 applies

This Division does not limit the operation of the *Interpretation Act 1984*.

[Clause 2 amended: No. 13 of 2013 s. 38.]

3. Persons holding offices under, or employed or engaged for purposes of, the repealed Act

(1) A person —

(a) who was appointed under Division 2 of Part II of the repealed Act to be the Chief Judge, a judge other than the Chief Judge, or an acting judge; or

(b) subject to subclauses (2) and (3), who was appointed under Division 4 of Part II of the repealed Act to be an officer of the Court; or

(c) who was employed or engaged as a member of staff for the purposes of the repealed Act, whether or not under Division 4 of Part II of the repealed Act,

and whose appointment to, or employment or engagement in, that office or position was in effect immediately before the commencement day is to be treated on and after the commencement

day as having been appointed, employed or engaged, as the case requires, on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before the commencement day.

(2) A person who was the registrar of the Court under the repealed Act and whose appointment to that office was in effect immediately before the commencement day is to be treated on and after the commencement day as having been appointed as the Principal Registrar under this Act but otherwise on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before the commencement day.

(3) A person who was a deputy registrar of the Court under the repealed Act and whose appointment to that office was in effect immediately before the commencement day is to be treated on and after the commencement day as having been appointed as a registrar under this Act but otherwise on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before the commencement day.

(4) A person to whom this clause applies retains all existing and accruing rights and benefits as if the holding of the office, or the employment or engagement, under this Act were a continuation of the person's holding of the office, or the employment or engagement, under the repealed Act immediately before the commencement day.

(5) If a person to whom subclause (2) or (3) applies has also been appointed, and holds office, as a stipendiary magistrate under the *Stipendiary Magistrates Act 1957*[2] and the person's appointment to the office of stipendiary magistrate was —

(a) in effect immediately before the commencement day; and

(b) conditional on the person holding office as the registrar or a deputy registrar under the repealed Act,

then on and after the commencement day, the person's appointment to the office of stipendiary magistrate —

(c) is to be treated as being conditional on the person holding office as the Principal Registrar or a registrar, as the case

requires, according to whether subclause (2) or (3) applies to the person; and

(d) otherwise continues to be subject to the terms and conditions applicable to the appointment.

4. Setting aside of orders made under repealed s. 30 altering property interests

(1) Where, on application by a person affected by an order made by the Court under section 30 of the repealed Act, the Court is satisfied that there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence, the giving of false evidence, or any other circumstance, the Court may, in its discretion, set aside the order and, if it thinks fit, make another order in substitution for the order so set aside, taking into account the considerations applicable to an order altering the interests of parties in their property under Part VIII of the Family Law Act.

(2) In the exercise of its powers under subsection (1), the Court must have regard to the interests of, and must make any order proper for the protection of, a bona fide purchaser or other person interested.

5. Treatment of orders as to custody, guardianship, access or maintenance or other payments

(1) An order with respect to the custody of a child in force under the repealed Act immediately before the commencement day has effect, on and after the commencement day —

(a) so far as it deals (expressly or impliedly) with the question of the person or persons with whom the child is to live, as if it were a residence order made under this Act; and

(b) so far as it deals, expressly or impliedly, with other aspects of parental responsibility for the child, as if it were a specific issues order made under this Act.

(2) An order with respect to the guardianship of a child in force under the repealed Act immediately before the commencement day has effect, on and after the commencement day —

(a) so far as it deals (expressly or impliedly) with the question of the person or persons with whom the child is to live, as if it were a residence order made under this Act; and

(b) so far as it deals (expressly or impliedly) with other aspects of parental responsibility for the child, as if it were a specific issues order made under this Act.

(3) An order with respect to the access to a child in force under the repealed Act immediately before the commencement day has effect, on and after the commencement day, as if it were a contact order made under this Act.

(4) An order with respect to the maintenance of a child in force under the repealed Act immediately before the commencement day has effect, on and after the commencement day, as if it were a child maintenance order made under this Act.

(5) An order for the payment of preliminary expenses or any other moneys under Division 5 of Part III of the repealed Act in force immediately before the commencement day has effect, on and after the commencement day, as if it were an order for the payment of child bearing expenses made under this Act.

(6) In this clause, a reference to a particular kind of order in force under the repealed Act includes a reference to —

(a) an agreement that has effect as that kind of order under the repealed Act; or

(b) an order that is treated, or that has effect, as if it were an order of that kind; or

(c) a right or liability, within the meaning of the *Family Court (Orders of Registrars) Act 1997*, that —

(i) is in respect of a matter to which subsection (1), (2), (3), (4) or (5) applies; and

(ii) is conferred, imposed or affected by section 4 of that Act.

(7) Nothing in subclause (6) applies to an agreement to the extent, if any, to which the agreement relates to child welfare matters in respect of a child.

6. Treatment of applications for orders as to custody, guardianship, access or maintenance or other payments

(1) This clause applies if, immediately before the commencement day, an application for an order under section 36, 55, 62 or 63 of the repealed Act of any of the following kinds was still awaiting determination —

(a) an order with respect to the custody of a child;

(b) an order with respect to the guardianship of a child;

(c) an order with respect to the access to a child;

(d) an order with respect to the maintenance of a child;

(e) an order for the payment of preliminary expenses or any other moneys under Division 5 of Part III of the repealed Act.

(2) An application referred to in subclause (1) must be determined as if it were an application for the corresponding order or orders under Part 5 of this Act (determined having regard to the effect of clause 5).

7. Treatment of agreements relating to child welfare matters

(1) To the extent that it relates to child welfare matters in respect of a child, a child agreement or a maintenance agreement in force under the repealed Act immediately before the commencement day has effect on and after the commencement day as if it were a parenting plan made under this Act.

(2) If —

(a) a child agreement had been registered under section 41 of the repealed Act and the registration was in effect immediately before the commencement day; or

(b) a maintenance agreement had been registered under section 70 of the repealed Act and the registration was in effect immediately before the commencement day,

then, to the extent that the agreement relates to child welfare matters in respect of a child, the agreement continues to have effect on and after the commencement day as if it were a parenting plan registered under section 79 of this Act.

8. Treatment of warrants

(1) If a warrant under section 47(1) or (2) of the repealed Act was in force immediately before the commencement day then the repealed Act continues to have effect on and after the commencement day in relation to the warrant as if the repealed Act had not been repealed.

(2) If an application for a warrant under section 47 of the repealed Act has not been decided by the commencement day then the repealed Act continues to have effect after the commencement day in relation to the application and to any warrant issued in relation to the application as if the repealed Act had not been repealed.

9. Treatment of orders as to information

(1) If an order under section 47(5a) or (5b) of the repealed Act was in force immediately before the commencement day then the repealed Act continues to have effect on and after the commencement day in relation to the order as if the repealed Act had not been repealed.

(2) If an application for an order under section 47(5a) or (5b) of the repealed Act has not been decided by the commencement day then the repealed Act continues to have effect on and after the commencement day in relation to the application and to any order made in relation to the application as if the repealed Act had not been repealed.

10. Other things done for purposes of provisions of repealed Act

Subject to clauses 5 to 9 —

(a) the making of an application to, or filing of a notice or other document in, a court; and

(b) the making of an order or other decree by a court; and

(c) the preparation of a report or other document; and

(d) the making of, continuation of, or conduct of proceedings in relation to, an appeal to or from a court,

or any other thing done for the purposes of a provision of the repealed Act has effect, on and after the commencement day, as if it were an equivalent thing done under the provisions of this Act that most closely correspond to the provisions of the repealed Act.

Division 2 — Provisions for *Family Court Amendment (Family Violence and Other Measures) Act 2013*

[Heading inserted: No. 13 of 2013 s. 39.]

11. Application of amendments relating to family violence

(1) In this clause —

commencement means the commencement of the *Family Court Amendment (Family Violence and Other Measures) Act 2013* Part 2;

old Act means this Act as in force immediately before commencement.

(2) The amendments made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* sections 4 to 8, 10, 11 and 17 to 22 apply in relation to proceedings instituted at or after commencement.

(3) The amendments made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* Part 2 do not affect an order made under the old Act or a certificate given under section 66H(7) of the old Act.

(4) The amendments made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* Part 2 are taken not to constitute changed circumstances that would justify the making of 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.

[Clause 11 inserted: No. 13 of 2013 s. 39.]

12. Application of other amendments

(1) In this clause —

commencement means the commencement of the *Family Court Amendment (Family Violence and Other Measures) Act 2013* Part 3;

old Act means this Act as in force immediately before commencement.

(2) An order or direction under section 65(1) or 73(5) of the old Act, or an application for such an order or direction, has effect after commencement as if it were an order or direction, or an application

for an order or direction, under that section as in force after commencement.

(3) The amendment made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* section 26 applies in relation to orders under Part 5 Division 11 Subdivision 4, whether made before, at or after commencement.

(4) The amendment made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* section 28 applies in relation to a court, after commencement, taking an opinion expressed by a family consultant into account, whether that opinion was expressed before, at or after commencement.

(5) The amendment made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* section 30 applies in relation to orders requiring persons to enter into bonds, whether made before, at or after commencement.

(6) The amendment made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* section 31 applies in relation to bonds entered into whether before, at or after commencement.

(7) Subject to subclause (8), the amendment made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* section 32 applies in relation to appeals whether instituted before, at or after commencement.

(8) The amendment made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* section 32 does not affect the dismissal or stay of proceedings on an appeal before commencement.

(9) The amendment made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* section 34 applies in relation to proceedings transferred to the Court whether before, at or after commencement.

[Clause 12 inserted: No. 13 of 2013 s. 39.]

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

[Heading inserted: No. 28 of 2022 s. 32.]

13. Application of amendments

(1) In this clause —

commencement day means the day on which the *Family Court Amendment Act 2022* Part 2 comes into operation.

(2) Subject to subclause (3), the amendments to this Act made by the *Family Court Amendment Act 2022* sections 4, 5, 7, 9, 14, 15, 16, 17, 18, 20, 21, 22, 23, 29 and 30, to the extent to which they relate to bankruptcies or personal insolvency agreements, apply in relation to —

(a) bankruptcies for which the date of the bankruptcy is on or after the commencement day; and

(b) personal insolvency agreements, whether executed before, on or after the commencement day.

(3) The following provisions, as inserted by the *Family Court Amendment Act 2022*, apply to proceedings instituted on or after the commencement day, whether the date of the bankruptcy is before, on or after the commencement day —

(a) section 205ZCA(2), (3), (4) and (5);

(b) section 205ZCA(10), to the extent to which it relates to section 205ZCA(2);

(c) the definitions in section 5(1), to the extent to which they relate to section 205ZCA(2), (3), (4) and (5);

(d) section 205ZG(12), (13), (14) and (15);

(e) section 205ZG(20), to the extent to which it relates to section 205ZG(12);

(f) the definitions in section 5(1), to the extent to which they relate to section 205ZG(12), (13), (14) and (15).

(4) Section 205ZA(3), as in force immediately before the commencement day, continues to apply on and after that day to a declaration or order made under section 205ZA before that day.

(5) The amendment to section 205ZB made by the *Family Court Amendment Act 2022* section 13 applies in relation to applications made on or after the commencement day.

(6) Section 205ZPA applies in relation to a financial agreement made on or after the commencement day.

(7) Section 205ZPB applies in relation to a financial agreement or former financial agreement made between parties whose de facto relationship breaks down on or after the commencement day.

(8) Section 211(6) applies in relation to appeals whether instituted before, on or after the commencement day.

(9) The amendment to section 211B made by the *Family Court Amendment Act 2022* section 28 applies in relation to appeals whether instituted before, on or after the commencement day.

[Clause 13 inserted: No. 28 of 2022 s. 32.]

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

[Heading inserted: No. 49 of 2024 s. 82.]

14. Application of amendments

(1) In this clause —

commencement day means the day on which the *Family Court Amendment (Commonwealth Reforms) Act 2024* Part 2 comes into operation;

old Act means the *Family Court Act 1997* as in force immediately before commencement day.

(2) Subject to subclause (8), the insertion by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 5(2) of the definition of ***family law practice and procedure provisions*** applies, and the amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* sections 6(1), 23, 24, 25, 26, 28, 31, 32, 33, 34, 36, 38, 39, 52, 53, 54, 55, 57 and 64 apply, in relation to the following proceedings —

(a) proceedings instituted on or after commencement day;

(b) proceedings instituted before, and not finally determined by, commencement day, other than proceedings in respect of which a final hearing has commenced by commencement day.

(3) So far as the amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* sections 5(6), 6(2) and 7 apply in relation to proceedings, they apply in relation to —

(a) proceedings instituted on or after commencement day; and

(b) proceedings instituted before, and not finally determined by, commencement day, other than proceedings in respect of which a final hearing has commenced by commencement day.

(4) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 9 are taken to apply on and from 1 September 2021.

(5) Section 33B, as inserted by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 11, applies in relation to the performance of a function or the exercise of a power of a registrar of the Court, before, on or after the day on which the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 11 comes into operation, regardless of whether the relevant proceeding commenced before, on or after commencement of that section.

(6) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* sections 13 and 14 apply in relation to proceedings instituted on or after commencement day.

(7) The amendment made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 19 applies in relation to a thing said or an admission made if the thing or admission is to be admitted, on or after commencement day, into proceedings (whether those proceedings are instituted before, on or after commencement day).

(8) Section 69A, as inserted by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 31, applies on and from commencement day.

(9) The amendment made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 37 applies in relation to

final parenting orders whether the orders came into force before, or come into force on or after, commencement day.

(10) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* sections 42 to 46 apply to —

(a) a child taken or sent from the State on or after commencement day; or

(b) a child taken or sent from the State before commencement day, if the period specified in the consent or order in accordance with which the child was taken or sent —

(i) ended after commencement day; or

(ii) was extended so that it ended after commencement day.

(11) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 58 apply in relation to revivals, variations and suspensions of orders, injunctions and arrangements if the revivals, variations and suspensions are made under section 176 on or after commencement day.

(12) Despite the repeal of section 202K of the old Act made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 62, section 202K of the old Act continues to apply on and after commencement day, in relation to orders made before commencement day, as if the repeal had not happened.

(13) Despite the amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* sections 65, 68, 77 and 79(a), the rules that were in force immediately before commencement day under the old Act (to the extent the rules relate to vexatious proceedings) continue to apply on and after commencement day in relation to proceedings that were pending in a court immediately before commencement day.

(14) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* sections 65, 68, 77 and 79(a) do not affect the validity of any orders that were made before commencement day under the rules (to the extent the rules relate to vexatious proceedings).

(15) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* sections 68 and 74(1) apply in relation to the following proceedings —

(a) proceedings instituted on or after commencement day;

(b) proceedings instituted before, and not finally determined by, commencement day.

(16) Part 11A of this Act, as inserted by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 73, applies in relation to acts or omissions occurring on or after commencement day.

(17) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 74(2) and (3) apply in relation to persons who become case guardians in proceedings on or after commencement day, whether the proceedings were instituted before, on or after that day.

(18) The amendments made by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 76 apply in relation to offers made before, on or after commencement day.

(19) The repeal of section 242 by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 77 —

(a) applies to proceedings instituted before, on or after commencement day; but

(b) does not affect any action taken under that section before commencement day.

(20) Regulations that were in force for the purposes of section 243(8)(aa) of the old Act continue in force on and after commencement day as if they were regulations in force for the purposes of section 236D(2)(c).

(21) Sections 243A and 243B, as inserted by the *Family Court Amendment (Commonwealth Reforms) Act 2024* section 78, apply in relation to arrests —

(a) authorised by this Act on or after commencement day; and

(b) authorised by warrants issued on or after commencement day.

(22) The Governor may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by any or all

of the following provisions of the *Family Court Amendment (Commonwealth Reforms) Act 2024* —

(a) section 5(1), in so far as that subsection deletes the definitions of ***community service order***, ***contravened an order***, ***order under this Act affecting children***, ***primary order*** and ***reasonable excuse for contravening***;

(b) section 5(2), in so far as that subsection inserts definitions of ***child-related order***, ***contravene*** and ***reasonable excuse***;

(c) section 5(3), 5(4), 18, 35, 36, 63, 69, 71, 72, 74(1) or 79(b).

(23) To avoid doubt, the regulations made under subclause (22) cannot do the following —

(a) create an offence or civil penalty;

(b) provide powers of —

(i) arrest or detention; or

(ii) entry, search or seizure;

(c) impose a tax;

(d) directly amend the text of the *Family Court Amendment (Commonwealth Reforms) Act 2024* or this Act.

[Clause 14 inserted: No. 49 of 2024 s. 82.]

Notes

This is a compilation of the *Family Court Act 1997* and includes amendments made by other written laws. For provisions that have come into operation and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Family Court Act 1997	40 of 1997	10 Dec 1997	s. 1 and 2: 10 Dec 1997; Act other than s. 1 and 2: 26 Sep 1998 (see s. 2 and *Gazette* 25 Sep 1998 p. 5295)
State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 43(1)	43 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2(2) and *Gazette* 16 Feb 2001 p. 903)
Acts Amendment (Lesbian and Gay Law Reform) Act 2002 Pt. 9	3 of 2002	17 Apr 2002	21 Sep 2002 (see s. 2 and *Gazette* 20 Sep 2002 p. 4693)
Family Court Amendment Act 2002 [3-5]	25 of 2002	25 Sep 2002	s. 1 and 2: 25 Sep 2002; Act other than s. 1 and 2: 1 Dec 2002 (see s. 2 and *Gazette* 29 Nov 2002 p. 5651)
Acts Amendment (Equality of Status) Act 2003 Pt. 19 [6]	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and *Gazette* 30 Jun 2003 p. 2579)
Sentencing Legislation Amendment and Repeal Act 2003 s. 60	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and *Gazette* 14 May 2004 p. 1445)
Reprint 1: The *Family Court Act 1997* as at 15 Aug 2003 (includes amendments listed above except those in the *Sentencing Legislation Amendment and Repeal Act 2003*)			
Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 126	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5722)
Criminal Code Amendment Act 2004 s. 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
Children and Community Services Act 2004 Sch. 2 cl. 10	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and *Gazette* 14 Feb 2006 p. 695)

Short title	Number and year	Assent	Commencement
Acts Amendment (Court of Appeal) Act 2004 s. 37	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and *Gazette* 14 Jan 2005 p. 163)
Courts Legislation Amendment and Repeal Act 2004 Pt. 12 [7]	59 of 2004 (as amended by No. 2 of 2008 s. 77(2))	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))
Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005 Pt. 7	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2(1) and *Gazette* 23 Dec 2005 p. 6244)
Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2(2) and *Gazette* 21 Mar 2006 p. 1078)
Reprint 2: The *Family Court Act 1997* as at 14 Apr 2006 (includes amendments listed above)			
Family Legislation Amendment Act 2006 Pt. 2 and 3 [8-11]	35 of 2006	4 Jul 2006	Pt. 2: 14 Jul 2006 (see s. 2 and *Gazette* 14 Jul 2006 p. 2559); Pt. 3: 15 Jul 2006 (see s. 2 and *Gazette* 14 Jul 2006 p. 2559)
Reprint 3: The *Family Court Act 1997* as at 20 Oct 2006 (includes amendments listed above)			
Legal Profession Act 2008 s. 663	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 511)
Surrogacy Act 2008 Pt. 4 Div. 3	47 of 2008	10 Dec 2008	1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 512)
Statutes (Repeals and Minor Amendments) Act 2009 s. 7	46 of 2009	3 Dec 2009	4 Dec 2009 (see s. 2(b))
Family Court Amendment (Family Violence and Other Measures) Act 2013	13 of 2013	4 Oct 2013	Pt. 1: 4 Oct 2013 (see s. 2(a)); Act other than Pt. 1: 5 Oct 2013 (see s. 2(b))

Short title	Number and year	Assent	Commencement
Reprint 4: The *Family Court Act 1997* as at 14 Mar 2014 (includes amendments listed above)			
Child Support (Commonwealth Powers) Act 2019 Pt. 3	7 of 2019	15 May 2019	15 May 2019 (see s. 2)
COVID-19 Response and Economic Recovery Omnibus Act 2020 s. 59	34 of 2020	11 Sep 2020	12 Sep 2020 (see s. 2(b))
Family Court Amendment Act 2021	16 of 2021	9 Sep 2021	s. 1 and 2: 9 Sep 2021 (see s. 2(a)); Act other than s. 1 and 2: 10 Sep 2021 (see s. 2(b))
Legal Profession Uniform Law Application Act 2022 s. 424	9 of 2022	14 Apr 2022	1 Jul 2022 (see s. 2(c) and SL 2022/113 cl. 2)
Family Court Amendment Act 2022 Pt. 2	28 of 2022	31 Aug 2022	28 Sep 2022 (see s. 2(c) and SL 2022/159 cl. 2)
Births, Deaths and Marriages Registration Amendment (Sex or Gender Changes) Act 2024 Pt. 4 Div. 8	31 of 2024	26 Sep 2024	30 May 2025 (see s. 2(b) and SL 2025/80 cl. 2)
Family Court Amendment (Commonwealth Reforms) Act 2024 Pt. 2	49 of 2024	6 Dec 2024	10 Feb 2025 (see s. 2(b) and SL 2025/10 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA legislation website.

Short title	Number and year	Assent	Commencement
State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 43(2)	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
Evidence Act 2025 s. 492(1)	15 of 2025	25 Sep 2025	18 Sep 2027 (see s. 2(e) and SL 2026/190 cl. 2)

Short title	Number and year	Assent	Commencement
Assisted Reproductive Technology and Surrogacy Act 2025 Pt. 17 Div. 6	19 of 2025	18 Dec 2025	To be proclaimed (see s. 2(c))

Other notes

[1] The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39. Certain provisions of that Act continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26.

[2] Repealed by the *Courts Legislation Amendment and Repeal Act 2004* s. 14.

[3] The *Family Court Amendment Act 2002* s. 25 reads as follows:

> **25. Saving**
>
> The amendments effected by this Part do not affect any act or thing done by a court under Part 10 Division 2 of the *Family Court Act 1997* before the commencement of this Part, and any such act or thing continues to have effect according to its terms after that commencement as if those amendments had not been made.

[4] The *Family Court Amendment Act 2002* s. 61(2) reads as follows:

> (2) The amendment effected by subsection (1) does not apply in relation to child maintenance orders made before the commencement of this section.

[5] The *Family Court Amendment Act 2002* s. 62(2) reads as follows:

> (2) The amendment made by subsection (1), applies in relation to arrears that are outstanding on or after the commencement of this section.

[6] The *Acts Amendment (Equality of Status) Act 2003* s. 50(2) and (3) read as follows:

> (2) In subsection (3) —

relevant action means anything done under the *Family Court Act 1997* —

(a) after the commencement of the *Family Court Amendment Act 2002*; but

(b) before the commencement of this section.

(3) It is declared that by force of this section —

(a) any relevant action is and has always been as valid and effective as it would have been; and

(b) the rights and liabilities of all persons are and have always been the same as they would have been,

if subsection (1) had come into operation on the day on which the *Family Court Amendment Act 2002* came into operation.

[7] The *Courts Legislation Amendment and Repeal Act 2004* s. 95 (to amend s. 243(6)) was repealed by the *Criminal Law and Evidence Amendment Act 2008* s. 77(2).

[8] The *Family Legislation Amendment Act 2006* s. 21, 30, 35, 41, 48, 51, 57, 61, 68(3), 70(3), 77(3), 99, 103 and 107 read as follows:

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.

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.

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.

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.

48. Transitional provisions

(1) In this section —

commencement means the day on which this Subdivision comes into operation;

parenting order has the same meaning as it has in the *Family Court Act 1997*.

(2) The *Family Court Act 1997*, as amended by this Subdivision, applies to —

(a) contraventions, and alleged contraventions, of parenting orders whether occurring before, at or after the commencement; and

(b) proceedings in a court (within the meaning of that Act section 8) in which it is alleged that a person committed a contravention of a parenting order whether those proceedings are commenced before, at or after the commencement.

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.

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.

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.

68. Section 64 amended and transitional provision

(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.

70. Section 205J amended and transitional provision

(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.

77. Section 237 amended and transitional provision

(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.

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.

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.

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.

[9] The *Family Legislation Amendment Act 2006* Pt. 3 Div. 4 Subdiv. 2 reads as follows:

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.

(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.

[10] The *Family Legislation Amendment Act 2006* s. 141 and 143 read as follows:

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.

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.

[11] The *Family Legislation Amendment Act 2006* Pt. 4 will not come into operation because it was deleted by the *Family Court Amendment Act 2022* s. 34.

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
Aboriginal child	5(1)
Aboriginal or Torres Strait Islander culture	5(1)
abuse	5(1)
adopted	5(1)
adviser	66HC(1), 78A(5)
affected person	205K(1)
alleged contravention	5(1)
alleged offender	5(1)
applicant	117(1), 219AZD(1), 219AZJ(1)
application for a confiscation declaration	5(1)
appropriate court official	219AY(1)
arbitration	5(1), 56(1)
arbitrator	5(1)
arrestee	243A(1), 243B(1)
arrester	243A(1), 243B(1)
arresting person	5(1)
audio link	5(1)
Australian court or tribunal	219AY(1)
bankrupt	5(1)
Bankruptcy Act	5(1)
bankruptcy trustee	5(1)
birth	5(1)
captain	5(1)
carer	109(1), 110(1)
case guardian	5(1)
CEO	5(1)
Chief Judge	5(1)
Chief Justice	209A
child	5(1), 202J(5), 205T, 214A(3)
child bearing expenses	5(1)
childbirth maintenance period	5(1)
child maintenance order	5(1), 84(5)
child maintenance provisions	5(1), 76(5)
child-related order	5(1), 205G(2)
child-related proceedings	5(1), 202H(6)
Child Support (Assessment) Act	5(1)
Child Support (Registration and Collection) Act	5(1)
child welfare law	5(1)
child welfare officer	5(1)

child welfare provisions ..... 5(1)
commencement ..... Sch. 2 cl. 11(1) and 12(1)
commencement day ..... 219AJ(1), Sch. 2 cl. 1, 13(1) and 14(1)
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