

WESTERN AUSTRALIA

**FAMILY COURT (ORDERS OF
REGISTRARS) ACT 1997**

No. 21 of 1997

**AN ACT relating to certain ineffective orders of Registrars
under the *Family Court Act 1975* and to make
consequential amendments to another Act.**

[Assented to 7 September 1997.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Family Court (Orders of Registrars) Act 1997*.

Commencement

2. (1) Subject to subsection 2, this Act comes into operation on the day on which it receives the Royal Assent.

(2) Section 12 comes into operation —

(a) on the day on which this Act receives the Royal Assent; or

(b) on the day on which the *Restraining Orders Act 1997* comes into operation,

whichever is the later.

Interpretation

3. (1) In this Act —

“**corresponding law**” means a law in force in the Commonwealth that is declared by order of the Attorney General to be a corresponding law for the purposes of this Act;

“**court**” means a court having jurisdiction under the *Family Court Act 1975*;

“**liability**” includes a duty or obligation;

“**proceedings**” has the meaning it had in the *Family Court Act 1975* as in force immediately before the commencement of this Act and includes an initiating application;

“**Registrar**” has the meaning it had in the *Family Court Act 1975* as in force immediately before the commencement of this Act;

“**right**” includes an interest or status.

(2) A reference in this Act to an “**ineffective order**” is a reference to an order that a Registrar has purported to make, before the commencement of this Act —

- (a) in the exercise or purported exercise of a delegated judicial power; and
- (b) by way of a non-reviewable judicial determination,

and, where there has been a purported variation, revocation, revival or suspension of such an order, includes a reference to the order in the form in which, and to the extent to which, it purports or purported to have effect from time to time.

Rights and liabilities declared in certain cases

4. If an ineffective order purports or purported to have effect in or in relation to any proceedings, the rights and liabilities of all persons are, by force of this Act, declared to be, and always to have been, the same as if the ineffective order had been made by a court.

Effect of declared rights and liabilities

5. A right or liability conferred, imposed or affected by section 4 —

- (a) is exercisable or enforceable; and
- (b) is to be regarded as always having been exercisable or enforceable,

as if it were a right or liability conferred, imposed or affected by an order made by a court in or in relation to the proceedings referred to in section 4.

Effect of things done under rights and liabilities declared under this Act or under a corresponding law

6. Any act or thing done or omitted to be done before or after the commencement of this Act under or in relation to a right or liability conferred, imposed or affected by section 4 or a corresponding law —

- (a) has the same effect and gives rise to the same consequences for the purposes of any written or other law; and
- (b) is to be regarded as always having had the same effect and given rise to the same consequences for the purposes of any written or other law,

as if it were done or omitted to be done to give effect to, or under the authority of, or in reliance on —

- (c) an order made by a court in or in relation to the proceedings referred to in section 4; or
- (d) an order made by a court exercising the federal jurisdiction with which it is invested by or under the *Family Law Act 1975*, the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988* of the Commonwealth in or in relation to the relevant proceedings under that Act,

as is applicable to the case.

Note: See for example Part IVD of the *Stamp Act 1921*.

Proceedings as for contempt

7. If, before or after the commencement of this Act, a person has —

- (a) interfered with a right conferred or affected by section 4; or

- (b) failed to satisfy or comply with a liability imposed or affected by section 4,

the interference or failure is, and is to be regarded as always having been, a matter that can be dealt with in the same manner as if the matter were the subject of proceedings in relation to a contempt of court.

Section 4 regarded as having ceased to have effect in certain cases

8. If, before the commencement of this Act, a court made an order (the “**subsequent order**”) having effect in relation to proceedings referred to in section 4 and —

- (a) conferring or imposing rights or liabilities similar to or different from those purportedly conferred or imposed by the ineffective order referred to in section 4; or
- (b) affecting rights or liabilities in the same way as they were purportedly affected by the ineffective order referred to in section 4 or in a different way,

section 4 is to be regarded as having ceased to have effect in respect of the ineffective order when the subsequent order took effect.

Powers of courts in relation to declared rights and liabilities

9. (1) A court may vary, revoke, revive or suspend a right or liability conferred, imposed or affected by section 4 as if it were a right or liability conferred, imposed or affected by an order made by a court.

(2) If, immediately before the commencement of this Act, a court had power under section 28 (3) (c), 31 (1) or 69 (“**the relevant provision**”) of the *Family Court Act 1975* to set aside,

vary, discharge, revive or suspend an order or part of an order then a court may, in accordance with the relevant provision, set aside, vary, discharge, revive or suspend a right or liability that —

(a) is in respect of a matter to which the relevant provision applies; and

(b) is conferred, imposed or affected by section 4.

(3) In this section —

“**court**” includes a court having jurisdiction under an Act that repeals the *Family Court Act 1975*.

Evidentiary

10. The court record, or a copy of the court record, of an extracted ineffective order may be adduced in evidence to show the existence, nature and extent of each right and liability conferred, imposed or affected by section 4.

Act does not apply to certain orders

11. Nothing in this Act applies to an order declared to be invalid by the Full Court of the Family Court of Australia before the commencement of this Act.

Consequential amendments

12. Section 5 (1) of the *Restraining Orders Act 1997* is amended —

(a) after paragraph (b) by deleting “or”;

(b) after paragraph (c) by deleting the full stop and substituting a semicolon; and

(c) by inserting the following paragraphs —

“

(d) a right or liability within the meaning of a Commonwealth law that is a corresponding law for the purposes of the *Family Court (Orders of Registrars) Act 1997* that —

(i) is in respect of a matter to which paragraph (a) or (c) applies; and

(ii) is conferred, imposed or affected by the corresponding law;

or

(e) 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 paragraph (b) or (c) applies; and

(ii) is conferred, imposed or affected by section 4 of that Act.

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