



Western Australia

## **Family Court Act 1997**

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Western Australia

## Family Court Act 1997

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### CONTENTS

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#### **Part 1 — Preliminary**

1.	Short title	2
2.	Commencement	2
3.	Contents of this Act	2
4.	References in section headings and definitions to comparable provisions of the Commonwealth Family Law Act	2
5.	Definitions	3
6.	Meaning of “member of family” — FLA s. 60D(2)	10
7.	Meaning of “relative” — FLA s. 60D(3)	12
8.	Meaning of “court”	12

#### **Part 2 — Family Court of Western Australia**

##### **Division 1 — The Family Court**

9.	Family Court continued	13
10.	Constitution etc. of Court	13

##### **Division 2 — Judges**

11.	Appointment of judges	13
12.	Seniority	14
13.	Oath of office	14
14.	Style and title of judges	15

Contents

---

15.	Salaries and allowances of judges	15
16.	Leave of judge	15
17.	Judges may continue certain superannuation scheme	15
18.	Tenure of office	15
19.	<i>Judges' Salaries and Pensions Act 1950</i> applies to Family Court judges	16
20.	Next senior judge may act if Chief Judge unable to act, or office vacant	16
21.	Acting Chief Judge	17
22.	Acting judges	17
23.	Effect of acting as a judge	18
24.	Dual appointments	19
	<b>Division 3 — Officers of the Court and staff</b>	
25.	Officers of the Court	20
26.	Principal Registrar and registrars may be magistrates	22
27.	Personal staff for judges	22
28.	Other Court staff	23
29.	Marshal	23
30.	Functions under federal jurisdiction	24
31.	Functions under non-federal jurisdictions	24
32.	Judicial notice of signatures	24
33.	Delegation of powers to registrars — FLA s. 37A	24
	<b>Division 4 — Counselling and welfare facilities</b>	
34.	Counselling and welfare facilities	27
	<b>Part 3 — Jurisdiction of courts and transfer, staying and dismissal of proceedings</b>	
	<b>Division 1 — Jurisdiction of the Family Court</b>	
35.	Federal jurisdiction of the Court	28
36.	Non-federal jurisdictions of the Court	28
37.	Principles to be applied, and matters to be considered, by the Court in its non-federal jurisdiction — FLA s. 43	30

	<b>Division 2 — Jurisdiction of courts of summary jurisdiction</b>	
38.	Federal jurisdiction of courts of summary jurisdiction	31
39.	Non-federal jurisdictions of courts of summary jurisdiction	31
40.	Functions of officers of courts of summary jurisdiction	31
	<b>Division 3 — Jurisdiction of other courts</b>	
41.	Courts making family violence orders have certain jurisdiction under this Act	32
	<b>Division 4 — Transfer, staying and dismissal of proceedings</b>	
43.	Transfer of proceedings from courts of summary jurisdiction in certain cases — FLA s. 69N	32
43A.	Transfer of proceedings from the Magistrates Court in other cases	34
44.	Transfer of proceedings to another court — FLA s. 45(2)	36
45.	Stay or dismissal of proceedings	36
46.	Orders on transfer or staying proceedings	36
	<b>Part 4 — Primary dispute resolution</b>	
	<b>Division 1 — Introductory</b>	
47.	Interpretation — FLA s. 14E	38
48.	Object of Part — FLA s. 14	38
49.	Duty of courts — FLA s. 14F	39
50.	Duty of legal practitioners — FLA s. 14G	39
	<b>Division 2 — Counselling</b>	
51.	Request for counselling — request to Court but no proceedings	39
52.	Request for counselling — request made through Court — FLA s. 62C	39
53.	Request for counselling — where made direct to a family and child counsellor — FLA s. 62D	40
54.	Court to direct or advise people to attend counselling — FLA s. 16A	40
55.	Provision of certain documents — FLA s. 62H	40
56.	Oath or affirmation of secrecy — FLA s. 19(1)	41

	<b>Division 3 — Mediation</b>	
57.	Request for mediation — FLA s. 19A	41
58.	Request for mediation — where made direct to a family and child mediator — FLA s. 19AA	42
59.	Court may refer matters for mediation — FLA s. 19B	42
60.	Court to advise people to attend mediation — FLA s. 19BA	42
	<b>Division 3A — Arbitration</b>	
60A.	Court may refer proceedings to arbitration — FLA s. 19D	43
60B.	Private arbitration — FLA s. 19E	44
60C.	Referral by arbitrator of questions of law to a court — FLA s. 19EA and 19EB	44
60D.	Review of awards by a court — FLA s. 19F and 19FA	45
60E.	Setting aside awards — courts — FLA s. 19G and 19GA	45
60F.	Fees for arbitration — FLA s. 19H	46
	<b>Division 4 — Miscellaneous</b>	
61.	Advice about mediation — FLA s. 19J	46
62.	Oath or affirmation by court or community mediator — FLA s. 19K	47
62A.	Oath or affirmation by arbitrator — FLA s. 19L	47
63.	Protection of family and child mediators — FLA s. 19M	47
64.	Admissions made to counsellors, mediators etc. — FLA s. 19N	47
65.	Advertising in Court registry of counselling and mediation services — FLA s. 19Q	48
	<b>Part 5 — Children</b>	
	<b>Division 1 — Introductory</b>	
66.	Object of Part and principles underlying it — FLA s. 60B	50
	<b>Division 2 — Parental responsibility</b>	
67.	What this Division does — FLA s. 61A	50
68.	Meaning of “parental responsibility” — FLA s. 61B	51

69.	Each parent has parental responsibility (subject to court orders) — FLA s. 61C	51
70.	Parenting orders and parental responsibility — FLA s. 61D	51
71.	Appointment and responsibilities of guardian	51
	<b>Division 3 — Counselling etc.</b>	
72.	Conferences with family and child counsellors or welfare officers — FLA s. 62F	53
73.	Reports by family and child counsellors and welfare officers — FLA s. 62G	54
	<b>Division 4 — Parenting plans</b>	
74.	What this Division does — FLA s. 63A	55
75.	Parents encouraged to reach agreement — FLA s. 63B	55
76.	Meaning of “parenting plan” and related terms — FLA s. 63C	55
77.	Parenting plans may include child support provisions	56
78.	Parenting plan may not be varied, but may be revoked, by further agreement — FLA s. 63D	57
78A.	Explanation by person advising or assisting in the making of a parenting plan — FLA s. 63DA	57
79.	Registration in a court — FLA s. 63E	58
80.	Child welfare provisions of registered parenting plans — FLA s. 63F	59
81.	Child maintenance provisions of registered parenting plans — FLA s. 63G	60
82.	Court’s powers to set aside, discharge, vary, suspend or revive registered parenting plans — FLA s. 63H	61
	<b>Division 5 — Parenting orders — what they are</b>	
83.	What this Division does — FLA s. 64A	62
84.	Meaning of “parenting order” and related terms — FLA s. 64B	62
85.	Parenting orders may be made in favour of parents or other persons — FLA s. 64C	63

	<b>Division 6 — Parenting orders other than child maintenance orders</b>	
	<b>Subdivision 1 — Introductory</b>	
86.	What this Division does — FLA s. 65A	64
86A.	Measures to promote the exercise of parental responsibility — FLA s. 65AA	64
87.	Division does not apply to child maintenance orders — FLA s. 65B	65
	<b>Subdivision 2 — Applying for and making parenting orders</b>	
88.	Who may apply for a parenting order — FLA s. 65C	65
89.	Court's power to make parenting order — FLA s. 65D	65
89A.	Parenting orders: stage 1 of parenting compliance regime — FLA s. 65DA	66
90.	Child's best interests paramount consideration in making a parenting order — FLA s. 65E	67
91.	General requirements for counselling before parenting order made — FLA s. 65F	67
92.	Special conditions for making residence order or specific issues order by consent in favour of non-parent — FLA s. 65G	68
93.	Children who are 18 or over or who have married or entered de facto relationships — FLA s. 65H	69
94.	What happens when parenting order that is or includes residence order does not make provision in relation to death of parent with whom child lives — FLA s. 65K	70
95.	Counsellors may be required to supervise or assist compliance with parenting orders — FLA s. 65L	70
	<b>Subdivision 3 — General obligations created by residence orders, contact orders and specific issues orders</b>	
96.	General obligations created by residence order — FLA s. 65M	71
97.	General obligations created by contact order — FLA s. 65N	71



98.	General obligations created by specific issues orders that confer responsibility for a child's care, welfare and development — FLA s. 65P	71
99.	Court may issue warrant for arrest of alleged offender — FLA s. 65Q	72
	<b>Subdivision 4 — Dealing with people who have been arrested</b>	
100.	Situation to which Subdivision applies — FLA s. 65R	73
101.	Arrested person to be brought before a court — FLA s. 65S	73
102.	Obligation of court where application before it to deal with contravention — FLA s. 65T	74
103.	Obligation of court where no application before it, but application before another court, to deal with contravention — FLA s. 65U	74
104.	Obligation of court where no application before any court to deal with contravention — FLA s. 65V	76
105.	Applications heard as required by section 102(2) or section 103(3)(b) — FLA s. 65W	76
	<b>Subdivision 5 — Obligations under parenting orders relating to taking or sending children from Western Australia to places outside Australia</b>	
106.	Interpretation — FLA s. 65X	77
107.	Obligations if residence order, contact order or care order has been made — FLA s. 65Y	77
108.	Obligations if proceedings for the making of residence order, contact order or care order are pending — FLA s. 65Z	78
109.	Obligations of owners etc. of aircraft and vessels if residence order, contact order or care order made — FLA s. 65ZA	79
110.	Obligations of owners etc. of aircraft and vessels if proceedings for the making of residence order, contact order or care order are pending — FLA s. 65ZB	80
111.	General provisions applicable to sections 109 and 110 — FLA s. 65ZC(1) and (2)	82
112.	No double jeopardy — FLA s. 65ZC(3)	82

	<b>Division 7 — Child maintenance orders</b>	
	<b>Subdivision 1 — What this Division does</b>	
113.	What this Division does — FLA s. 66A and interpretation	83
	<b>Subdivision 2 — Objects and principles</b>	
114.	Objects — FLA s. 66B	83
115.	Principles: parents have primary duty to maintain — FLA s. 66C	84
116.	Principles: when step-parents have a duty to maintain — FLA s. 66D	84
	<b>Subdivision 3 — Relationship with Child Support (Assessment) Act</b>	
117.	Child maintenance order not to be made etc. if application for administrative assessment of child support could be made — FLA s. 66E	85
	<b>Subdivision 4 — Applying for and making child maintenance orders</b>	
118.	Who may apply for a child maintenance order — FLA s. 66F	85
119.	Court's power to make child maintenance order — FLA s. 66G	86
120.	Approach to be taken in proceedings for child maintenance order — FLA s. 66H	86
121.	Matters to be taken into account in considering financial support necessary for maintenance of child — FLA s. 66J	87
122.	Matters to be taken into account in determining contribution that should be made by party etc. — FLA s. 66K	88
123.	Children who are 18 or over — FLA s. 66L	90
124.	When step-parents have a duty to maintain — FLA s. 66M	90
125.	Determining financial contribution of step-parent — FLA s. 66N	91
	<b>Subdivision 5 — Other aspects of court powers</b>	
126.	General powers of court — FLA s. 66P	91
127.	Urgent child maintenance orders — FLA s. 66Q	93
128.	Modification of child maintenance orders — FLA s. 66S	93

	<b>Subdivision 5A — Varying the maintenance of certain children</b>	
128A.	Varying the maintenance of certain children — FLA s. 66SA	96
	<b>Subdivision 6 — When child maintenance orders stop being in force</b>	
129.	Effect of child turning 18 — FLA s. 66T	97
130.	Effect of death of child, person liable to pay or person entitled to receive — FLA s. 66U	97
131.	Effect of adoption, marriage or entering into a de facto relationship — FLA s. 66V	98
131A.	Children who are 18 or over: change of circumstances — FLA s. 66VA	99
132.	Recovery of arrears — FLA s. 66W	99
	<b>Division 8 — Other matters relating to children</b>	
	<b>Subdivision 1 — What this Division does</b>	
133.	What this Division does — FLA s. 67A	100
	<b>Subdivision 2 — Liability of parent not married to child's mother to contribute towards child bearing expenses</b>	
134.	Definitions — FLA s. 60D(1)	100
135.	Father liable to contribute towards maintenance and expenses of mother — FLA s. 67B	101
136.	Matters to be taken into account in proceedings under Subdivision — FLA s. 67C	102
137.	Powers of court in proceedings under Subdivision — FLA s. 67D	103
138.	Urgent orders — FLA s. 67E	104
139.	Who may institute proceedings — FLA s. 67F	104
140.	Time limit for institution of proceedings — FLA s. 67G	104
141.	Orders for, and unspent, child bearing expenses	105
	<b>Subdivision 3 — Location and recovery of children</b>	
142.	Interpretation — FLA s. 67H	106
143.	Meaning of “location order” and “State information order” — FLA s. 67J	107
144.	Who may apply for a location order — FLA s. 67K	107
145.	Child's best interests paramount consideration in making a location order — FLA s. 67L	108

Contents

---

146.	Provisions about location orders, other than State information orders — FLA s. 67M	108
147.	Provisions about State information orders — FLA s. 67N	108
148.	Information provided under location order not to be disclosed except to limited persons — FLA s. 67P	110
149.	Meaning of “recovery order” — FLA s. 67Q	111
150.	How recovery orders authorise or direct people — FLA s. 67R	112
151.	How recovery orders to stop and search etc. name or describe vehicles, places etc. — FLA s. 67S	113
152.	Who may apply for a recovery order — FLA s. 67T	113
153.	Court’s power to make recovery order — FLA s. 67U	113
154.	Child’s best interests paramount consideration in making a recovery order — FLA s. 67V	113
155.	Duration of recovery order — FLA s. 67W	114
156.	Persons not to prevent or hinder taking of action under recovery order — FLA s. 67X	114
157.	Obligation to notify persons of child’s return — FLA s. 67Y	115
	<b>Subdivision 4 — Allegations of child abuse</b>	
158.	Meaning of “registrar”	115
159.	Where party to proceedings makes allegation of child abuse — FLA s. 67Z	115
160.	Where member of the Court personnel, counsellor or mediator suspects child abuse etc. — FLA s. 67ZA	116
161.	No liability for notification under section 159 or 160 — FLA s. 67ZB	117
	<b>Subdivision 5 — Other orders about children</b>	
162.	Orders relating to welfare of children — FLA s. 67ZC	118
163.	Orders for delivery of passports — FLA s. 67ZD	119
	<b>Division 9 — The best interests of children and the representation of children</b>	
	<b>Subdivision 1 — What this Division does</b>	
164.	What this Division does — FLA s. 68D	119

	<b>Subdivision 2 — Determining the best interests of a child</b>	
165.	Proceedings to which Subdivision applies — FLA s. 68E	119
166.	How a court determines what is in a child's best interests — FLA s. 68F	120
167.	How the wishes of a child are expressed — FLA s. 68G	121
168.	Children not required to express wishes — FLA s. 68H	122
169.	Informing court of relevant family violence orders — FLA s. 68J	122
170.	Court to consider risk of family violence — FLA s. 68K	122
	<b>Subdivision 3 — Separate representation of children</b>	
171.	Court orders for separate representation — FLA s. 68L	123
172.	Order that child be made available for examination — FLA s. 68M	123
	<b>Division 10 — Family violence</b>	
	<b>Subdivision 1 — Introductory</b>	
173.	What this Division does — FLA s. 68N	124
174.	Interpretation — FLA s. 68P	124
175.	Purposes of Division — FLA s. 68Q	125
	<b>Subdivision 2 — Where an order under this Act about contact is inconsistent with a family violence order</b>	
176.	Section 177 contact orders prevail over inconsistent family violence orders — FLA s. 68S(1)	126
177.	Court's obligations where it makes an order for contact that is inconsistent with a family violence order — FLA s. 68R	126
178.	Application for declaration of extent to which s. 177 contact order is inconsistent with a family violence order — FLA s. 68S(2) and (3)	128

	<b>Subdivision 3 — Powers etc. of a court making a family violence order as to making or affecting an order under this Act about contact</b>	
179.	Definition	128
180.	Variation etc. of Division 10 contact order in family violence proceedings — FLA s. 68T	129
181.	Court or relevant court to be informed of certain orders made in family violence proceedings — FLA s. 68T(6)	131
182.	Effect of certain orders of courts whose jurisdiction under this Act is limited to making, varying etc. Division 10 contact orders — such orders enforceable, but not appealable, under this Act	133
	<b>Division 11 — Proceedings, parentage presumptions and evidence and jurisdiction as to child welfare laws</b>	
	<b>Subdivision 1 — What this Division does</b>	
183.	What this Division does — FLA s. 69A	135
	<b>Subdivision 2 — Institution of proceedings</b>	
184.	Certain proceedings to be instituted only under this Act — FLA s. 69B	135
185.	Who may institute proceedings — FLA s. 69C	135
186.	Institution of maintenance proceedings by certain persons — FLA s. 69D	136
187.	Applicant may be in contempt — FLA s. 69F	136
	<b>Subdivision 3 — Presumptions of parentage</b>	
188.	Presumptions of parentage arising from marriage — FLA s. 69P	136
189.	Presumption of paternity arising from cohabitation — FLA s. 69Q	137
190.	Presumption of parentage arising from registration of birth — FLA s. 69R	138
191.	Presumptions of parentage arising from findings of courts — FLA s. 69S	138
192.	Presumption of paternity arising from acknowledgments — FLA s. 69T	139
193.	Rebuttal of presumptions etc. — FLA s. 69U	139
	<b>Subdivision 4 — Parentage evidence</b>	
194.	Evidence of parentage — FLA s. 69V	139

195.	Orders for conducting parentage testing procedures — FLA s. 69W	140
196.	Orders associated with parentage testing orders — FLA s. 69X	140
197.	Orders directed to persons 18 or over — FLA s. 69Y	141
198.	Orders directed to children under 18 — FLA s. 69Z	141
199.	No liability if parent etc. consents — FLA s. 69ZA	142
200.	Regulations about conducting, and reporting on, parentage testing procedures — FLA s. 69ZB	142
201.	Reports of information obtained may be received in evidence — FLA s. 69ZC	143
	<b>Subdivision 5 — Child welfare laws not affected</b>	
202.	Child welfare laws not affected — FLA s. 69ZK	143
	<b>Division 12 — State and Territory orders relating to children</b>	
203.	Interpretation — FLA s. 70B	144
204.	Registration of State child orders — FLA s. 70C and 70D	145
205.	Effect of registration — FLA s. 70E	145
	<b>Division 13 — Consequences of failure to comply with orders, and other obligations, that affect children</b>	
	<b>Subdivision 1 — Preliminary</b>	
205A.	Definitions — FLA s. 70NB	145
205B.	Application of Division — FLA s. 70NBA	146
205C.	Meaning of “contravened an order” — FLA s. 70NC	147
205D.	Requirements treated as included in certain orders — FLA s. 70ND	147
205E.	Meaning of “reasonable excuse for contravening an order” — FLA s. 70NE	148
205F.	Standard of proof of reasonable excuse — FLA s. 70NEA	150
	<b>Subdivision 2 — Powers of court where a person contravenes an order under this Act affecting children: stage 2 of parenting compliance regime</b>	
205G.	Application of Subdivision — FLA s. 70NF	150

205H.	Powers of court — FLA s. 70NG	151
205I.	Duties of provider of program — FLA s. 70NH	153
205J.	Evidence — FLA s. 70NI	153
205K.	Court may make further orders in relation to attendance at program — FLA s. 70NIA	153
	<b>Subdivision 3 — Court to take action in respect of person who contravenes an order: stage 3 of parenting compliance regime</b>	
205L.	Powers of court — FLA s. 70NJ	154
205M.	When court is empowered to impose a community service order — FLA s. 70NK	157
205N.	Variation and discharge of community service orders — FLA s. 70NL	158
205O.	Bonds — FLA s. 70NM	159
205P.	Procedure for enforcing community service orders or bonds — FLA s. 70NN	160
205Q.	Sentences of imprisonment — FLA s. 70NO	163
205R.	Relationship between Subdivision and other laws — FLA s. 70NP	164
205S.	Subdivision does not affect enforcement of child maintenance orders etc. — FLA s. 70NR	164
	<b>Part 5A — De facto relationships</b>	
	<b>Division 1 — Introductory</b>	
205T.	Interpretation	165
205U.	Application of Part generally	166
205V.	Right to certain civil proceedings limited	166
	<b>Division 2 — Property adjustment orders and maintenance orders</b>	
	<b>Subdivision 1 — Introductory</b>	
205W.	This Division does not apply to certain matters covered by binding financial agreements or former financial agreements — FLA s. 71A	167
205X.	People to whom this Part applies — connection with WA	167
205Y.	Court not otherwise limited by connection with WA referred to in section 205X	168
205Z.	Where court may make order under this Division	168
205ZA.	Declaration of interests in property — FLA s. 78	169



<b>Subdivision 2 — Alteration of property interests, and maintenance</b>		
205ZB.	Applications, and notifications to spouses	169
205ZC.	Right of de facto partner to maintenance — FLA s. 72	170
205ZD.	Maintenance orders — FLA s. 75	170
205ZE.	Urgent de facto partner maintenance cases — FLA s. 77	172
205ZF.	Specifications in orders of payments etc. for de facto maintenance purposes — FLA s. 77A	173
205ZG.	Alteration of property interests — FLA s. 79	174
205ZH.	Setting aside of orders altering property interests — FLA s. 79A	178
205ZI.	General powers of court — FLA s. 80	180
205ZJ.	Duty of court to end financial relations of de facto partners — FLA s. 81	182
205ZK.	Cessation of de facto maintenance orders — FLA s. 82	182
205ZL.	Modification of de facto maintenance orders — FLA s. 83	182
<b>Division 3 — Financial agreements</b>		
205ZM.	Definition — FLA s. 90A	185
205ZN.	Financial agreements before beginning a de facto relationship — FLA s. 90B	185
205ZO.	Financial agreements during de facto relationship — FLA s. 90C	186
205ZP.	Financial agreements after de facto relationship ends — FLA s. 90D	187
205ZQ.	Requirements with respect to provisions in financial agreements relating to the maintenance of a de facto partner or a child or children — FLA s. 90E	188
205ZR.	Certain provisions in agreements — FLA s. 90F	188
205ZS.	When financial agreements and former financial agreements are binding — FLA s. 90G	189
205ZT.	Effect of death of party to financial agreement — FLA s. 90H	190
205ZU.	Termination of financial agreement and former financial agreement — FLA s. 90J	191

Contents

---

205ZV.	Circumstances in which court may set aside a financial agreement, termination agreement or former financial agreement — FLA s. 90K	192
205ZW.	Validity, enforceability and effect of financial agreements, termination agreements and former financial agreements — FLA s. 90KA	193
<b>Part 6 — Intervention</b>		
206.	Intervention by Attorney General — FLA s. 91	195
207.	Intervention by CEO — FLA s. 91B	195
208.	Intervention by other persons — FLA s. 92	196
209.	Intervention in child abuse cases — FLA s. 92A	196
<b>Part 7 — Appeals</b>		
210.	Federal jurisdiction	198
211.	Non-federal jurisdictions	198
<b>Part 8 — Procedure and evidence</b>		
212.	Proceedings generally to be in open court — FLA s. 97	200
213.	Power to give directions	200
214.	Evidence of children — FLA s. 100A	201
214A.	Children swearing affidavits, being called as witnesses or being present in court — FLA s. 100B	201
215.	Protection of witnesses — FLA s. 101	202
216.	Certificates etc. of birth, death or marriage — FLA s. 102	202
217.	Admissibility of evidence after medical examination etc. of children — FLA s. 102A(1), (2), (4) and (5)	202
218.	Leave for a child to be examined medically etc. — FLA s. 102A(3)	203
219.	Assessors — FLA s. 102B	204
<b>Part 9 — Enforcement of decrees</b>		
219A.	Maintenance orders — more than 12 months old — FLA s. 106	205
220.	Enforcement of orders as to child maintenance or child bearing expenses	205
220A.	Rules relating to enforcement — FLA s. 109A	205

221.	Execution of instruments by order of court — FLA s.106A	208
222.	Transactions to defeat claim — FLA 106B	208
222A.	People not to be imprisoned for failure to comply with certain orders — FLA s. 107	209
<b>Part 10 — Sanctions for failure to comply with orders, and other obligations, that do not affect children</b>		
<b>Division 1 — Interpretation</b>		
223.	Interpretation — FLA s. 112AA	210
224.	Meaning of “contravene an order” — FLA s. 112AB	211
225.	Meaning of “reasonable excuse for contravening an order” — FLA s. 112AC	211
<b>Division 2 — Sanctions for failure to comply with orders</b>		
226.	Sanctions for failure to comply with orders — FLA s. 112AD	212
227.	Sentences of imprisonment — FLA s. 112AE	213
228.	Bonds — FLA s. 112AF	215
229.	Sentencing alternatives — FLA s. 112AG	215
230.	Failure to comply with sentencing alternative imposed under s. 226(3)(b) — FLA s. 112AH	217
231.	Variation and discharge of orders — FLA s. 112AK	220
232.	Relationship between Division and other laws — FLA s. 112AM	220
233.	Division does not affect enforcement of child maintenance orders etc. — FLA s. 112AO	221
<b>Part 10A — Contempt of court</b>		
233A.	Interpretation	222
234.	Contempt — FLA s. 112AP	222
<b>Part 11 — Injunctions</b>		
235.	Injunctions — FLA s. 68B	224

Contents

---

235A.	Injunctions relating to de facto relationships — FLA s. 114	225
236.	Powers of arrest where injunction breached — FLA s. 68C and s. 114AA	226
<b>Part 12 — Miscellaneous</b>		
237.	Costs — FLA s. 117	229
238.	Reparation for certain losses and expenses relating to children — FLA s. 117A	230
239.	Interest on moneys ordered to be paid — FLA s. 117B	231
240.	Offers of settlement — FLA s. 117C	232
241.	<i>Ex parte</i> orders	233
242.	Frivolous or vexatious proceedings — FLA s. 118	233
243.	Restriction on publication of court proceedings — FLA s. 121	234
243A.	Use of reasonable force in arresting persons — FLA s. 122AA	238
244.	Rules	238
245.	Regulations	242
246.	Repeal	244
247.	Transitional and savings	244
<b>Schedule 1 — Oath and affirmation of office</b>		
<b>Schedule 2 — Transitional and savings</b>		
1.	Definitions	246
2.	<i>Interpretation Act 1984</i> applies	246
3.	Persons holding offices under, or employed or engaged for purposes of, the repealed Act	246
4.	Setting aside of orders made under repealed s. 30 altering property interests	248
5.	Treatment of orders as to custody, guardianship, access or maintenance or other payments	248
6.	Treatment of applications for orders as to custody, guardianship, access or maintenance or other payments	249

7.	Treatment of agreements relating to child welfare matters	250
8.	Treatment of warrants	250
9.	Treatment of orders as to information	251
10.	Other things done for purposes of provisions of repealed Act	251
	<b>Notes</b>	
	Compilation table	252
	Provisions that have not come into operation	253





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14 April 2006

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*<sup>1</sup>.

**2. Commencement**

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation<sup>1</sup>.

**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;
- (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 the Commonwealth Family Law Act**

Without limiting section 32(2) of the *Interpretation Act 1984*, 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.



**5. Definitions**

In this Act, unless the contrary intention appears —

**(FLA s. 60D(1))**

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

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

**(FLA s. 60D(1))**

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

- (a) a child adopted, or treated as being adopted, under the *Adoption Act 1994* if the adoption order has not been discharged under that Act; or
- (b) a child adopted under an order which, under section 136 or 138 of the *Adoption Act 1994*, is treated as an adoption order made under that Act;

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

**“approved counselling organization”** means a counselling organization approved under the Family Law Act;

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

**“approved mediation organization”** means a mediation organization approved under the Family Law Act;

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

**“arbitrator”** means a person who meets the prescribed requirements for an arbitrator;

**(FLA s. 60D(1))**

“**birth**” includes stillbirth;

“**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;

“**child**” includes an adopted child and a stillborn child;

“**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))**

“**child counselling**” means counselling to —

- (a) discuss the care, welfare or development of a child;  
or
- (b) discuss, and try to resolve, differences between persons that affect the care, welfare or development of a child;

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

“**child maintenance order**” has the meaning given by section 84(5);

**(FLA s. 60D(1))**

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

“**Child Support (Assessment) Act**” means the *Child Support (Assessment) Act 1989* of the Commonwealth as adopted by the *Child Support (Adoption of Laws) Act 1990*;

“**Child Support (Registration and Collection) Act**” means the *Child Support (Registration and Collection) Act 1988* of the Commonwealth as adopted by the *Child Support (Adoption of Laws) Act 1990*;

**(FLA s. 60D(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. 60D(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))**

**“community mediator”** means a person referred to in paragraph (b) of the definition of “family and child mediator”;

**(FLA s. 60D(1))**

**“contact order”** has the meaning given by section 84(4);

**“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))**

**“court counsellor”** means the Director of Court Counselling appointed under section 25(1)(d) or any other person appointed as a court counsellor;

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

**“court mediator”** means a person referred to in paragraph (a) of the definition of “family and child mediator”;

**(FLA s. 60D(1))**

**“education”** includes apprenticeship or vocational training;

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

**“family and child counselling”** means any of the following kinds of counselling —

- (a) child counselling;
- (b) counselling about any matter that arises out of proceedings under this Act and that involves —
  - (i) a parent of a child;
  - (ii) a child; or
  - (iii) a party to the proceedings;

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

**“family and child counsellor”** means —

- (a) a court counsellor;
- (b) a person authorised by an approved counselling organization to offer family and child counselling on behalf of the organization; or
- (c) a person authorised under the Family Law Act, or by regulations under this Act, to offer family and child counselling;

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

**“family and child mediation”** means mediation, conducted in accordance with the regulations, of any dispute that could be the subject of proceedings under this Act and that involves —

- (a) a parent of a child;
- (b) a child; or
- (c) a party to the proceedings;

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

**“family and child mediator”** means —

- (a) a person employed or engaged by the Family Court of Australia or the Court to provide family and child mediation services;
- (b) a person authorised by an approved mediation organization to offer family and child mediation on behalf of the organization; or
- (c) a person, other than a person mentioned in paragraph (a) or (b), who offers family and child mediation;

**“Family Court of Australia”** means the Family Court of Australia created by the Family Law Act;

**“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. 60D(1))**

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

**(FLA s. 60D(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. 60D(1))**

“**has**” in relation to a residence order, a contact order or a specific issues order, has the meaning given by section 84(8);

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

**(FLA s. 60D(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. 60D(1))**

“**made in favour**”, in relation to a residence order, a contact order or a specific issues order, has the meaning given by section 84(7);

**(FLA s. 60D(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. 60D(1))**

“**member of the family**” has a meaning affected by 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. 60D(1))**

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

**(FLA s. 60D(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. 60D(1))**

**“parental responsibility”** has the meaning given by section 68;

**(FLA s. 60D(1))**

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

**(FLA s. 60D(1))**

**“parenting plan”** has the meaning given by section 76(1);

**(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))**

**“private arbitration”** means arbitration other than arbitration carried out as a result of an order made under section 60A;

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

**“private mediator”** means a person referred to in paragraph (c) of the definition of “family and child mediator”;

**“proceedings”** 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;

**(FLA s. 60D(1))**

**“professional ethics”** includes —

- (a) rules of professional conduct;

**s. 6**

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- (b) rules of professional etiquette;
- (c) a code of ethics; and
- (d) standards of professional conduct;

**(FLA s. 67H)**

**“recovery order”** has the meaning given by section 149;

**“relative”** has a meaning affected by section 7;

**(FLA s. 60D(1))**

**“residence order”** has the meaning given by section 84(3);

**(FLA s. 60D(1))**

**“specific issues order”** has the meaning given by section 84(6);

**(FLA s. 60D(1))**

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

- (a) is not a parent of the child;
- (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 treated, the child as a member of the family formed with the parent;

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

**“welfare officer”** means a person who is —

- (a) a court counsellor; or
- (b) appointed under section 28(1) as a welfare officer.

*[Section 5 amended by No. 25 of 2002 s. 4 and 29; No. 28 of 2003 s. 50(1); No. 34 of 2004 s. 251; No. 59 of 2004 s. 91; No. 38 of 2005 s. 15.]*

**6. Meaning of “member of family” — FLA s. 60D(2)**

For the purposes of the definitions of “family violence” and “step-parent” in section 5 and for the purposes of section 166(2)(i) and (j) and section 169, a person (the **“first**



**person**") is a member of the family of another person (the **"second person"**) if —

- (a) the first person is or has been married to, or in a de facto relationship with, the second person;
- (b) the first person is or has been a relative of the second person;
- (c) an order of a kind described in subparagraph (i) or (ii) is or was (at any time) in force under this Act or the *Family Court Act 1975* <sup>2</sup>—
  - (i) a residence order, contact order or specific issues 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;
- (d) an order of a kind described in subparagraph (i) or (ii) is or was (at any time) in force under a law of the Commonwealth or any State or Territory —
  - (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;
- (e) 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
- (f) the first person is or has been a member of the family of a child of the second person.

**s. 7**

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**7. Meaning of “relative” — FLA s. 60D(3)**

For the purposes of section 6, a relative of a person is —

- (a) a parent, grandparent or step-parent of the person;
- (b) a son, daughter, grandson, grand-daughter, step-son or step-daughter of the person;
- (c) a brother, sister, half-brother, half-sister, step-brother or step-sister of the person;
- (d) an uncle or aunt of the person;
- (e) a nephew or niece of the person;
- (f) a cousin of the person;
- (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.

*[Section 7 amended by No. 3 of 2002 s. 61.]*

**8. Meaning of “court”**

Unless the contrary intention appears, a reference in Parts 4, 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 by No. 25 of 2002 s. 30; No. 59 of 2004 s. 95.]*

## **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;
  - (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 or has been a judge of a court established by an Act of the Commonwealth;
  - (b) is or has been a judge or an acting judge of a court established by an Act of the State;
  - (c) is or has been a barrister or solicitor of the Supreme Court of at least 8 years standing; or
  - (d) is a practising barrister of the High Court of Australia of at least 8 years standing,

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

- (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.

**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 by 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*<sup>3,4</sup> 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 by 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 by 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 by No. 24 of 2005 s. 23.]*

**23. Effect of acting as a 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 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 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 Family Court of Australia;
- (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;
- (c) if, after ceasing to be a judge of the Family Court of Western Australia, the person remains a judge of the 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 Family Court of Australia; and

- (d) if, after ceasing to be a judge of the 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 by No. 28 of 2003 s. 52.]*

### **Division 3 — Officers of the Court and staff**

#### **25. Officers of the 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;
  - (b) registrars of the Court, in such number as is necessary for the performance of the functions of registrars under this Act;
  - (c) the Executive Officer;
  - (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;
  - (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.

- (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 appointed to, or to act in, an office of the Court under subsection (1), (2) 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 Officer 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 Officer 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 Officer during the period of the Executive Officer's inability, and the person so appointed by the Chief Judge has during that period the functions of the Executive Officer.
- (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.

**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 by 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 by 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 — FLA s. 37A**

(1) In this section —

“**registrar**” means the Principal Registrar, a registrar or a deputy registrar;

“**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 power of the Court to make —

(a) a decree of dissolution of marriage in proceedings that are defended;

- (b) a decree of nullity of marriage;
- (c) a declaration as to the validity of a marriage or the dissolution or annulment of a marriage;
- (d) an order that is —
  - (i) a residence order;
  - (ii) a contact order;
  - (iii) a specific issues order conferring responsibility for the long-term or day-to-day care, welfare and development of a child; or
  - (iv) an order in relation to the welfare of a child, and which is not an order until further order, an order made in undefended proceedings or an order made with the consent of all the parties to the proceedings; or
- (e) an order setting aside a registered award under section 60E,

cannot be delegated to a registrar.

- (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 by No. 25 of 2002 s. 31.]*

**Division 4 — Counselling and welfare facilities**

**34. Counselling and welfare facilities**

- (1) Counselling and welfare facilities like those available to the Family Court of Australia are to be available to the Court.
- (2) The Court may cause to be advertised the existence and availability of the Court's counselling and welfare facilities.

**Family Court Act 1997**

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

**Division 1** Jurisdiction of the Family Court

**s. 35**

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

**Division 1 — Jurisdiction of the Family Court**

**35. Federal jurisdiction of the 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 the 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* and the *Children and Community Services Act 2004*, to make —
  - (a) parenting orders in respect of;
  - (b) orders in respect of the welfare of;
  - (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;
    - (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.

**Family Court Act 1997**

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

**Division 1** Jurisdiction of the Family Court

**s. 37**

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- (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) repealed]*

- (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 by No. 25 of 2002 s. 32; No. 34 of 2004 s. 251.]*

**37. Principles to be applied, and matters to be considered, by the 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 a man and a woman to the exclusion of all others voluntarily entered into for life;
  - (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;
  - (c) the need to protect the rights of children and to promote their welfare;
  - (d) the need to ensure safety 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;

- (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.

## **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 by 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* 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 by No. 25 of 2002 s. 33; No. 59 of 2004 s. 95.]*

### **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.

**Family Court Act 1997**

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

**Division 3** Jurisdiction of other courts

**s. 41**

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- (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;
  - (b) any function under section 57(2)(b) or section 61(1) or (2); or
  - (c) the function of conducting a conciliation or other conference,

and the provisions of section 64 do not apply to such a registrar.

*[Section 40 amended by No. 59 of 2004 s. 95.]*

**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 180.

**Division 4 — Transfer, staying and dismissal of proceedings**

*[42. Repealed by No. 59 of 2004 s. 95.]*

**43. Transfer of proceedings from courts of summary jurisdiction in certain cases — FLA s. 69N**

- (1) This section applies —
- (a) if —
    - (i) proceedings for a parenting order (other than a child maintenance order) or an order relating to the welfare of a child are instituted in a court of summary jurisdiction (“**the court**”); and
    - (ii) the respondent, in answer to the application by which the proceedings were instituted, seeks an

order different from that sought in the application;

or

(b) if —

- (i) Part 5A proceedings in relation to property of a total value exceeding \$300 000, or such other amount, if any, as is prescribed in the regulations, are instituted in, or transferred to, the Magistrates Court (“**the court**”);
  - (ii) the court is constituted by a family law magistrate; and
  - (iii) the respondent, in answer to the application by which the proceedings are 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.
- (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) A reference in subsection (1)(b) to proceedings in respect of property does not include a reference to proceedings with respect to arrears of maintenance.

**Family Court Act 1997**

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

**Division 4** Transfer, staying and dismissal of proceedings

**s. 43A**

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- (4b) In determining the value of any property for the purposes of subsection (1)(b), any mortgage, lien, charge or other security over the property is to be disregarded.
- (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 Magistrates 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 Magistrates Court to comply with this section.

*[Section 43 amended by No. 25 of 2002 s. 34; No. 59 of 2004 s. 93 and 95.]*

**43A. Transfer of proceedings from the Magistrates Court in other cases**

- (1) This section applies if —
  - (a) proceedings in relation to property of a total value exceeding \$20 000, or such other amount, if any, as is prescribed in the regulations, are instituted in the Magistrates Court (“**the court**”);
  - (b) the court is not constituted by a family law magistrate; and
  - (c) the respondent, in answer to the application by which the proceedings are 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 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 a court in pursuance of this section, that court shall proceed as if the proceedings had been originally instituted in that court.
- (8) Failure by the court to comply with this section does not invalidate any order of the court in the proceedings.

*[Section 43A inserted by No. 25 of 2002 s. 35; amended by No. 59 of 2004 s. 94.]*

**Family Court Act 1997**

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

**Division 4** Transfer, staying and dismissal of proceedings

**s. 44**

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**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 by No. 25 of 2002 s. 53; No. 59 of 2004 s. 95.]*

**45. Stay or dismissal of proceedings**

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.

*[Section 45 amended by No. 59 of 2004 s. 95.]*

**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 and child counsellor or a welfare officer to discuss matters

- affecting the welfare of any child affected by the proceedings and to resolve the difference (if any) between the parties;
- (b) that a report in accordance with section 73 be obtained from a family and child counsellor or a welfare officer;
  - (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 by No. 25 of 2002 s. 36; No. 59 of 2004 s. 95.]*

## **Part 4 — Primary dispute resolution**

### **Division 1 — Introductory**

#### **47. Interpretation — FLA s. 14E**

In this Part —

**“primary dispute resolution methods”** means procedures and services for the resolution of disputes out of court, including —

- (a) counselling services provided by family and child counsellors;
- (b) mediation services provided by family and child mediators;
- (c) conciliation services of the Court; and
- (d) arbitration services provided by arbitrators.

*[Section 47 amended by No. 25 of 2002 s. 37.]*

#### **48. Object of Part — FLA s. 14**

The object of this Part is —

- (a) to encourage people to use primary dispute resolution mechanisms (such as counselling, mediation, arbitration or other means of conciliation or reconciliation) 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
- (b) to ensure that people have access to counselling —
  - (i) to improve relationships covered by this Act; and
  - (ii) to help them adjust to court orders under this Act.

*[Section 48 amended by No. 25 of 2002 s. 38.]*

**49. Duty of courts — FLA s. 14F**

A court hearing proceedings under this Act must consider whether or not to advise the parties to the proceedings about the primary dispute resolution methods that could be used to resolve any matter in dispute.

**50. Duty of legal practitioners — FLA s. 14G**

A legal practitioner acting in proceedings under this Act, or consulted by a person considering instituting such proceedings, must consider whether or not to advise the parties to the proceedings for whom the legal practitioner is acting, or the person considering instituting proceedings, about the primary dispute resolution methods that could be used to resolve any matter in dispute.

**Division 2 — Counselling**

**51. Request for counselling — request to Court but no proceedings**

Any person may seek the assistance of the counselling facilities of the Court and when such assistance is sought the Director of Court Counselling must, as far as practicable, make those facilities available.

**52. Request for counselling — request made through Court — FLA s. 62C**

- (1) A party to proceedings under this Act, or a person representing a child under an order made under section 171, may file in the Court a notice stating that the party or the person wishes to have the assistance of the counselling facilities of the Court.
- (2) On the filing of the notice, the Director of Court Counselling must arrange for parties to the proceedings (with or without the child) to be interviewed by a family and child counsellor or welfare officer 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.

**53. Request for counselling — where made direct to a family and child counsellor — FLA s. 62D**

A person may at any time request a family and child counsellor to provide counselling about a matter relating to a child.

**54. Court to direct or advise people to attend counselling — FLA s. 16A**

- (1) If a court makes an order or grants an injunction under section 235, the court must, if it considers that it is in the interests of the children of the parties to do so, direct or advise either or both of the parties to attend upon a family and child counsellor.
- (2) Failure to comply with a direction or advice referred to in subsection (1) does not constitute a contempt of the court.

**55. Provision of certain documents — FLA s. 62H**

- (1) The Principal Registrar must cause to be provided —
  - (a) to a person who institutes or proposes to institute proceedings under this Act in relation to a child;
  - (b) to any other party to the proceedings; and
  - (c) in appropriate cases, to any person who may be interested in the care, welfare and development of a child,

documents, prepared in accordance with the rules, setting out —

- (d) the legal and possible social effects of the proceedings or proposed proceedings; and

- (e) the counselling and welfare facilities available within the Court and elsewhere.
- (2) The legal practitioner of a person referred to in subsection (1)(a), (b) or (c) must, before filing an application, ensure that the person receives such of the documents referred to in subsection (1) as are applicable in relation to the proceedings.

**56. Oath or affirmation of secrecy — FLA s. 19(1)**

A family and child counsellor must, before performing any function under this Act of such a counsellor, make before a person authorised to take affidavits in this State, an oath or affirmation of secrecy in accordance with the prescribed form.

**Division 3 — Mediation**

**57. Request for mediation — FLA s. 19A**

- (1) A person who is —
  - (a) the parent of a child; or
  - (b) a child,and who is not a party to proceedings under this Act, may file in the Court a notice asking for the help of a mediator in settling a dispute to which the person is a party.
- (2) Where a notice is filed in the Court —
  - (a) the notice must be dealt with in accordance with the rules; and
  - (b) if a mediation service is available at the Registry of the Court and the dispute is one that, under the rules may be mediated, the Principal Registrar must cause arrangements to be made for a court mediator to mediate the dispute in accordance with the rules.
- (3) In this section —

**“dispute”** means a dispute about a matter with respect to which proceedings could be instituted under this Act.

**58. Request for mediation — where made direct to a family and child mediator — FLA s. 19AA**

A person may at any time request a family and child mediator to mediate a dispute.

**59. Court may refer matters for mediation — FLA s. 19B**

- (1) A court may, with the consent of the parties to any proceedings before it under this Act and in accordance with any relevant rules, make an order referring any or all of the matters in dispute in the proceedings for mediation by a court mediator.
- (2) Where a court makes an order under subsection (1), it may, if necessary, adjourn the proceedings and may make such additional orders as it thinks appropriate to facilitate the effective conduct of the mediation.
- (3) Where a court makes an order under subsection (1), the Principal Registrar must cause arrangements to be made for a court mediator to mediate the relevant disputed matter in accordance with the rules.
- (4) Where —
  - (a) a court makes an order under subsection (1) in relation to any matter in dispute in proceedings before it; and
  - (b) a party to the proceedings files a notice in the court that the mediation of the matter has ended,

the court may make such orders, or give such directions, as it thinks appropriate in relation to the proceedings.

**60. Court to advise people to attend mediation — FLA s. 19BA**

- (1) If a court considers that the parties to a dispute before the court could be helped to resolve the dispute then the court must, in



accordance with any relevant regulations, advise the parties to seek the help of a family and child mediator.

- (2) If the court does so advise the parties, it may, if it considers it desirable to do so, adjourn any proceedings before it to enable attendance at mediation.

### **Division 3A — Arbitration**

*[Heading inserted by No. 25 of 2002 s. 39.]*

#### **60A. Court may refer proceedings to arbitration — FLA s. 19D**

- (1) In any Part 5A proceedings the court may, subject to the rules, make an order referring the proceedings, or any part of them, or any matter arising in them, to an arbitrator for arbitration in accordance with the rules.
- (2) However, a court may only make an order under subsection (1) with the consent of all the parties to the proceedings.
- (3) Where a court makes an order under subsection (1), it may, if necessary, adjourn the proceedings and may make such additional orders as it thinks appropriate to facilitate the effective conduct of the arbitration.
- (4) Where a court makes an order under subsection (1), the arbitration must be carried out by the arbitrator in accordance with the rules.
- (5) A party to an award in an arbitration carried out as a result of an order under this section may register the award, in accordance with the regulations, in the court that made that order and the award, when so registered, has effect as if it were a decree made by that court.

*[Section 60A inserted by No. 25 of 2002 s. 39.]*

**60B. Private arbitration — FLA s. 19E**

- (1) A court may, on application by a party to the private arbitration of a dispute, make such orders as the court thinks appropriate to facilitate the effective conduct of the arbitration.
- (2) A party to an award made in a private arbitration of a dispute may register the award, in accordance with the regulations, in a court and the award, when so registered, has effect as if it were a decree made by that court.
- (3) In this section —  
“**dispute**” means —
  - (a) Part 5A proceedings;
  - (b) any part of such proceedings;
  - (c) any matter arising in such proceedings; or
  - (d) a dispute about a matter with respect to which such proceedings could be instituted.

*[Section 60B inserted by No. 25 of 2002 s. 39.]*

**60C. Referral by arbitrator of questions of law to a court — FLA s. 19EA and 19EB**

- (1) At any time before making an award in section 60A arbitration or private arbitration, the arbitrator may refer for determination by a court a question of law arising in relation to the arbitration.
- (2) The arbitrator may do so —
  - (a) on the arbitrator’s 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 a court 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 60C inserted by No. 25 of 2002 s. 39.]*

**60D. Review of awards by a court — FLA s. 19F and 19FA**

- (1) A party to a registered award made in section 60A arbitration or private arbitration may apply to a court for review of the award on questions of law.
- (2) On a review of an award under this section, a court may —
  - (a) determine all questions of law arising in relation to the arbitration; and
  - (b) make such decrees as it thinks appropriate, including a decree affirming, reversing or varying the award.

*[Section 60D inserted by No. 25 of 2002 s. 39.]*

**60E. Setting aside awards — courts — FLA s. 19G and 19GA**

If an award made in section 60A arbitration or private arbitration, or an agreement made as a result of such arbitration, is registered in a court, a court may make a decree affirming, reversing or varying the award or agreement if it is satisfied that —

- (a) the award or agreement was obtained by fraud (including non-disclosure of a material matter);
- (b) the award or agreement is void, voidable or unenforceable;
- (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 60E inserted by No. 25 of 2002 s. 39.]*

**60F. Fees for arbitration — FLA s. 19H**

- (1) An arbitrator conducting section 60A arbitration or private 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 60F inserted by No. 25 of 2002 s. 39.]*

**Division 4 — Miscellaneous**

*[Heading inserted by No. 25 of 2002 s. 39.]*

**61. Advice about mediation — FLA s. 19J**

- (1) The Principal Registrar must, as far as practicable, on request by a party to proceedings under this Act, cause the party to be advised about —
  - (a) the mediation or arbitration facilities (if any) available in the Court and how those facilities are made available; and
  - (b) the mediation services provided by approved mediation organizations.
- (2) The Principal Registrar must, as far as practicable, on request by a person who proposes to institute proceedings under this Act or by any other interested person, give the requesting person a document, prepared in accordance with the rules, setting out particulars of any mediation and arbitration facilities available in the Court and elsewhere.
- (3) The legal practitioner (if any) of a person making a request under subsection (1) or (2) must ensure that, before an application is filed, the person receives the requested document.

*[Section 61 amended by No. 25 of 2002 s. 40.]*

**62. Oath or affirmation by court or community mediator —  
FLA s. 19K**

A court mediator or a community mediator must, before performing any function under this Act of such a mediator, make before a person authorised to take affidavits in this State, an oath or affirmation of secrecy in accordance with the prescribed form.

**62A. Oath or affirmation by arbitrator — FLA s. 19L**

An arbitrator must, before performing any function under this Act of an arbitrator, make before a person authorised to take affidavits in this State, an oath or affirmation in accordance with the prescribed form.

*[Section 62A inserted by No. 25 of 2002 s. 41.]*

**63. Protection of family and child mediators — FLA s. 19M**

A family and child mediator and an arbitrator has, in performing the functions of such a mediator or arbitrator, the same protection and immunity as a judge has in performing the functions of a judge.

*[Section 63 amended by No. 25 of 2002 s. 42.]*

*[Division heading deleted by No. 25 of 2002 s. 43.]*

**64. Admissions made to counsellors, mediators etc. —  
FLA s. 19N**

- (1) This section applies to —
- (a) a family and child counsellor or welfare officer;
  - (b) a family and child mediator;
  - (c) the Principal Registrar, a registrar or a deputy registrar;  
or
  - (d) a person to whom a party to proceedings has been referred, for medical or other professional consultation, by a person referred to in paragraph (a), (b) or (c).

**Family Court Act 1997**

**Part 4** Primary dispute resolution

**Division 4** Miscellaneous

**s. 65**

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- (2) Subject to subsection (3), evidence of anything said, or any admission made, at a meeting, conference or consultation conducted by a person to whom this section applies while the person is acting as such a person 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 or of a State or Territory, or by the consent of the parties, to hear evidence.
- (3) Subsection (2) does not prevent evidence of anything said, or of any admission made, in the course of a meeting, conference or consultation being admitted in evidence —
- (a) in a court (of any kind) upon the trial of a person for an offence committed at the meeting, conference or consultation;
  - (b) upon a hearing under Division 2 of Part 10 in relation to whether, at the meeting, conference or consultation, a person has contravened an order under this Act without reasonable excuse;
  - (c) upon the hearing of an application under section 234 in relation to any statement made or act done at the meeting, conference or consultation; or
  - (d) upon the hearing of an application for costs arising out of the meeting, conference or consultation,

and in such a case the court in which the evidence is admitted must treat the evidence in the manner necessary to preserve, so far as is practicable, the confidentiality of the meeting, conference or consultation.

**65. Advertising in Court registry of counselling and mediation services — FLA s. 19Q**

- (1) A family and child counsellor or an approved counselling organization may, in accordance with any relevant regulations,

advertise at the Court's registry the counselling services the counsellor or organization provides.

- (2) A family and child mediator or an approved mediation organization may, in accordance with any relevant regulations, advertise at the Court's registry the mediation services the mediator or organization provides.
- (3) An arbitrator may, in accordance with any relevant regulations, advertise at the Court's registry the arbitration services the arbitrator provides.

*[Section 65 amended by No. 25 of 2002 s. 44.]*

## **Part 5 — Children**

### **Division 1 — Introductory**

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

- (1) The object of this Part is to ensure that children receive adequate and proper parenting to help them achieve their full potential, and to ensure that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.
- (2) The principles underlying these objects are that, except when it is or would be contrary to a child's best interests —
  - (a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together;
  - (b) children have a right of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development;
  - (c) parents share duties and responsibilities concerning the care, welfare and development of their children; and
  - (d) parents should agree about the future parenting of their children.

### **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;
- (b) who has parental responsibility; and
- (c) matters relating to appointment of guardians.



**68. Meaning of “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).

**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.

**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 residence order 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.

**Division 3 — Counselling etc.**

**72. Conferences with family and child counsellors or welfare officers — FLA s. 62F**

- (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, at any stage of proceedings under this Act, make an order directing the parties to the proceedings to attend a conference with a family and child counsellor or welfare officer —
  - (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.
- (3) A court 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) a person representing the child under an order made under section 171.
- (4) A court may, in an order under subsection (2) —
  - (a) fix a place and time for the conference to take place; or
  - (b) direct that the conference is to take place at a place and time to be fixed by a family and child counsellor or welfare officer.
- (5) If a person fails to attend a conference in respect of which a court has made an order under subsection (2), the counsellor or welfare officer must report the failure to the court.

- (6) On receiving a report under subsection (5), a court may give such further directions in relation to the conference as it considers appropriate.
- (7) A court may make further directions under subsection (6) —
  - (a) on its own initiative; or
  - (b) on the application of —
    - (i) a party to the proceedings; or
    - (ii) a person representing the child under an order made under section 171.

**73. Reports by family and child counsellors and welfare officers — 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 and child counsellor or welfare officer 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.
- (4) A counsellor or welfare officer may include in a report prepared in accordance with a direction under subsection (2), 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 purpose of the preparation of a report in accordance with a direction under subsection (2), a court may make such orders, or give such further directions, as it considers appropriate, including orders or directions for the attendance on the counsellor or welfare officer of a party to the proceedings or of the child.

- (6) If a person fails to comply with an order or direction under subsection (5), the counsellor or welfare officer must report the failure to the court that made the order or gave the direction.
- (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.

### **Division 4 — Parenting plans**

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

This Division explains what parenting plans are and provides for their registration in courts.

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

The parents of a child are encouraged —

- (a) to agree about matters concerning the child rather than seeking an order from a court; and
- (b) in reaching their agreement, to regard the best interests of the child as the paramount consideration.

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

- (1) A “**parenting plan**” is an agreement that —
  - (a) is in writing;
  - (b) is or was made between the parents of a child; and
  - (c) deals with a matter or matters mentioned in subsection (2).
- (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) contact between a child and another person or other persons;
  - (c) maintenance of a child;
  - (d) any other aspect of parental responsibility for a child.
- (3) An agreement may be a parenting plan —
- (a) whether made before or after the commencement of this section;
  - (b) whether made inside or outside Western Australia;
  - (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 any of the matters mentioned in subsection (2)(a), (b) and (d) are “**child welfare provisions**”.
- (5) Provisions of a parenting plan that deal with the matter mentioned in subsection (2)(c) are “**child maintenance provisions**”.

**77. Parenting plans may include child support provisions**

- (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 not be varied, but may be revoked, by further agreement — FLA s. 63D**

- (1) An agreement, in whatever form and however expressed, is not effective to vary a parenting plan for the purposes of this Act. An agreement purporting to vary a parenting plan cannot be registered under section 79.
- (2) Subject to subsection (3), a parenting plan may be revoked by agreement in writing between the parties to the plan.
- (3) An agreement revoking a registered parenting plan —
  - (a) may, in accordance with any relevant rules, be registered under section 79 as if it were a parenting plan; and
  - (b) does not have effect to revoke the plan until it is so registered.

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

- (1) If a person who is a family and child counsellor, a family and child mediator or a legal practitioner gives advice or assistance to people in connection with the making by them of a parenting plan, the person must explain to them, in language likely to be readily understood by them —
  - (a) the obligations that the plan creates;
  - (b) the consequences that may follow if either of them fails to comply with any of those obligations; and
  - (c) the availability of programs to help people who experience difficulties in complying with a parenting plan.
- (2) A court may cause to be prepared, and given to persons who are making a parenting plan, a document setting out particulars of the availability of programs to help people who experience difficulties in complying with a parenting plan.

*[Section 78A inserted by No. 25 of 2002 s. 5.]*

**79. Registration in a court — FLA s. 63E**

- (1) Subject to this section, a parenting plan may be registered in a court.
- (2) To apply for registration of a parenting plan —
  - (a) an application for registration of the plan must be lodged in accordance with the rules; and
  - (b) the application must be accompanied by a copy of the plan, the information required by the rules and —
    - (i) 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 plan and that is signed by the practitioner who provided that advice;
    - (ii) a statement to the effect that the plan was developed after consultation with a family and child counsellor and that is signed by the counsellor; or
    - (iii) a statement to the effect that the plan was developed after family and child mediation and that is signed by the family and child mediator involved.
- (2a) A reference in subsection (2)(b)(i), (ii) and (iii) to the plan does not include a reference to any child maintenance provisions.
- (3) A court may register the plan if it considers it appropriate to do so having regard to the best interests of the child to which the plan relates. In determining whether it is appropriate to register the plan, the court —
  - (a) must have regard to the information accompanying the application for registration; and
  - (b) may, but is not required to, have regard to all or any of the matters set out in section 166(2).

*[Section 79 amended by No. 25 of 2002 s. 54.]*



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

- (1) This section applies if a parenting plan that contains child welfare provisions is registered in a court under section 79 (“**the plan**”).
- (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) Subject to subsections (5) and (6), the child welfare provisions —
  - (a) to the extent they deal with the person or persons with whom the child is to live, have effect as if they were a residence order made by a court;
  - (b) to the extent they deal with contact between the child and another person or other persons, have effect as if they were a contact order made by a court; and
  - (c) to the extent they deal with any other aspect of parental responsibility for the child, have effect as if they were a specific issues order made by a court.
- (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.

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

- (1) This section applies if a parenting plan containing child maintenance provisions is registered in a court under section 79 (“**the plan**”).
- (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.

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

- (1) A court may set aside a parenting plan registered under section 79 (“**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;
  - (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;
  - (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);
  - (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 180, under which a court (within the meaning of that section) may make, revive, vary, suspend or discharge a Division 10 contact order in family violence proceedings.
- (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.

**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).
- (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) contact between a child and another person or other persons;
  - (c) maintenance of a child;
  - (d) any other aspect of parental responsibility for a child.
- (3) To the extent (if at all) that a parenting order deals with the matter mentioned in subsection (2)(a), the order is a **“residence order”**.
- (4) To the extent (if at all) that a parenting order deals with the matter mentioned in subsection (2)(b), the order is a **“contact order”**.
- (5) To the extent (if at all) that a parenting order deals with the matter mentioned in subsection (2)(c), the order is a **“child maintenance order”**.

- (6) To the extent (if at all) that a parenting order deals with any other aspect of parental responsibility for a child, the order is a **“specific issues order”**. A specific issues order may, for example, confer on a person (whether alone or jointly with another person) responsibility for the long-term care, welfare and development of the child or for the day-to-day care, welfare and development of the child.
- (7) For the purposes of this Act —
- (a) a residence order is **“made in favour”** of a person, or the person, with whom the child concerned is supposed to live under the order; and
  - (b) a contact order is **“made in favour”** of a person, or the person, with whom the child concerned is supposed to have contact under the order; and
  - (c) a specific issues order is **“made in favour”** of a person, or the person, on whom the order confers duties, powers, responsibilities or authority in relation to the child concerned.
- (8) For the purposes of this Act —
- (a) a person **“has a residence order”** in relation to a child if a residence order made in favour of the person is in force in relation to the child; and
  - (b) a person **“has a contact order”** in relation to a child if a contact order made in favour of the person is in force in relation to the child; and
  - (c) a person **“has a specific issues order”** in relation to a child if a specific issues order made in favour of the person is in force in relation to the child.

**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.

**Division 6 — Parenting orders other than child maintenance orders**

**Subdivision 1 — Introductory**

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

This Division deals with —

- (a) applying for and making parenting orders, other than child maintenance orders (Subdivision 2);
- (b) the general obligations created by residence orders, contact orders and specific issues orders (Subdivision 3);
- (c) dealing with people who have been arrested (Subdivision 4); and
- (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).

**86A. Measures to promote the exercise of parental responsibility — FLA s. 65AA**

- (1) Measures designed, as stage 1 of a parenting compliance regime, 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).
- (2) Remedial measures designed, as stage 2 of a parenting compliance regime, to enable parents to resolve issues of conflict about parenting and to help in the negotiation of improved parenting are contained in Division 13 Subdivision 2.
- (3) Further measures designed, as stage 3 of a parenting compliance regime, to ensure that, as a last resort, a parent is dealt with for deliberate disregard of an order made by a court are contained in Division 13 Subdivision 3.

*[Section 86A inserted by No. 25 of 2002 s. 6.]*

**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;
- (b) the child;
- (ba) a grandparent of the child;
- (c) any other person concerned with the care, welfare or development of the child;
- (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 by 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 this Division, make such parenting order as it thinks proper.
- (2) Without limiting the generality of subsection (1) and subject to this Division, a court may make a parenting order that discharges, varies, suspends or revives some or all of an earlier parenting order.

- (3) If the application for the parenting order was made as a result of the adjournment under section 205H(1)(c) of proceedings under Division 13 Subdivision 2 —
- (a) the court must hear and determine the application as soon as practicable; and
  - (b) if the court makes a parenting order on the application, the court may, if it thinks it is appropriate to do so, dismiss the proceedings under that Subdivision.

*[Section 89 amended by No. 25 of 2002 s. 7.]*

**89A. Parenting orders: stage 1 of parenting compliance regime — 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 by No. 25 of 2002 s. 8.]*

**90. Child's best interests paramount consideration in making a parenting order — FLA s. 65E**

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.

**91. General requirements for counselling before parenting order made — FLA s. 65F**

- (1) In proceedings for a parenting order in relation to a child, a court may order the parties to the proceedings to attend a conference with a family and child counsellor or a welfare officer to discuss the matter to which the proceedings relate.
- (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 a conference with a family and child counsellor or a welfare officer to discuss the matter to which the proceedings relate;

- (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 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).
- (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.

**92. Special conditions for making residence order or specific issues order by consent in favour of non-parent —  
FLA s. 65G**

- (1) This section applies if —
- (a) a court proposes to make —
    - (i) a residence order; or
    - (ii) a specific issues order under which a person will be responsible for a child’s long-term or day-to-day care, welfare and development;and
  - (b) the court proposes to make that order —
    - (i) otherwise than in favour of a parent, or of persons who include a parent, of the child concerned; and
    - (ii) with the consent of all the parties to the proceedings.
- (2) A court must not make the proposed order unless —

- (a) these conditions are satisfied —
  - (i) the parties to the proceedings have attended a conference with a family and child counsellor or a welfare officer to discuss the matter to be determined by the proposed order; and
  - (ii) the court has considered a report prepared by the counsellor or officer about that matter;

or

- (b) the court is satisfied that there are circumstances that make it appropriate to make the proposed order even though the conditions in paragraph (a) are not satisfied.

**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;
  - (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 is or includes residence order 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 that is or includes a residence order is in force determining that a child is to live with one of the child's parents;
  - (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 the making of a residence order in relation to the child.
- (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.

**95. Counsellors 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 and child counsellor or a welfare officer;
  - (b) an order requiring a family and child counsellor or a welfare officer 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.

**Subdivision 3 — General obligations created by residence orders, contact orders and specific issues orders**

**96. General obligations created by residence order — FLA s. 65M**

- (1) This section applies if a residence order is in force in relation to a child.
- (2) A person must not, contrary to the order —
- (a) remove the child from the care of a person;
  - (b) refuse or fail to deliver or return the child to a person; or
  - (c) interfere with the exercise or performance of any of the powers, duties or responsibilities that a person has under the order.

**97. General obligations created by contact order — FLA s. 65N**

- (1) This section applies if a contact order is in force in relation to a child.
- (2) A person must not —
- (a) hinder or prevent a person and the child from having contact in accordance with the order; or
  - (b) interfere with the contact that a person and the child are supposed to have with each other under the order.

**98. General obligations created by specific issues orders that confer responsibility for a child's care, welfare and development — FLA s. 65P**

- (1) This section applies if a specific issues order —

- (a) is in force in relation to a child; and
- (b) confers responsibility on a person (the “**carer**”) for the child’s long-term or day-to-day care, welfare and development.

(2) A person must not hinder the carer in, or prevent the carer from, discharging that responsibility.

**99. Court may issue warrant for arrest of alleged offender —  
FLA s. 65Q**

- (1) This section applies if —
  - (a) a residence order or a contact order is in force in relation to a child;
  - (b) a court is satisfied, on application by a person in whose favour the order was made, that there are reasonable grounds for believing that a person (the “**alleged offender**”) has contravened section 96 or 97 in relation to the order;
  - (c) there is an application before the court for the alleged offender to be dealt with under Division 13 for the alleged contravention; and
  - (d) the court is satisfied that the issue of a warrant is necessary to ensure that the alleged offender will attend before a court to be dealt with under Division 13 for the alleged contravention.
- (2) A court referred to in subsection (1) may issue a warrant authorising a person to whom it is addressed to arrest the alleged offender.
- (3) A warrant stops being in force —
  - (a) if a date not later than 6 months after the issue of the warrant is specified in the warrant as the date when it stops being in force, on that date; or
  - (b) otherwise, 6 months after the issue of the warrant.

*[Section 99 amended by No. 25 of 2002 s. 9.]*

**Subdivision 4 — Dealing with people who have been arrested**

**100. Situation to which Subdivision applies — FLA s. 65R**

- (1) This Subdivision applies if a person —
  - (a) is arrested under a warrant issued under section 99(2); or
  - (b) is arrested without warrant under a recovery order.
- (2) In this Subdivision —

**“alleged contravention”** means the alleged contravention because of which the alleged offender is arrested;

**“alleged offender”** means the person who is arrested;

**“arresting person”** means the person who arrests the alleged offender.

**101. Arrested person to be brought before a court — FLA s. 65S**

- (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.

**102. Obligation of court where application before it to deal with contravention — FLA s. 65T**

- (1) This section applies if —
- (a) the alleged offender is brought before a court under section 101; and
  - (b) there is an application before the court for the alleged offender to be dealt with under section 226 for the alleged contravention.
- (2) The court referred to in subsection (1) must, without delay, proceed to hear and determine the application.

**103. Obligation of court where no application before it, but application before another court, to deal with contravention — FLA s. 65U**

- (1) This section applies if —
- (a) the alleged offender is brought before a court under section 101 (**“the court”**);



- (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 (“**the other 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 upon the alleged offender entering into a bond (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 the alleged offender is brought before the other court;
  - (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 103 amended by No. 25 of 2002 s. 10 and 74(1).]*

**104. Obligation of court where no application before any court to deal with contravention — FLA s. 65V**

- (1) This section applies if —
  - (a) the alleged offender is brought before a court under section 101 (“**the court**”);
  - (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 104 amended by No. 25 of 2002 s. 11.]*

**105. Applications heard as required by section 102(2) or section 103(3)(b) — FLA s. 65W**

- (1) If a court hearing an application as required by section 102(2) or section 103(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 upon the alleged offender entering into a bond (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 105 amended by No. 25 of 2002 s. 74(1).]*

**Subdivision 5 — Obligations under parenting orders relating to taking or sending children from Western Australia to places outside Australia**

**106. Interpretation — FLA s. 65X**

- (1) In this Subdivision —
- “**captain**”, in relation to an aircraft or vessel, means the person in charge or command of the aircraft or vessel;
- “**care order**” means a specific issues order under which a person is responsible for a child’s long-term or day-to-day care, welfare and development;
- “**child**” means a person who is under 18 years of age;
- “**pending**” has a meaning affected by subsection (2).
- (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 and 110 (rather than sections 107 and 109) apply.

**107. Obligations if residence order, contact order or care order has been made — FLA s. 65Y**

- (1) Subject to subsection (2), if a residence order, a contact order or a care order is in force, a person who was a party to the proceedings in which the order was made, or a person who is acting on behalf of, or at the request of, a party, must not, intentionally or recklessly, take or send, or attempt to take or send, the child concerned from the State to a place outside Australia.
- Penalty: Imprisonment for 3 years.
- (2) A person does not commit an offence under subsection (1) if the person takes or sends, or attempts to take or send, a child from the State to a place outside Australia —

- (a) with the consent (evidenced by statutory declaration) of each person in whose favour the order referred to in subsection (1) was made; or
- (b) in accordance with an order —
  - (i) of any court (whether of a kind referred to in section 8(a) or (b) or otherwise) under any written law; or
  - (ii) under a law of the Commonwealth or any other State or a Territory, of a court of the Commonwealth or that State or Territory, made at the same time, or after, the order referred to in subsection (1) was made.

**108. Obligations if proceedings for the making of residence order, contact order or care order are pending —  
FLA s. 65Z**

- (1) Subject to subsection (2), if proceedings for the making of a residence order, a contact order or a care order are pending, a person who is a party to the proceedings, or who is acting on behalf of, or at the request of, a party, must not, intentionally or recklessly, take or send, or attempt to take or send, the child concerned from the State to a place outside Australia.  
Penalty: Imprisonment for 3 years.
- (2) A person does not commit an offence under subsection (1) if the person takes or sends, or attempts to take or send, a child from the State to a place outside Australia —
  - (a) with the consent (evidenced by statutory declaration) of each other party to the proceedings referred to in subsection (1); or
  - (b) in accordance with an order —
    - (i) of any court (whether of a kind referred to in section 8(a) or (b) or otherwise) under any written law; or

(ii) under a law of the Commonwealth or any other State or a Territory, of a court of the Commonwealth or that State or Territory,

made after the proceedings referred to in subsection (1) were instituted.

**109. Obligations of owners etc. of aircraft and vessels if residence order, contact order or care order made — FLA s. 65ZA**

- (1) This section applies if —
- (a) a residence order, a contact order or a care order is in force; and
  - (b) a person in whose favour an order referred to in paragraph (a) was made has served on the captain, owner or charterer of an aircraft or vessel a statutory declaration made by the person not earlier than 7 days before the date of service that —
    - (i) relates to the order; and
    - (ii) complies with subsection (4).
- (2) Subject to subsection (3), a person on whom a statutory declaration referred to in subsection (1)(b) is served must not, intentionally or recklessly and without reasonable excuse, permit a child identified in the statutory declaration to leave a port or place in the State in the aircraft or vessel for a destination outside Australia.  
Penalty: \$6 600.
- (3) A person does not commit an offence under subsection (2) if the child leaves the State, in the aircraft or vessel —
- (a) in the company, or with the consent (evidenced by statutory declaration), of the person who made the statutory declaration referred to in subsection (1)(b); or
  - (b) in accordance with an order —

- (i) of any court (whether of a kind referred to in section 8(a) or (b) or otherwise) under any written law; or
  - (ii) under a law of the Commonwealth or any other State or a Territory, of a court of the Commonwealth or that State or Territory,made at the same time, or after, the order referred to in subsection (1)(a) was made.
- (4) A statutory declaration referred to in subsection (1)(b) 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;
    - (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 by No. 25 of 2002 s. 75.]*

**110. Obligations of owners etc. of aircraft and vessels if proceedings for the making of residence order, contact order or care order are pending — FLA s. 65ZB**

- (1) This section applies if —
  - (a) proceedings for the making of a residence order, a contact order or a care order are pending; and
  - (b) a party to the proceedings referred to in paragraph (a) has served on the captain, owner or charterer of a vessel a statutory declaration made by the party not earlier than 7 days before the date of service that —
    - (i) relates to the proceedings; and

- (ii) complies with subsection (4).
- (2) Subject to subsection (3), a person on whom a statutory declaration referred to in subsection (1)(b) is served must not, intentionally or recklessly and without reasonable excuse, permit a child identified in the statutory declaration to leave a port or place in the State in the aircraft or vessel for a destination outside Australia.
- Penalty: \$6 600.
- (3) A person does not commit an offence under subsection (2) if the child leaves the State, in the aircraft or vessel —
- (a) in the company, or with the consent (evidenced by statutory declaration), of the person who made the statutory declaration referred to in subsection (1)(b); or
  - (b) in accordance with an order —
    - (i) of any court (whether of a kind referred to in section 8(a) or (b) or otherwise) under any written law; or
    - (ii) under a law of the Commonwealth or any other State or a Territory, of a court of the Commonwealth or that State or Territory,made after the proceedings referred to in subsection (1)(a) were instituted.
- (4) A statutory declaration referred to in subsection (1)(b) must contain —
- (a) full particulars of the relevant proceedings referred to in subsection (1)(a), including —
    - (i) the full name and the date of birth of the child to whom the proceedings relate;
    - (ii) the full names of the parties to the proceedings;
    - (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;
- (b) a statement that the proceedings referred to in subsection (1)(a) are pending at the date of the statutory declaration; and
- (c) such other matters (if any) as are prescribed.

*[Section 110 amended by No. 25 of 2002 s. 75.]*

**111. General provisions applicable to sections 109 and 110 — FLA s. 65ZC(1) and (2)**

- (1) A statutory declaration referred to in section 109(1)(b) or 110(1)(b) 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.

**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 and interpretation**

This Division —

- (a) contains statements of objects and principles relevant to the making of child maintenance orders (Subdivision 2);
- (b) deals with the relationship between this Division and the Child Support (Assessment) Act (Subdivision 3);
- (c) deals with applying for and making child maintenance orders (Subdivision 4);
- (d) deals with other aspects of courts' powers in relation to child maintenance orders (Subdivision 5);
- (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).

*[Section 113 amended by No. 25 of 2002 s. 56.]*

### **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;
  - (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 a 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 a 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;
  - (b) the child;
  - (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;
  - (b) a parent of the child who has the daily care of the child;
  - (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 by 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;
  - (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;
    - (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;
  - (b) the income, earning capacity, property and financial resources of the party or each of those parties (this is expanded on in subsection (2));
  - (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;
  - (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;
  - (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 by No. 25 of 2002 s. 58.]*

**124. When step-parents have a 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;
  - (b) the length and circumstances of the step-parent's marriage to, or de facto relationship with, the relevant parent of the child;
  - (c) the relationship that has existed between the step-parent and the child;
  - (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 by 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;
- (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;

- (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;
  - (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;
  - (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;

- (ii) the circumstances of the person liable to make payments under the first order have changed so as to justify the variation;
  - (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;
- (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));
  - (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 by No. 25 of 2002 s. 59.]*

**Subdivision 5A — Varying the maintenance of certain children**

*[Heading inserted by No. 25 of 2002 s. 60.]*

**128A. Varying the 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 by 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 a 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 by 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;
    - (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 by No. 25 of 2002 s. 62(1).]*

## **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);
- (b) orders for the location and recovery of children (Subdivision 3);
- (c) the reporting of allegations of child abuse (Subdivision 4); and
- (d) other orders about children (Subdivision 5).

*[Section 133 amended by No. 3 of 2002 s. 62.]*

### **Subdivision 2 — Liability of parent not married to child's mother to contribute towards child bearing expenses**

*[Heading amended by No. 3 of 2002 s. 63.]*

#### **134. Definitions — FLA s. 60D(1)**

In this Subdivision —

**“childbirth maintenance period”**, in relation to the birth of a child, means the period —

- (a) commencing —
  - (i) in a case where the mother —
    - (I) works in paid employment;

- (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,
- on the day on which she stops working; or
- (ii) in any other case, 2 months before the child is due to be born;

and

- (b) ending 3 months after the child's birth;

**“medical expenses”** includes medical, surgical, dental, diagnostic, hospital, nursing, pharmaceutical and physiotherapy expenses.

**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;
- (b) the mother's reasonable medical expenses in relation to the pregnancy and birth;
- (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 by 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 by 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;
  - (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;
- (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 by No. 3 of 2002 s. 66.]*

**Subdivision 3 — Location and recovery of children**

**142. Interpretation — FLA s. 67H**

In this Subdivision —

**“department”** means a department of the Public Service;

**“information about the 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;

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

**“organization”** has the meaning given by the *Public Sector Management Act 1994*;

**“principal officer”**—

- (a) in relation to a department or an organization, means the chief executive officer or chief employee (as those terms are defined in the *Public Sector Management Act 1994*) of the department or organization; and
- (b) in relation to any other State entity, means a person who is the chief executive officer of the State entity;

**“registrar”**—

- (a) in relation to the Court, means the Principal Registrar or a registrar; and
- (b) in relation to the Magistrates Court, means a registrar of that court at the place where that court was held;

**“State entity”** means —

- (a) a department or an organization; or
- (b) a body corporate, other than an organization or a local government, established for a public purpose by a written law;



**“State information order”** has the meaning given by section 143(2).

*[Section 142 amended by No. 59 of 2004 s. 95.]*

**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 a location order — FLA s. 67K**

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

- (a) a person who has a residence order in relation to the child;
- (b) a person who has a contact order in relation to the child;
- (c) a person who has a specific issues order in relation to the child under which the person is responsible for the child’s long-term or day-to-day care, welfare and development;
- (ca) a grandparent of the child; or
- (d) any other person concerned with the care, welfare or development of the child.

*[Section 144 amended by No. 25 of 2002 s. 63.]*

**145. Child's best interests paramount consideration in making a 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;
  - (b) to an officer of the Court for the purpose of that officer's responsibilities or duties;
  - (c) to a process-server engaged by a court or by an officer of the Court;
  - (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 by 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;
  - (ii) a person who has a residence order or a contact order in relation to the child; or
  - (iii) a person who has a specific issues order in relation to the child under which the person is responsible for the child’s long-term or day-to-day care, welfare and development;
- (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;
  - (ii) a person who has a residence order or a contact order in relation to the child;
  - (iii) a person who has a specific issues order in relation to the child under which the person is responsible for the child’s long-term or day-to-day care, welfare and development; or
  - (iv) some other person on behalf of a person described in subparagraph (i), (ii) or (iii);
- (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 by No. 25 of 2002 s. 64.]*

**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;
  - (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 a recovery order — FLA s. 67T**

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

- (a) a person who has a residence order in relation to the child;
- (b) a person who has a contact order in relation to the child;
- (c) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development;
- (ca) a grandparent of the child; or
- (d) any other person concerned with the care, welfare or development of the child.

*[Section 152 amended by No. 25 of 2002 s. 65.]*

**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 a 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 by 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;
  - (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 by 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**

**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 by No. 59 of 2004 s. 95.]*

**159. Where party to proceedings makes allegation of child abuse — FLA s. 67Z**

- (1) If a party to 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 party 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 by No. 34 of 2004 s. 251.]*

**160. Where member of the Court personnel, counsellor or mediator suspects child abuse etc. — FLA s. 67ZA**

- (1) This section applies to a person in the course of performing the functions of —
- (a) a registrar;
  - (b) a family and child counsellor;
  - (c) a welfare officer;
  - (d) a family and child mediator; or
  - (e) an arbitrator.
- (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 by No. 25 of 2002 s. 46; No. 34 of 2004 s. 251.]*

**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);
  - (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 by No. 34 of 2004 s. 251.]*

**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 passports — FLA s. 67ZD**

If a court considers that there is a possibility or threat that a child may be removed from Australia, it may order the passport of the child and of any other person concerned to be delivered up to the court upon such conditions as the court considers appropriate.

**Division 9 — The best interests of children and the representation of children**

**Subdivision 1 — What this Division does**

**164. What this Division does — FLA s. 68D**

This Division deals with —

- (a) determining what is in a child's best interests (including in situations of family violence) (Subdivision 2); and
- (b) the separate representation of children (Subdivision 3).

**Subdivision 2 — Determining the best interests of a child**

**165. Proceedings to which Subdivision applies — FLA s. 68E**

- (1) This Subdivision applies to any proceedings under this Act 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 section 180 applies.

**166. How a court determines what is in a child's best interests —  
FLA s. 68F**

- (1) Subject to subsection (3), in determining what is in the child's best interests, a court must consider the matters set out in subsection (2).
- (2) A court must consider —
  - (a) any wishes expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's wishes;
  - (b) the nature of the relationship of the child with each of the child's parents and with other persons;
  - (c) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from —
    - (i) either of the child's parents; or
    - (ii) any other child, or other person, with whom the child has been living;
  - (d) the practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;
  - (e) the capacity of each parent, or of any other person, to provide for the needs of the child, including emotional and intellectual needs;
  - (f) the child's maturity, sex and background (including any need to maintain a connection with the lifestyle, culture and traditions of Aboriginal peoples or Torres Strait Islanders) and any other characteristics of the child that the court thinks are relevant;
  - (g) the need to protect the child from physical or psychological harm caused, or that may be caused, by —

- (i) being subjected or exposed to abuse, ill-treatment, violence or other behaviour; or
  - (ii) being directly or indirectly exposed to abuse, ill-treatment, violence or other behaviour that is directed towards, or may affect, another person;
  - (h) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
  - (i) any family violence involving the child or a member of the child's family;
  - (j) any family violence order that applies to the child or a member of the child's family;
  - (k) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;
  - (l) any other fact or circumstance that the court thinks is relevant.
- (3) If a 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).
- (4) In subsection (2)(f) —
- “Aboriginal peoples”** means the peoples of the Aboriginal race of Australia;
- “Torres Strait Islanders”** means the descendants of the indigenous inhabitants of the Torres Strait Islands.

**167. How the wishes of a child are expressed — FLA s. 68G**

- (1) Section 166(2)(a) requires a court to consider any wishes expressed by a child in deciding whether to make a particular parenting order in relation to the child. This section deals with how a court informs itself of wishes expressed by a child.
- (2) A court may inform itself of wishes expressed by a child —

**Family Court Act 1997**

**Part 5** Children

**Division 9** The best interests of children and the representation of children

**s. 168**

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- (a) by having regard to anything contained in a report given to the court under section 73(2); or
- (b) by such other means as the court thinks appropriate and in accordance with any relevant rules.

**168. Children not required to express wishes — FLA s. 68H**

Nothing in this Act permits a court or any person to require the child to express the child's wishes in relation to any matter.

**169. Informing court of relevant family violence orders — FLA s. 68J**

- (1) If a party to proceedings to which this Subdivision applies is aware that a family violence order applies to a child who is a subject of the proceedings, 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 proceedings to which this Subdivision applies is aware that a family violence order applies to a child who is a subject of the proceedings, or a member of the child's family, then that person may, in accordance with any relevant rules, inform the court of the family violence order.
- (3) Failure to inform a court of a family violence order does not affect the validity of any order made by the court.

**170. Court to consider risk of family violence — FLA s. 68K**

- (1) In considering what order to make in proceedings to which this Subdivision applies, a 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) a court may include in the order any safeguards that it considers necessary for the safety of those affected by the order.



**Subdivision 3 — Separate representation of children**

**171. Court orders for separate representation — 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 a child ought to be separately represented in proceedings referred to in subsection (1), the court may order that the child is to be separately represented, and may also make such other orders as it considers necessary to secure that separate representation.
- (3) A court may make an order for separate representation —
  - (a) on its own initiative; or
  - (b) on the application of —
    - (i) a child;
    - (ii) an organization concerned with the welfare of children; or
    - (iii) any other person.

**172. Order that child be made available for examination — FLA s. 68M**

- (1) This section applies if, in proceedings under this Act, a child is separately represented by a person (the “**child's representative**”) in accordance with an order under section 171.
- (2) A court may, on application by a child's representative, order a person mentioned in subsection (3) to make the child available, as specified in the order, for a psychiatric or other examination by a medical practitioner or for a psychological examination to be made for the purpose of preparing a report about the child for use by the child's representative in connection with the proceedings.

- (3) The order may be directed to —
- (a) a parent of the child;
  - (b) a person who has a residence order or a contact order in relation to the child;
  - (c) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development; or
  - (d) any other person who is responsible for the child's long-term or day-to-day care, welfare and development.

### **Division 10 — Family violence**

#### **Subdivision 1 — Introductory**

**173. What this Division does — FLA s. 68N**

This Division deals with the relationship between certain kinds of contact orders made under this Act and family violence orders.

**174. Interpretation — FLA s. 68P**

In this Division —

**“Division 10 contact order”** means —

- (a) a contact order; or
- (b) any of the following, to the extent that it requires or authorises (expressly or impliedly) contact between a child and another person or other persons —
  - (i) a recovery order, a specific issues order or any other order (however described) made under this Act;
  - (ii) an injunction granted under section 235;
  - (iii) an undertaking given to, and accepted by, a court;

- (iv) a parenting plan registered in a court under section 79;
- (v) a bond entered into in accordance with an order under this Act;

**“section 177 contact order”** means —

- (a) a contact order; or
- (b) any of the following, to the extent that it requires or authorises (expressly or impliedly) contact between a child and another person or other persons —
  - (i) a recovery order, a specific issues order or any other order (however described) made under this Act;
  - (ii) an injunction granted under section 235.

*[Section 174 amended by No. 25 of 2002 s. 74(1).]*

**175. Purposes of Division — FLA s. 68Q**

The purposes of this Division are —

- (a) to resolve inconsistencies between section 177 contact orders and family violence orders (Subdivision 2);
- (b) to ensure that the terms and effects of section 177 contact orders which are inconsistent with family violence orders are explained to relevant persons (Subdivision 2);
- (c) to resolve inconsistencies between Division 10 contact orders and family violence orders (Subdivision 3);
- (d) to ensure that Division 10 contact orders do not expose people to family violence (Subdivision 3); and
- (e) to respect the right of a child to have contact, on a regular basis, with both the child’s parents where —
  - (i) contact is diminished by the making or variation of a family violence order; and

- (ii) it is in the best interests of the child to have contact with both parents on a regular basis (Subdivision 3).

**Subdivision 2 — Where an order under this Act about contact is inconsistent with a family violence order**

**176. Section 177 contact orders prevail over inconsistent family violence orders — FLA s. 68S(1)**

If a section 177 contact order is inconsistent with a family violence order (whether the family violence order is made before or after the section 177 contact order), the section 177 contact order prevails and the family violence order is invalid to the extent of the inconsistency.

**177. Court's obligations where it makes an order for contact that is inconsistent with a family violence order — FLA s. 68R**

- (1) This section applies if a section 177 contact order (“**the order**”) that is inconsistent with a family violence order is made by a court.
- (2) A court that makes an order that is inconsistent with a family violence order must explain, or arrange for someone else to explain, in accordance with subsection (3), the order —
- (a) to the applicant and the respondent in the proceedings for the order;
  - (b) if paragraph (a) does not apply to the person against whom the family violence order is directed, to that person; and
  - (c) if paragraph (a) does not apply to the person protected by the family violence order, to that person.
- (3) An explanation under subsection (2) must explain, in language likely to be readily understood by the person to whom the explanation is given —
- (a) the purpose of the order;

- (b) the obligations that the order creates;
  - (c) the consequences that may follow if a person fails to comply with the order;
  - (d) the court's reasons for making the order even though the order is inconsistent with a family violence order; and
  - (e) the circumstances in which a person may apply for the order to be revoked or varied.
- (4) In addition to the requirements mentioned in subsection (3), a court that makes an order that is inconsistent with a family violence order must —
- (a) include in the order a detailed explanation of how the contact provided for in the order is to take place; and
  - (b) as soon as practicable, but not later than 14 days after making the order, give a copy of that order —
    - (i) to the applicant and the respondent in the proceedings for the order;
    - (ii) if subparagraph (i) does not apply to the person against whom the family violence order is directed, to that person;
    - (iii) if subparagraph (i) does not apply to the person protected by the family violence order, to that person;
    - (iv) if the court that made or last varied the family violence order —
      - (I) is the Magistrates Court, to the registrar of that court at the place where that court made or varied the order;
      - (II) is the Children's Court, to the registrar of that court at the place where that court made or varied the order; or

(III) is the Supreme Court or the District Court, to the Principal Registrar of the respective court;

and

(v) to the Commissioner of Police or the Commissioner's delegate.

(5) Failure to comply with a requirement of this section does not affect the validity of a section 177 contact order.

*[Section 177 amended by No. 59 of 2004 s. 95.]*

**178. Application for declaration of extent to which s. 177 contact order is inconsistent with a family violence order — FLA s. 68S(2) and (3)**

(1) Any of the following persons may apply to a court for a declaration of the extent to which a section 177 contact order is inconsistent with a family violence order —

- (a) the applicant and the respondent in the proceedings for the section 177 contact order;
- (b) if paragraph (a) does not apply to the person against whom the family violence order is directed, that person;
- (c) if paragraph (a) does not apply to the person protected by the family violence order, that person.

(2) A court to which an application for a declaration is made must hear and determine the application and make such declaration as it considers appropriate.

**Subdivision 3 — Powers etc. of a court making a family violence order as to making or affecting an order under this Act about contact**

**179. Definition**

In this Subdivision —

**“family violence proceedings”** means proceedings for the making or variation of a family violence order.

**180. Variation etc. of Division 10 contact order in family violence proceedings — FLA s. 68T**

(1) In this section —

**“court”** includes a court that has jurisdiction in relation to matters arising under this section because of section 41, even though the court cannot otherwise exercise jurisdiction under this Act.

(2) If family violence proceedings are before a court then the court may, subject to this section, in the course of the family violence proceedings, make, revive, vary, suspend or discharge a Division 10 contact order.

(3) A court’s power to make, revive, vary, suspend or discharge a Division 10 contact order in family violence proceedings is subject to the following provisions —

- (a) the court must not exercise that power unless, whether by interim order or otherwise, it makes or varies a family violence order in those proceedings;
- (b) the court must exercise that power having regard to the purposes of this Division (as stated in section 175) and to the best interests of any relevant child;
- (c) if section 177 applied to the making of a Division 10 contact order the court must not exercise the power to vary, suspend or discharge the order unless it is satisfied that it is appropriate to do so —
  - (i) because a person has been exposed, or is likely to be exposed, to family violence as a result of the operation of the order; and
  - (ii) having regard to the matters mentioned in paragraph (b);
- (d) if the court makes an interim family violence order, or an interim order varying a family violence order, the

court must not discharge a Division 10 contact order in those proceedings.

- (4) This Act and the rules apply to the making, revival, variation, suspension or discharge of a Division 10 contact order in family violence proceedings subject to the following qualifications —
- (a) the following provisions do not apply —
    - (i) sections 43, 88, 91(2) and 170;
    - (ii) any provisions (for example, section 90) that would otherwise make the best interests of a child the paramount consideration;
    - (iii) any other prescribed provisions;
  - (b) if a court makes an interim family violence order, or an interim order varying a family violence order, then, in addition to the effect of paragraph (a) —
    - (i) the court has a discretion whether to apply section 166(2)(a); and
    - (ii) any other prescribed provisions do not apply;and
  - (c) a court may dispense with any rule if it is appropriate to do so.
- (5) A court, in family violence proceedings, may (subject to this section) make, revive, vary, suspend or discharge a Division 10 contact order —
- (a) on its own initiative; or
  - (b) on application by any person.
- (6) If, in family violence proceedings —
- (a) a court makes an interim family violence order, or an interim order varying a family violence order (the “**interim order**”); and
  - (b) the court makes, revives, varies or suspends a Division 10 contact order,



then the following provisions apply —

- (c) the Division 10 contact order made, or the revival, variation or suspension of the Division 10 contact order, as the case may be, does not have effect at a time that is after whichever of the following occurs first —
  - (i) the interim order stops being in force;
  - (ii) the end of the period of 21 days starting when the interim order was made;
- (d) no appeal lies in relation to the making, revival, variation or suspension of the Division 10 contact order.

**181. Court or relevant court to be informed of certain orders made in family violence proceedings — FLA s. 68T(6)**

- (1) If, in family violence proceedings, a court within the meaning of section 180(1) revives, varies, discharges or suspends a Division 10 contact order made by the Court then the court must send to the Principal Registrar —
  - (a) a sealed copy of the order by which the Division 10 contact order is revived, varied, discharged or suspended, for registration by the Court;
  - (b) either —
    - (i) a sealed copy of the family violence order made in the family violence proceedings; or
    - (ii) a sealed copy of the order by which the family violence order that is a subject of the family violence proceedings is varied in those proceedings and a copy of the family violence order before the variation,as is relevant to the case; and
  - (c) a copy of any reasons for the orders referred to in paragraph (a) and in paragraph (b)(i) or (ii), as is relevant to the case.

- (2) If, in family violence proceedings, a court within the meaning of section 180(1) revives, varies, discharges or suspends a Division 10 contact order made by the Magistrates Court when exercising non-federal jurisdictions under this Act then the first-mentioned court must send to the Magistrates Court —
- (a) a sealed copy of the order by which the Division 10 contact order is revived, varied, discharged or suspended, for registration by the Magistrates Court;
  - (b) either —
    - (i) a sealed copy of the family violence order made in the family violence proceedings; or
    - (ii) a sealed copy of the order by which the family violence order that is a subject of the family violence proceedings is varied in those proceedings and a copy of the family violence order before the variation,  
as is relevant to the case; and
  - (c) a copy of any reasons for the orders referred to in paragraph (a) and in paragraph (b)(i) or (ii), as is relevant to the case.
- (3) If, in family violence proceedings, a court within the meaning of section 180(1) makes a Division 10 contact order then the court must send to the Court or to the Magistrates Court sitting at a place outside the metropolitan region, whichever is the nearest to the place where the Division 10 contact order is made —
- (a) a sealed copy of the Division 10 contact order, for registration by the Court or the Magistrates Court, as the case requires;
  - (b) either —
    - (i) a sealed copy of the family violence order made in the family violence proceedings; or
    - (ii) a sealed copy of the order by which the family violence order that is a subject of the family violence proceedings is varied in those

proceedings and a copy of the family violence order before the variation,

as is relevant to the case; and

- (c) a copy of any reasons for the orders referred to in paragraph (a) and in paragraph (b)(i) or (ii), as is relevant to the case.
- (4) The failure by a court within the meaning of section 180(1) to comply with paragraph (a), (b) or (c) of subsection (1), (2) or (3) does not affect the validity of the order that the court makes under section 180.

*[Section 181 amended by No. 59 of 2004 s. 95.]*

**182. Effect of certain orders of courts whose jurisdiction under this Act is limited to making, varying etc. Division 10 contact orders — such orders enforceable, but not appealable, under this Act**

- (1) If, in the course of family violence proceedings, the Supreme Court, the District Court or the Children’s Court (constituted so as to include a judge of that court) makes, revives, varies, suspends or discharges a Division 10 contact order then —
  - (a) the Division 10 contact order made; or
  - (b) the order by which the Division 10 contact order is revived, varied, suspended or discharged,

as is relevant to the case, has the same force and effect as if it were an order made by the Court.

- (2) Despite subsection (1) and section 211(3) if, in the course of family violence proceedings, a court referred to in subsection (1) makes, revives, varies, suspends or discharges a Division 10 contact order then an appeal does not lie under this Act from —
  - (a) the Division 10 contact order made; or
  - (b) the order by which the Division 10 contact order is revived, varied, suspended or discharged,

**Family Court Act 1997**

**Part 5** Children

**Division 11** Proceedings, parentage presumptions and evidence and jurisdiction as to child welfare laws

**s. 183**

---

as is relevant to the case and nothing in this subsection affects any appeal that may be made under any other written law in respect of the matter.

- (3) If, in the course of family violence proceedings, the Children's Court (constituted so as to not include a judge of that court) or a court (other than a court referred to in section 39) makes, revives, varies, suspends or discharges a Division 10 contact order then —
- (a) the Division 10 contact order made; or
  - (b) the order by which the Division 10 contact order is revived, varied, suspended or discharged,

as is relevant to the case, has the same force and effect as if it were an order made by a court referred to in section 39.

- (4) Despite subsection (3) and section 211(2), if, in the course of family violence proceedings, the Children's Court (constituted so as to not include a judge of that court) or a court (other than a court referred to in section 39) makes, revives, varies, suspends or discharges a Division 10 contact order then an appeal does not lie under this Act from —
- (a) the Division 10 contact order made; or
  - (b) the order by which the Division 10 contact order is revived, varied, suspended or discharged,

as is relevant to the case and nothing in this subsection affects any appeal that may be made under any other written law in respect of the matter.

*[Section 182 amended by No. 59 of 2004 s. 95.]*

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**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);
- (b) presumptions of parentage (Subdivision 3);
- (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;
  - (b) the child;
  - (c) a grandparent of the child; or

**Family Court Act 1997**

**Part 5** Children

**Division 11** Proceedings, parentage presumptions and evidence and jurisdiction as to child welfare laws

**s. 186**

---

- (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;

(b) after the separation, they resumed cohabitation on one occasion;

(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 dissolution of the marriage,

the child is presumed to be a child of the woman and the husband.

**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.

**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) a person representing the child under an order made under section 171.
- (3) A parentage testing order may be made in relation to —
  - (a) the child;
  - (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.

**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.

**s. 199**

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- (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;
  - (b) a guardian of the child; or
  - (c) a person who, under a specific issues order, is responsible 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.

**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;
  - (b) a guardian of the child; or
  - (c) a person who, under a specific issues order, is responsible 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.

**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) a person representing the relevant child under an order made under section 171.

**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;
  - (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.

**Division 12 — State and Territory orders relating to children**

**203. Interpretation — FLA s. 70B**

In this Division —

“**State**” includes a Territory;

“**State child order**” means an order made under the law of a State —

- (a) that (however it is expressed) has the effect of determining the person or persons with whom a child who is under 18 years of age is to live, or that provides for a person or persons to have custody of a child who is under 18 years of age; or
- (b) that (however it is expressed) has the effect of providing for contact between a child who is under 18 years of age and another person or persons, or that provides for a person or persons to have access to a child who is under 18 years of age.

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

*[Heading inserted by No. 25 of 2002 s. 12.]*

**Subdivision 1 — Preliminary**

*[Heading inserted by No. 25 of 2002 s. 12.]*

**205A. Definitions — FLA s. 70NB**

In this Division —

**“appropriate post-separation parenting program”** or **“appropriate program”**, in relation to a person, means a post-separation parenting program that is available within a reasonable distance from the person’s place of residence or place of work;

**“community service order”** has the meaning given by section 205M;

**“contravened an order”** has the meaning given by section 205C;

**“order under this Act affecting children”**, in relation to a court, means —

- (a) a parenting order;
- (b) an injunction granted by a court —
  - (i) under section 235; or

**Family Court Act 1997**

**Part 5** Children

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

**s. 205B**

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- (ii) under section 235A 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 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 that relate wholly or partly to a parenting order, being a subpoena issued to a party to the proceedings;
- (e) a parenting plan registered in a court under section 79;
- (f) a bond entered into —
  - (i) under a parenting order;
  - (ii) under section 205L(5)(b); or
  - (iii) for the purposes of section 205Q(5),and includes an order, injunction, plan or bond that —
- (g) is an order under this Act affecting children made by another court because of paragraph (a), (b), (e) or (f); and
- (h) has been registered in the first-mentioned court;

**“post-separation parenting program”** or **“program”** has the same meaning as in section 70NB of the Family Law Act;

**“primary order”** has the meaning given by section 205G or 205L;

**“reasonable excuse for contravening an order”** includes the meanings given by section 205E.

*[Section 205A inserted by No. 25 of 2002 s. 12.]*

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

Despite anything contained in any other provision of this Division, this Division does not apply in respect of a contravention, committed before this Division commences, of



an order under this Act affecting children if a court made an order, in respect of that contravention before this Division commences, under this Act as previously in force.

*[Section 205B inserted by No. 25 of 2002 s. 12.]*

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

For the purposes of this Division, a person is to be treated as having contravened an order under this Act affecting children 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.

*[Section 205C inserted by No. 25 of 2002 s. 12.]*

**205D. Requirements treated as included in certain orders — FLA s. 70ND**

For the purposes of this Division —

- (a) a residence order is to be treated as including a requirement that persons act in accordance with section 96 in relation to the order;
- (b) a contact order is to be treated as including a requirement that persons act in accordance with section 97 in relation to the order; and

**Family Court Act 1997**

**Part 5** Children

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

**s. 205E**

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- (c) a specific issues order to which section 98 applies is to be treated as including a requirement that persons act in accordance with that section in relation to the order.

*[Section 205D inserted by No. 25 of 2002 s. 12.]*

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

- (1) The circumstances in which a person may be treated as having had, for the purposes of this Division, a reasonable excuse for contravening an order under this Act affecting children include, but are not limited to, the circumstances set out in subsections (2), (4), (5) and (6).
- (2) A person (the “**respondent**”) is to be treated as having a reasonable excuse for contravening an order under this Act affecting children 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) the court is satisfied that the respondent ought to be excused in respect of the contravention.
- (3) If a court decides that a person had a reasonable excuse for contravening an order under this Act for the reason referred to in subsection (2)(a), it is the duty of the court to explain to the person, in language likely to be readily understood by the person, the obligations imposed on the person by the order and the consequences that may follow if the person again contravenes the order.
- (4) A person (the “**respondent**”) is to be treated as having a reasonable excuse for contravening a residence order in a way that resulted in a child not living with a person in whose favour the order was made if —
- (a) the respondent believed on reasonable grounds that the actions constituting the contravention were necessary to

- protect the health or safety of a person (including the respondent or the child); and
- (b) the period during which, because of the contravention, the child did not live with the person in whose favour the order was made was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).
- (5) A person (the “**respondent**”) is to be treated as having a reasonable excuse for contravening a contact order in a way that resulted in a person and a child being deprived of contact they were supposed to have had under the order if —
- (a) the respondent believed on reasonable grounds that the deprivation of contact was necessary to protect the health or safety of a person (including the respondent or the child); and
- (b) the deprivation of contact was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).
- (6) A person (the “**respondent**”) is to be treated as having had a reasonable excuse for contravening a specific issues order by acting contrary to section 98 if —
- (a) the respondent believed on reasonable grounds that the action constituting the contravention was necessary to protect the health or safety of a person (including the respondent or the child); and
- (b) the period during which, because of that action, a person in whose favour the order was made was hindered in or prevented from discharging responsibilities under the order was not for longer than was necessary to protect the health or safety of the person referred to in paragraph (a).

*[Section 205E inserted by No. 25 of 2002 s. 12.]*

**s. 205F**

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**205F. Standard of proof of reasonable excuse — FLA s. 70NEA**

The standard of proof to be applied in determining, in proceedings under this Division, whether a person who contravened an order under this Act affecting children had a reasonable excuse for the contravention is proof on the balance of probabilities.

*[Section 205F inserted by No. 25 of 2002 s. 12.]*

**Subdivision 2 — Powers of court where a person contravenes an order under this Act affecting children: stage 2 of parenting compliance regime**

*[Heading inserted by No. 25 of 2002 s. 12.]*

**205G. Application of Subdivision — FLA s. 70NF**

- (1) Subject to subsection (2), this Subdivision applies if —
- (a) an order under this Act affecting children (the “**primary order**”) has been made, whether before or after the commencement of this Division;
  - (b) a court is satisfied that a person has, whether before or after that commencement, committed a contravention (the “**current contravention**”) of the primary order;
  - (c) the person does not prove that the person had a reasonable excuse for the current contravention; and
  - (d) either of the following applies —
    - (i) a court has not previously determined that the person has, without reasonable excuse, contravened the primary order;
    - (ii) a court has previously determined that the person has, without reasonable excuse, contravened the primary order but the court dealing with the current contravention is satisfied that it is more appropriate for that contravention to be dealt with under this Subdivision,

and, if the primary order is an order for the maintenance of a child, this Subdivision applies irrespective of the period since the current contravention occurred.

- (2) This Subdivision does not apply if, in circumstances mentioned in subsection (1)(d)(i), the court dealing with the current contravention is satisfied that the person who contravened the primary order has behaved in a way that showed a serious disregard for the person's obligations under the primary order.

*[Section 205G inserted by No. 25 of 2002 s. 12.]*

**205H. Powers of court — FLA s. 70NG**

- (1) If this Subdivision applies, a court may do any or all of the following —
- (a) make an order in respect of the person who committed the current contravention, or (subject to subsection (2)) in respect of both that person and another specified person, as follows —
    - (i) directing the person or each person to attend before the provider of a specified appropriate post-separation parenting program so that the provider can make an initial assessment as to the suitability of the person concerned to attend such a program;
    - (ii) if a person so attending before a provider is assessed by the provider to be suitable to attend such a program or a part of such a program and the provider nominates a particular appropriate program for the person to attend, directing the person to attend that program or that part of that program;
  - (b) make a further parenting order that compensates for contact forgone as a result of the current contravention;
  - (c) adjourn the proceedings to allow either or both of the parties to the primary order to apply for a further

**Family Court Act 1997**

**Part 5** Children

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

**s. 205I**

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parenting order under Part 5 Division 6 that discharges, varies or suspends the primary order or revives some or all of an earlier parenting order.

- (2) In deciding whether to adjourn the proceedings as mentioned in subsection (1)(c), the court must have regard to the following —
- (a) whether the primary order was made by consent;
  - (b) whether either or both of the parties to the proceedings in which the primary order was made were represented in those proceedings by a legal practitioner;
  - (c) the length of the period between the making of the primary order and the occurrence of the current contravention;
  - (d) any other matters that the court thinks relevant.
- (3) The court must not make an order under subsection (1)(a) directed to a person other than the person who committed the current contravention unless —
- (a) the person brought the proceedings before the court in relation to the current contravention or is otherwise a party to those proceedings; and
  - (b) the court is satisfied that it is appropriate to direct the order to the person because of the connection between the current contravention and the carrying out by the person of the person's parental responsibilities in relation to the child or children to whom the primary order relates.
- (4) If the court makes an order under subsection (1)(a) that a person is to attend before the provider of a program for assessment, or is to attend a program, the court must cause the provider of the program to be notified, in accordance with the rules, of the making of the order.

*[Section 205H inserted by No. 25 of 2002 s. 12.]*

**205I. Duties of provider of program — FLA s. 70NH**

- (1) The provider of a program before whom a person attends under an order made under section 205H(1)(a)(i) must inform the court, in accordance with the rules, if the person is unsuitable to attend any program.
- (2) If a person is ordered to attend a program or a part of a program, the provider of the program must inform the court, in accordance with the rules, if —
  - (a) the person fails to attend the program or the part of the program; or
  - (b) the provider considers that the person is unsuitable to take any further part in the program or part of the program.

*[Section 205I inserted by No. 25 of 2002 s. 12.]*

**205J. Evidence — FLA s. 70NI**

Evidence of anything said, or of any admission made, by a person attending before the provider of a program for assessment, or attending a program, is not admissible —

- (a) in a 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, or of a State or Territory, or by the consent of the parties, to hear evidence.

*[Section 205J inserted by No. 25 of 2002 s. 12.]*

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

If it appears to a court that a person has not attended a program or a part of a program that the person was ordered to attend, the court may, by order, give further directions to the person with respect to the person attending the program.

*[Section 205K inserted by No. 25 of 2002 s. 12.]*

**Subdivision 3 — Court to take action in respect of person who contravenes an order: stage 3 of parenting compliance regime**

*[Heading inserted by No. 25 of 2002 s. 12.]*

**205L. Powers of court — FLA s. 70NJ**

- (1) Subject to subsection (2), this Subdivision applies if —
  - (a) an order under this Act affecting children (the “**primary order**”) has been made, whether before or after the commencement of this Division;
  - (b) a court is satisfied that a person has, whether before or after that commencement, committed a contravention (the “**current contravention**”) of the primary order;
  - (c) the person does not prove that the person had a reasonable excuse for the current contravention; and
  - (d) either of the following applies —
    - (i) a court has not previously determined that the person has, without reasonable excuse, contravened the primary order but the court dealing with the current contravention is satisfied that the person has behaved in a way that showed a serious disregard of the person’s obligations under the primary order;
    - (ii) a court has previously determined that the person has, without reasonable excuse, contravened the primary order.
- (2) This Subdivision does not apply if a court dealing with the current contravention is satisfied that it is more appropriate for that contravention to be dealt with under Subdivision 2.
- (3) If this Subdivision applies, a court must make, in respect of the person who committed the current contravention, the order or orders available to be made under subsection (5) that it considers to be appropriate in the circumstances.



- (4) This section applies whether the primary order was made, and whether the current contravention occurred, before or after the commencement of this Division.
- (5) The orders that are available to be made by a court are —
- (a) a community service order of a kind referred to in, and in accordance with, section 205M;
  - (b) an order requiring the person to enter into a bond in accordance with section 205O;
  - (c) if the person has contravened a parenting order, an order varying the order so contravened, subject to subsection (7);
  - (d) to fine the person —
    - (i) in the case of a natural person, not more than \$6 600; or
    - (ii) in the case of a body corporate, not more than \$33 000;
- or
- (e) subject to subsection (8), to impose a sentence of imprisonment on the person in accordance with section 205Q.
- (6) If a court varies or discharges under section 205N a community service order made under subsection (5)(a), the court may give any directions as to the effect of the variation or discharge that the court considers appropriate.
- (7) When making an order under subsection (5)(c) varying a parenting order, the court, in addition to regarding, under section 90, the best interests of the child as the paramount consideration, must, if any of the following considerations is relevant, take that consideration into account —
- (a) the person who contravened the parenting order did so after having attended, after having refused or failed to attend, or after having been found to be unsuitable to

**Family Court Act 1997**

**Part 5** Children

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

**s. 205L**

---

- take any further part in, a post-separation parenting program or a part of such a program;
- (b) there was no appropriate post-separation parenting program that the person who contravened the parenting order could attend;
  - (c) because of the behaviour of the person who contravened the parenting order, it was not appropriate, in the court's opinion, for the person to attend a post-separation parenting program, or a part of such a program;
  - (d) the parenting order was a compensatory parenting order made under section 205H(1)(b) after the person had contravened a previous order under this Act affecting children.
- (8) The court must not make an order imposing a sentence of imprisonment on a person under this section in respect of a contravention of a child maintenance order made under this Act unless the court is satisfied that the contravention was intentional or fraudulent.
- (9) The court must not make an order imposing a sentence of imprisonment on a person under this section in respect of —
- (a) a contravention of an administrative assessment of child support made under the Child Support (Assessment) Act;
  - (b) a breach of a child support agreement made under that Act; or
  - (c) a contravention of an order made by a court 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).
- (10) An order under this section may be expressed to take effect immediately, at the end of a specified period or on the occurrence of a specified event.

- (11) When a court makes an order under this section, the court may make any other orders that the court considers necessary to ensure compliance with the order that was contravened.

*[Section 205L inserted by No. 25 of 2002 s. 12.]*

**205M. When court is empowered to impose a community service order — FLA s. 70NK**

- (1) In this section —  
“**Sentencing Act**” means the *Sentencing Act 1995*.
- (2) A community service order imposed on a person under section 205L(5)(a) can be one of the following kinds —
- (a) a community based order, within the meaning of the Sentencing Act, imposed in accordance with the provisions of Part 9 of that Act;
  - (b) an intensive supervision order, within the meaning of the Sentencing Act, imposed in accordance with the provisions of Part 10 of that Act.
- (3) For the purposes of this Act —
- (a) a reference in Part 9 or 10 of the Sentencing Act to an offence includes a reference to the contravention of an order;
  - (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

**Family Court Act 1997**

**Part 5** Children

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

**s. 205N**

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- (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 205L(5)(a), a court proposes to impose a community service order of a kind referred to in this section on a person, the court must, before doing so, explain or cause to be explained to the person, in language likely to be readily understood by the person —
- (a) the purpose and effect of the proposed community service order;
  - (b) the requirements, obligations and conditions applicable to that person under the proposed community service order;
  - (c) the consequences that may follow if the person fails to comply with the proposed community service order or with any requirement, obligation or condition applicable to that person under the proposed community service order; and
  - (d) how the proposed community service order may be discharged or varied.
- (6) If, in the application of Part 9 or 10 of the Sentencing Act for the purposes of this Act, there is any inconsistency between the provisions of the Sentencing Act and this Act, the provisions of this Act prevail.

*[Section 205M inserted by No. 25 of 2002 s. 12.]*

**205N. Variation and discharge of community service orders —  
FLA s. 70NL**

If —

- (a) the Court makes a community service order under section 205L(5)(a) then the Court can vary or discharge the order; or

- (b) a court other than the Court makes a community service order under section 205L(5)(a) then that court or the Court can vary or discharge the order.

*[Section 205N inserted by No. 25 of 2002 s. 12.]*

**205O. Bonds — FLA s. 70NM**

- (1) This section provides for bonds that a court may require a person to enter into under section 205L(5)(b).
- (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, but are not limited to, conditions of the following kinds —
- (a) a condition requiring the person to attend upon a family and child counsellor, or a welfare officer, for counselling;
  - (b) 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 205O inserted by No. 25 of 2002 s. 12.]*

**s. 205P**

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**205P. Procedure for enforcing community service orders or bonds — FLA s. 70NN**

- (1) This section applies where a court (the “**court**”) makes a community service order under section 205L(5)(a) in respect of a person, or an order under paragraph 205L(5)(b) requiring a person to enter into a bond in accordance with section 205O.
- (2) Sections 62(3) and 69(4) of the *Sentencing Act 1995* do not apply for the purposes of this Act.
- (3) If an information is laid before a magistrate, whether before or after the end of the period for which the community service order or the bond is to operate, or operated, alleging that the person has, without reasonable excuse, contravened the order or any requirement made in relation to the order, or the bond, the magistrate may —
  - (a) issue a summons directing the person to appear, on a date, at a time and at a place fixed in the summons, before the court; or
  - (b) if the information is laid on oath and the magistrate thinks that proceedings against the person by summons might not be effective, issue a warrant for the arrest of the person.
- (4) If —
  - (a) the person is served with a summons issued under subsection (3); and
  - (b) the person fails to attend before the court as required by the summons,the court may, on proof of the service of the summons, issue a warrant for the arrest of the person.
- (5) If —
  - (a) the person is arrested under a warrant issued under subsection (3), (4) or (7); and

- (b) the court is not sitting at the time of the arrest,  
the person is to be brought before a magistrate.
- (6) The magistrate may —
- (a) order that the person be released from custody upon the person entering into a bond (with or without surety or security) that the person will attend before the court on a date, at a time and at a place specified by the magistrate; or
  - (b) direct that the person be kept in custody in accordance with the warrant.
- (7) If —
- (a) on entering into a bond under subsection (6), the person is released under an order made by a magistrate under subsection (6)(a); and
  - (b) the person fails to attend before the court as required by the bond,
- the court may, on proof of the entering into of the bond, issue a warrant for the arrest of the person.
- (8) If —
- (a) in accordance with this section, the person is brought before the court; and
  - (b) the court (whether or not constituted by the judge or magistrate who made the community service order or required the bond to be entered into in accordance with section 205O) is satisfied that the person has, without reasonable excuse, failed to comply with the order or bond,
- the court may take action under subsection (9).
- (9) The court may —
- (a) without prejudice to the continuance of the community service order or the bond entered into in accordance with

**Family Court Act 1997**

**Part 5** Children

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

**s. 205P**

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- section 205O, impose a fine not exceeding \$1 100 on the person; or
- (b) revoke the community service order or the bond entered into in accordance with section 205O and, subject to subsection (10), deal with the person, for the contravention in respect of which the community service order was made or the bond was entered into, in any manner in which the person could have been dealt with for the contravention if —
- (i) the community service order had not been made or the bond had not been entered into; and
- (ii) the person was before the court under section 205L 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 community service order was made or the bond was entered into;
- (b) anything done under the community service order or pursuant to the bond; and
- (c) any fine imposed, and any other order made, for or in respect of the contravention.
- (11) A warrant issued under subsection (3), (4) or (7) in relation to the person authorises —
- (a) the arrest of the person;
- (b) the bringing of the person before the court as soon as practicable after the person is arrested; and
- (c) the detention of the person in custody until the person is released by order of the court, or in accordance with subsection (6).

*[Section 205P inserted by No. 25 of 2002 s. 12.]*



**205Q. Sentences of imprisonment — FLA s. 70NO**

- (1) A sentence of imprisonment imposed on a person under paragraph 205L(5)(e) 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 205L(5)(e) unless the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention under any of the other paragraphs of section 205L(5).
- (3) If a court sentences a person to imprisonment under section 205L(5)(e), the court must —
  - (a) state the reasons why it is satisfied as mentioned in subsection (2); and
  - (b) cause those reasons to be entered in the records of the court.
- (4) The failure of a court to comply with subsection (3) does not invalidate a sentence.
- (5) A court, when sentencing a person to imprisonment under paragraph 205L(5)(e), may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a bond described in subsection (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.

**Family Court Act 1997**

**Part 5** Children

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

**s. 205R**

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- (7) 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 205L(5)(e) for failure to make a payment under a child maintenance order does not affect the person's liability to make the payment.

*[Section 205Q inserted by No. 25 of 2002 s. 12.]*

**205R. Relationship between Subdivision and other laws —  
FLA s. 70NP**

- (1) This section applies where an act or omission by a person —
  - (a) constitutes a contravention of an order under this Act affecting children; and
  - (b) is also an offence 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 205L in respect of the contravention of the order 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 205R inserted by No. 25 of 2002 s. 12.]*

**205S. Subdivision does not affect enforcement of child  
maintenance orders etc. — FLA s. 70NR**

Nothing in this Subdivision is intended to limit the operation of section 220.

*[Section 205S inserted by No. 25 of 2002 s. 12.]*

## **Part 5A — De facto relationships**

*[Heading inserted by No. 25 of 2002 s. 47.]*

### **Division 1 — Introductory**

*[Heading inserted by No. 25 of 2002 s. 47.]*

#### **205T. Interpretation**

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;
  - (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
  - (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;
- (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;

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

**“property”**, in relation to de facto partners, or either of them, means property to which those parties are, or that party is, as the case may be, entitled, whether in possession or reversion.

*[Section 205T inserted by No. 25 of 2002 s. 47.]*

**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 by 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 by No. 25 of 2002 s. 47.]*

**Division 2 — Property adjustment orders and maintenance orders**

*[Heading inserted by No. 25 of 2002 s. 47.]*

**Subdivision 1 — Introductory**

*[Heading inserted by 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.

*[Section 205W inserted by No. 25 of 2002 s. 47.]*

**205X. People to whom this Part applies — connection with WA**

Despite section 36(5), before making an order under this Division a court must be satisfied —

- (a) that one or both of the parties to the application were resident in Western Australia on the day on which the application was made; and
- (b) that —
  - (i) both parties 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 by No. 25 of 2002 s. 47.]*

**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 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 by No. 25 of 2002 s. 47.]*

**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;
  - (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 by 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.
- (3) A declaration or order under this section is binding on the de facto partners but not on anyone else.

*[Section 205ZA inserted by No. 25 of 2002 s. 47.]*

**Subdivision 2 — Alteration of property interests, and maintenance**

*[Heading inserted by No. 25 of 2002 s. 47.]*

**205ZB. Applications, and notifications to spouses**

- (1) A de facto partner whose de facto relationship has ended may apply for an order under this Division in relation to the relationship only if the application is made within one year (“**the application period**”) after the relationship ended.
- (2) However, the court may grant a de facto partner leave to apply after the application period if satisfied that hardship would be caused to a de facto partner 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 by No. 25 of 2002 s. 47.]*

**205ZC. Right of de facto partner to maintenance — FLA s. 72**

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 party is unable to support herself or himself 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;
- (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.

*[Section 205ZC inserted by No. 25 of 2002 s. 47.]*

**205ZD. Maintenance orders — FLA s. 75**

- (1) A court may make such order as it considers proper for the maintenance of a de facto partner.
- (2) In exercising jurisdiction under this section, 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;
  - (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;
  - (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;



- (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 party has a duty to maintain;
- (e) the responsibilities of either party to support any other person;
- (f) subject to subsection (4), the eligibility of either party 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 party;
- (g) a standard of living that in all the circumstances is reasonable;
- (h) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;
- (i) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;
- (j) the duration of the de facto relationship and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;
- (k) the need to protect a party who wishes to continue that party's role as a parent;

**Family Court Act 1997**

**Part 5A** De facto relationships

**Division 2** Property adjustment orders and maintenance orders

**s. 205ZE**

---

- (l) if either party is cohabiting with another person, the financial circumstances relating to the cohabitation;
  - (m) the terms of any order made or proposed to be made under section 205ZG in relation to the property of the parties;
  - (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;
  - (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 parties.
- (4) In exercising its jurisdiction under this section, 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 by No. 25 of 2002 s. 47.]*

**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 by 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 by No. 25 of 2002 s. 47.]*

**205ZG. Alteration of property interests — FLA s. 79**

- (1) In proceedings with respect to the property of de facto partners, or either of them, the court may make such order as it considers appropriate altering the interests of the parties in the property, including an order for a settlement of property in substitution for any interest in the property and including an order requiring either or both of the partners to make, for the benefit of either or both of the 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 proceedings with respect to the property of de facto partners, or either of them may, after the death of a partner to the proceedings, 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 proceedings with respect to any property of de facto partners, or either of them, the court must take into account —
  - (a) the financial contribution made directly or indirectly by or on behalf of a de facto partner to the de facto relationship 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;

- (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;
  - (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;
  - (d) the effect of any proposed order upon the earning capacity of either de facto partner;
  - (e) the matters referred to in section 205ZD(3) so far as they are relevant;
  - (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) Without limiting the power of any court to grant an adjournment in proceedings under this Act, where, in proceedings with respect to the property of the de facto partners, or either of them, 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 an order that the court could make with respect to the property of the de facto partners, or either of them if that significant change in financial circumstances occurs is more likely to do justice as between the de facto partners than an order that the court could make immediately with respect to the property of the de facto partners, or either of them,

the court may, if so requested by either de facto partner, adjourn the proceedings until such time, before the expiration of a period specified by the court, as that de facto partner 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 (5), 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 any of the property of the de facto partners or of either of them.
- (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 proceedings with respect to the property of de facto partners, or either of them are completed, either party to the proceedings 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;
  - (b) if the court is of the opinion —
    - (i) that it would have made an order with respect to property if the deceased party had not died; and
    - (ii) 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 any of the property of the de facto partners, or either of them; 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 proceedings with respect to the property of de facto partners, or either of them (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;
  - (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

**Family Court Act 1997**

**Part 5A** De facto relationships

**Division 2** Property adjustment orders and maintenance orders

**s. 205ZH**

---

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).

*[Section 205ZG inserted by No. 25 of 2002 s. 47.]*

**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 proceedings with respect to the property of de facto partners, or either of them, 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;
  - (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;
  - (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,



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 proceedings with respect to the property of de facto partners, or either of them, 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;
  - (b) the person has a residence order in relation to the child; or
  - (c) the person has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development.
- (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 party to the proceedings 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;

- (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.

*[Section 205ZH inserted by No. 25 of 2002 s. 47.]*

**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.

*[Section 205ZI inserted by No. 25 of 2002 s. 47.]*

**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 by 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 by No. 25 of 2002 s. 47.]*

**205ZL. Modification of de facto maintenance orders — FLA s. 83**

- (1) In proceedings with respect to the maintenance of a de facto partner, if there is in force an order with respect to the

maintenance of that person by the de facto partner of that person made by a court, the court may, by order —

- (a) discharge the order if there is any just cause for so doing;
  - (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;
  - (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.
- (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;
    - (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;
  - (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));
  - (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

**Family Court Act 1997**

**Part 5A** De facto relationships

**Division 2** Property adjustment orders and maintenance orders

**s. 205ZL**

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- (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 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 by No. 25 of 2002 s. 47.]*

### **Division 3 — Financial agreements**

*[Heading inserted by No. 25 of 2002 s. 47.]*

#### **205ZM. Definition — FLA s. 90A**

In this Division —

“**dealt with**” includes the meaning given by section 205ZR(2).

*[Section 205ZM inserted by No. 25 of 2002 s. 47.]*

#### **205ZN. Financial agreements before beginning a 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);
  - (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;
  - (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 by 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);
  - (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;
  - (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 by 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);
  - (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 by No. 25 of 2002 s. 47.]*

**205ZQ. Requirements with respect to provisions in financial agreements relating to the maintenance of a de facto partner or a 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 by No. 25 of 2002 s. 47.]*

**205ZR. Certain provisions in agreements — FLA s. 90F**

- (1) No provision of a financial agreement (other than a financial agreement made under section 205ZN or 205ZO in the event of the breakdown of a de facto relationship) excludes or limits the

power of a court to make an order in relation to the maintenance of a de facto partner if the court is satisfied that, when the agreement was made, the circumstances of the de facto partner were such that, taking into account the terms and effect of the agreement, the partner would have been 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 by No. 25 of 2002 s. 47.]*

**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;
  - (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) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement;
    - (iii) whether or not, at that time, it was prudent for that party to make the agreement; and

**Family Court Act 1997**

**Part 5A** De facto relationships

**Division 3** Financial agreements

**s. 205ZT**

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- (iv) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable;
  - (c) the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided;
  - (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 by No. 25 of 2002 s. 47.]*

**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 by 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;
  - (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) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement;
    - (iii) whether or not, at that time, it was prudent for that party to make the agreement;
    - (iv) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable;
  - (c) the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided;

- (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 by No. 25 of 2002 s. 47.]*

**205ZV. Circumstances in which court may set aside a financial agreement, termination agreement or former financial agreement — FLA s. 90K**

- (1) A court may 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);
  - (b) the agreement is void, voidable or unenforceable;
  - (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;
  - (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.
- (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;
  - (b) the person has a residence order in relation to the child; or
  - (c) the person has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development.

*[Section 205ZV inserted by No. 25 of 2002 s. 47.]*

**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;
- (b) has power to make an order for the payment, by a party to the agreement to another party to the agreement, of

**Family Court Act 1997**

**Part 5A** De facto relationships

**Division 3** Financial agreements

**s. 205ZW**

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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 by No. 25 of 2002 s. 47.]*



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## 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 residence order, a contact order or a specific issues 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.

### 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 by No. 34 of 2004 s. 251.]*

**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 who has a residence order in relation to the child;
  - (d) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development;
  - (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 by No. 34 of 2004 s. 251.]*

## **Part 7 — Appeals**

### **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 apply.

### **211. Non-federal jurisdictions**

(1) In this section —

“**decree**” includes —

- (a) a judgment or an order;
- (b) an order dismissing an application or prosecution;
- (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.

(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.

*[Section 211 amended by No. 45 of 2004 s. 37; No. 59 of 2004 s. 95; No. 84 of 2004 s. 80.]*

## **Part 8 — Procedure and evidence**

### **212. Proceedings generally to be in open court — FLA s. 97**

- (1) Subject to subsections (2) and (5), 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 or magistrate sitting in Chambers.

### **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. Evidence of children — FLA s. 100A**

- (1) 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 solely because of the law against hearsay in any proceedings under Part 5.
- (2) A court may give such weight (if any) as it thinks fit to evidence admitted under subsection (1).
- (3) This section applies despite any other written law or rule of law.
- (4) In this section —  
“**child**” means a person who is under 18 years of age;  
“**representation**” includes an express or implied representation, whether oral or in writing, and a representation inferred from conduct.

**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 by No. 25 of 2002 s. 67.]*

**s. 215**

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**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;
  - (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 and child counsellor or a welfare officer).

**218. Leave for a 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).

**s. 219**

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- (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.

## **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 by 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) an order under this Act affecting children (within the meaning of Part 5 Division 13);
  - (b) an order under this Act (within the meaning of section 223);
  - (c) the Child Support (Registration and Collection) Act; or

**s. 220A**

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- (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;
  - (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);
  - (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;
    - (ii) fails to pay an amount payable under a bond entered into under Part 5 Division 13 or under Part 10 Division 2;
    - (iii) fails to pay under section 123 an amount of maintenance for a person who is 18 or more years of age;
    - (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.

**s. 221**

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*[Section 220A inserted by No. 25 of 2002 s. 13; amended by No. 59 of 2004 s. 95.]*

**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;
  - (b) a provision of a parenting plan registered under section 79 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.

**222. Transactions to defeat claim — FLA 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.

- (2) A court referred to in subsection (1) may order that any money or real or personal property dealt with by any such instrument or disposition 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) 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.
- (5) In this section —  
**“disposition”** includes a sale and a gift.

**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 Part 5 Division 13 or the operation of Part 10 Division 2.

*[Section 222A inserted by No. 25 of 2002 s. 14.]*

**Part 10 — Sanctions for failure to comply with orders,  
and other obligations, that do not affect children**

*[Heading inserted by No. 25 of 2002 s. 15.]*

**Division 1 — Interpretation**

**223. Interpretation — 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 by 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) repealed]*

*[Section 224 amended by 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).

**Family Court Act 1997**

**Part 10** Sanctions for failure to comply with orders, and other obligations, that do not affect children

**Division 2** Sanctions for failure to comply with orders

**s. 226**

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- (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 by 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;
  - (b) to impose a sentence on the person, or make an order directed to the person, in accordance with section 229;

- (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) 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 by No. 25 of 2002 s. 19.]*

**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.

**Family Court Act 1997**

**Part 10** Sanctions for failure to comply with orders, and other obligations, that do not affect children

**Division 2** Sanctions for failure to comply with orders

**s. 227**

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- (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.
- (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 by No. 25 of 2002 s. 20.]*

**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 by 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;

**Family Court Act 1997**

**Part 10** Sanctions for failure to comply with orders, and other obligations, that do not affect children

**Division 2** Sanctions for failure to comply with orders

**s. 229**

---

- (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;
  - (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;
  - (b) the requirements, obligations and conditions applicable to that person under the proposed sentencing alternative;
  - (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 by 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 an information is laid before a magistrate, whether before or after the end of the period for which the sentencing alternative is to operate, or operated, alleging that the person has, without reasonable excuse, failed to comply with the sentencing alternative or with any requirements made in relation to the sentencing alternative the magistrate may —
  - (a) issue a summons directing the person to appear, on a date, at a time and at a place fixed in the summons, before the court; or
  - (b) if the information is laid on oath and the magistrate thinks that proceedings against the person by summons might not be effective, issue a warrant for the arrest of the person.
- (4) If —
  - (a) the person is served with a summons issued under subsection (3); and

**Family Court Act 1997**

**Part 10** Sanctions for failure to comply with orders, and other obligations, that do not affect children

**Division 2** Sanctions for failure to comply with orders

**s. 230**

---

- (b) the person fails to attend before the court as required by the summons,

the court may, on proof of the service of the summons, issue a warrant for the arrest of the person.

- (5) If —

- (a) the person is arrested under a warrant issued under subsection (3), (4) or (7); and
- (b) the court is not sitting at the time of the arrest,

the person must be brought before a magistrate who may deal with the person under subsection (6).

- (6) The magistrate may —

- (a) order that the person is to be released from custody upon the person entering into a bond (with or without surety or security) that the person will attend before the court on a date, at a time and at a place specified by the magistrate; or
- (b) direct that the person be kept in custody in accordance with the warrant.

- (7) If —

- (a) on entering into a bond, the person is released under an order made by a magistrate under subsection (6)(a); and
- (b) the person fails to attend before the court as required by the bond,

the court may, on proof of the entering into of the bond, issue a warrant for the arrest of the person.

- (8) If —

- (a) in accordance with this section, the person is brought before the court; and
- (b) 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 the sentencing alternative or with any requirements made in relation to the sentencing alternative,

the court may take action under subsection (9).

- (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;
  - (b) anything done under the sentencing alternative; and
  - (c) any fine imposed, and any other order made, for or in respect of the contravention.
- (11) A warrant issued under subsection (3), (4) or (7) in relation to the person must authorise —
- (a) the arrest of the person;
  - (b) the bringing of the person before the court as soon as practicable after the person is arrested; and

**Family Court Act 1997**

**Part 10** Sanctions for failure to comply with orders, and other obligations, that do not affect children

**Division 2** Sanctions for failure to comply with orders

**s. 231**

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- (c) the detention of the person in custody until the person is released by order of the court, or in accordance with subsection (6).

*[Section 230 amended by No. 25 of 2002 s. 23, 74(1) and 75.]*

**231. Variation and discharge of orders — FLA s. 112AK**

- (1) Subject to this section —
  - (a) if the Court makes an order under section 226 then the Court can vary or discharge the order; or
  - (b) if a court other than the Court makes an order under section 226 then that court or the Court can vary or discharge the order.
- (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.

**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 by 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 by No. 25 of 2002 s. 26.]*

## **Part 10A — Contempt of court**

*[Heading inserted by No. 25 of 2002 s. 26.]*

### **233A. Interpretation**

In this Part —

**“contravene an order”** has the same meaning as in section 224;

**“maintenance order”** has the same meaning as in section 223;

**“order under this Act”** has the same meaning as in section 223.

*[Section 233A inserted by No. 25 of 2002 s. 26.]*

### **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 an order under this Act; or
  - (b) constitutes a contravention of an order under this Act 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;
  - (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 by No. 25 of 2002 s. 27.]*

## **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;
  - (b) an injunction for the personal protection of —
    - (i) a parent of the child;
    - (ii) a person who has a residence order or a contact order in relation to the child; or
    - (iii) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development;
  - (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.

**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;
  - (b) an injunction restraining a de facto partner from entering or remaining in —
    - (i) the home previously shared by the de facto partners;
    - (ii) a de facto partner's principal place of residence;
    - (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;
  - (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

**s. 236**

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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 235A inserted by No. 25 of 2002 s. 48.]*

**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);
  - (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;
- (e) the court orders that the respondent be released; or

**s. 236**

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- (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 by No. 25 of 2002 s. 49 and 69.]*

## **Part 12 — Miscellaneous**

### **237. Costs — FLA s. 117**

- (1) Subject to subsection (2) and section 242, each party to proceedings under this Act is to 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 subsection (3) 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;
  - (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;
  - (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;
  - (d) whether the proceedings were necessitated by the failure of a party to the proceedings to comply with previous orders of a court;
  - (e) whether any party to the proceedings has been wholly unsuccessful in the proceedings;
  - (f) whether a party to the proceedings has, in accordance with section 240 or otherwise, 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.

**238.      **Reparation for certain losses and expenses relating to children — FLA s. 117A****

(1)      Where —

- (a)      a court has found for the purposes of section 226, 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 —
  - (i)      a residence order; or
  - (ii)     a contact order;
- (b)      a person has been convicted of an offence against section 107 or 108 in respect of a child;
- (c)      a court has found, for the purposes of section 226 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.

**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

**s. 240**

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- (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) Where a party to proceedings under this Act (other than proceedings under Division 6 or 12 of Part 5 or section 235(1) or proceedings to enforce a decree or injunction made under Division 6 or 12 of Part 5 or section 235(1)) has made an offer in the form prescribed by the rules to another party to the proceedings to settle the proceedings on terms specified in the offer, the first-mentioned party may file, in the court hearing the proceedings, a copy of the offer.
- (2) If a party to proceedings withdraws an offer a copy of which has been filed under subsection (1), that party must file, in the court referred to in subsection (1), notice that the offer has been withdrawn.
- (2a) If a party files a copy of an offer and, before any notice of withdrawal is filed, the party to whom the offer is made files a notice that the offer has been accepted, the proceedings end (so far as they concern the party who accepted the offer) when the court makes an order giving effect to the terms of that offer.
- (3) The fact that an offer has been made under subsection (1), or the terms of such an offer, must not be disclosed to the court hearing the proceedings 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.
- (4) A judge or magistrate of the court mentioned in subsection (1) is not disqualified from sitting in the proceedings only because the fact that an offer has been made is, contrary to subsection (3), disclosed to the court.

*[Section 240 amended by No. 25 of 2002 s. 70.]*

**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;
  - (b) an order under section 162(1) relating to the welfare of a child;
  - (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. Frivolous or vexatious proceedings — FLA s. 118**

- (1) In proceedings under this Act the court hearing the proceedings may at any stage of the proceedings if it is satisfied that the proceedings are frivolous or vexatious —
  - (a) dismiss the proceedings;
  - (b) make such order as to costs as the court thinks just; and
  - (c) if the court thinks fit, on the application of a party to the proceedings, order that the person who instituted the proceedings cannot, without leave of the court or another court, institute proceedings under this Act of the kind or kinds specified in the order,and an order made by the court under paragraph (c) has effect despite any other provision of this Act.
- (2) If a court makes an order under subsection (1)(c) then the Court or the court which made the order may discharge or vary the order.

**s. 243**

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**243.      Restriction on publication of court proceedings —  
            FLA s. 121**

- (1) A person must not publish in a newspaper or periodical publication or by radio broadcast, television or other electronic means, or otherwise disseminate to the public or to a section of the public by any means, any account of any proceedings, or of any part of any proceedings, under this Act that identifies —
- (a) a party to the proceedings;
  - (b) a person who is related to, or associated with, a party to the proceedings or is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate; or
  - (c) a witness in the proceedings.

Penalty: Except where subsection (6) applies —

- (a) in the case of a body corporate, \$11 000;
- (b) in any other case, \$5 500 and imprisonment for 12 months.

- (2) A person must not, except as permitted by the rules, publish in a newspaper or periodical publication or by radio broadcast, television or other electronic means, or otherwise disseminate to the public or to a section of the public by any means (otherwise than by the display of a notice in the premises of a court), a list of proceedings under this Act, identified by reference to the names of the parties to the proceedings, that are to be dealt with by the court.

Penalty: Except where subsection (6) applies —

- (a) in the case of a body corporate, \$11 000;
- (b) in any other case, \$5 500 and imprisonment for 12 months.



- (3) Without limiting the generality of subsection (1), an account of proceedings, or of any part of proceedings, referred to in that subsection is to be treated as identifying a person if —
- (a) it contains any particulars of —
    - (i) the name, title, pseudonym or alias of the person;
    - (ii) the address of any premises at which the person resides or works, or the locality in which any such premises are situated;
    - (iii) the physical description or the style of dress of the person;
    - (iv) any employment or occupation engaged in, profession practised or calling pursued, by the person or any official or honorary position held by the person;
    - (v) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;
    - (vi) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person; or
    - (vii) any real or personal property in which the person has an interest or with which the person is otherwise associated,being particulars that are sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires;
  - (b) in the case of a written or televised account or an account by other electronic means, it is accompanied by a picture of the person; or

**s. 243**

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- (c) in the case of a broadcast or televised account or an account by other electronic means, it is spoken in whole or in part by the person and the person's voice is sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires.
- (4) A reference in subsection (1) or (2) to proceedings includes a reference to proceedings commenced before the commencement of section 41 of the *Family Court Amendment Act 1987*.
- (5) An offence against subsection (1) or (2) is a crime.  
Summary conviction penalty:
  - (a) in the case of a body corporate, a fine of \$5 500;
  - (b) in any other case, a fine of \$2 750.
- [(6) repealed]*
- (7) Proceedings for an offence against subsection (1) or (2) must not be commenced except by, or with the written consent of, the Director of Public Prosecutions appointed under section 5 of the *Director of Public Prosecutions Act 1991*.
- (8) Subsections (1) and (2) do not apply to or in relation to —
  - (a) the communication, to persons concerned in proceedings in any court, of any pleading, transcript of evidence or other document for use in connection with those proceedings;
  - (b) the communication of any pleading, transcript of evidence or other document to —
    - (i) a body that is responsible for disciplining members of the legal profession; or
    - (ii) persons concerned in disciplinary proceedings against a member of the legal profession, being proceedings before a body that is responsible for disciplining members of the legal profession;

- (c) the communication, to a body that grants assistance by way of legal aid, of any pleading, transcript of evidence or other document for the purpose of facilitating the making of a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case;
- (d) the publishing of a notice or report in pursuance of the direction of a court;
- (da) the display of a notice in the premises of a court that lists proceedings under this Act, identified by reference to the names of the parties, that are to be dealt with by the court;
- (e) the publishing of any publication bona fide intended primarily for use by the members of any profession, being —
  - (i) a separate volume or part of a series of law reports or a decision of a court from information stored electronically or otherwise; or
  - (ii) any other publication of a technical character;or
- (f) the publication or other dissemination of an account of proceedings or of any part of proceedings —
  - (i) to a person who is a member of a profession, in connection with the person's professional practice or in the course of any form of professional training in which that person is involved;
  - (ii) to a person who is a student, in connection with the person's studies; or
  - (iii) to a natural person who is a party to any proceedings under this Act, in connection with the conduct of those proceedings.

**s. 243A**

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(9) In this section —

**“court”** includes —

- (a) an officer of a court investigating or dealing with a matter in accordance with this Act, the regulations or the rules; and
- (b) a tribunal established by or under a law of this State or of the Commonwealth or of any other State or of a Territory;

**“electronic means”** includes —

- (a) in the form of data, text or images by means of guided and, or, unguided electromagnetic energy; or
- (b) in the form of speech by means of guided and, or, unguided electromagnetic energy, where the speech is processed at its destination by an automated voice recognition system.

*[Section 243 amended by No. 25 of 2002 s. 71 and 75; No. 50 of 2003 s. 60(2); No. 4 of 2004 s. 58.]*

**243A. Use of reasonable force in arresting persons —**  
**FLA s. 122AA**

A person who is authorised or directed by a provision of this Act or by a warrant issued under a provision of this Act, to arrest another person may use such reasonable force as is necessary to make the arrest or to prevent the escape of that person after the arrest.

*[Section 243A inserted by No. 25 of 2002 s. 72.]*

**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;
  - (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;
  - (b) the attendance of witnesses;
  - (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;
  - (d) trial management;
  - (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;
  - (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;
  - (g) the seals and stamps to be used in the Court and in the Magistrates Court exercising jurisdiction under this Act;

**s. 244**

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- (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;
- (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;
- (j) authorising an officer making an investigation referred to in paragraph (i) to take evidence on oath or affirmation and to obtain and receive in evidence a report from a family and child counsellor or welfare officer, and enabling the summoning of witnesses before an officer making such an investigation for the purpose of giving evidence or producing books and documents;
- (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);
- (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;
- (m) the appointment of a next friend for a party;
- [(n) deleted]*
- (o) the forfeiture of bonds entered into in pursuance of requirements made under this Act;
- (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;

- (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);
- (r) the attendance, by parties to proceedings, at conferences conducted by family and child counsellors or welfare officers;
- (s) the use by the Court and the Magistrates Court exercising jurisdiction under this Act, and by officers of such courts, for the purposes of proceedings, of reports prepared by family and child counsellors or welfare officers in relation to conferences attended by parties to the proceedings in accordance with rules made under paragraph (r), being reports relating to the future conduct of the proceedings;
- (t) the functions and duties of assessors and of court mediators and arbitrators;
- (u) the making of applications under this Act for mediation or arbitration or orders under section 60B;
- (v) the disputes, proceedings or matters that may or may not be mediated or arbitrated under this Act;
- (w) the procedures to be followed by a court mediator or arbitrator in mediating or arbitrating a dispute, proceeding or matter under this Act;
- (x) the attendance by persons at conferences conducted by court mediators or arbitrators for the purposes of mediating or arbitrating a dispute, proceeding or matter under this Act;
- (y) the procedure to be followed when a mediation or arbitration ends, both where it has resulted in an agreement or award and where it has not;

**s. 245**

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- (z) matters relating to the costs of mediation and arbitration by court mediators and arbitrators and the assessment or taxation of those costs;
  - (zaa) the registration of awards under sections 60A or 60B;
  - (zab) the time and manner of making applications for review of registered awards under section 60D or for orders setting aside registered awards under section 60E; 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 by No. 25 of 2002 s. 28, 50, 74 and 75;  
No. 59 of 2004 s. 95.]*

**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;
  - (b) court fees to be payable in respect of —
    - (i) proceedings under this Act;
    - (ii) counselling services provided by the Court whether or not proceedings have been instituted under this Act; or



- (iii) mediation services provided by the Court whether or not proceedings have been instituted under this Act;
  - (ba) the requirements to be complied with by a person who is, or wishes to become, an arbitrator;
  - (bb) anything in respect of which rules may be made under section 244(3)(t), (u), (v), (w), (x), (y) or (z);
  - (c) the manner of approving persons as court mediators and the matters to be taken into account when approving persons as court mediators;
  - (d) the requirements to be complied with by a person who is, or wishes to become, a family and child mediator in relation to the family and child mediation services provided, or proposed to be provided, by the person;
  - (e) the functions and duties of a person who is a community mediator or a private mediator including duties in relation to confidentiality of information given, or the disclosure of any communication or admission made, to the person in the person's capacity as a community mediator or a private mediator;
  - (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;
  - (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

**s. 246**

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offence and, subject to 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 by No. 25 of 2002 s. 51, 73 and 75;  
No. 59 of 2004 s. 95.]*

**246. Repeal**

The *Family Court Act 1975* is repealed.

**247. Transitional and savings**

Schedule 2 has effect in relation to the repeal effected by section 246.

**Schedule 1 — Oath and affirmation of office**

[s. 13 & 22(4)]

*[Heading inserted by 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 by No. 24 of 2005 s. 24.]*

## **Schedule 2 — Transitional and savings**

[Section 247]

### **1. Definitions**

In this Schedule, 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.

### **2. Interpretation Act 1984 applies**

This Schedule does not limit the operation of the *Interpretation Act 1984*.

### **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;
- (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* 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.

**cl. 4**

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**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;
  - (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;

**cl. 7**

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- (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;
- (b) the making of an order or other decree by a court;
- (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.



**Notes**

- <sup>1</sup> This reprint is a compilation as at 14 April 2006 of the *Family Court Act 1997* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Family Court Act 1997</i>	40 of 1997	10 Dec 1997	26 Sep 1998 (see s. 2 and <i>Gazette</i> 25 Sep 1998 p. 5295)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 43(1)	43 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2(2) and <i>Gazette</i> 16 Feb 2001 p. 903)
<i>Acts Amendment (Lesbian and Gay Law Reform) Act 2002</i> Pt. 9	3 of 2002	17 Apr 2002	21 Sep 2002 (see s. 2 and <i>Gazette</i> 20 Sep 2002 p. 4693)
<i>Family Court Amendment Act 2002</i> <sup>5,6,7</sup>	25 of 2002	25 Sep 2002	1 Dec 2002 (see s. 2 and <i>Gazette</i> 29 Nov 2002 p. 5651)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 19 <sup>8</sup>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 60	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<b>Reprint 1: The <i>Family Court Act 1997</i> as at 15 Aug 2003</b> (includes amendments listed above except those in the <i>Sentencing Legislation Amendment and Repeal Act 2003</i> )			
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 126	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Criminal Code Amendment Act 2004</i> s. 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Children and Community Services Act 2004</i> s. 251	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 37	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Courts Legislation Amendment and Repeal Act 2004</i> Pt. 12 <sup>9</sup>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)

Short title	Number and year	Assent	Commencement
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005 Pt. 7</i>	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2(1) and <i>Gazette</i> 23 Dec 2005 p. 6244)
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2(2) and <i>Gazette</i> 21 Mar 2006 p. 1078)
<b>Reprint 2: The Family Court Act 1997 as at 14 Apr 2006</b> (includes amendments listed above)			

<sup>1a</sup> On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 43(2)</i> <sup>4</sup>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

<sup>2</sup> Repealed by s. 246 of this Act.

<sup>3</sup> Repealed by the *State Superannuation Act 2000*.

<sup>4</sup> On the date as at which this reprint was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 43(2)* had not come into operation. It reads as follows:

“

(2) Section 17 of the *Family Court Act 1997* is repealed.

”.

<sup>5</sup> 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.

”.

<sup>6</sup> 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.

”.

<sup>7</sup> 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.

”.

<sup>8</sup> 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.

”.

- <sup>9</sup> The amendment in the *Courts Legislation Amendment and Repeal Act 2004* s. 95 to amend s. 243(6) is not included because the section it sought to amend had been repealed by the *Criminal Code Amendment Act 2004* s. 58 before the amendment purported to come into operation.

**23. Family Court Act 1997**

Section 5 is amended by deleting the definition of “metropolitan region” and inserting instead —

“

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

”.

”.