



Western Australia

Family Court Act 1997

Compare between:

[12 Mar 2008, 03-b0-01] and [27 Apr 2008, 03-c0-03]

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*¹.

2. Commencement

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation¹.

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

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

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

(FLA s. 4(1))

“abuse” in relation to a child, means —

- (a) an assault, including a sexual assault, of the child
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. 4(1))

“adopted” in relation to a child, means adopted under the law
of any place (whether in or out of Australia) relating to the
adoption of children;

(FLA s. 4(1))

“alleged contravention” in Part 5 Division 6 Subdivision 4, means the alleged contravention because of which the alleged offender is arrested;

(FLA s. 4(1))

“alleged offender” in Part 5 Division 6 Subdivision 4, means the person who is arrested;

(FLA s. 4(1))

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

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

(FLA s. 4(1))

“arbitration” has the meaning given by section 56;

(FLA s. 4(1))

“arbitrator” has the meaning given by section 57;

(FLA s. 4(1))

“arresting person” means the person who arrests the alleged offender;

(FLA s. 4(1))

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

(FLA s. 4(1))

“**birth**” includes stillbirth;

(FLA s. 4(1))

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

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

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

(FLA s. 4(1))

“**child**” —

- (a) in Part 5, includes an adopted child and a stillborn child; and
- (b) in Part 5 Division 6 Subdivision 5, means a person who has not attained the age of 18 years (including a person who is an adopted child);

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

(FLA s. 4(1))

“**childbirth maintenance period**”, in relation to the birth of a child, means the period that begins on the day mentioned in paragraph (a) or (b) and ends 3 months after the child’s birth —

- (a) if the mother —
 - (i) works in paid employment; and
 - (ii) is advised by a medical practitioner to stop working for medical reasons related to her pregnancy; and

- (iii) stops working after being so advised and more than 2 months before the child is due to be born,

the period begins on the day on which she stops working; or

- (b) in any other case, the period begins on the day that is 2 months before the child is due to be born;

(FLA s. 4(1))

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

“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. 4(1))

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

- (a) the imprisonment, detention or residence of a child; or
- (b) the care, treatment and protection of a child who has a mental illness;

(FLA s. 4(1))

“child welfare officer” in relation to a State or Territory, means —

- (a) a person who, because he or she holds, or performs the duties of, a prescribed office of the State or Territory, has responsibilities in relation to a child welfare law of the State or Territory; or
- (b) a person authorised in writing by such a person for the purposes of Part 5;

(FLA s. 4(1))

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

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

(FLA s. 4(1))

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

(FLA s. 4(1))

“confiscation declaration” means any of the following —

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

(FLA s. 4(1))

“contravened an order”, in Part 5 Division 13, has the meaning given by section 205C;

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

“court” has a meaning affected by section 8;

(FLA s. 4(1))

“criminal confiscation order” means any of the following —

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

(FLA s. 4(1))

“department” means a department of the Public Service;

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

(FLA s. 4(1))

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

(FLA s. 4(1))

“education” includes apprenticeship or vocational training;

(FLA s. 4(1))

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

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

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

(FLA s. 4(1))

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

(FLA s. 4(1))

“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;

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

(FLA s. 4(1))

“independent children’s lawyer”, for a child, means a certificated practitioner (within the meaning of the *Legal Practice Act 2003*) who represents the child’s interests in proceedings under an appointment made under a court order under section 164(2);

(FLA s. 4(1))

“information about a child’s location”, in the context of a location order made or to be made by a court in relation to a child, means information about —

- (a) where the child is; or

(b) where a person who the court has reasonable cause to believe has the child is;

(FLA s. 4(1))

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

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

(FLA s. 4(1))

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

(FLA s. 4(1))

“made in favour”, in relation to a parenting order (other than a child maintenance order), has the meaning given by section 84(6);

(FLA s. 4(1))

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

(FLA s. 4(1))

“member of the family”, in relation to a person, has for the purposes of the definition of step-parent, sections 66C(3)(j) and (k) and 66F, the meaning given by section 6;

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

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

(FLA s. 4(1))

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

- (a) a parenting order; or
- (b) an injunction granted by a court —
 - (i) under section 235; or
 - (ii) under section 235A insofar as the injunction is for the protection of a child;

or

- (c) an undertaking given to, and accepted by, the court —
 - (i) that relates to, or to the making of, an order or injunction referred to in paragraph (a) or (b) or a community service order referred to in paragraph (f); or
 - (ii) that relates to a bond referred to in paragraph (g);

or

- (d) a subpoena issued under the rules of Court —
 - (i) that relates to, or to the making of, an order or injunction referred to in paragraph (a) or (b) or a community service order referred to in paragraph (f); or
 - (ii) that relates to a bond referred to in paragraph (g),

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

or

- (e) a registered parenting plan within the meaning of section 76(6); or

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- (f) a community service order made under section 205SB(2)(a); or
- (g) a bond entered into —
 - (i) under a parenting order; or
 - (ii) under section 205SB(2)(b); or
 - (iii) for the purposes of section 205SG(6), and includes an order, injunction, plan or bond that —
 - (iv) is an order under this Act affecting children made by another court because of paragraph (a), (b), (e) or (g); and
 - (v) has been registered in the first-mentioned court;

(FLA s. 4(1))

“parent”, when used in Part 5 in relation to a child who has been adopted, means an adoptive parent of the child;

(FLA s. 4(1))

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

(FLA s. 4(1))

“parenting plan” has the meaning given by section 76;

(FLA s. 4(1))

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

“principal officer” —

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

“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. 4(1))

“professional ethics” includes —

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

(FLA s. 4(1))

“reasonable excuse for contravening”, in relation to an order, includes the meanings given by section 205E;

(FLA s. 4(1))

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

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

(FLA s. 4(1))

“registrar” means —

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

(FLA s. 4(1))

“Registry Manager” means —

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

(FLA s. 4(1))

“relative”, of a child —

- (a) in Part 5, means —
 - (i) a step-parent of the child; or
 - (ii) a brother, sister, half-brother, half-sister, step-brother or step-sister of the child; or

- (iii) a grandparent of the child; or
 - (iv) an uncle or aunt of the child; or
 - (v) a nephew or niece of the child; or
 - (vi) a cousin of the child;
- and

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

(FLA s. 4(1))

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

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

“State entity” means —

- (a) a department or an organisation within the meaning of the *Public Sector Management Act 1994*; or

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

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

(FLA s. 4(1))

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

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

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

(FLA s. 4(1))

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

- (2) A reference in this Act to a person who has parental responsibility for a child is a reference to a person who —
 - (a) has some or all of that responsibility solely; or
 - (b) shares some or all of that responsibility with another person.
- (3) A reference in this Act to a person who shares parental responsibility for a child with another person is a reference to a person who shares some or all of the parental responsibility for the child with that other person.
- (4) A reference in this Act to a person or people involved in proceedings is a reference to —

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

[Section 5 amended 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; No. 35 of 2006 s. 4, 17, 42(1), 63, 80, 104, 108, 136, 144 and 170.]

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

For the purposes of —

- (a) the definitions of “family violence” and “step-parent” in section 5(1); and
- (b) section 66C(3)(j) and (k); and
- (c) section 66F,

a person (the “**first person**”) is a member of the family of another person (the “**second person**”) if —

- (d) the first person is or has been married to, or in a de facto relationship with, the second person; or
- (e) the first person is or has been a relative of the second person (as defined in section 7); or
- (f) an order under this Act described in subparagraph (i) or (ii) is or was (at any time) in force —
 - (i) a parenting order (other than a child maintenance order) that relates to a child who is either the first person or the second person and that is in favour of the other of those persons;
 - (ii) an order providing for the first person or the second person to have custody or guardianship of, or a right of access to, the other of those persons;

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or

- (g) an order under a law of a State or Territory described in subparagraph (i) or (ii) is or was (at any time) in force —
 - (i) an order determining that the first person or the second person is or was to live with the other of those persons, or is or was to have custody or guardianship of the other of those persons;
 - (ii) an order providing for contact between the first person and the second person, or for the first person or the second person to have a right of access to the other of those persons;

or

- (h) the first person ordinarily or regularly resides or resided with the second person, or with another member of the family of the second person; or
- (i) the first person is or has been a member of the family of a child of the second person.

[Section 6 inserted by No. 35 of 2006 s. 171.]

7. Meaning of “relative” — FLA s. 4(1AC)

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

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

- (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 inserted by No. 35 of 2006 s. 171.]

7A. Meaning of “major long-term issues” — FLA s. 4(1)

- (1) For the purposes of this Act —
 - “**major long-term issues**”, in relation to a child, means issues about the care, welfare and development of the child of a long-term nature and includes (but is not limited to) issues of that nature about —
 - (a) the child's education (both current and future); and
 - (b) the child's religious and cultural upbringing; and
 - (c) the child's health; and
 - (d) the child's name; and
 - (e) changes to the child's living arrangements that make it significantly more difficult for the child to spend time with a parent.
- (2) To avoid doubt, a decision by a parent of a child to form a relationship with a new partner is not, of itself, a major long-term issue in relation to the child, however, the decision will involve a major long-term issue if, for example, the relationship with the new partner involves the parent moving to another area and the move will make it significantly more difficult for the child to spend time with the other parent.

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

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*^{2,3} 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 manager;
 - (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.
- (2a) Subject to subsection (4), the Court may —
- (a) authorise persons to act as —
 - (i) family counsellors; and
 - (ii) family dispute resolution practitioners;and
 - (b) appoint persons as family consultants.
- (3) If there is a vacancy in an office referred to in subsection (1) or (2) then, subject to subsection (4), the Attorney General may appoint a person to act in the office during the period of the vacancy and the person so appointed to act in the office has during that period the functions of a person appointed to the office.
- (4) A person cannot be authorised to act as an officer of the court, or appointed to, or to act in, an office of the Court under subsection (1), (2), (2a) or (3) unless the person is also appointed under Part 3 of the *Public Sector Management Act 1994* and the person may hold office as such in conjunction with any other office in the Public Service.
- (5) If an officer of the Court other than the executive manager or the Director of Court Counselling is, or is expected to be, temporarily unable for any reason to perform the functions of office then the Chief Judge may appoint another officer of the Court to act in the place of the first-mentioned officer during the period of that officer's inability, and the officer so appointed by the Chief Judge has during that period the functions of the first-mentioned officer.
- (6) If the executive manager is, or is expected to be, temporarily unable for any reason to perform the functions of office then the

Chief Judge may appoint a person who has been appointed under Part 3 of the *Public Sector Management Act 1994* to act in the place of the executive manager during the period of the executive manager's inability, and the person so appointed by the Chief Judge has during that period the functions of the executive manager.

- (7) If the Director of Court Counselling ("**the Director**") is, or is expected to be, temporarily unable for any reason to perform the functions of office then the Chief Judge may appoint a person who has been appointed under Part 3 of the *Public Sector Management Act 1994* as a court counsellor to act in the place of the Director during the period of the Director's inability, and the person so appointed by the Chief Judge has during that period the functions of the Director.
- (8) If there is a vacancy in the office of Principal Registrar and no person has been specifically appointed under subsection (3) to act in the office of Principal Registrar for the period of the vacancy then the Chief Judge may appoint a registrar to act in the office of the Principal Registrar during the period of the vacancy and the registrar so appointed by the Chief Judge has during that period the functions of the Principal Registrar.

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

26. Principal Registrar and registrars may be magistrates

- (1) Nothing in section 25 prevents the Principal Registrar or any registrar from being appointed and holding office as a magistrate under the *Magistrates Court Act 2004*.
- (2) During any period when a person who is the Principal Registrar or a registrar is a magistrate, the person is not a member of the Public Service and references in this Act to the Public Service and to Part 3 of the *Public Sector Management Act 1994* do not apply to that person.

- (3) If the Principal Registrar and any one or more registrars hold office as magistrates, the Principal Registrar is the senior of them.
- (4) This Act does not prevent a family law magistrate from constituting the Magistrates Court at a place in or outside the metropolitan region.

[Section 26 amended 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 —
 “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 65Q or 65R,

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; No. 35 of 2006 s. 110 and 172.]

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

- (1) The executive manager may engage persons having suitable qualifications and experiences as consultants to, or to perform services for, the executive manager.
- (2) An engagement under subsection (1) is to be made —
 - (a) on behalf of the State; and
 - (b) by written agreement.

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

Division 4 — Administration of Court's family services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Director of Court Counselling may engage persons to perform —

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

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

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

Division 1 — Jurisdiction of the Family Court

35. Federal jurisdiction of 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

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arose before the coming into operation of this Act or outside the State.

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

[(7) 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

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have such functions as are authorised by the Family Law Act or as are provided for under this Act.

- (2) In respect of the non-federal jurisdictions of the Magistrates Court referred to in section 39(a), a registrar of that Court has the Principal Registrar's functions under this Act, other than —
- (a) any judicial function; or
 - [(b) deleted]*
 - (c) the function of conducting a conciliation or other conference.

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

Division 3 — Jurisdiction of other courts

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

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

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

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) the Magistrates Court (the “**court**”) is dealing with proceedings in which a parenting order

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

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

or

(b) if —

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

- (2) 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.

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

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

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.

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- (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.]

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 counsellor or family dispute resolution practitioner to discuss matters affecting the welfare of any child affected by the proceedings and to resolve the difference (if any) between the parties;
 - (b) that a report in accordance with section 73 be obtained from a family consultant;
 - (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; No. 35 of 2006 s. 114.]

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. 46A

46A. Change of venue — FLA s. 27A

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

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

Part 4 — Non-court based family services

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

Division 1 — Family counselling

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

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

For the purposes of this Act —

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

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

[Section 47 inserted by No. 35 of 2006 s. 115.]

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

For the purposes of this Act —

“family counsellor” means —

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

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

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

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

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

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

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

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

- (2) Subsection (1) does not apply to —
- (a) an admission by an adult that indicates that a child who has not attained the age of 18 years has been abused or is at risk of abuse; or
 - (b) a disclosure by a child who has not attained the age of 18 years that indicates that the child has been abused or is at risk of abuse,

unless, in the opinion of the court or board, tribunal or person authorised to hear evidence referred to in subsection (1), there is sufficient evidence of the admission or disclosure available to the court from other sources.

- (3) A family counsellor who refers a person to a professional (within the meaning of subsection (1)(b)) must inform the professional of the effect of this section.

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

Division 2 — Family dispute resolution

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

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

For the purposes of this Act —

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

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

[Section 51 inserted by No. 35 of 2006 s. 115.]

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

For the purposes of this Act —

“family dispute resolution practitioner” means —

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

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

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

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

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

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

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

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

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

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

- (1) The regulations may prescribe requirements to be complied with by family dispute resolution practitioners in relation to the family dispute resolution services they provide.
- (2) The regulations may prescribe penalties not exceeding \$1 100 in respect of offences against regulations made for the purposes of subsection (1).

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

Division 3 — Arbitration

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

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

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

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

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

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

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

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

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

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

59. Immunity of arbitrators — FLA s. 10P

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

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

Part 4A — Family consultants

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

Division 1 — About family consultants

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

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

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

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

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

[60A-60F. Repealed by No. 35 of 2006 s. 115.]

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

For the purposes of this Act —

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

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

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

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

is admissible in proceedings under this Act.

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

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

- (a) it is an admission by an adult that indicates that a child who has not attained the age of 18 years has been abused or is at risk of abuse; or
- (b) it is a disclosure by a child who has not attained the age of 18 years that indicates that the child has been abused or is at risk of abuse,

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

[Section 62 inserted by No. 35 of 2006 s. 115.]

[62A. Repealed by No. 35 of 2006 s. 115.]

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

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

[Section 63 inserted by No. 35 of 2006 s. 115.]

Division 2 — Courts' use of family consultants

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

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

- (1) If, under this Act, a court has the power to —
- (a) order a person to attend family counselling or family dispute resolution; or
 - (b) order a person to participate in a course, program or other service (other than arbitration); or
 - (c) order a person to attend appointments with a family consultant; or
 - (d) advise or inform a person about family counselling, family dispute resolution or other courses, programs or services,
- the court —
- (e) may, before exercising the power, seek the advice of a family consultant as to the services appropriate to the needs of the person and the most appropriate provider of those services; and
 - (f) must, before exercising the power, consider seeking that advice.
- (2) If the court seeks advice under subsection (1), the court must inform the person in relation to whom the advice is sought —
- (a) whom the court is seeking advice from; and

- (b) the nature of the advice the court is seeking.

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

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

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

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

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

- (1) If a person who is ordered to attend an appointment with a family consultant under section 65 fails to comply with —
 - (a) the order made by the court; or
 - (b) any instruction the consultant gives to the person,the consultant must report the failure to the court.
- (2) On receiving the report, the court may make any further orders it considers appropriate.

Family Court Act 1997

Part 4A Family consultants

Division 2 Courts' use of family consultants

s. 65A

- (3) The court may make orders under subsection (2) —
- (a) on its own initiative; or
 - (b) on the application of —
 - (i) a party to the proceedings; or
 - (ii) an independent children's lawyer representing a child's interests under an order made under section 164.

[Section 65A inserted by No. 35 of 2006 s. 115.]

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

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

Division 1 — Introduction

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

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

The objects of this Part are —

- (a) to ensure that parents or de facto partners considering ending their relationship are informed about the services available to help with a possible reconciliation, in situations where a reconciliation seems a reasonable possibility; and
- (b) to ensure that parents or people affected, or likely to be affected, by the breakdown of a relationship covered by this Act are informed about the services available to help them adjust to —
 - (i) the breakdown of the relationship; and
 - (ii) orders made under this Act;and
- (c) to ensure that parents or people affected, or likely to be affected, by the breakdown of a relationship covered by this Act are informed about ways of resolving disputes other than by applying for orders under this Act.

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

Family Court Act 1997

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

Division 2 Kind of information to be provided

s. 65C

Division 2 — Kind of information to be provided

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

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

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

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

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

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

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

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

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

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

Division 3 — Who must provide information and when

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

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

- (1) A legal practitioner who is consulted by a person considering instituting proceedings under this Act must give the person documents containing the information prescribed under section 65C.
- (2) A legal practitioner who is consulted by, or who is representing, a person who is a party to financial or Part 5 proceedings in relation to a relationship covered by this Act must give the person documents containing the information prescribed under section 65D.
- (3) A legal practitioner representing a party in proceedings under Part 5 must give the party documents containing the information prescribed under section 65E.
- (4) A legal practitioner does not have to comply with subsection (1), (2) or (3) if the practitioner has reasonable grounds to believe that the person has already been given documents containing the prescribed information mentioned in that subsection.

Family Court Act 1997

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

Division 3 Who must provide information and when

s. 65G

- (5) A legal practitioner does not have to comply with subsection (2) if the practitioner considers that there is no reasonable possibility of a reconciliation between the de facto partners.

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

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

- (1) The executive manager must ensure that any person who is considering instituting proceedings under this Act is, on the first occasion the person deals with a registry of the court, given documents containing the information prescribed under —

- (a) section 65C; and
- (b) section 65D.

- (2) The executive manager must ensure that, if a person involved in proceedings under this Act requests an officer or staff member of the court for information about family counselling services or family dispute resolution services, the person is given documents containing information about those services.

[Section 65G inserted by No. 35 of 2006 s. 115.]

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

- (1) A family counsellor, family dispute resolution practitioner or arbitrator who deals with a person considering instituting financial or Part 5 proceedings in relation to a relationship covered by this Act must give the person (and in appropriate cases, that person's de facto partner) documents containing the information prescribed under section 65D.
- (2) A family counsellor, family dispute resolution practitioner or arbitrator does not have to comply with subsection (1), if he or she —

- (a) has reasonable grounds to believe that the person has already been given documents containing the prescribed information; or
- (b) considers that there is no reasonable possibility of a reconciliation between the de facto partners.

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

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

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

Division 1 — Introduction

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

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

- (1) The objects of this Part are —
- (a) to facilitate access to family counselling —
 - (i) to help de facto partners considering ending their de facto relationship to reconcile; and
 - (ii) to help people adjust to the breakdown of a relationship covered by this Act; and
 - (iii) to help people adjust to court orders under this Act;
 - and
 - (b) to encourage people to use dispute resolution mechanisms (other than judicial ones) to resolve matters in which a court order might otherwise be made under this Act, provided the mechanisms are appropriate in the circumstances and proper procedures are followed; and
 - (c) to encourage people to use, in appropriate circumstances, arbitration to resolve matters in which a court order might otherwise be made, and to provide ways of facilitating that use; and
 - (d) to give the court the power to require parties to proceedings under this Act to make use of court or non-court based family services appropriate to the needs of the parties.

- (2) The object mentioned in subsection (1)(b) also lies behind the general requirement in section 66H for family dispute resolution services to be used before an application for a Part 5 Order is made.

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

Division 2 — Help with reconciliation

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

65J. Court to accommodate possible reconciliations — FLA s. 13B

- (1) If, during the proceedings, the court considers, from the evidence in the proceedings or the attitude of the parties to the de facto relationship, that there is a reasonable possibility of a reconciliation between the parties, the court may adjourn the proceedings to give the parties the opportunity to consider a reconciliation.
- (2) If the court adjourns the proceedings under subsection (1), the court must advise the parties to attend family counselling, or use the services of another appropriate person or organisation.
- (3) If, after an adjournment under subsection (1), either of the parties requests that the proceedings resume, the court must resume the proceedings as soon as practicable.

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

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

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

Family Court Act 1997

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

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

s. 65K

65K. Court may refer parties to family counselling, family dispute resolution and other family services — FLA s. 13C

- (1) A court exercising jurisdiction in proceedings under this Act may, at any stage in the proceedings, make one or more of the following orders —
 - (a) that one or more of the parties to the proceedings attend family counselling; and
 - (b) that the parties to the proceedings attend family dispute resolution; and
 - (c) that one or more of the parties to the proceedings participate in an appropriate course, program or other service.
- (2) The court may suggest a particular purpose for the attendance or participation.
- (3) The order may require the party or parties to encourage the participation of specified other persons who are likely to be affected by the proceedings.
- (4) The court may make any other orders it considers reasonably necessary or appropriate in relation to the order.
- (5) The court may make orders under this section —
 - (a) on its own initiative; or
 - (b) on the application of —
 - (i) a party to the proceedings; or
 - (ii) an independent children's lawyer representing a child's interests under an order made under section 164.

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

65L. Consequences of failure to comply with order under section 65K — FLA s. 13D

- (1) If a party fails to comply with an order of a court under section 65K, the family counsellor, family dispute resolution practitioner or provider of the course, program or other service must report the failure to the court.
- (2) On receiving the report, the court may make any further orders it considers appropriate.
- (3) The court may make orders under subsection (2) —
 - (a) on its own initiative; or
 - (b) on the application of —
 - (i) a party to the proceedings; or
 - (ii) an independent children's lawyer representing a child's interests under an order made under section 164.

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

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

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

65M. Court may refer Part 5A proceedings to arbitration — FLA s. 13E

- (1) With the consent of all of the parties to the proceedings, a court exercising jurisdiction in Part 5A proceedings may make an order referring the proceedings, or any part of them, or any matter arising in them, to an arbitrator for arbitration.
- (2) If the court makes an order under subsection (1), it may, if necessary, adjourn the proceedings and may make any additional orders as it thinks appropriate to facilitate the effective conduct of the arbitration.

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

Family Court Act 1997

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

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

s. 65N

65N. Court may make orders to facilitate arbitration of certain disputes — FLA s. 13F

A court may, on application by a party to relevant property or financial arbitration, make orders the court thinks appropriate to facilitate the effective conduct of the arbitration.

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

65O. Court may determine questions of law referred by arbitrator — FLA s. 13G

- (1) An arbitrator of section 65M arbitration or relevant property or financial arbitration may, at any time before making an award in the arbitration, refer a question of law arising in relation to the arbitration for determination by a single judge of the Court.
- (2) The arbitrator may do so —
 - (a) on his or her own initiative; or
 - (b) at the request of one or more of the parties to the arbitration if the arbitrator considers it appropriate to do so.
- (3) The arbitrator must not make an award in the arbitration before the judge or Family Law Magistrate has either —
 - (a) determined the question of law; or
 - (b) remitted the matter to the arbitrator having found that no question of law arises.

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

65P. Awards made in arbitration may be registered in court — FLA s. 13H

- (1) A party to an award made in section 65M arbitration or in relevant property or financial arbitration may register the award —

- (a) in the case of section 65M arbitration, in the court that ordered the arbitration; or
 - (b) otherwise, in any court.
- (2) An award registered under subsection (1) has effect as if it were a decree made by that court.

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

65Q. Court can review registered awards — FLA s. 13J

- (1) A party to a registered award made in section 65M arbitration or relevant property or financial arbitration may apply for review of the award, on questions of law, by a single judge of the Court.
- (2) On a review of an award under this section, the judge or Family Law Magistrate may —
- (a) determine all questions of law arising in relation to the arbitration; and
 - (b) make such decrees as the judge or magistrate thinks appropriate, including a decree affirming, reversing or varying the award.

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

65R. Court may set aside registered awards — FLA s. 13K

- (1) If an award made in section 65M arbitration or relevant property or financial arbitration, or an agreement made as a result of such arbitration, is registered in the Court, the Court may make a decree affirming, reversing or varying the award or agreement.
- (2) The Court may only make a decree under subsection (1) if the Court is satisfied that —
- (a) the award or agreement was obtained by fraud (including non-disclosure of a material matter); or
 - (b) the award or agreement is void, voidable or unenforceable; or

Family Court Act 1997

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

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

s. 65R

- (c) in the circumstances that have arisen since the award or agreement was made it is impracticable for some or all of it to be carried out; or
- (d) the arbitration was affected by bias, or there was a lack of procedural fairness in the way in which the arbitration process, as agreed between the parties and the arbitrator, was conducted.

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

Part 5 — Children

Division 1 — Introductory

Subdivision 1 — Objects and principles

[Heading inserted by No. 35 of 2006 s. 81.]

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

- (1) The objects of this Part are to ensure that the best interests of children are met by —
 - (a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and
 - (b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and
 - (c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and
 - (d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.

- (2) The principles underlying these objects are that (except when it is or would be contrary to a child's best interests) —
 - (a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
 - (b) children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and

- (c) parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and
 - (d) parents should agree about the future parenting of their children; and
 - (e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).
- (3) For the purposes of subsection (2)(e), an Aboriginal child's or Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right —
- (a) to maintain a connection with that culture; and
 - (b) to have the support, opportunity and encouragement necessary —
 - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
 - (ii) to develop a positive appreciation of that culture.

[Section 66 inserted by No. 35 of 2006 s. 82.]

Subdivision 2 — Best interests of the child

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

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

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

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

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

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

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

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

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

and

- (c) the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent; and
- (d) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from —
 - (i) either of his or her parents; or
 - (ii) any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living;and
- (e) the practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis; and
- (f) the capacity of —
 - (i) each of the child's parents; and
 - (ii) any other person (including any grandparent or other relative of the child),to provide for the needs of the child, including emotional and intellectual needs; and
- (g) the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant; and
- (h) if the child is an Aboriginal child or a Torres Strait Islander child —
 - (i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and

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

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

[Section 66C inserted by No. 35 of 2006 s. 83.]

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

- (1) A court required under section 66C(3)(a) to consider any views expressed by a child in deciding whether to make a particular parenting order in relation to the child is to inform itself of the views expressed by a child in accordance with this section.

- (2) The court may inform itself of views expressed by a child —
- (a) by having regard to anything contained in a report given to the court under section 73(2); or
 - (b) by making an order under section 164 for the child's interests in the proceedings to be independently represented by a lawyer; or
 - (c) subject to the rules, by such other means as the court thinks appropriate.

[Section 66D inserted by No. 35 of 2006 s. 83.]

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

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

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

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

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

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

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

- (1) In considering what order to make, the court must, to the extent that it is possible to do so consistently with the child's best

interests being the paramount consideration, ensure that the order —

- (a) is consistent with any family violence order; and
 - (b) does not expose a person to an unacceptable risk of family violence.
- (2) For the purposes of subsection (1)(b), the court may include in the order any safeguards that it considers necessary for the safety of those affected by the order.

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

Subdivision 3 — Family dispute resolution

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

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

- (1) In this section —
- “dispute resolution provisions of the rules”** means the provisions of the *Family Law Rules 2004* of the Commonwealth referred to in section 60I(12) of the Family Law Act to the extent, if any, that those rules are adopted by the rules under this Act.
- (2) The object of this section is to ensure that all persons who have a dispute about matters that may be dealt with by a Part 5 Order make a genuine effort to resolve that dispute by family dispute resolution before the Part 5 Order is applied for.
- (3) The dispute resolution provisions of the rules (with such modifications as are necessary) must be complied with before an application is made under this Act for a parenting order if the application is made —
- (a) on or after the commencement of this section; and
 - (b) before 1 July 2007.

- (4) Subsections (6) to (10) apply to an application for a Part 5 Order in relation to a child if —
- (a) the application is made on or after 1 July 2007 and before the date fixed by Proclamation for the purposes of this paragraph; and
 - (b) none of the parties to the proceedings on the application has applied, before 1 July 2007, for a Part 5 Order in relation to the child.
- (5) Subsections (6) to (10) apply to all applications for a Part 5 Order in relation to a child that are made on or after the date fixed by Proclamation for the purposes of this subsection.
- (6) Subject to subsection (8), a court must not hear an application for a Part 5 Order in relation to a child unless —
- (a) the applicant files in the court a certificate given to the applicant by a family dispute resolution practitioner under subsection (7); and
 - (b) the certificate is filed with the application for the Part 5 Order.
- (7) A family dispute resolution practitioner may give one of these kinds of certificates to a person —
- (a) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but the person's failure to do so was due to the refusal, or the failure, of the other party or parties to the proceedings to attend;
 - (b) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, because the practitioner considers, having regard to the matters prescribed by the regulations for the purposes of this

- paragraph, that it would not be appropriate to conduct the proposed family dispute resolution;
- (c) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, and that all attendees made a genuine effort to resolve the issue or issues;
 - (d) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the person, the other party or another of the parties did not make a genuine effort to resolve the issue or issues.
- (8) Subsection (6) does not apply to an application for a Part 5 Order in relation to a child if —
- (a) the applicant is applying for the order —
 - (i) to be made with the consent of all the parties to the proceedings; or
 - (ii) in response to an application that another party to the proceedings has made for a Part 5 Order;
 - or
 - (b) the court is satisfied that there are reasonable grounds to believe that —
 - (i) there has been abuse of the child by one of the parties to the proceedings; or
 - (ii) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or
 - (iii) there has been family violence by one of the parties to the proceedings; or
 - (iv) there is a risk of family violence by one of the parties to the proceedings;

or

- (c) all the following conditions are satisfied —
- (i) the application is made in relation to a particular issue;
 - (ii) a Part 5 Order has been made in relation to that issue within the period of 12 months before the application is made;
 - (iii) the application is made in relation to a contravention of the order by a person;
 - (iv) the court is satisfied that there are reasonable grounds to believe that the person has behaved in a way that shows a serious disregard for his or her obligations under the order;

or

- (d) the application is made in circumstances of urgency; or
- (e) one or more of the parties to the proceedings is unable to participate effectively in family dispute resolution (whether because of an incapacity of some kind, physical remoteness from dispute resolution services or for some other reason); or
- (f) other circumstances specified in the regulations are satisfied.

(9) If —

- (a) a person applies for a Part 5 Order; and
- (b) the person does not, before applying for the order, attend family dispute resolution with a family dispute resolution practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with; and
- (c) subsection (6) does not apply to the application because of subsection (8),

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

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

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

[Section 66H inserted by No. 35 of 2006 s. 83.]

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

- (1) If —
- (a) section 66H(6) to (10) apply to an application for a Part 5 Order (see section 66H(4) and (5)); and
 - (b) section 66H(6) does not apply to the application because the court is satisfied that there are reasonable grounds to believe that —
 - (i) there has been abuse of the child by one of the parties to the proceedings; or
 - (ii) there has been family violence by one of the parties to the proceedings,

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

- (2) Subsection (1) does not apply if the court is satisfied that there are reasonable grounds to believe that —

- (a) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or
 - (b) there is a risk of family violence by one of the parties to the proceedings.
- (3) The validity of —
- (a) proceedings on an application for a Part 5 Order; or
 - (b) any order made in those proceedings,

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

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

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

[Section 66I inserted by No. 35 of 2006 s. 83.]

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

- (1) This section applies if —
- (a) an application is made to a court for a Part 5 Order in relation to a child; and
 - (b) a document is filed in the court, on or after the commencement of this section, in relation to the proceedings for the order; and

- (c) the document alleges as a consideration that is relevant to whether the court should grant or refuse the application, that —
 - (i) there has been abuse of the child by one of the parties to the proceedings; or
 - (ii) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or
 - (iii) there has been family violence by one of the parties to the proceedings; or
 - (iv) there is a risk of family violence by one of the parties to the proceedings;and
 - (d) the document is a document of the kind prescribed by the rules for the purposes of this paragraph.
- (2) A court must —
- (a) consider what interim or procedural orders (if any) should be made —
 - (i) to enable appropriate evidence about the allegation to be obtained as expeditiously as possible; and
 - (ii) to protect the child or any of the parties to the proceedings;and
 - (b) make such orders of that kind as the court considers appropriate; and
 - (c) deal with the issues raised by the allegation as expeditiously as possible.
- (3) A court must take the action required by subsection (2)(a) and (b) —
- (a) as soon as practicable after the document is filed; and

- (b) if it is appropriate having regard to the circumstances of the case, within 8 weeks after the document is filed.
- (4) Without limiting subsection (2)(a)(i), the court must consider whether orders should be made under section 202K to obtain reports from prescribed government agencies in relation to the allegations.
- (5) Without limiting subsection (2)(a)(ii), the court must consider whether orders should be made, or an injunction granted, under section 235.
- (6) A failure to comply with a provision of this section in relation to an application does not affect the validity of any order made in the proceedings in relation to the application.

[Section 66J inserted by No. 35 of 2006 s. 83.]

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.

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

- (1) When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

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

[Section 70A inserted by No. 35 of 2006 s. 84.]

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

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

[Section 70B inserted by No. 35 of 2006 s. 84.]

71. Appointment and responsibilities of guardian

- (1) A person who is appointed under this section as a child's guardian has parental responsibility for the child.
- (2) A court may appoint a person to be the guardian of a child —
 - (a) if no person has parental responsibility for the child; or

- (b) if a parenting order that deals with whom a child is to live with has been made in favour of a person who has subsequently died or who cannot be found or refuses to act.
- (3) Subject to subsections (4) and (5), a person who has parental responsibility for a child may, by deed or will, appoint any person or 2 or more persons jointly to be the guardian or guardians of the child after the person's death, and an appointment so made has effect after the person's death in accordance with the appointment.
- (4) If a court has declared that a person must not exercise the power in subsection (3) or that any exercise of the power is of no effect then —
 - (a) the person cannot make an appointment under subsection (3); and
 - (b) if the person purports to make the appointment, the appointment is of no effect.
- (5) An appointment under subsection (3) has effect after the appointor's death —
 - (a) if at the time of the appointer's death the appointer was the only person with parental responsibility for the child; and
 - (b) subject to any order of a court.
- (6) A court may, on being satisfied that it is in the best interests of a child, remove from office any guardian, whether appointed under the provisions of this Act or by will or otherwise and may also, if it considers it to be in the best interests of the child, appoint another guardian in place of the guardian so removed.

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

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

In —

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

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

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

Division 3 — Reports relating to children under 18

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

72. Court's obligation to inform people to whom orders under this Part apply about family counselling, family dispute resolution and other family services — FLA s. 62B

If a court makes an order in proceedings under this Part, the court must inform the parties to the proceedings about the family counselling services, family dispute resolution services and other courses, programs and services available to help the parties adjust to the consequences of that order.

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

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

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

- (2) A court may direct a family consultant to give the court a report on such matters relevant to proceedings under this Act as the court thinks desirable.
- (3) If a court gives a direction under subsection (2), it may, if it thinks it necessary, adjourn the proceedings until the report has been given to the court.
- (3a) A family consultant who is directed to give the court a report on a matter under subsection (2) must —
 - (a) ascertain the views of the child in relation to that matter; and
 - (b) include the views of the child on that matter in the report.
- (3b) Subsection (3a) does not apply if complying with that subsection would be inappropriate because of —
 - (a) the child's age or maturity; or
 - (b) some other special circumstance.
- (4) The family consultant may include in the report, in addition to the matters required to be included in it, any other matters that relate to the care, welfare or development of the child.
- (5) For the purposes of the preparation of the report, the court may make any other orders, or give any other directions, that the court considers appropriate (including orders or directions that a party to proceedings, or the child, attend an appointment or a series of appointments with a family consultant).
- (6) If a person fails to comply with an order or direction under subsection (5), the family consultant 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.

[Section 73 amended by No. 35 of 2006 s. 86 and 118.]

Division 4 — Parenting plans

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

This Division explains what parenting plans are.

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

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

The parents of a child are encouraged —

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

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

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

- (1) A “parenting plan” is an agreement that —
- (a) is in writing; and
 - (b) is or was made between the parents of a child; and
 - (ba) is signed by the parents of the child; and
 - (bb) is dated; and

- (c) deals with a matter or matters mentioned in subsection (2).
- (1a) An agreement is not a parenting plan unless it is made free from any threat, duress or coercion.
- (2) A parenting plan may deal with one or more of the following —
 - (a) the person or persons with whom a child is to live;
 - (b) the time a child is to spend with another person or other persons;
 - (c) the allocation of parental responsibility for a child;
 - (d) if 2 or more persons are to share parental responsibility for a child, the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility;
 - (e) the communication a child is to have with another person or other persons;
 - (f) maintenance of a child;
 - (g) the process to be used for resolving disputes about the terms or operation of the plan;
 - (h) the process to be used for changing the plan to take account of the changing needs or circumstances of the child or the parties to the plan;
 - (i) any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.
- (2a) The person referred to in subsection (2) may be, or the persons referred to in that subsection may include, either a parent of the child or a person other than the parent of the child (including a grandparent or other relative of the child).
- (2b) Without limiting subsection (2)(c), the plan may deal with the allocation of responsibility for making decisions about major long-term issues in relation to the child.

- (2c) The communication referred to in subsection (2)(e) includes (but is not limited to) communication by —
- (a) letter; and
 - (b) telephone, email or any other electronic means.
- (3) An agreement may be a parenting plan —
- (a) whether made before or after the commencement of this section;
 - (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 matters other than the maintenance of a child are child welfare provisions.
- (5) Provisions of a parenting plan that deal with the matter mentioned in subsection (2)(f) are “**child maintenance provisions**”.
- (6) A registered parenting plan is a parenting plan —
- (a) that was registered in a court under section 79 as in force at any time before the commencement of section 7 of the *Family Legislation Amendment Act 2006*¹; and
 - (b) that continued to be registered immediately before that section commenced.

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

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

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

- (2) Subsection (1) does not affect the operation of the provisions for any other purpose.
- (3) Nothing in this Division is to be treated as preventing the same agreement being both a parenting plan under this Part and a child support agreement under Part 6 of the Child Support (Assessment) Act.

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

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

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

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

- (1) If an adviser gives advice or assistance to people in relation to parental responsibility for a child following the breakdown of the relationship between those people, the adviser must —
 - (a) inform them that they could consider entering into a parenting plan in relation to the child; and
 - (b) inform them about where they can get further assistance to develop a parenting plan and the content of the plan.
- (2) If an adviser gives advice to people in connection with the making by those people of a parenting plan in relation to a child, the adviser must —
 - (a) inform them that, if the child spending equal time with each of them is —
 - (i) reasonably practicable; and
 - (ii) in the best interests of the child,they could consider the option of an arrangement of that kind; and

- (b) inform them that, if the child spending equal time with each of them is not reasonably practicable or is not in the best interests of the child but the child spending substantial and significant time with each of them is —
 - (i) reasonably practicable; and
 - (ii) in the best interests of the child,they could consider the option of an arrangement of that kind; and
- (c) inform them that decisions made in developing parenting plans should be made in the best interests of the child; and
- (d) inform them of the matters that may be dealt with in a parenting plan in accordance with section 76(2); and
- (e) inform them that, if there is a parenting order in force in relation to the child, the order may (because of section 85A) include a provision that the order is subject to a parenting plan they enter into; and
- (f) inform them about the desirability of including in the plan —
 - (i) if they are to share parental responsibility for the child under the plan, provisions of the kind referred to in section 76(2)(d) (which deals with the form of consultations between the parties to the plan) as a way of avoiding future conflicts over, or misunderstandings about, the matters covered by that paragraph; and
 - (ii) provisions of the kind referred to in section 76(2)(g); and
 - (iii) provisions of the kind referred to in section 76(2)(h);and
- (g) explain to them, in language they are likely to readily understand, the availability of programs to help people

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

(d) a family consultant.

[Section 78A inserted by No. 35 of 2006 s. 88.]

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

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

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

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

- (1) This section applies to a registered parenting plan (the “**plan**”).
- (2) To apply for registration of an agreement (the “**revocation agreement**”) revoking a registered parenting plan —
 - (a) an application for registration of the revocation agreement must be lodged in accordance with the rules; and
 - (b) the application must be accompanied by —
 - (i) a copy of the revocation agreement; and
 - (ii) the information required by the rules; and

- (iii) a statement, in relation to each party, that is to the effect that the party has been provided with independent legal advice as to the meaning and effect of the revocation agreement and that is signed by the legal practitioner who provided that advice.
- (3) A court may register the revocation agreement if it considers it appropriate to do so having regard to the best interests of the child to whom the agreement relates.
- (4) In determining whether it is appropriate to register the revocation agreement, a court —
 - (a) must have regard to the information accompanying the application for registration; and
 - (b) may, but is not required to, have regard to all or any of the matters set out in section 66C(2) and (3).

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

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

- (1) This section applies to a registered parenting plan that contains child welfare provisions.
- (2) A court may, by order, vary the child welfare provisions in the plan if it considers the variation is required in the best interests of a child.
- (3) The child welfare provisions have effect, subject to subsections (5) and (6), as if they were provisions of a parenting order.
- (4) If provisions of the plan have effect under subsection (3) as a court order, a person who is a party to the plan is to be treated (for example, for the purposes of section 107) as a party to the proceedings in which the order was made.

- (5) Subsection (3) does not apply to the plan (whenever registered) to the extent (if at all) that the plan purports to determine that the child concerned is to live with a person who is not a parent of the child.
- (6) Even though the plan is registered, a court must not enforce the child welfare provisions if it considers that to do so would be contrary to the best interests of a child.

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

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

- (1) This section applies if a registered parenting plan contains child maintenance provisions.
- (2) The child maintenance provisions have effect, subject to subsections (3), (4) and (5), as if they were a child maintenance order made by a court.
- (3) Unless the plan provides otherwise, the child maintenance provisions (other than provisions for the periodic payment of maintenance) continue to operate despite the death of a party to the plan and operate in favour of, and are binding on, the legal personal representative of that party.
- (4) If the child maintenance provisions include provisions (the “**periodic provisions**”) for the periodic payment of maintenance —
 - (a) the periodic provisions continue to operate, if the plan so provides, despite the death of a party to the plan who is liable to make the periodic payments, and are binding on the legal personal representative of that party; but
 - (b) the periodic provisions do not continue to operate, despite anything in the plan, after the death of the person entitled to receive the periodic payments.

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

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

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

- (1a) This section applies to a registered parenting plan.
 - (1) A court may set aside a registered parenting plan (“**the plan**”), and its registration, if the court is satisfied —
 - (a) that the concurrence of a party was obtained by fraud, duress or undue influence;
 - (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 176, under which a court may revive, vary, discharge or suspend a registered parenting plan.
- (4) Except as permitted by subsection (1) or by a provision mentioned in subsection (3), a court must not set aside, discharge, vary, suspend or revive the whole or a part of the plan.

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

Division 5 — Parenting orders — what they are

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

This Division explains what parenting orders are.

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

- (1) A parenting order is —
- (a) an order under this Part (including an order until further order) dealing with a matter mentioned in subsection (2); or
 - (b) an order under this Part discharging, varying, suspending or reviving an order, or part of an order, described in paragraph (a).
- (2) A parenting order may deal with one or more of the following —
- (a) the person or persons with whom a child is to live;
 - (b) the time a child is to spend with another person or other persons;

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

- (4a) Without limiting subsection (2)(g) and (h), the parenting order may provide that the parties to the proceedings must consult with a family dispute resolution practitioner to assist with —
- (a) resolving any dispute about the terms or operation of the order; or
 - (b) reaching agreement about changes to be made to the order.
- (5) To the extent (if at all) that a parenting order deals with the matter mentioned in subsection (2)(f), the order is a **“child maintenance order”**.
- (6) For the purposes of this Act —
- (a) a parenting order that provides that a child is to live with a person is made in favour of that person; and
 - (b) a parenting order that provides that a child is to spend time with a person is made in favour of that person; and
 - (c) a parenting order that provides that a child is to have communication with a person is made in favour of that person; and
 - (d) a parenting order that —
 - (i) allocates parental responsibility for a child to a person; or
 - (ii) provides that a person is to share parental responsibility for a child with another person, is made in favour of that person.

[Section 84 amended by No. 35 of 2006 s. 90.]

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

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

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

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

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

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

Subdivision 1 — Introductory

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

- (1) This Division deals with —
 - (a) applying for and making parenting orders, other than child maintenance orders (Subdivision 2); and

- (b) the general obligations created by parenting orders, other than child maintenance orders (Subdivision 3); and
 - (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).
- (2) Measures designed to improve communication between separated parents and to educate parents about their respective responsibilities in relation to their children are contained in this Division (see section 89A).

[Section 86 amended by No. 35 of 2006 s. 92.]

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

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

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

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

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

Subdivision 2 — Applying for and making parenting orders

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

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

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

- (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 sections 70A and 89AB and this Division, make such parenting order as it thinks proper.
- (2) Without limiting the generality of subsection (1) and subject to section 70A and section 89AB and this Division, a court may make a parenting order that discharges, varies, suspends or revives some or all of an earlier parenting order.
- (3) If the application for the parenting order was made as a result of the adjournment under section 205O of proceedings under Division 13 Subdivision 5 —
 - (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; No. 35 of 2006 s. 94 and 100.]

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

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

- (2) If —
 - (a) a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child; and
 - (b) the court does not make an order (or include a provision in the order) for the child to spend equal time with each of the parents,the court must —
 - (c) consider whether the child spending substantial and significant time with each of the parents would be in the best interests of the child; and
 - (d) consider whether the child spending substantial and significant time with each of the parents is reasonably practicable; and
 - (e) if it is, consider making an order to provide (or including a provision in the order) for the child to spend substantial and significant time with each of the parents.

- (3) For the purposes of subsection (2), a child will be taken to spend substantial and significant time with a parent only if —
- (a) the time the child spends with the parent includes both —
 - (i) days that fall on weekends and holidays; and
 - (ii) days that do not fall on weekends or holidays;and
 - (b) the time the child spends with the parent allows the parent to be involved in —
 - (i) the child's daily routine; and
 - (ii) occasions and events that are of particular significance to the child;and
 - (c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.
- (4) Subsection (3) does not limit the other matters to which a court can have regard in determining whether the time a child spends with a parent would be substantial and significant.
- (5) In determining for the purposes of subsections (1) and (2) whether it is reasonably practicable for a child to spend equal time, or substantial and significant time, with each of the child's parents, the court must have regard to —
- (a) how far apart the parents live from each other; and
 - (b) the parents' current and future capacity to implement an arrangement for the child spending equal time, or substantial and significant time, with each of the parents; and
 - (c) the parents' current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind; and

- (d) the impact that an arrangement of that kind would have on the child; and
- (e) such other matters as the court considers relevant.

[Section 89AA inserted by No. 35 of 2006 s. 95.]

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

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

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

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

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

[Section 89AC inserted by No. 35 of 2006 s. 95.]

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

- (1) If a child is spending time with a person at a particular time under a parenting order, the order is taken not to require the person to consult a person who —
 - (a) has parental responsibility for the child; or
 - (b) shares parental responsibility for the child with another person,

about decisions that are made in relation to the child during that time on issues that are not major long-term issues.

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

[Section 89AD inserted by No. 35 of 2006 s. 95.]

89A. Parenting orders — FLA s. 65DA

- (1) This section applies when a court makes a parenting order.
- (2) It is the duty of the court to include in the order particulars of —
 - (a) the obligations that the order creates; and
 - (b) the consequences that may follow if a person contravenes the order.
- (3) If any of the persons to whom the order is directed is not represented by a legal practitioner, it is also the duty of the court to explain to the person, or to each of the persons —
 - (a) the availability of programs to help people to understand their responsibilities under parenting orders; and
 - (b) the availability and use of location and recovery orders to ensure that parenting orders are complied with.

- (4) The court may cause to be prepared, and given to persons to whom a parenting order is directed, a document setting out particulars of the matters mentioned in subsection (3)(a) and (b).
- (5) If a person to whom the order is directed is represented by a legal practitioner, the court may request the practitioner —
 - (a) to assist in explaining to the person the matters mentioned in subsection (2)(a) and (b); and
 - (b) to explain to the person the matters mentioned in subsection (3)(a) and (b).
- (6) If a request is made by the court to a legal practitioner under subsection (5)(a) or (b), it is the duty of the practitioner to comply with the request.
- (7) Failure to comply with a requirement of, or with a request made under, this section does not affect the validity of a parenting order.
- (8) Any matter that is required by this section to be included in a parenting order or any explanation that is required by this section to be given to a person is to be expressed in language that is likely to be readily understood by the person to whom the order is directed or the explanation is given.

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

[90. Repealed by No. 35 of 2006 s. 96.]

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

[(1) repealed]

- (2) Subject to subsection (3), a court must not make a parenting order in relation to a child unless —
 - (a) the parties to the proceedings have attended family counselling to discuss the matter to which the proceedings relate;

- (b) the court is satisfied that there is an urgent need for the parenting order, or there is some other special circumstance (such as family violence), that makes it appropriate to make the order even though the parties to the proceedings have not attended counselling as mentioned in paragraph (a); or
 - (c) the court is satisfied that it is not practicable to require the parties to the proceedings to attend counselling as mentioned in paragraph (a).
- (3) Subsection (2) does not apply to the making of a parenting order if —
- (a) it is made with the consent of all the parties to the proceedings; or
 - (b) it is an order until further order.
- (4) In this section —
- “proceedings for a parenting order”** includes —
- (a) proceedings for the enforcement of a parenting order; and
 - (b) any other proceedings in which a contravention of a parenting order is alleged.

[Section 91 amended by No. 35 of 2006 s. 46 and 119.]

92. Special conditions for making parenting order about whom a child lives with or the allocation of parental responsibility by consent in favour of non-parent — FLA s. 65G

- (1) This section applies if —
- (a) a court proposes to make a parenting order that deals with whom a child is to live with; and
 - (b) under the order, the child would not live with a parent, grandparent or other relative of the child; and
 - (c) the court proposes to make that order with the consent of all the parties to the proceedings.

- (1a) This section also applies if —
- (a) a court proposes to make a parenting order that deals with the allocation of parental responsibility for a child; and
 - (b) under the order, no parent, grandparent or other relative of the child would be allocated parental responsibility for the child; and
 - (c) the court proposes to make that order with the consent of all the parties to the proceedings.
- (2) A court must not make the proposed order unless —
- (a) the parties to the proceedings have attended a conference with a family consultant to discuss the matter to be determined by the proposed order; or
 - (b) the court is satisfied that there are circumstances that make it appropriate to make the proposed order even though paragraph (a) has not been complied with.

[Section 92 amended by No. 35 of 2006 s. 97 and 148.]

93. Children who are 18 or over or who have married or entered de facto relationships — FLA s. 65H

- (1) A parenting order must not be made in relation to a child who —
- (a) is 18 or more years of age;
 - (b) is or has been married; or
 - (c) is in a de facto relationship.
- (2) A parenting order in relation to a child stops being in force if the child turns 18, marries or enters into a de facto relationship.
- (3) A court may make a declaration to the effect that the child is in, or has entered into, a de facto relationship.
- (4) A declaration under subsection (3) has effect for the purposes of this Act but does not have effect for any other purpose.

94. What happens when parenting order that deals with whom a child lives with does not make provision in relation to death of parent with whom child lives — FLA s. 65K

- (1) This section applies if —
 - (a) a parenting order is in force that provides that a child is to live with one of the child's parents; and
 - (b) that parent dies; and
 - (c) the parenting order does not provide for what is to happen on that parent's death.
- (2) The surviving parent cannot require the child to live with him or her.
- (3) The surviving parent, or another person (subject to section 88), may apply for a parenting order that deals with the person or persons with whom the child is to live.
- (4) In an application under subsection (3) by a person who does not, at the time of the application, have any parental responsibility for the child, any person who, at that time, has any parental responsibility for the child is entitled to be a party to the proceedings.

[Section 94 amended by No. 35 of 2006 s. 149.]

95. Family consultants may be required to supervise or assist compliance with parenting orders — FLA s. 65L

- (1) If a court makes a parenting order in relation to a child, the court may also, subject to subsection (2), make either or both of the following orders —
 - (a) an order requiring compliance with the parenting order, as far as practicable, to be supervised by a family consultant;
 - (b) an order requiring a family consultant to give any party to the parenting order such assistance as is reasonably

requested by that party in relation to compliance with,
and the carrying out of, the parenting order.

- (2) In deciding whether to make a particular order under subsection (1) in relation to a child, a court must regard the best interests of the child as the paramount consideration.

[Section 95 amended by No. 35 of 2006 s. 120.]

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

- (1) In proceedings for a parenting order, the court may make an order directing a party to the proceedings to attend a post-separation parenting program.
- (2) In deciding whether to make a particular order under subsection (1), a court must regard the best interests of the child as the paramount consideration.

- (3) In this section —

“proceedings for a parenting order” includes —

- (a) proceedings for the enforcement of a parenting order;
and
- (b) any other proceedings in which a contravention of a parenting order is alleged.

[Section 95A inserted by No. 35 of 2006 s. 22; amended by No. 35 of 2006 s. 121.]

95B. Conditions for providers of post-separation parenting programs — FLA s. 65LB

- (1) An organisation meets the conditions in this section if —
- (a) it is a recipient organisation (see subsection (2)); or
- (b) there is a recipient organisation in relation to the organisation (see subsection (3)).

- (2) An organisation is a recipient organisation for the purposes of subsection (1)(a) if it receives, or has been approved to receive, funding under a program or a part of a program designated under section 65LB(4) of the Family Law Act in order to provide services that include post-separation parenting programs.
- (3) An organisation is a recipient organisation in relation to another organisation for the purposes of subsection (1)(b) if —
- (a) both —
- (i) the other organisation is a member of the organisation; and
 - (ii) the organisation receives, or has been approved to receive, funding under a program or a part of a program designated under section 65LB(4) of the Family Law Act in order that the organisation's members may provide services that include post-separation parenting programs;
- or
- (b) both —
- (i) the organisation acts on behalf of a group of organisations that includes the other organisation; and
 - (ii) the organisation receives, or has been approved to receive, funding under a program or a part of a program designated under section 65LB(4) of the Family Law Act in order that the organisations on whose behalf it acts may provide services that include post-separation parenting programs.

[Section 95B inserted by No. 35 of 2006 s. 122.]

Subdivision 3 — General obligations created by certain parenting orders

[Heading inserted by No. 35 of 2006 s. 150.]

96. General obligations created by parenting order that deals with whom a child lives with — FLA s. 65M

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order deals with whom the child is to live with.
- (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.

[Section 96 amended by No. 35 of 2006 s. 151.]

97. General obligations created by parenting order that deals with whom a child spends time with — FLA s. 65N

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order deals with whom the child is to spend time with.
- (2) A person must not —
 - (a) hinder or prevent a person and the child from spending time together in accordance with the order; or
 - (b) interfere with a person and the child benefiting from spending time with each other under the order.

[Section 97 inserted by No. 35 of 2006 s. 152.]

98. General obligations created by parenting order that deals with whom a child communicates with — FLA s. 65NA

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order deals with whom the child is to communicate with.
- (2) A person must not —

- (a) hinder or prevent a person and the child from communicating with each other in accordance with the order; or
- (b) interfere with the communication that a person and the child are supposed to have with each other under the order.

[Section 98 inserted by No. 35 of 2006 s. 152.]

98A. General obligations created by parenting order that allocates parental responsibility — FLA s. 65P

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order allocates parental responsibility for the child to a person (the “**carer**”).
- (2) A person must not hinder the carer in, or prevent the carer from, discharging that responsibility.

[Section 98A inserted by No. 35 of 2006 s. 152.]

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

- (1) This section applies if —
 - (a) a parenting order provides that —
 - (i) a child is to live with a person; or
 - (ii) a child is to spend time with a person; or
 - (iii) a child is to communicate with a person;and
 - (b) a court is satisfied, on application by the person referred to in subsection (1)(a), that there are reasonable grounds for believing that a person (the “**alleged offender**”) has contravened section 96, 97 or 98 in relation to the order; and

- (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; No. 35 of 2006 s. 153.]

Subdivision 4 — Dealing with people who have been arrested

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

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.

[Section 100 amended by No. 35 of 2006 s. 173.]

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 Division 13 for the alleged contravention.

(2) The court referred to in subsection (1) must, without delay, proceed to hear and determine the application.

[Section 102 amended by No. 35 of 2006 s. 23.]

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 —

“parenting order to which this Subdivision applies” means a parenting order to the extent to which it provides, or would provide, that —

 - (a) a child is to live with a person; or
 - (b) a child is to spend time with a person; or
 - (c) a child is to communicate with a person; or
 - (d) a person is to have parental responsibility for a child.

- (2) For the purposes of this Subdivision, if an appeal against a decision of a court in proceedings has been instituted and is pending, the proceedings are to be treated as pending and sections 108 and 110 (rather than sections 107 and 109) apply.

[Section 106 amended by No. 35 of 2006 s. 154.]

107. Obligations if certain parenting orders have been made — FLA s. 65Y

- (1) Subject to subsection (2), if a parenting order to which this Subdivision applies 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.

[Section 107 amended by No. 35 of 2006 s. 155.]

108. Obligations if proceedings for the making of certain parenting orders are pending — FLA s. 65Z

- (1) Subject to subsection (2), if proceedings for the making of a parenting order to which this Subdivision applies 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.

[Section 108 amended by No. 35 of 2006 s. 156.]

109. Obligations of owners etc. of aircraft and vessels if certain parenting orders made — FLA s. 65ZA

- (1) This section applies if —
- (a) a parenting order to which this Subdivision applies 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; No. 35 of 2006 s. 157.]

110. Obligations of owners etc. of aircraft and vessels if proceedings for the making of certain parenting orders are pending — FLA s. 65ZB

- (1) This section applies if —
 - (a) proceedings for the making of a parenting order to which this Subdivision applies 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; No. 35 of 2006 s. 158.]

**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

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).]

Subdivision 7 — Recovery of amounts paid under maintenance orders

[Heading inserted by No. 35 of 2006 s. 62.]

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

- (1) This section applies if —
 - (a) a court has at any time purported to make an order (“**the purported order**”) of a kind referred to in section 126(1)(a), (b) or (c) requiring a person (“**the maintenance provider**”) to pay an amount, or to transfer or settle property, by way of maintenance for a child; and
 - (b) the maintenance provider has —
 - (i) paid another person an amount or amounts; or
 - (ii) transferred or settled property,in compliance, or partial compliance, with the purported order; and
 - (c) a court has determined that the maintenance provider is not a parent or step-parent of the child.
- (2) If the maintenance provider applies to a court for an order under this subsection, the court must make such order as it considers just and equitable in the circumstances, for —
 - (a) if the purported order was of a kind referred to in section 126(1)(a) or (b), the repayment to the maintenance provider, by the person to whom the amount or amounts referred to in subsection (1)(b)(i) were paid, of an amount up to, or equal to, that amount or the sum of those amounts; or
 - (b) if the purported order was of the kind referred to in section 126(1)(c), the return to the maintenance provider of —
 - (i) the property referred to in subsection (1)(b)(ii); or
 - (ii) an amount up to, or equal to, the value of that property.

- (2a) A court may only order the repayment of an amount that is less than the amount, or the sum of the amounts, referred to in subsection (1)(b)(i), or the return of an amount that is less than the value of the property referred to in subsection (1)(b)(ii), in exceptional circumstances.
- (3) If the purported order was of the kind referred to in section 126(1)(c) and the court that made the order did so —
- (a) in part by way of providing maintenance for the child; and
 - (b) in part for some other purpose,
- the reference in subsection (2)(b) to the property, or the value of the property, referred to in subsection (1)(b)(ii) is taken to be a reference to that property, or the value of that property, only to the extent to which that property was transferred or settled by way of providing maintenance for the child.
- (4) Without limiting subsection (2)(b), the orders that a court may make under that paragraph include the following —
- (a) an order that a specified payment be made;
 - (b) an order that a specified transfer or settlement of property be made;
 - (c) an order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order.
- (5) An amount paid to the Commonwealth under the Child Support (Registration and Collection) Act section 30 is to be taken, for the purposes of this section, to have been paid to the person to whom, apart from that section, the amount would have been payable.

[Section 132A inserted by No. 35 of 2006 s. 62.]

Division 8 — Other matters relating to children

Subdivision 1 — What this Division does

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

This Division deals with —

- (a) the liability of a father, or a person who is the parent of a child under section 6A of the *Artificial Conception Act 1985*, to contribute towards child bearing expenses if he is not married to the child's mother (Subdivision 2);
- (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. Repealed by No. 35 of 2006 s. 174.]

135. Father liable to contribute towards maintenance and expenses of mother — FLA s. 67B

The father of a child who is not married to the child's mother, or a person who is the parent of the child under section 6A of the *Artificial Conception Act 1985*, is, subject to this Division, liable to make a proper contribution towards —

- (a) the maintenance of the mother for the childbirth maintenance period in relation to the birth of the child;
- (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. Repealed by No. 35 of 2006 s. 175.]

143. Meaning of “location order” and “State information order” — FLA s. 67J

- (1) A location order is an order made by a court requiring —
 - (a) a person to provide the registrar with information that the person has or obtains about the child’s location; or
 - (b) the principal officer of a State entity or the person who holds an office or position specified in the order in, or in relation to, the State entity, to provide the registrar with information about the child’s location that is contained in or comes into the records of the State entity.
- (2) A State information order is a location order described in subsection (1)(b).

144. Who may apply for a location order — FLA s. 67K

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

- (a) a person with whom the child is to live under a parenting order; or
- (b) a person with whom the child is to spend time under a parenting order; or
- (c) a person with whom the child is to communicate under a parenting order; or
- (caa) a person who has parental responsibility for the child under a parenting order; or

- (ca) a grandparent of the child; or
- (d) any other person concerned with the care, welfare or development of the child.

[Section 144 amended by No. 25 of 2002 s. 63; No. 35 of 2006 s. 159.]

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; or
 - (ii) a person with whom the child is to live under a parenting order; or
 - (iii) a person with whom the child is to spend time under a parenting order; or
 - (iv) a person with whom the child is to communicate under a parenting order; or
 - (v) a person who has parental responsibility for the child;
- (b) authorising or directing any person, with such assistance as may be required, and if necessary by force, to stop and search any vehicle, vessel or aircraft, and to enter and search any premises or place, for the purpose of finding a child;
- (c) authorising or directing any person, with such assistance as may be required, and if necessary by force, to recover a child;

- (d) authorising or directing a person to whom a child is returned, or who recovers a child, to deliver the child to —
 - (i) a parent of the child; or
 - (ii) a person described in paragraph (a)(ii), (iii), (iv) or (v); or
 - (iii) some other person on behalf of a person described in this paragraph;
- (e) giving directions about the day-to-day care of a child until the child is returned or delivered to another person;
- (f) prohibiting a person from again removing or taking possession of a child;
- (g) authorising or directing a person to arrest, without warrant, a person who again removes or takes possession of a child.

[Section 149 amended by No. 25 of 2002 s. 64; No. 35 of 2006 s. 160.]

**150. How recovery orders authorise or direct people —
FLA s. 67R**

- (1) An authorisation or direction described in section 149(b), (c) or (d) may be addressed to —
 - (a) the Marshal;
 - (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 with whom the child is to live under a parenting order; or
- (b) a person with whom the child is to spend time under a parenting order; or
- (c) a person with whom the child is to communicate under a parenting order; or
- (caa) a person who has parental responsibility for the child under a parenting order; or
- (ca) a grandparent of the child; or
- (d) any other person concerned with the care, welfare or development of the child.

[Section 152 amended by No. 25 of 2002 s. 65; No. 35 of 2006 s. 161.]

153. Court's power to make recovery order — FLA s. 67U

In proceedings for a recovery order, a court may, subject to section 154, make such recovery order as it thinks proper.

154. Child's best interests paramount consideration in making 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, family counsellor, family dispute resolution practitioner or arbitrator suspects child abuse etc. — FLA s. 67ZA

- (1) This section applies to a person in the course of performing duties or functions, or exercising powers, as —
 - (a) the Principal Registrar, a registrar or a deputy registrar;
or

- (b) a family consultant; or
 - (c) a family counsellor; or
 - (d) a family dispute resolution practitioner; or
 - (e) an arbitrator; or
 - (f) a legal practitioner independently representing a child's interests.
- (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; No. 35 of 2006 s. 123.]

**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 — Independent representation of child's interests

[Heading inserted by No. 35 of 2006 s. 137.]

164. Court order for independent representation of child's interests — FLA s. 68L

- (1) This section applies to proceedings under this Act in which a child's best interests are, or a child's welfare is, the paramount, or a relevant, consideration.
- (2) If it appears to a court that the child's interests in the proceedings ought to be independently represented by a lawyer, the court —
 - (a) may order that the child's interests in the proceedings are to be independently represented by a lawyer; and

- (b) may make such other orders as it considers necessary to secure that independent representation of the child's interests.
- (3) A court may make an order for the independent representation of the child's interests in the proceedings by a lawyer —
 - (a) on its own initiative; or
 - (b) on the application of —
 - (i) the child; or
 - (ii) an organisation concerned with the welfare of children; or
 - (iii) any other person.
- (4) Without limiting subsection (2)(b), the court may make an order under that paragraph for the purpose of allowing the lawyer who is to represent the child's interests to find out what the child's views are on the matters to which the proceedings relate.
- (5) Subsection (4) does not apply if complying with that subsection would be inappropriate because of —
 - (a) the child's age or maturity; or
 - (b) some other special circumstance.

[Section 164 inserted by No. 35 of 2006 s. 137.]

165. Role of independent children's lawyer — FLA s. 68LA

- (1) This section applies if an independent children's lawyer is appointed for a child in relation to proceedings under this Act.
- (2) The independent children's lawyer must —
 - (a) form an independent view, based on the evidence available to the independent children's lawyer, of what is in the best interests of the child; and
 - (b) act in relation to the proceedings in what the independent children's lawyer believes to be the best interests of the child.

- (3) The independent children's lawyer must, if satisfied that the adoption of a particular course of action is in the best interests of the child, make a submission to the court suggesting the adoption of that course of action.
- (4) The independent children's lawyer —
- (a) is not the child's legal representative; and
 - (b) is not obliged to act on the child's instructions in relation to the proceedings.
- (5) The independent children's lawyer must —
- (a) act impartially in dealings with the parties to the proceedings; and
 - (b) ensure that any views expressed by the child in relation to the matters to which the proceedings relate are fully put before the court; and
 - (c) if a report or other document that relates to the child is to be used in the proceedings —
 - (i) analyse the report or other document to identify those matters in the report or other document that the independent children's lawyer considers to be the most significant ones for determining what is in the best interests of the child; and
 - (ii) ensure that those matters are properly drawn to the court's attention;
- and
- (d) endeavour to minimise the trauma to the child associated with the proceedings; and
 - (e) facilitate an agreed resolution of matters at issue in the proceedings to the extent to which doing so is in the best interests of the child.
- (6) Subject to subsection (7), the independent children's lawyer —
- (a) is not under an obligation to disclose to the court; and

- (b) cannot be required to disclose to the court,
any information that the child communicates to the independent
children's lawyer.
- (7) The independent children's lawyer may disclose to the court any
information that the child communicates to the independent
children's lawyer if the independent children's lawyer considers
the disclosure to be in the best interests of the child.
- (8) Subsection (7) applies even if the disclosure is made against the
wishes of the child.

[Section 165 inserted by No. 35 of 2006 s. 137.]

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

- (1) This section applies if an independent children's lawyer is
appointed to independently represent a child's interests in
relation to proceedings under this Act.
- (2) A court may, on application by the independent children's
lawyer, order a person mentioned in subsection (3) to make the
child available, as specified in the order, for an examination to
be made for the purpose of preparing a report about the child for
use by the independent children's lawyer in connection with the
proceedings.
- (3) The order may be directed to —
- (a) a parent of the child; or
 - (b) a person with whom the child is to live under a parenting
order; or
 - (c) a person with whom the child is to spend time under a
parenting order; or
 - (d) a person with whom the child is to communicate under a
parenting order; or
 - (e) a person who has parental responsibility for the child.

[Section 166 inserted by No. 35 of 2006 s. 137.]

[167-172. Repealed by No. 35 of 2006 s. 137.]

Division 10 — Family violence

[Heading inserted by No. 35 of 2006 s. 142(1).]

173. Purposes of this Division — FLA s. 68N

The purposes of this Division are —

- (a) to resolve inconsistencies between —
 - (i) family violence orders; and
 - (ii) certain orders, injunctions and arrangements made under this Act that provide for a child to spend time with a person or require or authorise a person to spend time with a child;
- and
- (b) to ensure that orders, injunctions and arrangements of the kind referred to in paragraph (a)(ii) do not expose people to family violence; and
- (c) to achieve the objects and principles in section 66.

[Section 173 inserted by No. 35 of 2006 s. 142(1).]

174. Obligations of court making an order or granting an injunction under this Act that is inconsistent with an existing family violence order — FLA s. 68P

- (1) This section applies if —
 - (a) a court —
 - (i) makes a parenting order that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; or
 - (ii) makes a recovery order (as defined in section 149) or any other order under this Act

- that expressly or impliedly requires or authorises a person to spend time with a child; or
 - (iii) grants an injunction under section 235 or 235A that expressly or impliedly requires or authorises a person to spend time with a child;
 - and
 - (b) the order made or injunction granted is inconsistent with an existing family violence order.
- (2) The court must, to the extent to which the order or injunction provides for the child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with the child —
- (a) specify in the order or injunction that it is inconsistent with an existing family violence order; and
 - (b) give a detailed explanation in the order or injunction of how the contact that it provides for is to take place; and
 - (c) explain (or arrange for someone else to explain) the order or injunction to —
 - (i) the applicant and respondent in the proceedings for the order or injunction; and
 - (ii) the person against whom the family violence order is directed (if that person is not the applicant or respondent); and
 - (iii) the person protected by the family violence order (if that person is not the applicant or respondent);
 - and
 - (d) include (or arrange to be included) in the explanation, in language those persons are likely to readily understand —
 - (i) the purpose of the order or injunction; and

- (ii) the obligations created by the order or injunction, including how the contact that it provides for is to take place; and
 - (iii) the consequences that may follow if a person fails to comply with the order or injunction; and
 - (iv) the court's reasons for making an order or granting an injunction that is inconsistent with a family violence order; and
 - (v) the circumstances in which a person may apply for variation or revocation of the order or injunction.
- (3) As soon as practicable after making the order or granting the injunction (and no later than 14 days after making or granting it), the court must give a copy to —
 - (a) the applicant and respondent in the proceedings for the order or injunction; and
 - (b) the person against whom the family violence order is directed (if that person is not the applicant or respondent); and
 - (c) the person protected by the family violence order (if that person is not the applicant or respondent); and
 - (d) the registrar, executive manager or other appropriate officer of the court that last made or varied the family violence order; and
 - (e) the Commissioner or head (however described) of the police force of the State or Territory in which the person protected by the family violence order resides; and
 - (f) a child welfare officer in relation to the State or Territory in which the person protected by the family violence order resides.
- (4) Failure to comply with this section does not affect the validity of the order or injunction.

[Section 174 inserted by No. 35 of 2006 s. 142(1).]

175. Relationship of order or injunction made under this Act with existing inconsistent family violence order — FLA s. 68Q

- (1) To the extent to which —
 - (a) an order or injunction mentioned in section 174(1)(a) is made or granted that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; and
 - (b) the order or injunction is inconsistent with an existing family violence order,the family violence order is invalid.
- (2) An application for a declaration that the order or injunction is inconsistent with the family violence order may be made, to a court that has jurisdiction under this Part, by —
 - (a) the applicant or respondent in the proceedings for the order or injunction mentioned in section 174(1)(a); or
 - (b) the person against whom the family violence order is directed (if that person is not the applicant or respondent); or
 - (c) the person protected by the family violence order (if that person is not the applicant or respondent).
- (3) The court must hear and determine the application and make such declarations as it considers appropriate.

[Section 175 inserted by No. 35 of 2006 s. 142(1).]

176. Power of court making a family violence order to revive, vary, discharge or suspend an existing order, injunction or arrangement under this Act — FLA s. 68R

- (1) In proceedings to make or vary a family violence order, a court may revive, vary, discharge or suspend —

- (a) a parenting order, to the extent to which it provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with the child; or
 - (b) a recovery order (as defined in section 149) or any other order under this Act, to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child; or
 - (c) an injunction granted under section 235 or 235A, to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child; or
 - (d) to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child —
 - (i) an undertaking given to, and accepted by, a court; or
 - (ii) a registered parenting plan within the meaning of section 76(6); or
 - (iii) a bond entered into under an order under this Act.
- (2) The court may do so —
- (a) on its own initiative; or
 - (b) on application by any person.
- (3) The court must not do so unless —
- (a) it also makes or varies a family violence order in the proceedings (whether or not by interim order); and
 - (b) if the court proposes to revive, vary, discharge or suspend an order or injunction mentioned in subsection (1)(a), (b) or (c), the court has before it material that was not before the court that made that order or injunction.
- (4) The court must not exercise its power under subsection (1) to discharge an order, injunction or arrangement in proceedings to

make an interim family violence order or an interim variation of a family violence order.

- (5) In exercising its power under subsection (1), the court must —
- (a) have regard to the purposes of this Division (stated in section 173); and
 - (b) have regard to whether contact with both parents is in the best interests of the child concerned; and
 - (c) if varying, discharging or suspending an order or injunction mentioned in subsection (1)(a), (b) or (c) that, when made or granted, was inconsistent with an existing family violence order, be satisfied that it is appropriate to do so because a person has been exposed, or is likely to be exposed, to family violence as a result of the operation of that order or injunction.
- (6) The regulations may require a copy of the court's decision to revive, vary, discharge or suspend an order, injunction or arrangement to be registered in accordance with the regulations.
- (7) Failure to comply with any requirement of the regulations referred to in subsection (6) does not affect the validity of the court's decision.

[Section 176 inserted by No. 35 of 2006 s. 142(1).]

177. Application of Act and rules when exercising section 176 power — FLA s. 68S

- (1) The following provisions do not apply to a court exercising the power under section 176 —
- (a) section 88;
 - (b) section 91(2);
 - (c) section 66G;
 - (d) section 43;

- (e) any provisions (for example, section 66A) that would otherwise make the best interests of the child the paramount consideration;
 - (f) any provisions of this Act or the rules specified in the regulations.
- (2) If a court is exercising the power under section 176 in proceedings to make an interim family violence order or an interim variation of a family violence order —
- (a) the court has a discretion about whether to apply section 66C(3)(a); and
 - (b) any provisions of this Act or the rules specified in the regulations do not apply.
- (3) A court exercising the power under section 176 may, as it thinks appropriate, dispense with any otherwise applicable rules.

[Section 177 inserted by No. 35 of 2006 s. 142(1).]

178. Special provisions relating to proceedings to make an interim (or interim variation of) family violence order — FLA s. 68T

- (1) If, in proceedings to make an interim family violence order or an interim variation of a family violence order, the court revives, varies or suspends an order, injunction or arrangement under section 176, that revival, variation or suspension ceases to have effect at the earlier of —
- (a) the time the interim order stops being in force; and
 - (b) the end of the period of 21 days starting when the interim order was made.
- (2) No appeal lies in relation to the revival, variation or suspension.

[Section 178 inserted by No. 35 of 2006 s. 142(1).]

[179-182. Repealed by No. 35 of 2006 s. 142(1).]

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

Subdivision 1 — What this Division does

183. What this Division does — FLA s. 69A

This Division deals with —

- (a) the institution of proceedings (Subdivision 2);
- (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;

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- (c) a grandparent of the child; or
- (d) any other person concerned with the care, welfare or development of the child.

186. Institution of maintenance proceedings by certain persons — FLA s. 69D

- (1) The Collector of Maintenance or an assistant collector of maintenance may, on behalf of a child —
 - (a) institute and conduct proceedings with respect to the maintenance of the child; and
 - (b) institute and conduct proceedings for the purpose of enforcing a child maintenance order made with respect to the child.
- (2) Proceedings instituted on behalf of a child under subsection (1) are to be treated, for the purposes of section 185 and the provisions referred to in it, as having been instituted by the child.

187. Applicant may be in contempt — FLA s. 69F

A court may proceed with the hearing of proceedings in relation to a child even though the person who instituted the proceedings has failed to comply with an order of the court or of another court.

Subdivision 3 — Presumptions of parentage

188. Presumptions of parentage arising from marriage — FLA s. 69P

- (1) If a child is born to a woman while she is married, the child is presumed to be a child of the woman and her husband.

- (2) If —
- (a) at a particular time —
 - (i) a marriage to which a woman is a party is ended by death; or
 - (ii) a purported marriage to which a woman is a party is annulled;
 - and
 - (b) a child is born to the woman within 44 weeks after that time,

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

- (3) If —
- (a) the parties to a marriage separated at any time;
 - (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) an independent children’s lawyer representing the child’s interests under an order made under section 164.
- (3) A parentage testing order may be made in relation to —
 - (a) the child;
 - (b) a person known to be the mother of the child; or
 - (c) any other person, if the court hearing the proceedings referred to in subsection (1) is of the opinion that, if the parentage testing procedure were to be conducted in relation to the person, the information that could be

obtained might assist in determining the parentage of the child.

- (4) A parentage testing order may be made subject to terms and conditions.
- (5) This section does not affect the generality of section 194.

[Section 195 amended by No. 35 of 2006 s. 138.]

**196. Orders associated with parentage testing orders —
FLA s. 69X**

- (1) If a court makes a parentage testing order, it may also make orders under subsection (2) or (4).
- (2) The court referred to in subsection (1) may make such orders as it considers necessary or desirable —
 - (a) to enable the parentage testing procedure to be conducted; or
 - (b) to make the parentage testing procedure more effective or reliable.
- (3) Some examples of the kinds of orders a court may make under subsection (2) are as follows —
 - (a) an order requiring a person to submit to a medical procedure;
 - (b) an order requiring a person to provide a bodily sample;
 - (c) an order requiring a person to provide information relevant to the person's medical or family history.
- (4) The court referred to in subsection (1) may make such orders as it considers just in relation to costs incurred in relation to —
 - (a) conducting the parentage testing procedure or other orders made by the court in relation to the parentage testing procedure; or

- (b) the preparation of reports relating to the information obtained as a result of conducting the parentage testing procedure.

197. Orders directed to persons 18 or over — FLA s. 69Y

- (1) If a person who is 18 or more years of age contravenes a parentage testing order or an order under section 196, the person is not liable to any penalty in relation to the contravention.
- (2) A court may draw such inferences from the contravention as appear just in the circumstances.

198. Orders directed to children under 18 — FLA s. 69Z

- (1) This section applies if a parentage testing order, or an order under section 196, requires a medical procedure or other act to be carried out in relation to a child who is under 18 years of age.
- (2) The procedure or act must not be carried out in relation to the child under the order without the consent of —
 - (a) a parent of the child; or
 - (b) a guardian of the child; or
 - (c) a person who, under a parenting order, has responsibility for the child's long-term or day-to-day care, welfare and development.
- (3) A court may draw such inferences from a failure or refusal to consent as mentioned in subsection (2) as appear just in the circumstances.

[Section 198 amended by No. 35 of 2006 s. 162.]

199. No liability if parent etc. consents — FLA s. 69ZA

- (1) A person who conducts, or who assists in conducting, a medical procedure or other act in relation to a child under a parentage testing order is not liable to any civil or criminal action in

relation to the proper conducting of the procedure or act if it is done with the consent of —

- (a) a parent of the child; or
 - (b) a guardian of the child; or
 - (c) a person who, under a parenting order, has responsibility for the child's long-term or day-to-day care, welfare and development.
- (2) Subsection (1) does not affect any liability of a person for an act done negligently, or negligently omitted to be done, in relation to conducting the medical procedure or act.

[Section 199 amended by No. 35 of 2006 s. 163.]

200. Regulations about conducting, and reporting on, parentage testing procedures — FLA s. 69ZB

The regulations may provide for —

- (a) the conduct of parentage testing procedures under parentage testing orders; and
- (b) the preparation of reports relating to the information obtained as the result of conducting such procedures.

201. Reports of information obtained may be received in evidence — FLA s. 69ZC

- (1) A report made in accordance with regulations under section 200(b) may be received in evidence in any proceedings under this Act.
- (2) If, under subsection (1), a report is received in evidence in proceedings under this Act, the court hearing the proceedings may make an order requiring the person who made the report, or any person whose evidence may be relevant in relation to the report, to appear before the court and give evidence in relation to the report.

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- (3) The court hearing proceedings under this Act may make an order under subsection (2) —
- (a) on its own initiative; or
 - (b) on the application of —
 - (i) a party to the proceedings; or
 - (ii) an independent children’s lawyer representing the relevant child’s interests.

[Section 201 amended by No. 35 of 2006 s. 139.]

Subdivision 5 — Child welfare laws not affected

202. Child welfare laws not affected — FLA s. 69ZK

- (1) A court must not make an order under this Act (other than an order under Division 7) in relation to a child who is under the control or in the care (however described), of a person under a child welfare law unless —
- (a) the order is expressed to come into effect when the child ceases to be under that control or in that care; or
 - (b) the order is made in proceedings relating to the child in respect of the institution or continuation of which the written consent has been obtained from a person who, under the relevant child welfare law, has responsibility for the control or care (however described) of the child.
- (2) Nothing in this Act, and no decree under this Act, affects —
- (a) the jurisdiction of a court (whether of a kind referred to in section 8(a) or (b) or otherwise), or the power of an authority, under a child welfare law to make an order, or to take any other action, by which a child is placed under control or in the care (however described) of a person under a child welfare law;
 - (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 11A — Principles for conducting child-related proceedings

[Heading inserted by No. 35 of 2006 s. 105.]

Subdivision 1 — Proceedings to which this Division applies

[Heading inserted by No. 35 of 2006 s. 105.]

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

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

- (6) A party to proceedings may, with the leave of the court, revoke a consent given for the purposes of subsection (2)(b) or (3).

[Section 202A inserted by No. 35 of 2006 s. 105.]

Subdivision 2 — Principles for conducting child-related proceedings

[Heading inserted by No. 35 of 2006 s. 105.]

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

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

- (7) The fourth principle is that the proceedings are, as far as possible, to be conducted in a way that will promote cooperative and child-focused parenting by the parties.
- (8) The fifth principle is that the proceedings are to be conducted without undue delay and with as little formality, and legal technicality and form, as possible.

[Section 202B inserted by No. 35 of 2006 s. 105.]

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

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

[Section 202C inserted by No. 35 of 2006 s. 105.]

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

A court may exercise a power under this Division —

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

[Section 202D inserted by No. 35 of 2006 s. 105.]

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

[Heading inserted by No. 35 of 2006 s. 105.]

202E. General duties — FLA s. 69ZQ

- (1) In giving effect to the principles in section 202B, the court must —
 - (a) decide which of the issues in the proceedings require full investigation and hearing and which may be disposed of summarily; and

- (b) decide the order in which the issues are to be decided; and
 - (c) give directions or make orders about the timing of steps that are to be taken in the proceedings; and
 - (d) in deciding whether a particular step is to be taken, consider whether the likely benefits of taking the step justify the costs of taking it; and
 - (e) make appropriate use of technology; and
 - (f) if the court considers it appropriate, encourage the parties to use family dispute resolution or family counselling; and
 - (g) deal with as many aspects of the matter as it can on a single occasion; and
 - (h) deal with the matter, where appropriate, without requiring the parties' physical attendance at court.
- (2) Subsection (1) does not limit section 202B(1).
- (3) A failure to comply with subsection (1) does not invalidate an order.

[Section 202E inserted by No. 35 of 2006 s. 105.]

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

- (1) If, at any time after the commencement of child-related proceedings and before making final orders, the court considers that it may assist in the determination of the dispute between the parties, the court may do any or all of the following —
- (a) make a finding of fact in relation to the proceedings;
 - (b) determine a matter arising out of the proceedings;
 - (c) make an order in relation to an issue arising out of the proceedings.

- (2) Subsection (1) does not prevent the court doing something mentioned in subsection (1)(a), (b) or (c) at the same time as making final orders.
- (3) To avoid doubt, a judge, registrar or magistrate who exercises a power under subsection (1) in relation to proceedings is not, merely because of having exercised the power, required to disqualify himself or herself from a further hearing of the proceedings.

[Section 202F inserted by No. 35 of 2006 s. 105.]

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

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

[Section 202G inserted by No. 35 of 2006 s. 105.]

Subdivision 4 — Matters relating to evidence

[Heading inserted by No. 35 of 2006 s. 105.]

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

- (1) The excluded rules of evidence do not apply to child-related proceedings.
- (2) A court may give such weight (if any) as it thinks fit to evidence admitted as a consequence of a provision of the *Evidence Act 1906* or the rules of evidence not applying because of subsection (1).
- (3) Despite subsection (1), a court may decide to apply one or more of the excluded rules of evidence to an issue in the proceedings, if —
 - (a) the court is satisfied that the circumstances are exceptional; and

- (b) the court has taken into account (in addition to any other matters the court thinks relevant) —
 - (i) the importance of the evidence in the proceedings; and
 - (ii) the nature of the subject matter of the proceedings; and
 - (iii) the probative value of the evidence; and
 - (iv) the powers of the court (if any) to adjourn the hearing, to make another order or to give a direction in relation to the evidence.
- (4) If a court decides to apply an excluded rule of evidence to an issue in the proceedings, the court may give such weight (if any) as it thinks fit to evidence admitted as a consequence of the application of the excluded rule of evidence.
- (5) Subsection (1) does not revive the operation of —
 - (a) a rule of common law; or
 - (b) any written law,that, but for subsection (1), would have been prevented from operating because of an excluded rule of evidence.
- (6) In this section —
 - “**child-related proceedings**” includes proceedings that are child-related proceedings within the meaning of the Family Law Act;
 - “**excluded rules of evidence**” means such provisions of the *Evidence Act 1906* and the rules of evidence as most closely correspond to the provisions of the *Evidence Act 1995* of the Commonwealth referred to in section 69ZT of the Family Law Act.

[Section 202H inserted by No. 35 of 2006 s. 105.]

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

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

[Section 202I inserted by No. 35 of 2006 s. 105.]

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

- (1) This section applies if a court applies the law against hearsay under section 202H(2) to child-related proceedings, as defined in section 202H(6).
- (2) Evidence of a representation made by a child about a matter that is relevant to the welfare of the child or another child, which would not otherwise be admissible as evidence because of the law against hearsay, is not inadmissible in the proceedings solely because of the law against hearsay.
- (3) A court may give such weight (if any) as it thinks fit to evidence admitted under subsection (2).
- (4) This section applies despite any other Act or rule of law.
- (5) In this section —
“**child**” means a person under 18;
“**representation**” includes an express or implied representation, whether oral or in writing, and a representation inferred from conduct.

[Section 202J inserted by No. 35 of 2006 s. 105.]

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

- (1) A court may make an order in child-related proceedings requiring a prescribed government agency to provide the court with the documents or information specified in the order.

- (2) The documents or information specified in the order must be documents recording, or information about, one or more of the following —
 - (a) any notifications to the prescribed government agency of suspected abuse of a child to whom the proceedings relate or of suspected family violence affecting the child;
 - (b) any assessments by the agency of investigations into a notification of that kind or the findings or outcomes of those investigations;
 - (c) any reports commissioned by the agency in the course of investigating a notification.
- (3) Nothing in the order is to be taken to require a prescribed government agency to provide the court with —
 - (a) documents or information not in the possession or control of the agency; or
 - (b) documents or information that include the identity of the person who made a notification.
- (4) A written law has no effect to the extent that it would, apart from this subsection, hinder or prevent a prescribed government agency complying with the order.
- (5) A court must admit into evidence any documents or information, provided in response to the order, on which the court intends to rely.
- (6) Despite subsection (5), a court must not disclose the identity of the person who made a notification, or information that could identify that person, unless —
 - (a) the person consents to the disclosure; or
 - (b) the court is satisfied that the identity or information is critically important to the proceedings and that failure to make the disclosure would prejudice the proper administration of justice.

- (7) Before making a disclosure for the reasons in subsection (6)(b), a court must ensure that a prescribed government agency that provided the identity or information —
- (a) is notified about the intended disclosure; and
 - (b) is given an opportunity to respond.

- (8) In this section —

“prescribed government agency” means —

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

[Section 202K inserted by No. 35 of 2006 s. 105.]

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

- (1) In giving effect to the principles in section 202B, a court may —
- (a) give directions or make orders about the matters in relation to which the parties are to present evidence; and
 - (b) give directions or make orders about who is to give evidence in relation to each remaining issue; and
 - (c) give directions or make orders about how particular evidence is to be given; and
 - (d) if the court considers that expert evidence is required, give directions or make orders about —
 - (i) the matters in relation to which an expert is to provide evidence; and
 - (ii) the number of experts who may provide evidence in relation to a matter; and

- (iii) how an expert is to provide the expert's evidence;
 - and
 - (e) ask questions of, and seek evidence or the production of documents or other things from, parties, witnesses and experts on matters relevant to the proceedings.
- (2) Without limiting subsection (1) or section 202F, the court may give directions or make orders —
 - (a) about the use of written submissions; or
 - (b) about the length of written submissions; or
 - (c) limiting the time for oral argument; or
 - (d) limiting the time for the giving of evidence; or
 - (e) that particular evidence is to be given orally; or
 - (f) that particular evidence is to be given by affidavit; or
 - (g) that evidence in relation to a particular matter not be presented by a party; or
 - (h) that evidence of a particular kind not be presented by a party; or
 - (i) limiting, or not allowing, cross-examination of a particular witness; or
 - (j) limiting the number of witnesses who are to give evidence in the proceedings.
- (3) A court may, in child-related proceedings —
 - (a) receive into evidence the transcript of evidence in any other proceedings before —
 - (i) the court; or
 - (ii) another court; or
 - (iii) a tribunal,and draw any conclusions of fact from that transcript that it thinks proper; and

- (b) adopt any recommendation, finding, decision or judgment of any court, person or body of a kind mentioned in paragraph (a)(i) to (iii).

[Section 202L inserted by No. 35 of 2006 s. 105.]

Division 12 — State and Territory orders relating to children

[203. Repealed by No. 35 of 2006 s. 176.]

204. Registration of State child orders — FLA s. 70C and 70D

The rules may make provision for and in relation to the registration in a court of State child orders made in this or another State.

205. Effect of registration — FLA s. 70E

A State child order registered in a court under section 204 has the same force and effect as if it were an order made by that court under this Act.

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

[Heading inserted by No. 35 of 2006 s. 101.]

Subdivision 1 — Preliminary

[Heading inserted by No. 35 of 2006 s. 101.]

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

- (1) This Division deals with the powers that a court has to make orders to enforce compliance with orders under this Act affecting children.
- (2) A court always has the power to vary the order under Subdivision 2, and, in doing so, the court will have regard to any parenting plan that has been entered into since the order was made (see section 205H).

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- (3) The other orders that a court can make depend on whether —
- (a) a contravention is alleged to have occurred but is not established (Subdivision 3); or
 - (b) the court finds that a contravention has occurred but there is a reasonable excuse for the contravention (Subdivision 4); or
 - (c) the court finds that there was a contravention and there is no reasonable excuse for the contravention (Subdivision 5 for less serious contraventions and Subdivision 6 for more serious contraventions).

[Section 205A inserted by No. 35 of 2006 s. 101.]

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

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

[Section 205B inserted by No. 35 of 2006 s. 101.]

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

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

- (a) where the person is bound by the order, he or she has —
 - (i) intentionally failed to comply with the order; or
 - (ii) made no reasonable attempt to comply with the order;

or

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

[Section 205C inserted by No. 35 of 2006 s. 101.]

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

For the purposes of this Division —

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

[Section 205D inserted by No. 35 of 2006 s. 101.]

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

- (1) The circumstances in which a person may be taken to have had, for the purposes of this Division, a reasonable excuse for contravening an order under this Act affecting children include, but are not limited to, the circumstances set out in subsections (2), (4), (5), (6) and (7).

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

resulted in a person and a child not spending time together as provided for in the order if —

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

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

[Section 205E inserted by No. 35 of 2006 s. 101.]

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

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

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

[Section 205F inserted by No. 35 of 2006 s. 101.]

[205FA. Repealed by No. 35 of 2006 s. 101.]

Subdivision 2 — Court's power to vary parenting order

[Heading inserted by No. 35 of 2006 s. 101.]

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

- (1) A court may make an order varying a primary order if —
 - (a) proceedings in relation to the primary order are brought before the court; and
 - (b) it is alleged in those proceedings that a person committed a contravention of the primary order and either —

- (i) the court does not find that the person committed a contravention of the primary order; or
 - (ii) the court finds that the person committed a contravention of the primary order.
- (2) If Subdivision 6 applies to the contravention, when making an order under subsection (1) varying a primary order, a court, in addition to regarding, under section 66A, the best interests of the child as the paramount consideration, must, if any of the following considerations is relevant, take that consideration into account —
- (a) the person who contravened the primary order did so after having attended, after having refused or failed to attend, or after having been found to be unsuitable to take any further part in, a post-separation parenting program or a part of such a program;
 - (b) there was no post-separation parenting program that the person who contravened the primary order could attend;
 - (c) because of the behaviour of the person who contravened the primary order, it was not appropriate, in the court's opinion, for the person to attend a post-separation parenting program, or a part of such a program;
 - (d) the primary order was a compensatory parenting order made under section 205O(1)(b) or 205SB(2)(c) after the person had contravened a previous order under this Act affecting children.
- (3) This section does not limit the circumstances in which a court may vary a primary order.

[Section 205G inserted by No. 35 of 2006 s. 101.]

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

- (1) This section applies if —
- (a) a parenting order has been made in relation to a child (whether before or after the commencement of

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section 101 of the *Family Legislation Amendment Act 2006*¹); and

- (b) after the parenting order was made, the parents of the child made a parenting plan that dealt with a matter (the “**relevant matter**”) that was dealt with in the parenting order.

(2) If —

- (a) section 205G applies to proceedings brought in relation to the parenting order in relation to the relevant matter; and
- (b) the parenting plan was in force when the contravention of the parenting order —
 - (i) is alleged to have been committed; or
 - (ii) occurred,

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

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

[Section 205H inserted by No. 35 of 2006 s. 101.]

Subdivision 3 — Contravention alleged but not established

[Heading inserted by No. 35 of 2006 s. 101.]

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

This Subdivision applies if —

- (a) a primary order has been made, whether before or after the commencement of this Subdivision; and
- (b) proceedings in relation to the primary order are brought before a court; and

- (c) it is alleged in those proceedings that a person (the “**respondent**”) committed a contravention of the primary order; and
- (d) a court does not find that the respondent committed a contravention of the primary order.

[Section 205I inserted by No. 35 of 2006 s. 101.]

205J. Costs — FLA s. 70NCB

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

[Section 205J inserted by No. 35 of 2006 s. 101.]

Subdivision 4 — Contravention established but reasonable excuse for contravention

[Heading inserted by No. 35 of 2006 s. 101.]

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

This Subdivision applies if —

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

[Section 205K inserted by No. 35 of 2006 s. 101.]

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

(1) If —

- (a) the primary order is a parenting order in relation to a child; and
- (b) the current contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period),

a court —

- (c) may make a further parenting order that compensates the person for time the person did not spend with the child (or the time the child did not live with the person) as a result of the current contravention; and
- (d) must consider making that kind of order.

- (2) A court must not make an order under subsection (1)(c) if it would not be in the best interests of the child for the court to do so.

[Section 205L inserted by No. 35 of 2006 s. 101.]

205M. Costs — FLA s. 70NDC

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

[Section 205M inserted by No. 35 of 2006 s. 101.]

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

[Heading inserted by No. 35 of 2006 s. 101.]

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

- (1) Subject to subsection (4), this Subdivision applies if —
- (a) a primary order has been made, whether before or after the commencement of this Division; and
 - (b) a court is satisfied that a person has, whether before or after that commencement, committed a contravention (the “**current contravention**”) of the primary order; and
 - (c) the person does not prove that he or she had a reasonable excuse for the current contravention; and
 - (d) either subsection (2) or (3) applies,

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

- (2) For the purposes of subsection (1)(d), this subsection applies if no court has previously —
- (a) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
 - (b) under section 205O(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order.
- (3) For the purposes of subsection (1)(d), this subsection applies if —
- (a) a court has previously —

- (i) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
 - (ii) under section 205O(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order;
- and
- (b) the court, in dealing with the current contravention, is satisfied that it is more appropriate for that contravention to be dealt with under this Subdivision.
- (4) This Subdivision does not apply if, in circumstances mentioned in subsection (2), the court dealing with the current contravention is satisfied that the person who contravened the primary order has behaved in a way that showed a serious disregard for his or her obligations under the primary order.

[Section 205N inserted by No. 35 of 2006 s. 101.]

205O. Powers of court — FLA s. 70NEB

- (1) If this Subdivision applies, a court may do any or all of the following —
 - (a) make an order directing —
 - (i) the person who committed the current contravention; or
 - (ii) that person and another specified person, to attend a post-separation parenting program;
 - (b) if the current contravention is a contravention of a parenting order in relation to a child, make a further parenting order that compensates a person for time the person did not spend with the child (or time the child did not live with the person) as a result of the current contravention;
 - (c) adjourn the proceedings to allow either or both of the parties to the primary order to apply for a further

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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;

- (d) make an order requiring the person who committed the current contravention to enter into a bond in accordance with section 205P;
- (e) if —
 - (i) the current contravention is a contravention of a parenting order in relation to a child; and
 - (ii) the current contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period); and
 - (iii) the person referred to in subparagraph (ii) reasonably incurs expenses as a result of the contravention,make an order requiring the person who committed the current contravention to compensate the person referred to in subparagraph (ii) for some or all of the expenses referred to in subparagraph (iii);
- (f) make an order that the person who committed the current contravention pay some or all of the costs of another party, or other parties, to the proceedings under this Division;
- (g) if the court makes no other orders in relation to the current contravention, order that the person who brought the proceedings in relation to the current contravention pay some or all of the costs of the person who committed the current contravention.

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

- (a) the person brought the proceedings before the court in relation to the current contravention or is otherwise a party to those proceedings; and
 - (b) the court is satisfied that it is appropriate to direct the order to the person because of the connection between the current contravention and the carrying out by the person of his or her parental responsibilities in relation to the child or children to whom the primary order relates.
- (3) If a court makes an order under subsection (1)(a), the executive manager of the court must ensure that the provider of the program concerned is notified of the making of the order.
- (4) If —
- (a) the current contravention is a contravention of a parenting order in relation to a child; and
 - (b) the contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period),
- a court must consider making an order under subsection (1)(b) to compensate the person for the time the person did not spend with the child (or the time the child did not live with the person) as a result of the contravention.
- (5) A court must not make an order under subsection (1)(b) if it would not be in the best interests of the child for the court to do so.
- (6) In deciding whether to adjourn the proceedings as mentioned in subsection (1)(c), a court must have regard to the following —
- (a) whether the primary order was made by consent;
 - (b) whether either or both of the parties to the proceedings in which the primary order was made were represented in those proceedings by a legal practitioner;

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

[Section 205O inserted by No. 35 of 2006 s. 101.]

205P. Bonds — FLA s. 70NEC

- (1) This section provides for bonds that a court may require a person to enter into under section 205O(1)(d).
- (2) A bond is to be for a specified period of up to 2 years.

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

[Section 205P inserted by No. 35 of 2006 s. 101.]

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

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

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

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[Section 205Q inserted by No. 35 of 2006 s. 101.]

205R. Evidence — FLA s. 70NEF

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

unless, in the opinion of the court or person authorised to hear evidence referred to in subsection (1), there is sufficient evidence of the admission or disclosure available to the court from other sources.

[Section 205R inserted by No. 35 of 2006 s. 101.]

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

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

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

[Section 205S inserted by No. 35 of 2006 s. 101.]

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

[Heading inserted by No. 35 of 2006 s. 101.]

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

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

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

[Section 205SA inserted by No. 35 of 2006 s. 101.]

205SB. Powers of court — FLA s. 70NFB

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

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

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- referred to in subparagraph (ii) for some or all of the expenses referred to in subparagraph (iii); or
- (g) to make an order that the person who committed the current contravention pay all of the costs of another party, or other parties, to the proceedings under this Division; or
 - (h) to make an order that the person who committed the current contravention pay some of the costs of another party, or other parties, to the proceedings under this Division.
- (3) If a court varies or discharges under section 205SD a community service order made under subsection (2)(a), the court may give any directions as to the effect of the variation or discharge that the court considers appropriate.
 - (4) A court must not make an order imposing a sentence of imprisonment on a person under this section in respect of a contravention of a child maintenance order made under this Act unless the court is satisfied that the contravention was intentional or fraudulent.
 - (5) A court must not make an order imposing a sentence of imprisonment on a person under this section in respect of —
 - (a) a contravention of an administrative assessment of child support made under the Child Support (Assessment) Act; or
 - (b) a breach of a child support agreement made under that Act; or
 - (c) a contravention of an order made by a court under Division 4 of Part 7 of that Act for a departure from such an assessment (including such an order that contains matters mentioned in section 141 of that Act).

- (6) An order under this section may be expressed to take effect immediately, at the end of a specified period or on the occurrence of a specified event.
- (7) When a court makes an order under this section, the court may make any other orders that the court considers necessary to ensure compliance with the order that was contravened.

[Section 205SB inserted by No. 35 of 2006 s. 101.]

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

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

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- (a) is the executive manager; or
- (b) is a community corrections officer,

has, for the purposes of this Act, the same functions as the person has under Part 9 or 10 of the Sentencing Act, unless a court orders otherwise.

- (5) Where, under section 205SB(2)(a), a court proposes to impose a community service order of a kind referred to in this section on a person, the court must, before doing so, explain or cause to be explained to the person, in language likely to be readily understood by the person —
 - (a) the purpose and effect of the proposed community service order; and
 - (b) the requirements, obligations and conditions applicable to that person under the proposed community service order; and
 - (c) the consequences that may follow if the person fails to comply with the proposed community service order or with any requirement, obligation or condition applicable to that person under the proposed community service order; and
 - (d) how the proposed community service order may be discharged or varied.
- (6) If, in the application of Part 9 or 10 of the Sentencing Act for the purposes of this Act, there is any inconsistency between the provisions of the Sentencing Act and this Act, the provisions of this Act prevail.

[Section 205SC inserted by No. 35 of 2006 s. 101.]

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

If —

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

[Section 205SD inserted by No. 35 of 2006 s. 101.]

205SE. Bonds — FLA s. 70NFE

- (1) This section provides for bonds that a court may require a person to enter into under section 205SB(2)(b).
- (2) A bond is to be for a specified period of up to 2 years.
- (3) A bond may be —
 - (a) with or without surety; and
 - (b) with or without security.
- (4) The conditions that may be imposed on a person by a bond include (without limitation) conditions that require the person —
 - (a) to attend an appointment (or a series of appointments) with a family consultant; or
 - (b) to attend family counselling; or
 - (c) to attend family dispute resolution; or
 - (d) to be of good behaviour.
- (5) If a court proposes to require a person to enter into a bond, it must, before making the requirement, explain to the person, in language likely to be readily understood by the person —
 - (a) the purpose and effect of the proposed requirement; and
 - (b) the consequences that may follow if the person —
 - (i) fails to enter into the bond; or

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- (ii) having entered into the bond, fails to act in accordance with the bond.

[Section 205SE inserted by No. 35 of 2006 s. 101.]

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

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

- (4) In dealing with the person as mentioned in subsection (3)(b), the court must, in addition to any other matters that it considers should be taken into account, take into account —
- (a) the fact that the community service order was made or the bond was entered into; and
 - (b) anything done under the community service order or pursuant to the bond; and
 - (c) any fine imposed, and any other order made, for or in respect of the contravention.

[Section 205SF inserted by No. 35 of 2006 s. 101.]

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

- (1) A sentence of imprisonment imposed on a person under section 205SB(2)(e) is to be expressed to be —
- (a) for a specified period of 12 months or less; or
 - (b) for a period ending when the person —
 - (i) complies with the order concerned; or
 - (ii) has been imprisoned under the sentence for 12 months or such lesser period as is specified by the court,whichever happens first.
- (2) A court must not sentence a person to imprisonment under section 205SB(2)(e) unless the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention under any of the other paragraphs of section 205SB(2).
- (3) If a court sentences a person to imprisonment under section 205SB(2)(e), the court must —
- (a) state the reasons why it is satisfied as mentioned in subsection (2); and
 - (b) cause those reasons to be entered in the records of the court.

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- (4) The failure of a court to comply with subsection (3) does not invalidate a sentence.
- (5) A court that sentences a person to imprisonment under section 205SB(2)(e) may —
 - (a) suspend the sentence upon the terms and conditions determined by the court; and
 - (b) terminate a suspension made under paragraph (a).
- (6) A court, when sentencing a person to imprisonment under section 205SB(2)(e), may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a bond described in subsection (7) after he or she has served a specified part of the term of imprisonment.
- (7) A bond for the purposes of subsection (6) is a bond (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.
- (8) A court that has sentenced a person to imprisonment for a period expressed as provided by subsection (1)(b) may order the release of the person if it is satisfied that the person will, if he or she is released, comply with the order concerned.
- (9) To avoid doubt, the serving by a person of a period of imprisonment under a sentence imposed on the person under section 205SB(2)(e) for failure to make a payment under a child maintenance order does not affect the person's liability to make the payment.

[Section 205SG inserted by No. 35 of 2006 s. 101.]

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

- (1) This section applies where an act or omission by a person —
 - (a) constitutes a contravention of an order under this Act affecting children; and

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

[Section 205SH inserted by No. 35 of 2006 s. 101.]

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 2 years (“**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; amended by No. 35 of 2006 s. 72.]

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;

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- (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;
 - (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

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- 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,

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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 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; or
 - (b) in the circumstances that have arisen since the order was made it is impracticable for the order to be carried out or impracticable for a part of the order to be carried out; or
 - (c) a person has defaulted in carrying out an obligation imposed on the person by the order and, in the circumstances that have arisen as a result of that default, it is just and equitable to vary the order or to set the order aside and make another order in substitution for the order; or
 - (d) in the circumstances that have arisen since the making of the order, being circumstances of an exceptional nature relating to the care, welfare and development of a child of the de facto relationship, the child or, where the

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applicant has caring responsibility for the child (within the meaning of subsection (3)), the applicant, will suffer hardship if the court does not vary the order or set the order aside and make another order in substitution for the order; or

- (e) a criminal confiscation order has been made in relation to property of the de facto partners or either of them, the court may, in its discretion, vary the order or set the order aside and, if it considers appropriate, make another order under section 205ZG in substitution for the order so set aside.
- (2) A court may, on application by a person affected by an order made by a court under section 205ZG in 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; or
 - (b) a parenting order provides that the child is to live with the person; or
 - (c) a parenting order provides that the person has parental responsibility for the child.
- (4) An order varied or made under subsection (1) or (2) may, after the death of a party to the proceedings in which the order was so varied or made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (5) Where, before proceedings under this section in relation to an order made under section 205ZG are completed, either 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; amended by No. 35 of 2006 s. 43 and 164.]

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

- (1) If —
 - (a) a person makes an application for an order, under this Division, with respect to —
 - (i) the property of de facto partners, or either of them; or

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

Penalty: \$5 500.

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

Penalty: \$5 500.

[Section 205ZHA inserted by No. 35 of 2006 s. 44.]

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

- (1) A court in which proceedings under this Division are pending must stay those proceedings if notified under section 205ZHA in relation to the proceedings.

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

[Section 205ZHB inserted by No. 35 of 2006 s. 44.]

205ZHC. Lifting a stay — FLA s. 79D

- (1) A court that stayed proceedings under section 205ZHB must wholly or partially lift the stay if —

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

[Section 205ZHC inserted by No. 35 of 2006 s. 44.]

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

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

[Section 205ZHD inserted by No. 35 of 2006 s. 44.]

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
 - (d) that material facts were withheld from the court that made the order or from a court that varied the order or

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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 2A — Orders and injunctions binding third parties

[Heading inserted by No. 35 of 2006 s. 34.]

Subdivision 1 — Introductory

[Heading inserted by No. 35 of 2006 s. 34.]

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

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

- (a) make an order under section 205ZG or 235A; or
- (b) grant an injunction under section 235A,

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

[Section 205ZLA inserted by No. 35 of 2006 s. 34.]

205ZLB. Definition — FLA s. 90AB

In this Division —

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

[Section 205ZLB inserted by No. 35 of 2006 s. 34.]

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

- (1) This Division has effect despite anything to the contrary in any of the following (whether made before or after the commencement of this Division) —
- (a) any other law (whether written or unwritten);

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- (b) anything in a trust deed or other instrument.
- (2) Without limiting subsection (1), nothing done in compliance with this Division by a third party in relation to a de facto relationship is to be treated as resulting in a contravention of a law or instrument referred to in subsection (1).

[Section 205ZLC inserted by No. 35 of 2006 s. 34.]

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

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

[Section 205ZLD inserted by No. 35 of 2006 s. 34.]

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

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

[Section 205ZLE inserted by No. 35 of 2006 s. 34.]

Subdivision 2 — Orders under section 205ZG

[Heading inserted by No. 35 of 2006 s. 34.]

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

- (1) In proceedings under section 205ZG, a court may make any of the following orders —
 - (a) an order directed to a creditor of the de facto partners in a de facto relationship to substitute one de facto partner

- for both partners in relation to the debt owed to the creditor;
- (b) an order directed to a creditor of one de facto partner to substitute the other de facto partner, or both de facto partners for that de facto partner in relation to the debt owed to the creditor;
 - (c) an order directed to a creditor of the de facto partners in a de facto relationship that the de facto partners be liable for a different proportion of the debt owed to the creditor than the proportion the de facto partners are liable to before the order is made;
 - (d) an order directed to a director of a company or to a company to register a transfer of shares from one de facto partner in a de facto relationship to the other de facto partner.
- (2) In proceedings under section 205ZG, a court may make any other order that —
- (a) directs a third party to do a thing in relation to the property of a de facto partner; or
 - (b) alters the rights, liabilities or property interests of a third party in relation to a de facto relationship.
- (3) The court may make an order under subsection (1) or (2) only if —
- (a) the making of the order is reasonably necessary, or reasonably appropriate and adapted, to effect a division of property between the de facto partners in a de facto relationship; and
 - (b) if the order concerns a debt of a de facto partner, it is not foreseeable at the time that the order is made that to make the order would result in the debt not being paid in full; and
 - (c) the third party has been accorded procedural fairness in relation to the making of the order; and

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- (d) the court is satisfied that, in all the circumstances, it is just and equitable to make the order; and
 - (e) the court is satisfied that the order takes into account the matters mentioned in subsection (4).
- (4) The matters are as follows —
- (a) the taxation effect (if any) of the order on the de facto partners;
 - (b) the taxation effect (if any) of the order on the third party;
 - (c) the social security effect (if any) of the order on the de facto partners;
 - (d) the third party's administrative costs in relation to the order;
 - (e) if the order concerns a debt of a de facto partner, the capacity of a de facto partner to repay the debt after the order is made;
 - (f) the economic, legal or other capacity of the third party to comply with the order;
 - (g) if, as a result of the third party being accorded procedural fairness in relation to the making of the order, the third party raises any other matters, those matters;
 - (h) any other matter that the court considers relevant.

[Section 205ZLF inserted by No. 35 of 2006 s. 34.]

Subdivision 3 — Orders or injunctions under section 235A

[Heading inserted by No. 35 of 2006 s. 34.]

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

- (1) In proceedings under section 235A a court may —
 - (a) make an order restraining a person from repossessing property of a de facto partner; or

- (b) grant an injunction restraining a person from commencing legal proceedings against a de facto partner.
- (2) In proceedings under section 235A, a court may make any other order, or grant any other injunction that —
- (a) directs a third party to do a thing in relation to the property of a de facto partner; or
 - (b) alters the rights, liabilities or property interests of a third party in relation to the de facto relationship.
- (3) A court may make an order or grant an injunction under subsection (1) or (2) only if —
- (a) the making of the order, or the granting of the injunction, is reasonably necessary, or reasonably appropriate and adapted, to effect a division of property between de facto partners; and
 - (b) the order or injunction concerns a debt of a de facto partner, it is not foreseeable at the time that the order is made, or the injunction granted, that to make the order or grant the injunction would result in the debt not being paid in full; and
 - (c) the third party has been accorded procedural fairness in relation to the making of the order or injunction; and
 - (d) for an injunction or order under section 235A(1), the court is satisfied that, in all the circumstances, it is proper to make the order or grant the injunction; and
 - (e) for an injunction under section 235A(2), the court is satisfied that, in all the circumstances, it is just or convenient to grant the injunction; and
 - (f) the court is satisfied that the order or injunction takes into account the matters mentioned in subsection (4).
- (4) The matters are as follows —

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- (a) the taxation effect (if any) of the order or injunction on the de facto partners;
- (b) the taxation effect (if any) of the order or injunction on the third party;
- (c) the social security effect (if any) of the order or injunction on the de facto partners;
- (d) the third party's administrative costs in relation to the order or injunction;
- (e) if the order or injunction concerns a debt of a de facto partner, the capacity of a de facto partner to repay the debt after the order is made or the injunction is granted;
- (f) the economic, legal or other capacity of the third party to comply with the order or injunction;
- (g) if, as a result of the third party being accorded procedural fairness in relation to the making of the order or the granting of the injunction, the third party raises any other matters, those matters;
- (h) any other matter that the court considers relevant.

[Section 205ZLG inserted by No. 35 of 2006 s. 34.]

Subdivision 4 — Other matters

[Heading inserted by No. 35 of 2006 s. 34.]

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

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

[Section 205ZLH inserted by No. 35 of 2006 s. 34.]

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

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

[Section 205ZLI inserted by No. 35 of 2006 s. 34.]

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

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

[Section 205ZLJ inserted by No. 35 of 2006 s. 34.]

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

- (1) Subsection (2) applies if —
 - (a) a court has made an order or granted an injunction in accordance with this Division in relation to a de facto relationship; and
 - (b) a third party in relation to the de facto relationship has incurred expense as a necessary result of the order or injunction.
- (2) A court may make such order as it considers just for the payment of the reasonable expenses of the third party incurred as a necessary result of the order or injunction.
- (3) In deciding whether to make an order under subsection (2), subject to what a court considers just, a court must take into account the principle that the parties to the de facto relationship should bear the reasonable expenses of the third party equally.

- (4) The regulations may provide, in situations where a court has not made an order under subsection (2) —
- (a) for the charging by the third party of reasonable fees to cover the reasonable expenses of the third party incurred as a necessary result of the order or injunction; and
 - (b) if such fees are charged, that each of the de facto partners in the de facto relationship is separately liable to pay the third party an amount equal to half of those fees; and
 - (c) for conferring jurisdiction on a particular court or courts in relation to the collection or recovery of such fees.

[Section 205ZLK inserted by No. 35 of 2006 s. 34.]

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 excludes or limits the power of a court to make an order in relation to the maintenance of a de facto partner if subsection (1a) applies.
- (1a) This subsection applies if the court is satisfied that, when the agreement came into effect, the circumstances of the party were such that, taking into account the terms and effect of the agreement, the party was unable to support himself or herself without an income tested pension, allowance or benefit.
- (2) To avoid doubt, a provision in an agreement made as mentioned in section 205ZO(1) or 205ZP(1) that provides for property or financial resources owned by a party to the agreement to continue in the ownership of that party is taken, for the purposes of that section, to be a provision with respect to how the property or financial resources are to be dealt with.

[Section 205ZR inserted by No. 25 of 2002 s. 47; amended by No. 35 of 2006 s. 31.]

205ZS. When financial agreements and former financial agreements are binding — FLA s. 90G

- (1) A financial agreement is binding on the parties to the agreement if, and only if —
 - (a) the agreement is signed by both parties; and
 - (b) the agreement contains, in relation to each party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, as certified in an annexure to the agreement, with independent legal advice from a legal practitioner as to the following matters —

- (i) the effect of the agreement on the rights of that party; and
 - (ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement;
- and
- (c) the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and
 - (d) the agreement has not been terminated and has not been set aside by a court; and
 - (e) after the agreement is signed, the original agreement is given to one of the parties and a copy is given to the other.
- (2) A former financial agreement is binding on the parties to the agreement if, and only if —
- (a) the agreement is signed by both parties; and
 - (b) the agreement has not been terminated and has not been set aside by a court.
- (3) A court may make such orders for the enforcement of a financial agreement, or a former financial agreement, that is binding on the parties to the agreement as it thinks necessary.

[Section 205ZS inserted by No. 25 of 2002 s. 47; amended by No. 35 of 2006 s. 32.]

**205ZT. Effect of death of party to financial agreement —
FLA s. 90H**

A financial agreement that is binding on the parties to the agreement continues to operate despite the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party.

[Section 205ZT inserted 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; and
 - (b) the agreement contains, in relation to each party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, as certified in an annexure to the agreement, with independent legal advice from a legal practitioner as to the following matters —
 - (i) the effect of the agreement on the rights of that party;
 - (ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement;and
 - (c) the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and
 - (d) the agreement has not been set aside by a court; and

- (e) after the agreement is signed, the original agreement is given to one of the parties and a copy is given to the other.
- (3) A court may, on an application by a person who was a party to the financial agreement, or the former financial agreement, that has been terminated, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that agreement and any other interested persons.

[Section 205ZU inserted by No. 25 of 2002 s. 47; amended by No. 35 of 2006 s. 33.]

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

- (1) A court may, on an application by a person who was a party to the financial agreement, or by any other interested person, make an order setting aside a financial agreement, a termination agreement or a former financial agreement if, and only if, the court is satisfied that —
 - (a) the agreement was obtained by fraud (including non-disclosure of a material matter); or
 - (aa) either party to the agreement entered into the agreement —
 - (i) for the purpose, or for purposes that included the purpose, of defrauding or defeating a creditor or creditors of the party; or
 - (ii) with reckless disregard of the interests of a creditor or creditors of the party;or
- (b) the agreement is void, voidable or unenforceable; or

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- (c) in the circumstances that have arisen since the agreement was made it is impracticable for the agreement or a part of the agreement to be carried out; or
 - (d) since the making of the agreement, a material change in circumstances has occurred (being circumstances relating to the care, welfare and development of a child of the de facto relationship) and, as a result of the change, the child or, if the applicant has caring responsibility for the child (within the meaning of subsection (2)), a party to the agreement will suffer hardship if the court does not set the agreement aside; or
 - (e) in respect of the making of a financial agreement or former financial agreement, a party to the agreement engaged in conduct that was, in all the circumstances, unconscionable.
- (2) For the purposes of subsection (1)(d), a person has caring responsibility for a child if —
- (a) the person is a parent of the child with whom the child lives; or
 - (b) a parenting order provides that the child is to live with the person; or
 - (c) a parenting order provides that the person has parental responsibility for the child.
- (3) A court may, on an application by a person who was a party to the financial agreement that has been set aside, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.
- (4) An order under subsection (1) or (3) may, after the death of a party to the proceedings in which the order was made, be

enforced on behalf of, or against, as the case may be, the estate of the deceased party.

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

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

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

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

[Section 205ZV inserted by No. 25 of 2002 s. 47; amended by No. 35 of 2006 s. 29 and 165.]

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 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.]

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

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

Penalty: \$5 500.

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

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

Penalty: \$5 500.

[Section 205ZX inserted by No. 35 of 2006 s. 45.]

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

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

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

[Section 205ZY inserted by No. 35 of 2006 s. 45.]

205ZZ. Lifting a stay — FLA s. 90P

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

[Section 205ZZ inserted by No. 35 of 2006 s. 45.]

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205ZZA. Intervention by DPP — FLA s. 90Q

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

[Section 205ZZA inserted by No. 35 of 2006 s. 45.]

Part 6 — Intervention

206. Intervention by Attorney General — FLA s. 91

- (1) The Attorney General may intervene in, and contest or argue any question arising in —
 - (a) any proceedings in a court relating to any non-federal jurisdiction under this Act where the court hearing the proceedings requests the Attorney General to do so or a matter arises that affects the public interest; or
 - (b) any proceedings in a court relating to any non-federal jurisdiction under this Act for or in relation to —
 - (i) a parenting order, other than a child maintenance order; or
 - (ii) an order relating to the welfare of a child.
- (2) If the Attorney General intervenes in proceedings the Attorney General is to be treated as a party to the proceedings with all the rights, duties, and liabilities of a party.

[Section 206 amended by No. 35 of 2006 s. 166.]

207. Intervention by CEO — FLA s. 91B

- (1) In any proceedings under this Act that affect, or may affect, the welfare of a child, the court hearing the proceedings may request the CEO to intervene in the proceedings and the CEO may intervene in those proceedings on that request.
- (2) If a child the subject of proceedings under this Act appears to be a child in need of protection within the meaning of the *Children and Community Services Act 2004* the CEO may intervene in any proceedings with respect to the child.
- (3) If the CEO intervenes in proceedings the CEO is to be treated as a party to the proceedings with all the rights, duties and liabilities of a party.

[Section 207 amended by No. 34 of 2004 s. 251.]

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208. Intervention by other persons — FLA s. 92

- (1) Any person may apply for leave to intervene in any proceedings under this Act, and the court hearing the proceedings may make an order entitling that person to intervene in the proceedings.
- (2) An order under this section may be made upon such conditions as the court hearing the proceedings thinks fit.
- (3) If a person intervenes in proceedings by leave of a court the person is, unless the court otherwise orders, to be treated as a party to the proceedings with all the rights, duties and liabilities of a party.

209. Intervention in child abuse cases — FLA s. 92A

- (1) This section applies to proceedings under this Act in which it has been alleged that a child has been abused or is at risk of being abused.
- (2) Each of the following persons is entitled to intervene in the proceedings referred to in subsection (1) —
 - (a) a guardian of the child;
 - (b) a parent of the child with whom the child lives;
 - (c) a person with whom the child is to live under a parenting order;
 - (d) a person who has parental responsibility for the child under a parenting order;
 - (e) any other person responsible for the child's care, welfare and development;
 - (f) the CEO;
 - (g) a person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.
- (3) If a person intervenes under this section in proceedings the person is, unless the court hearing the proceedings otherwise orders, to be treated as a party to the proceedings with all the rights, duties and liabilities of a party.

[Section 209 amended by No. 34 of 2004 s. 251; No. 35 of 2006 s. 167.]

Part 7 — Appeals

209A. Interpretation

In this Part —

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

“**decree**” includes —

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

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

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

[Section 209A inserted by No. 35 of 2006 s. 37.]

210. Federal jurisdiction

In respect of the federal jurisdiction of the Family Court of Western Australia, and of the courts of summary jurisdiction referred to in section 38, the appeal provisions of the Family Law Act apply.

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

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

- (3) Subsection (2) has effect subject to section 210AA.
- (4) The jurisdiction of the Court of Appeal in relation to an appeal under this section may, if the Chief Justice considers that it is appropriate, be exercised by a single judge.
- (5) Subsection (4) has effect subject to subsections (9) and (11).
- (6) An appeal under this section is to be instituted within —
 - (a) the time prescribed by the rules of the Supreme Court; or
 - (b) such further time as is allowed in accordance with those rules.
- (7) On an appeal under this section, the Court of Appeal may affirm, reverse or vary the decree or decision the subject of the appeal and may make such decree or decision as, in the opinion of the court, ought to have been made in the first instance, or may, if it considers appropriate, order a re-hearing on such terms and conditions, if any, as it considers appropriate.
- (8) If, in dismissing an appeal under this section, the Court of Appeal is of the opinion that the appeal does not raise any question of general principle, it may give reasons for its decision in short form.
- (9) A single judge or the Court of Appeal may —
 - (a) join or remove a party to an appeal under this section; or
 - (b) make an order by consent disposing of an appeal under this section (including an order for costs); or
 - (c) give directions about the conduct of an appeal under this section, including directions about —
 - (i) the use of written submissions; and
 - (ii) limiting the time for oral argument.
- (10) The rules of the Supreme Court may make provision enabling matters of the kind mentioned in subsection (9) to be dealt with, subject to conditions prescribed by those rules, without an oral hearing.

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- (11) Applications of a procedural nature, including applications —
- (a) for an extension of time within which to institute an appeal under this section; or
 - (b) for leave to amend the grounds of an appeal under this section; or
 - (c) to reinstate an appeal under this section that, because of the rules of the Supreme Court, was taken to have been abandoned; or
 - (d) to stay an order of the Court of Appeal made in connection with an appeal under this section; or
 - (e) for an extension of time within which to file an application for leave to appeal; or
 - (f) for security for costs in relation to an appeal; or
 - (g) to reinstate an appeal dismissed under a provision of the rules of the Supreme Court; or
 - (h) to adjourn the hearing of an appeal; or
 - (i) to vacate the hearing date of an appeal; or
 - (j) to expedite the hearing of an appeal,

may be heard and determined by a single judge or by the Court of Appeal.

- (12) The rules of the Supreme Court may make provision enabling applications of a kind mentioned in subsection (11) to be dealt with, subject to conditions prescribed by those rules, without an oral hearing.
- (13) An appeal does not lie to the Court of Appeal from a decision of a single judge exercising jurisdiction under this section.
- (14) The single judge referred to in subsection (4), (9) or (11) need not be a member of the Court of Appeal.

[Section 210A inserted by No. 35 of 2006 s. 38.]

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

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

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

[Section 210AA inserted by No. 35 of 2006 s. 38.]

210AB. Case stated

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

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

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

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

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

[Section 210AB inserted by No. 35 of 2006 s. 38.]

211. Non-federal jurisdictions

- (1) Subsection (2) does not apply if the Magistrates Court is constituted by a family law magistrate, unless the decree is an interlocutory order and —

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- (a) the Family Court of Western Australia has granted leave to appeal; or
 - (b) the decree is a decree prescribed in the regulations for the purposes of this paragraph.
- (2) In respect of the non-federal jurisdictions of the Magistrates Court an appeal lies from a decree of the court to the Family Court of Western Australia and upon any such appeal the Court —
- (a) must proceed by way of a re-hearing, but may receive as evidence any record of evidence given, including any affidavit filed or exhibit received, in the Magistrates Court; and
 - (b) may make such decrees as it thinks fit, including a decree affirming, reversing or varying the decree the subject of the appeal.
- (3) In respect of the non-federal jurisdictions of the Family Court of Western Australia an appeal lies from a decree of the Family Court of Western Australia given in its original or appellate jurisdiction to the Court of Appeal and upon any such appeal the Court of Appeal may affirm, reverse, or vary the decree the subject of the appeal and may make such decree as, in the opinion of the Court of Appeal, ought to have been made in the first instance.
- (4) Appeals under subsection (2) to the Family Court of Western Australia are to be made in the manner and within the time prescribed by the rules.
- (5) Appeals under subsection (3) to the Court of Appeal are to be made in the manner and within the time prescribed by the Rules of the Supreme Court.

[Section 211 amended by No. 45 of 2004 s. 37; No. 59 of 2004 s. 95; No. 84 of 2004 s. 80; No. 35 of 2006 s. 39.]

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

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

[Section 211A inserted by No. 35 of 2006 s. 40.]

211B. Power to dismiss appeal

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

[Section 211B inserted by No. 35 of 2006 s. 40.]

Part 8 — Procedure and evidence

Division 1 — General matters concerning procedure and evidence

[Heading inserted by No. 35 of 2006 s. 18.]

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, Principal Registrar, registrar or magistrate sitting in Chambers.

[Section 212 amended by No. 35 of 2006 s. 73.]

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. Repealed by No. 35 of 2006 s. 106.]

214A. Children swearing affidavits, being called as witnesses or being present in court — FLA s. 100B

- (1) A child, other than a child who is or is seeking to become a party to proceedings, must not swear an affidavit for the purposes of proceedings, unless a court makes an order allowing the child to do so.
- (2) A child must not be called as a witness in, or be present during, proceedings in a court, unless a court makes an order allowing the child to be called as a witness or to be present (as the case may be).
- (3) In this section —
“**child**” means a child under 18 years of age.

[Section 214A inserted by No. 25 of 2002 s. 67.]

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 counsellor or family consultant).

[Section 217 amended by No. 35 of 2006 s. 124.]

**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).
- (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;

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- (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.

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[Heading inserted by No. 35 of 2006 s. 19.]

219AA. Evidence Act 1906 not excluded

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

[Section 219AA inserted by No. 35 of 2006 s. 19.]

219AB. Testimony — FLA s. 102C

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

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

[Section 219AB inserted by No. 35 of 2006 s. 19.]

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

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

[Section 219AC inserted by No. 35 of 2006 s. 19.]

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

- (1) A court or a judge may, for the purposes of any proceedings, direct or allow a person to make a submission to the court or the judge by way of video link, audio link or other appropriate means.
- (2) The power conferred on a court or a judge by subsection (1) may be exercised —
- (a) on the application of a party to the proceedings concerned; or
 - (b) on the court's own initiative or on the judge's own initiative, as the case may be.

- (3) This section applies whether the person making the submission is in or outside Australia, but does not apply if the person making the submission is in New Zealand.

[Section 219AD inserted by No. 35 of 2006 s. 19.]

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

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

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

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

[Section 219AE inserted by No. 35 of 2006 s. 19.]

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

- (1) This section applies if, in the course of an examination or appearance of a person by video link, audio link or other appropriate means in accordance with this Division, it is necessary to put a document to the person.
- (2) A court or a judge may direct or allow the document to be put to the person —
 - (a) if the document is physically present in the courtroom or other place where the court or the judge is sitting —

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

[Section 219AF inserted by No. 35 of 2006 s. 19.]

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

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

- (a) by means of the video link or audio link, as the case may be, in a way that, as nearly as practicable, corresponds to the way in which the oath or affirmation would be administered if the remote person were to give testimony in the courtroom or other place where the court or the judge is sitting; or
- (b) if the court or the judge allows another person who is present at the place where the remote person is located to administer the oath or affirmation, by that other person.

[Section 219AG inserted by No. 35 of 2006 s. 19.]

219AH. Expenses — FLA s. 102K

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

[Section 219AH inserted by No. 35 of 2006 s. 19.]

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

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

[Section 219AI inserted by No. 35 of 2006 s. 19.]

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;
 - (b) an order under this Act (within the meaning of section 223);
 - (c) the Child Support (Registration and Collection) Act; or

- (d) the Child Support (Assessment) Act.
- (2) Without limiting the generality of subsection (1), the rules may make provision for and in relation to —
 - (a) requiring a person to do any one or more of the following —
 - (i) to attend before a court or registrar and answer questions or produce documents;
 - (ii) to deliver a document or article to, or to a person specified by, a court or registrar;
 - (iii) to transfer the ownership of specified property to another person;
 - (iv) to give another person possession (including exclusive possession) of specified property;
 - (v) to deliver a specified chattel to another person;
 - (vi) to do, or abstain from doing, any other act;
 - (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

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- (v) fails to comply with a requirement made as referred to in paragraph (a);
 - and
 - (d) delegating to a registrar all or any of the powers conferred on a court by rules referred to in this section.
- (3) Subject to subsection (4), the actions in respect of a person the taking of which may be provided for by rules as mentioned in subsection (2)(c) are as follows —
- (a) the issue of a warrant for the arrest of the person;
 - (b) the issue of a warrant of execution against property of the person;
 - (c) the making of an order authorising the taking of possession of property of the person;
 - (d) the making of an order for the sequestration, and if necessary the sale, of property of the person;
 - (e) the making of an order for the attachment, by garnishment or attachment of earnings, of debts owed to the person;
 - (f) the appointment of a receiver of property of the person.
- (4) A reference in subsection (2)(c) to a failure to pay an amount is a reference to any such failure irrespective of the length of the period during which the failure has continued, and includes a reference to a failure to pay part of an amount.
- (5) In this section —
- “property”** means real or personal property;
- “registrar”** means —
- (a) in relation to the Court, the Principal Registrar, a registrar or a deputy registrar; and
 - (b) in relation to the Magistrates Court, means the registrar of that court at the place where that court was held.

*[Section 220A inserted by No. 25 of 2002 s. 13; amended by
No. 59 of 2004 s. 95; No. 35 of 2006 s. 177.]*

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 registered parenting plan requires a person to execute a deed or instrument and the person has refused or neglected to comply with the provision;
or
 - (c) for any other reason, a court thinks it necessary to do so,

then a court may appoint an officer of the court or other person specified in the order to execute the deed or instrument in the name of the person directed under the order, or required under the provision, to do all acts and things necessary to give effect to the deed or instrument.

- (2) A deed or instrument executed by a person appointed under subsection (1) has effect as if it had been executed by the person directed under the order, or required under the parenting plan provision, to execute the deed or instrument.
- (3) A court may make such order as it thinks just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

[Section 221 amended by No. 35 of 2006 s. 16.]

222. Transactions to defeat claim — FLA s. 106B

- (1) In proceedings under this Act, the court hearing the proceedings may set aside or restrain the making of an instrument or disposition by or on behalf of, or by direction or in the interest of, a party which is made or proposed to be made to defeat an

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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.
- (4a) In addition to the powers a court referred to in subsection (1) has under this section, such a court may also do any or all of the things listed in section 205ZI(1).
- (5) In this section —
 - “**disposition**” includes —
 - (a) a sale or gift; and
 - (b) the issue, grant, creation, transfer or cancellation of, or a variation of the rights attaching to, an interest in a company or a trust;
 - “**interest**” —
 - (a) in a company includes —
 - (i) a share in or debenture of the company; and
 - (ii) an option over a share in or debenture of the company (whether the share or debenture is issued or not);

and

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

[Section 222 amended by No. 35 of 2006 s. 60 and 74.]

222A. People not to be imprisoned for failure to comply with certain orders — FLA s. 107

- (1) A person must not be imprisoned or otherwise placed in custody because of a contravention of an order made under this Act for the payment of money.
- (2) This section does not affect the operation of —
 - (a) Part 5 Division 13; or
 - (b) Part 10 Division 2; or
 - (c) Part 10A.

[Section 222A inserted by No. 25 of 2002 s. 14; amended by No. 35 of 2006 s. 75.]

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

[Heading inserted 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).

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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.]

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**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 by order 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) subject to subsection (4), to impose a sentence of imprisonment on the person in accordance with section 227.
- (4) A court must not impose a sentence of imprisonment on a person under subsection (3)(d) in respect of the contravention of a maintenance order unless the court is satisfied that the contravention was intentional or fraudulent.
- (5) An order under subsection (1) may be expressed to take effect immediately, or at the end of a specified period or on the occurrence of a specified event.
- (6) Where a court makes an order under subsection (1), the court may make such other orders as the court considers necessary to ensure compliance with the order that was contravened.
- [Section 226 amended by No. 25 of 2002 s. 19; No. 35 of 2006 s. 53 and 76.]*

227. Sentences of imprisonment — FLA s. 112AE

- (1) A sentence of imprisonment imposed on a person under section 226(3)(d) must be expressed to be —
 - (a) for a specified period of 12 months or less; or
 - (b) for a period ending when the person —
 - (i) complies with the order concerned; or

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- (ii) has been imprisoned under the sentence for 12 months or such lesser period as is specified by the court,
- whichever happens first.
- (2) A court must not sentence a person to imprisonment under section 226(3)(d) unless the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention under any of the other paragraphs of section 226(3).
- (3) If a court sentences a person to imprisonment under section 226(3)(d), the court must —
- (a) state the reasons why it is satisfied as mentioned in subsection (2); and
 - (b) cause those reasons to be entered in the records of the court.
- (4) The failure of a court to comply with subsection (3) does not invalidate a sentence.
- (4a) A court that sentences a person to imprisonment under section 226(3)(d) may —
- (a) suspend the sentence upon the terms and conditions determined by the court; and
 - (b) terminate a suspension made under paragraph (a).
- (5) A court, when sentencing a person to imprisonment under section 226(3)(d) may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a bond described in subsection (6) after the person has served a specified part of the term of imprisonment.
- (6) A bond for the purposes of subsection (5) is a bond (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.

- (7) Without limiting the circumstances in which a court may discharge an order under section 231, a court that has sentenced a person to imprisonment for a period referred to in subsection (1)(b) may order the release of the person if it is satisfied that the person will, if released, comply with the order concerned.
- (8) To avoid doubt, the serving by a person of a period of imprisonment under a sentence imposed on the person under section 226(3)(d) for failure to make a payment under a child maintenance order does not affect the person's liability to make the payment.

[Section 227 amended by No. 25 of 2002 s. 20; No. 35 of 2006 s. 54.]

228. Bonds — FLA s. 112AF

- (1) This section provides for bonds that a court may require a person to enter into under section 226(3)(a).
- (2) A bond must be for a specified period of up to 2 years.
- (3) A bond may be —
 - (a) with or without surety; and
 - (b) with or without security.
- (4) The conditions that may be imposed on a person by a bond include a condition requiring the person to be of good behaviour.
- (5) Where a court proposes to require a person to enter into a bond it must, before making the requirement, explain to the person, in language likely to be readily understood by the person —
 - (a) the purpose and effect of the proposed requirement; and
 - (b) the consequences that may follow if the person —
 - (i) fails to enter into the bond; or
 - (ii) having entered into the bond, fails to act in accordance with the bond.

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

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

the court may take action under subsection (9).

[(4)-(8) repealed]

(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.

[Section 230 amended by No. 25 of 2002 s. 23, 74(1) and 75; No. 35 of 2006 s. 56.]

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

- (1) Subject to this section —
 - (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.

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- (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.

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- (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; or
 - (b) an injunction for the personal protection of —
 - (i) a parent of the child; or
 - (ii) a person with whom the child is to live under a parenting order; or
 - (iii) a person with whom the child is to spend time under a parenting order; or
 - (iv) a person with whom the child is to communicate under a parenting order; or
 - (v) a person who has parental responsibility for the child;
- or
- (c) an injunction restraining a person from entering or remaining in —
 - (i) a place of residence, employment or education of the child; or
 - (ii) a specified area that contains a place of a kind referred to in subparagraph (i);
- or
- (d) an injunction restraining a person from entering or remaining in —
 - (i) a place of residence, employment or education of a person referred to in paragraph (b); or

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- (ii) a specified area that contains a place of a kind referred to in subparagraph (i).
- (2) In any proceedings under this Act (other than proceedings to which subsection (1) applies) the court hearing the proceedings may grant an injunction with respect to a matter to which the proceedings relate, by interlocutory order or otherwise, in any case in which it appears to the court to be just or convenient to do so.
- (3) An injunction or order under this section may be granted unconditionally or on such terms and conditions as a court considers appropriate.

[Section 235 amended by No. 35 of 2006 s. 168.]

235A. Injunctions relating to de facto relationships — FLA s. 114

- (1) A person may institute proceedings in a court for an injunction in relation to a matter arising out of a de facto relationship and the court hearing the proceedings may make an order or grant an injunction as it considers proper with respect to the proceedings, including —
 - (a) an injunction for the personal protection of a de facto partner;
 - (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 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.

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- (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
(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 sections 205SB, 237A and 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 subsections (3), (5) and (6) 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 made an offer in writing to another party to the proceedings to settle the proceedings and the terms of any such offer; and

- (g) such other matters as the court considers relevant.
- (4) To avoid doubt, in proceedings in which an independent children's lawyer for a child has been appointed, the court may make an order under subsection (2) as to costs or security for costs, whether by way of interlocutory order or otherwise, to the effect that each party to the proceedings bears, in such proportion as the court considers just, the costs of the independent children's lawyer in respect of the proceedings.
- (5) However, in proceedings in which an independent children's lawyer for a child has been appointed, if —
 - (a) a party to the proceedings has received legal aid in respect of the proceedings; or
 - (b) the court considers that a party to the proceedings would suffer financial hardship if the party had to bear a proportion of the costs of the independent children's lawyer,

the court must not make an order under subsection (2) against that party in relation to the costs of the independent children's lawyer.

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

[Section 237 amended by No. 35 of 2006 s. 49, 77(1) and (2), 102 and 140.]

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

- (1) This section applies if —
 - (a) proceedings under this Act are brought before a court;
and

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- (b) the court is satisfied that a party to the proceedings knowingly made a false allegation or statement in the proceedings.
- (2) The court must order that party to pay some or all of the costs of another party, or other parties, to the proceedings.

[Section 237A inserted by No. 35 of 2006 s. 98.]

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

- (1) Where —
 - (a) a court has found, for the purposes of Part 5 Division 13, that a person has, by taking a child away from another person or by refusing or failing to deliver a child to another person, contravened a parenting order to the extent to which the order provides that —
 - (i) a child is to live with a person; or
 - (ii) a child is to spend time with a person; or
 - (iii) a child is to communicate with a person;or
 - (b) a person has been convicted of an offence against section 107 or 108 in respect of a child; or
 - (c) a court has found, for the purposes of Part 5 Division 13 that a person has, by taking a child away from another person or by refusing or failing to deliver a child to another person, contravened an injunction granted, or an order made, under section 235; or
 - (d) a person has been found to be in contempt of a court by reason of taking a child from another person or having refused or failed to deliver a child to another person,a court may, subject to subsection (2) —
 - (e) on the application of the Commonwealth or the State Government order the person to make reparation to the

Commonwealth or the State Government or to a Commonwealth or State instrumentality, by way of money payment or otherwise, in respect of any loss suffered, or any expense incurred, by the Commonwealth or the State Government or the instrumentality, as the case may be, in recovering the child and returning the child to a person; or

- (f) on the application of any other person, order the first-mentioned person to make reparation to that other person, by way of money payment or otherwise, in respect of any loss suffered, or expense incurred, by that other person in recovering the child and, if applicable, returning the child to a person.
- (2) Nothing in subsection (1) empowers a court to order a person to make reparation to the Commonwealth or the State Government, to a Commonwealth or State instrumentality or to another person in respect of any loss suffered, or any expense incurred, where a court (whether of a kind referred to in section 8(a) or (b) or otherwise) has, under a written law, ordered the first-mentioned person to make reparation to the Commonwealth or the State Government, to the Commonwealth or State instrumentality or to that other person, as the case may be, in respect of the same loss suffered or expense incurred.
- (3) In this section —
- “Commonwealth or State instrumentality”** means a body or authority established for a public purpose by or under a law of the Commonwealth or of the State.

[Section 238 amended by No. 35 of 2006 s. 78 and 169.]

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 —

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- (a) the date on which the order is made; or
- (b) the date on which the order takes effect,

whichever is later, on so much of the money as is from time to time unpaid.

- (2) Where a court makes an order for the payment of money as mentioned in subsection (1), it may order that interest is not payable on the money payable under the first-mentioned order or may order —

- (a) that interest is payable at a rate specified in the order, being a rate other than the rate prescribed by the rules; or
- (b) that interest is payable from the date specified in the order, being a date other than the date from which the interest would be payable under subsection (1).

240. Offers of settlement — FLA s. 117C

- (1) This section applies to proceedings under this Act other than the following proceedings —

- (a) proceedings under section 235(1) or Division 6 or 12 of Part 5;
- (b) proceedings to enforce a decree or injunction made under section 235 or Division 6 or 12 of Part 5.

- (2) If —

- (a) a party to proceedings to which this section applies makes an offer to the other party to the proceedings to settle the proceedings; and
- (b) the offer is made in accordance with any relevant rules,

the fact that the offer has been made, or the terms of the offer, must not be disclosed to a court in which the proceedings are being heard except for the purposes of the consideration by the court of whether it should make an order as to costs under section 237(2) and the terms of any such order.

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

[Section 240 inserted by No. 35 of 2006 s. 50.]

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,

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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.

**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;

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- (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
 - (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 DPP.
- (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; or
 - (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;
- or
- (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; or
 - (d) the publishing of a notice or report in pursuance of the direction of a court; or
 - (da) the publication by a court of lists of proceedings under this Act, identified by reference to the names of the parties, that are to be dealt with by the court; or
 - (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

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- (iii) to a natural person who is a party to any proceedings under this Act, in connection with the conduct of those proceedings;
 - or
 - (g) the publication of accounts of proceedings, where those accounts have been approved by a court.
- (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; No. 35 of 2006 s. 42(2) and 79.]

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; and
 - (b) the attendance of witnesses; and
 - (c) the manner of service of process of the Court or of the Magistrates Court exercising jurisdiction under this Act and for and in relation to dispensing with such service; and
 - (d) trial management; and

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- (e) the time and manner of institution of appeals to the Court, including the conferral of power to stay the execution of decrees that are subject to appeal; and
- (f) the functions of officers of the Court and officers of the Magistrates Court exercising federal jurisdiction or exercising non-federal jurisdictions under this Act; and
- (g) the seals and stamps to be used in the Court and in the Magistrates Court exercising jurisdiction under this Act; and
- (h) matters relating to the costs of proceedings (including solicitor and client costs and party and party costs) and the assessment or taxation of those costs; and
- (i) authorising the Court and the Magistrates Court exercising jurisdiction under this Act to refer to an officer of the court for investigation, report and recommendation claims or applications for or relating to any matters before the court; and
- (j) authorising an officer making an investigation mentioned in paragraph (i) to —
 - (i) take evidence on oath or affirmation; and
 - (ii) receive in evidence a report from a family consultant under section 73; and
 - (iii) receive in evidence a report from a person who has had dealings with a party to the matter under investigation under section 91, 95, 95A, 205O or 205S;and
- (ja) enabling the summoning of witnesses before an officer making an investigation mentioned in paragraph (i) for the purposes of giving evidence or producing books or documents; and
- (k) the procedure of the Court and the Magistrates Court exercising jurisdiction under this Act upon receiving a

report of an officer who has made an investigation referred to in paragraph (i); and

- (l) matters relating to expert evidence, including the disclosure, by the furnishing of copies of reports or otherwise, of the nature and substance of the expert evidence to be given, and including the exclusion of expert evidence in case of non-compliance with the rules relating to expert evidence or with any order for the disclosure of the nature and substance of expert evidence; and
- (m) the appointment of a next friend for a party; and
- (n) for the purposes of Part 8 Division 2, providing for the conditions relating to the use of video links, audio links and other appropriate means of communication; and
- (o) the forfeiture of bonds entered into in pursuance of requirements made under this Act; and
- (p) the recovery of any money that may be due to the State under a bond referred to in paragraph (o) or from any person who has become a surety under this Act; and
- (q) the attachment of moneys payable by the Commonwealth, the State or another State, a Territory or the Administration of a Territory, or by an authority of the Commonwealth, of the State or another State or of a Territory (other than moneys as to which it is provided by any law of the Commonwealth, of the State or another State or of a Territory that they are not liable to attachment); and
- (r) providing for and in relation to —
 - (i) the attendance at family counselling by parties to proceedings under this Act; and
 - (ii) the attendance at family dispute resolution by parties to proceedings under this Act; and

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- (iii) the giving of advice and assistance by family consultants to people involved in proceedings under this Act; and
- (iv) the participation by parties to proceedings under this Act in courses, programs and other services (other than those mentioned in subparagraph (i), (ii) or (iii)) that the parties are ordered by the court to participate in; and
- (v) the use, for the purposes of proceedings under this Act, by the Court and the Magistrates Court exercising jurisdiction under this Act and officers of such courts, of reports about the future conduct of the proceedings that have been prepared by persons who dealt with the parties in accordance with rules made under subparagraph (i), (ii), (iii) or (iv);

and

[(s) deleted]

- (t) the functions and duties of assessors and of family consultants and arbitrators; and
- (u) the making of applications under this Act for arbitration or orders under sections 65M and 65N; and
- (v) the disputes, proceedings or matters that may or may not be arbitrated under this Act; and
- (va) prescribing the disputes, proceedings or matters in relation to which family consultants may, or must not, perform their functions; and
- (w) providing for and in relation to —
 - (i) the functions to be performed by family consultants; and
 - (ii) the procedures to be followed in performing those functions; and

- (iii) the procedures to be followed by persons involved in proceedings in relation to which a family consultant is performing functions; and
 - (iv) the procedures to be followed when a family consultant ceases performing functions in relation to a dispute, proceeding or matter;
- and
- (x) providing for and in relation to —
 - (i) the procedures to be followed by a family counsellor authorised under section 25(2a) or 34C(1) or engaged under section 34D; and
 - (ii) the procedures to be followed by persons attending family counselling with such a counsellor; and
 - (iii) the procedures to be followed when family counselling with such a counsellor ends;
- and
- (y) providing for and in relation to —
 - (i) the procedures to be followed by a family dispute resolution practitioner authorised under section 25(2a) or 34C(2) or engaged under section 34D; and
 - (ii) the procedures to be followed by persons attending family dispute resolution with such a practitioner; and
 - (iii) the procedures to be followed when family dispute resolution with such a practitioner ends;
- and
- (ya) providing for and in relation to —
 - (i) the procedures to be followed by an arbitrator in relation to a dispute, proceeding or matter under this Act; and

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- (ii) the attendance by persons at conferences conducted by arbitrators for the purpose of arbitrating a dispute, proceeding or matter under this Act; and
 - (iii) the procedure to be followed when arbitration ends, both where it has resulted in an agreement or award and where it has not;
- and
- (z) prescribing matters relating to the costs of —
 - (i) arbitration by arbitrators, and the assessment or taxation of those costs; and
 - (ii) family counselling by family counsellors authorised under section 25(2a) or 34C(1) or engaged under section 34D; and
 - (iii) family dispute resolution by family dispute resolution practitioners authorised under section 25(2a) or 34C(2) or engaged under section 34D;
- and
- (zaa) the registration of awards under section 65P; and
 - (zab) the time and manner of making applications for review of registered awards under section 65Q or for orders setting aside registered awards under section 65R; and
 - (za) conciliation conferences.
- (4) Rules made under this Act may, for the purposes of this Act, adopt or apply any rule for the time being in force under the Family Law Act.
 - (5) Rules made under this Act may provide that contravention of a rule or a provision of a rule constitutes an offence and provide for penalties not exceeding \$5 500.

[Section 244 amended by No. 25 of 2002 s. 28, 50, 74 and 75; No. 59 of 2004 s. 95; No. 35 of 2006 s. 20 and 125.]

245. Regulations

- (1) The Governor may make regulations, not inconsistent with this Act or the Family Law Act, prescribing all matters that are required or permitted by this Act to be prescribed by regulations or are necessary or convenient to be prescribed by regulations for giving effect to the purposes of this Act.
- (2) Without limiting the generality of subsection (1) the regulations may make provision for or in relation to —
 - (a) the establishment of registries of the Court; and
 - (b) court fees to be payable in respect of —
 - (i) proceedings under this Act; or
 - (ii) services provided by the Court in circumstances other than where a court orders or directs the provision of the services;

and

 - (ba) the requirements to be complied with by a person who is, or wishes to become, an arbitrator under section 57; and
 - (bb) anything in respect of which rules may be made under section 244(3)(t), (u), (v), (va), (w), (x), (y), (ya) or (z); and
 - (c) the manner of authorising persons to act as family dispute resolution practitioners under section 52, and the matters to be taken into account when doing so; and
 - (d) the manner of authorising persons to act as family consultants under section 61, and the matters to be taken into account when doing so; and
 - (e) the registration of awards made in section 65M arbitration and relevant property or financial arbitration; and
 - (f) authorising any justice of the peace, any member of the Police Force, the Court or any court of summary

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jurisdiction exercising federal jurisdiction or the Magistrates Court exercising non-federal jurisdictions under this Act, to grant bail; and

- (g) the transcription of proceedings under this Act and the making available of copies of transcripts of those proceedings; and
 - (h) matters incidental to the matters specified in this section.
- (3) Regulations made under this Act may, for the purposes of this Act, adopt or apply any regulation for the time being in force under the Family Law Act.
- (4) Regulations made under this Act may provide that contravention of a regulation or a provision of a regulation constitutes an offence and, subject to 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; No. 35 of 2006 s. 126.]*

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.

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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;

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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

¹ This is a compilation of the *Family Court Act 1997* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<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> ⁴⁻⁶	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 ⁷	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)
Reprint 1: The <i>Family Court Act 1997</i> as at 15 Aug 2003 (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 ⁸	59 of 2004 (as amended by No. 2 of 2008 s. 77(2))	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)
Reprint 2: The Family Court Act 1997 as at 14 Apr 2006 (includes amendments listed above)			
<i>Family Legislation Amendment Act 2006 Pt. 2 and 3⁹⁻¹¹</i>	35 of 2006	4 Jul 2006	Pt. 2: 14 Jul 2006 (see s. 2 and <i>Gazette</i> 14 Jul 2006 p. 2559); Pt. 3: 15 Jul 2006 (see s. 2 and <i>Gazette</i> 14 Jul 2006 p. 2559)
Reprint 3: The Family Court Act 1997 as at 20 Oct 2006 (includes amendments listed above)			

^{1a} On the date as at which this ~~reprint~~[compilation](#) was prepared, provisions referred to in the following table had not come into operation and were therefore not included in ~~compiling the reprint~~[this compilation](#). 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)³</i>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
<i>Family Legislation Amendment Act 2006 Pt. 4¹²</i>	35 of 2006	4 Jul 2006	To be proclaimed (see s. 2)

Short title	Number and year	Assent	Commencement
Criminal Law and Evidence Amendment Act 2008 s. 77(2) ¹³	2 of 2008	12 Mar 2008	To be proclaimed (see s. 2)

² The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39. Certain provisions of that Act continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26.

³ On the date as at which this ~~reprint~~ [compilation](#) 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.
”

⁴ 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.
”

⁵ 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.
”

⁶ 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.
”

⁷ 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.

”.

⁸ 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~~) was repealed by the *Criminal Code Law and Evidence Amendment Act 2004/2008* s. ~~58 before the amendment purported to come into operation.~~ [77\(2\)](#).

⁹ The *Family Legislation Amendment Act 2006* s. 21, 30, 35, 41, 48, 51, 57, 61, 68(3), 70(3), 77(3), 99, 103 and 107 read as follows:

“

21. Transitional provision

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

30. Transitional provisions

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

35. Transitional provisions

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

41. Transitional provision

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

48. Transitional provisions

- (1) In this section —
“**commencement**” means the day on which this Subdivision comes into operation;
“**parenting order**” has the same meaning as it has in the *Family Court Act 1997*.
- (2) The *Family Court Act 1997*, as amended by this Subdivision, applies to —
 - (a) contraventions, and alleged contraventions, of parenting orders whether occurring before, at or after the commencement; and
 - (b) proceedings in a court (within the meaning of that Act section 8) in which it is alleged that a person committed a

contravention of a parenting order whether those proceedings are commenced before, at or after the commencement.

51. Savings provision

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

57. Savings provision

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

61. Savings provision

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

68. Section 64 amended and transitional provision

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

70. Section 205J amended and transitional provision

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

77. Section 237 amended and transitional provision

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

99. Transitional provisions

- (1) In this section —
“**commencement**” means the day on which this Division comes into operation;

“**new Act**” means the *Family Court Act 1997* as in force after commencement;

“**parenting order**” has the same meaning as in the *Family Court Act 1997*.

- (2) Section 66C of the new Act applies to orders made on or after commencement.
- (3) The amendments effected by sections 84 and 94 apply in respect of parenting orders made on or after commencement.
- (4) The amendment effected by section 85 applies to proceedings under Part 5 of the *Family Court Act 1997*, whether the proceedings were initiated before, on or after commencement.
- (5) The amendment effected by section 86 applies to directions given under section 73(2) of the new Act on or after commencement.
- (6) The amendment effected by section 87 applies to parenting plans made on or after commencement.
- (7) The amendment effected by section 90 applies to parenting orders made on or after commencement.
- (8) The amendment effected by section 91 applies to parenting orders made on or after commencement (this includes, without limitation, a parenting order that varies an earlier parenting order, whether the earlier parenting order was made before or after commencement).
- (9) Sections 89AA, 89AB, 89AC and 89AD of the new Act apply to parenting orders made on or after commencement.
- (10) The amendment effected by section 97 applies to a court proposing to make an order mentioned in section 92(1) of the new Act, whether the proceedings to which the order relates were initiated before or after commencement.
- (11) The amendments effected by this Division are taken not to constitute changed circumstances that would justify making an order to discharge or vary, or to suspend or revive the operation of, some or all of a parenting order that was made before commencement.

103. Transitional provisions

- (1) In this section —

“**commencement**” means the day on which this Division comes into operation;

“**parenting order**” has the same meaning as in the *Family Court Act 1997*.

- (2) The amendments effected by this Division apply to a contravention, or alleged contravention of a parenting order —
- (a) if the contravention occurs, or the alleged contravention is alleged to occur, on or after commencement; and
 - (b) do not apply if the contravention occurs, or the alleged contravention is alleged to occur, before commencement.

107. Transitional provision

The amendments effected by this Division —

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

”.

¹⁰ The *Family Legislation Amendment Act 2006* Pt. 3 Div. 4 Subdiv. 2 reads as follows:

“

Subdivision 2 — Transitional provisions

127. Interpretation

In this Division —

“**commencement**” means the day on which this Division comes into operation.

128. Arbitration awards registered under section 60A or 60B are taken to be registered under section 65P

If —

- (a) at any time before commencement, an award in an arbitration had been registered under section 60A or 60B of the *Family Court Act 1997*; and
- (b) the award is still registered immediately before commencement,

the registration of the award continues to have effect after commencement as if it had been done under section 65P of that Act.

129. Powers under Part 4C Division 4 of the *Family Court Act 1997* may be exercised in relation to section 60A arbitration and private arbitration

For the purposes of sections 65O, 65P, 65Q and 65R —

- (a) a reference to section 65M arbitration includes a reference to section 60A arbitration (within the meaning of the *Family Court Act 1997* as in force immediately before commencement); and
- (b) a reference to relevant property or financial arbitration includes a reference to private arbitration of a dispute (within the meaning of the *Family Court Act 1997* as in force immediately before commencement).

130. Request for counselling under section 52

If, at commencement, a notice filed under section 52 of the *Family Court Act 1997* has not been acted on, an appropriate officer of the court in which the notice is filed must arrange for the parties to the proceedings to which the notice relates (and the child and any other persons the officer thinks appropriate) to be interviewed by a family counsellor to assess whether counselling is appropriate in all the circumstances, and, if it is —

- (a) to discuss the care, welfare and development of the child; and
- (b) if there are differences between the parties in relation to matters affecting the care, welfare and development of the child, to try to resolve those differences.

131. Orders under section 72(2)

If, at commencement, an order under section 72(2) of the *Family Court Act 1997* has not yet been complied with, the order is taken to have been complied with if the parties to which the order relate attend a conference with a family counsellor (within the meaning of the *Family Court Act 1997* as amended by this Division).

132. Reports under section 73

If, at commencement, a family and child counsellor or welfare officer (within the meaning of the *Family Court Act 1997* as in force immediately before commencement) has been directed to give a report under section 73(2) of that Act and has not yet given that report —

- (a) the person must still provide the report; and
- (b) references in section 73 of that Act (as amended by this Division) to a family consultant are taken to be references to the person who provides the report.

133. Pre-parenting order counselling for the purposes of section 72

If, before commencement, parties to proceedings attended a conference with a family and child counsellor or a welfare officer

to discuss the matter to which the proceedings relate, the attendance at that conference is taken to satisfy the requirement in section 72(2) of the *Family Court Act 1997* (as amended by this Division) to attend a conference with a family counsellor.

134. Supervision etc. of parenting orders

If—

- (a) under a court order made before commencement under section 95 of the *Family Court Act 1997*, a person is required to do either or both of the following —
 - (i) supervise compliance with a parenting order;
 - (ii) give any party to the parenting order such assistance as is reasonably requested by that party in relation to compliance with, and the carrying out of, the parenting order;

and

- (b) immediately after commencement, the person is not a family consultant within the meaning of the *Family Court Act 1997* as amended by this Division,

then the court may make another order substituting a family consultant for the person.

135. Transitional regulations

- (1) If this Division does not provide sufficiently for a matter or issue of a transitional nature that arises as a result of the amendments made by this Division, the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed for providing for that matter or issue.
- (2) If regulations made under subsection (1) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than commencement, the regulations have effect according to their terms.
- (3) In subsection (2) —
“**specified**” means specified or described in the regulations.
- (4) If regulations contain a provision referred to in subsection (2), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication; or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication.

”.

¹¹ The *Family Legislation Amendment Act 2006* s. 141 and 143 read as follows:
“

141. Transitional provisions

- (1) In this section —
 - “**commencement**” means the day on which this Division comes into operation;
 - “**new provision**” means section 164 of the *Family Court Act 1997* as in force after commencement;
 - “**old provision**” means section 171 of the *Family Court Act 1997* as in force immediately before commencement.
- (2) The amendments effected by this Division apply to proceedings initiated under Part 5 of the *Family Court Act 1997* before, on or after commencement.
- (3) If —
 - (a) a court made an order under the old provision for separate representation of a child; and
 - (b) immediately before commencement, the proceedings in which the order was made have not been concluded,then —
 - (c) the person who was appointed as the child’s representative under the old provision is taken to be appointed as the independent children’s lawyer under the new provision; and
 - (d) the order under the old provision for separate representation of the child is taken to be an order under the new provision for independent representation of the child’s interests.

143. Transitional provisions

- (1) In this section —
 - “**commencement**” means the day on which this Division comes into operation.
- (2) The amendments effected by this Division —
 - (a) apply to orders made after commencement; and
 - (b) do not apply to orders made before commencement.

”.

¹² On the date as at which this ~~reprint~~[compilation](#) was prepared, the *Family Legislation Amendment Act 2006* Pt. 4 had not come into operation. It reads as follows:

“

Part 4 — Amendments about the interaction between family law and bankruptcy law

178. Section 5 amended

Section 5(1) is amended as follows:

- (a) by inserting in the appropriate alphabetical positions —

“

(FLA s. 4(1))

“**bankrupt**” has the same meaning as in the Bankruptcy Act;

“Bankruptcy Act” means the Bankruptcy Act 1966 of the Commonwealth;

(FLA s. 4(1))

“**bankruptcy trustee**”, in relation to a bankrupt, means the trustee of the bankrupt’s estate;

(FLA s. 4(1))

“**debtor subject to a personal insolvency agreement**” has the meaning given by section 7B;

(FLA s. 4(1))

“**personal insolvency agreement**” has the same meaning as in the Bankruptcy Act;

(FLA s. 4(1))

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

(FLA s. 4(1))

“**property settlement proceedings**” means proceedings with respect to —

- (a) the property of de facto partners, or either of them; or
(b) the vested bankruptcy property in relation to a bankrupt de facto partner;

(FLA s. 4(1))

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

(FLA s. 4(1))

“**vested bankruptcy property**”, in relation to a bankrupt, means property, within the meaning of the Bankruptcy Act, of the bankrupt that has vested in the bankruptcy trustee under that Act;

”.

- (b) by deleting the definition of “Part 5A proceedings” and inserting instead —

“

“**Part 5A proceedings**” means proceedings under Part 5A for orders with respect to —

- (a) the property of de facto partners, or either of them; or
(b) the vested bankruptcy property in relation to a bankrupt de facto partner; or
(c) the maintenance of a de facto partner,

but does not include any proceedings specified in the regulations for the purposes of this definition;

”.

179. Section 7B inserted

Before section 8 the following section is inserted —

“

7B. Meaning of “debtor subject to a personal insolvency agreement” — FLA s. 4A

For the purposes of this Act, if —

- (a) a person who is a debtor (within the meaning of Part X of the Bankruptcy Act) executes a personal insolvency agreement; and
(b) the agreement has not ended (within the meaning of the Bankruptcy Act),

the person is a debtor subject to the personal insolvency agreement.

”.

180. Section 45 amended

- (1) Section 45 is amended by inserting before “Where” the subsection designation “(1)”.
- (2) At the end of section 45 the following subsection is inserted —

“

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

”.

181. Section 205T amended

Section 205T is amended as follows:

- (a) at the end of the definition of “income tested pension, allowance or benefit” by deleting the semicolon and inserting instead a full stop;
- (b) by deleting the definition of “property”.

182. Section 205W amended

After section 205W(2) the following subsection is inserted —

“

- (3) Subsections (1) and (2) do not apply in relation to —
 - (a) proceedings between —
 - (i) a de facto partner; and
 - (ii) the bankruptcy trustee of a bankrupt de facto partner,with respect to the maintenance of the partner referred to in subparagraph (ii); or
 - (b) proceedings between —
 - (i) a de facto partner; and
 - (ii) the bankruptcy trustee of a bankrupt de facto partner,with respect to any vested bankruptcy property in relation to the bankrupt partner, being proceedings arising out of the de facto relationship.

”.

183. Section 205ZC amended

- (1) Section 205ZC is amended as follows:
 - (a) by inserting before “A de facto partner” the subsection designation “(1)”;
 - (b) by deleting “party” and inserting instead —
“ partner ”.

- (2) At the end of section 205ZC the following subsection is inserted —

“

- (2) The liability under subsection (1) of a bankrupt de facto partner to maintain the other de facto partner may be satisfied, in whole or in part, by way of the transfer of vested bankruptcy property in relation to the bankrupt partner if the court makes an order under this Part for the transfer.

”

184. Section 205ZCA inserted

After section 205ZC the following section is inserted —

“

205ZCA. Powers of court in maintenance proceedings — FLA s. 74

- (1) In proceedings with respect to the maintenance of a de facto partner, the court may make such order as it considers proper for the provision of maintenance in accordance with this Division.
- (2) If —
- (a) an application is made for an order under this section in proceedings between de facto partners with respect to the maintenance of one of the partners; and
 - (b) either of the following subparagraphs apply to one of the de facto partners —
 - (i) when the application was made, the de facto partner was a bankrupt; and
 - (ii) after the application was made but before the proceedings are finally determined, the de facto partner became a bankrupt;
- and
- (c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and
 - (d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings,
- the court must join the bankruptcy trustee as a party to the proceedings.
- (3) If a bankruptcy trustee is a party to proceedings with respect to the maintenance of a de facto partner, then, except with the leave of the court, the bankrupt de facto partner is not entitled to make a

submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.

- (4) The court must not grant leave under subsection (3) unless the court is satisfied that there are exceptional circumstances.
- (5) If —
- (a) an application is made for an order under this section in proceedings between de facto partners with respect to the maintenance of one of the de facto partners; and
 - (b) either of the following subparagraphs apply to one of the de facto partners (the “**debtor party**”) —
 - (i) when the application was made, the de facto partner was a debtor subject to a personal insolvency agreement; or
 - (ii) after the application was made but before it is finally determined, the de facto partner becomes a debtor subject to a personal insolvency agreement;
- and
- (c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and
 - (d) the court is satisfied that the interests of the debtor party’s creditors may be affected by the making of an order under this section in the proceedings,
- the court must join the trustee of the agreement as a party to the proceedings.
- (6) If the trustee of a personal insolvency agreement is a party to proceedings with respect to the maintenance of a de facto partner then, except with the leave of the court, the de facto partner who is the debtor subject to the agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.
- (7) The court must not grant leave under subsection (6) unless the court is satisfied that there are exceptional circumstances.
- (8) For the purposes of subsections (2) and (5), an application for an order under this section is taken to be finally determined when —
- (a) the application is withdrawn or dismissed; or
 - (b) an order (other than an interim order) is made as a result of the application.

”.

185. Section 205ZD amended

- (1) Section 205ZD(1) is repealed.
- (2) Section 205ZD(3) is amended as follows:
 - (a) in paragraph (d)(ii) by deleting “party” and inserting instead —
“ partner ”;
 - (b) in paragraph (e) by deleting “party” and inserting instead —
“ de facto partner ”;
 - (c) in paragraph (f) by deleting “party” in both places where it occurs and inserting instead —
“ de facto partner ”;
 - (d) in paragraph (h) —
 - (i) by deleting “party” in the first place where it occurs and inserting instead —
“ de facto partner ”; and
 - (ii) by deleting “that party” in both places where it occurs and inserting instead —
“ that partner ”;
 - (e) after paragraph (h) by inserting —
“
 - (ha) the effect of any proposed order on the ability of a creditor of a de facto partner to recover the creditor’s debt, so far as that effect is relevant; and”;
 - (f) in paragraph (i) by deleting “party” in both places where it occurs and inserting instead —
“ de facto partner ”;
 - (g) in paragraph (j) by deleting “party” and inserting instead —
“ de facto partner ”;
 - (h) in paragraph (k) by deleting “party” and inserting instead —
“ de facto partner ”;
 - (i) in paragraph (l) by deleting “party” and inserting instead —
“ de facto partner ”;
 - (j) in paragraph (m) by deleting “section 205ZG in relation to the property of the parties;” and inserting instead —

“

section 205ZG in relation to —

- (i) the property of the de facto partners; or
- (ii) vested bankruptcy property in relation to a bankrupt de facto partner;

”.

- (k) in paragraph (p) by deleting “parties.” and inserting instead —

“ de facto partners. ”;

- (l) after each of paragraphs (a) to (h) and (i) to (n) by inserting —

“ and ”.

186. Section 205ZG amended

- (1) Section 205ZG(1) is repealed and the following subsection is inserted instead —

“

- (1) In property settlement proceedings, the court may make such order as it considers appropriate —

- (a) in the case of proceedings with respect to the property of the de facto partners, or either of them, altering the interests of the partners in the property; or
- (b) in the case of proceedings with respect to the vested bankruptcy property in relation to a bankrupt de facto partner, altering the interests of the bankruptcy trustee in the vested bankruptcy property,

including —

- (c) an order for a settlement of property in substitution for any interest in the property; and
- (d) an order requiring —
 - (i) either or both of the de facto partners; or
 - (ii) the relevant bankruptcy trustee (if any),to make, for the benefit of either or both of the de facto partners or a child of the de facto partner, such settlement or transfer of property as the court determines.

”.

- (2) Section 205ZG(2) is amended as follows:

- (a) by deleting “proceedings with respect to the property of de facto partners, or either of them” and inserting instead —
“ property settlement proceedings ”;
 - (b) by deleting “a partner to the proceedings,” and inserting instead —
“ one of the de facto partners, ”.
- (3) Section 205ZG(4) is amended by deleting “proceedings with respect to any property of de facto partners, or either of them,” and inserting instead —
“ property settlement proceedings ”.
- (4) Section 205ZG(5) is amended as follows:
- (a) by deleting “proceedings with respect to the property of the de facto partners, or either of them,” and inserting instead —
“ property settlement proceedings ”;
 - (b) by deleting paragraph (b) and inserting the following paragraph instead —
“
 - (b) that an order that the court could make with respect to —
 - (i) the property of the de facto partners, or either of them; or
 - (ii) the vested bankruptcy property in relation to a bankrupt de facto partner,
if that significant change in financial circumstances occurs is more likely to do justice as between the de facto partners than an order that the court could make immediately with respect to —
 - (iii) the property of the de facto partners, or either of them; or
 - (iv) the vested bankruptcy property in relation to a bankrupt de facto partner,”;
 - (c) by inserting after “either de facto partner” —
“ or the relevant bankruptcy trustee (if any) ”;
 - (d) by inserting after “that de facto partner” —
“ or the relevant bankruptcy trustee, as the case may be”.

- (5) Section 205ZG(6) is amended by deleting “with respect to any of the property of the de facto partners or of either of them.” and inserting instead —

“

with respect to —

- (a) any of the property of the de facto partners, or of either of them; or
- (b) any of the vested bankruptcy property in relation to a bankrupt de facto partner.

”.

- (6) Section 205ZG(8) is amended as follows:

- (a) by deleting “proceedings with respect to the property of de facto partners, or either of them are completed, either party to the proceedings” and inserting instead —

“

property settlement proceedings are completed, either de facto partner

”;

- (b) after paragraph (a) by inserting —
“ and ”;
- (c) in paragraph (b) by deleting “with respect to any of the property of the de facto partners, or either of them; and” and inserting instead —

“

with respect to —

- (iii) any of the property of the de facto partners, or either of them; or
- (iv) any of the vested bankruptcy property in relation to a bankrupt de facto partner;

and

”.

- (7) Section 205ZG(9) is amended by deleting “proceedings with respect to the property of de facto partners, or either of them” and inserting instead —

“ property settlement proceedings ”.

- (8) After section 205ZG(9) the following subsections are inserted —

“

- (10) The following are entitled to become a party to proceedings in which an application is made for an order under this section —
- (a) a creditor of a party to the proceedings if the creditor may be able to recover his or her debt if the order were made;
 - (b) any other person whose interests would be affected by the making of the order.
- (11) Subsection (10) does not apply to a creditor of a party to the proceedings —
- (a) if the party is a bankrupt, to the extent to which the debt is a provable debt (within the meaning of the Bankruptcy Act); or
 - (b) if the party is a debtor subject to a personal insolvency agreement, to the extent to which the debt is covered by the personal insolvency agreement.
- (12) If —
- (a) an application is made for an order under this section in proceedings between the de facto partners with respect to the property of the de facto partners, or either of them; and
 - (b) either of the following subparagraphs apply to a de facto partner —
 - (i) when the application was made, the partner was a bankrupt;
 - (ii) after the application was made but before it is finally determined, the partner became a bankrupt;
- and
- (c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and
 - (d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings,
- the court must join the bankruptcy trustee as a party to the proceedings.
- (13) If a bankruptcy trustee is a party to property settlement proceedings, then, except with the leave of the court, the bankrupt de facto partner is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.

- (14) The court must not grant leave under subsection (13) unless the court is satisfied that there are exceptional circumstances.
- (15) If—
- (a) an application is made for an order under this section in proceedings between de facto partners with respect to the property of the de facto partners, or either of them; and
 - (b) either of the following subparagraphs apply to a de facto partner (the “**debtor party**”) —
 - (i) when the application was made, the de facto partner was a debtor subject to a personal insolvency agreement; or
 - (ii) after the application was made but before it is finally determined, the de facto partner becomes a debtor subject to a personal insolvency agreement;
- and
- (c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and
 - (d) the court is satisfied that the interests of the debtor party’s creditors may be affected by the making of an order under this section in the proceedings,
- the court must join the trustee of the agreement as a party to the proceedings.
- (16) If the trustee of a personal insolvency agreement is a party to property settlement proceedings, then, except with the leave of the court, the de facto partner who is the debtor subject to the agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.
- (17) The court must not grant leave under subsection (16) unless the court is satisfied that there are exceptional circumstances.
- (18) For the purposes of subsections (12) and (15), an application for an order under this section is taken to be finally determined when —
- (a) the application is withdrawn or dismissed; or
 - (b) an order (other than an interim order) is made as a result of the application.

”.

187. Section 205ZH amended

- (1) Section 205ZH(1) is amended by deleting “proceedings with respect to the property of de facto partners, or either of them,” and inserting instead —

“ property settlement proceedings, ”.

- (2) Section 205ZH(2) is amended by deleting “proceedings with respect to the property of de facto partners, or either of them,” and inserting instead —

“ property settlement proceedings, ”.

- (3) Section 205ZH(5) is amended by deleting “party to the proceedings” and inserting instead —

“ de facto partner ”.

- (4) After section 205ZH(6) the following subsections are inserted —

“

- (7) For the purposes of this section, a creditor of a party to the proceedings in which the order under section 205ZG was made is taken to be a person whose interests are affected by the order if the creditor may not be able to recover his or her debt because the order has been made.

- (8) For the purposes of this section, if —

- (a) an order is made by a court under section 205ZG in proceedings with respect to the property of de facto partners or either of them; and
(b) either of the following subparagraphs apply to a de facto partner —
(i) when the order was made, the de facto partner was a bankrupt;
(ii) after the order was made, the de facto partner became a bankrupt,

the bankruptcy trustee is taken to be a person whose interests are affected by the order.

- (9) For the purposes of this section, if —

- (a) a de facto partner is a bankrupt; and
(b) an order is made by a court under section 205ZG in proceedings with respect to the vested bankruptcy property in relation to the bankrupt party,

the bankruptcy trustee is taken to be a person whose interests are affected by the order.

- (10) For the purposes of this section, if —

-
- (a) an order is made by a court under section 205ZG in proceedings with respect to the property of de facto partners or either of them; and
 - (b) either of the following subparagraphs apply to a de facto partner —
 - (i) when the order was made, the de facto partner was a debtor subject to a personal insolvency agreement;
 - (ii) after the order was made, the de facto partner became a debtor subject to a personal insolvency agreement,

the trustee of the agreement is taken to be a person whose interests are affected by the order.

”

188. Sections 205ZHE, 205ZHF, 205ZHG and 205ZHH inserted

Before section 205ZI the following sections are inserted —

“

205ZHE. Notifying third parties about application — FLA s. 79F

The rules may specify the circumstances in which a person who —

- (a) applies for an order under this Part; or
- (b) is a party to proceedings for an order under this Part,

is to give notice of the application to a person who is not a party to the proceedings.

205ZHF. Notifying bankruptcy trustee etc. about application under section 205ZA, 205ZCA, 205ZG or 205ZH — FLA s. 79G

- (1) The rules may make provision for a bankrupt who becomes a party to a proceeding for an application under section 205ZA, 205ZCA, 205ZG or 205ZH to give notice of the application to the bankruptcy trustee.
- (2) The rules may make provision for a debtor subject to a personal insolvency agreement who becomes a party to a proceeding for an application under section 205ZA, 205ZCA, 205ZG or 205ZH to give notice of the application to the trustee of the agreement.

205ZHG. Notifying court about bankruptcy etc. — FLA s. 79H

- (1) The rules may make provision for a person who —
 - (a) is a de facto partner; and
 - (b) is a party to a proceeding for an application under section 205ZA, 205ZCA, 205ZG or 205ZH; and

- (c) before that application is finally determined, becomes a bankrupt,

to notify a court exercising jurisdiction under this Act that the person has become a bankrupt.

- (2) The rules may make provision for a person who —
 - (a) is a de facto partner; and
 - (b) is a party to a proceeding for an application under section 205ZA, 205ZCA, 205ZG or 205ZH; and
 - (c) before that application is finally determined, becomes a debtor subject to a personal insolvency agreement,

to notify a court exercising jurisdiction under this Act that the person has become a debtor subject to a personal insolvency agreement.

- (3) The rules may make provision for a person who —
 - (a) is a de facto partner; and
 - (b) is a party to a proceeding for an application under section 205ZA, 205ZCA, 205ZG or 205ZH; and
 - (c) before that application is finally determined, becomes a party to a proceeding before the Federal Court or the Federal Magistrates Court under the Bankruptcy Act that relates to —
 - (i) the bankruptcy of the person; or
 - (ii) the person's capacity as a debtor subject to a personal insolvency agreement,

to notify a court exercising jurisdiction under this Act of the institution of the proceeding under the Bankruptcy Act.

- (4) The rules may make provision for a person who —
 - (a) is the bankruptcy trustee of a bankrupt de facto partner; and
 - (b) applies under section 139A of the Bankruptcy Act for an order under Division 4A of Part VI of that Act,

to notify a court exercising jurisdiction under this Act of the making of the application.

- (5) For the purposes of this section, an application for an order under section 205ZCA, 205ZG or 205ZH is taken to be finally determined when —
 - (a) the application is withdrawn or dismissed; or
 - (b) an order (other than an interim order) is made as a result of the application.

-
- (6) For the purposes of this section, an application for a declaration under section 205ZA is taken to be finally determined when —
- (a) the application is withdrawn or dismissed; or
 - (b) a declaration is made as a result of the application.

205ZHH. Notifying non-bankrupt de facto partner about application under section 139A of the Bankruptcy Act — FLA s. 79J

The rules may make provision for a person who —

- (a) is the bankruptcy trustee of a bankrupt de facto partner; and
- (b) applies under section 139A of the Bankruptcy Act for an order under Division 4A of Part VI of that Act in relation to an entity (other than the other de facto partner),

to notify the other de facto partner of the making of the application.

”.

189. Section 205ZI amended

After section 205ZI(3) the following subsections are inserted —

“

- (4) If a bankruptcy trustee is a party to a proceeding before the court, the court may make an order under subsection (1)(e) directed to the bankrupt.
- (5) If the trustee of a personal insolvency agreement is a party to a proceeding before the court, the court may make an order under subsection (1)(e) directed to the debtor subject to the agreement.
- (6) Subsections (4) and (5) do not limit subsection (1)(e).

”.

190. Section 205ZL amended and transitional provision

- (1) Section 205ZL(1) is amended by deleting “In proceedings with respect to the maintenance of a de facto partner, if there is in force an order with respect to the maintenance of that person by the de facto partner of that person” and inserting instead —

“

If there is in force an order with respect to the maintenance of a de facto partner

”.

- (2) After section 205ZL(1) the following subsection is inserted —

“

- (1a) The court’s jurisdiction under subsection (1) may be exercised —
- (a) in any case, in proceedings with respect to the maintenance of a de facto partner; or
 - (b) if there is a bankrupt de facto partner, on the application of the bankruptcy trustee; or
 - (c) if a de facto partner is a debtor subject to a personal insolvency agreement, on the application of the trustee of the agreement.

”.

- (3) Section 205ZL(5) is amended by inserting after “a de facto partner” —

“ , or by the bankruptcy trustee of a de facto partner ”.

- (4) Section 205ZL(1) of the *Family Court Act 1997*, as amended by subsection (1), applies to an order made before, on or after the commencement of this Part.

191. Section 205ZP amended

- (1) Section 205ZP(1)(a) is amended by deleting “parties” and inserting instead —

“ de facto partners ”.

- (2) Section 205ZP(1)(b) is amended by deleting “parties” and inserting instead —

“ de facto partners ”.

192. Section 205ZPA inserted

After section 205ZP the following section is inserted —

“

205ZPA. Need for separation declaration for certain provisions of financial agreement to take effect — FLA s. 90DA

- (1) A financial agreement between 2 people, to the extent to which it deals with —
- (a) how, in the event of the breakdown of the de facto relationship, all or any of the property or financial resources of either or both of them at the time when the agreement is made, or at a later time and during the de facto relationship, is to be dealt with; or
 - (b) the maintenance of either of them after the de facto relationship has ended,

is of no force or effect until a separation declaration is made.

- (2) A separation declaration is a written declaration that complies with subsections (3) and (4).
- (3) The declaration must be signed by at least one of the parties to the financial agreement.
- (4) The declaration must state that —
 - (a) the de facto partners have separated and are living separately and apart at the declaration time; and
 - (b) in the opinion of the de facto partners making the declaration, there is no reasonable likelihood of cohabitation being resumed.
- (5) In this section —

“**declaration time**” means the time when the declaration was signed by a party to the financial agreement (or last signed by a party to the agreement, if both parties to the agreement have signed);

“**separated**” has the same meaning in relation to a de facto relationship as it has for the purposes of section 48 of the Family Law Act, as affected by section 49 of that Act, in relation to a marriage.

”.

193. Section 222 amended

- (1) After section 222(1) the following subsections are inserted —

“

- (1a) If —
 - (a) a de facto partner is a bankrupt; and
 - (b) the bankrupt trustee is a party to proceedings under this Act,the court may set aside or restrain the making of an instrument or disposition —
 - (c) which is made or proposed to be made by or on behalf of, or by direction or in the interests of, the bankrupt; and
 - (d) which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.
- (1b) If —

- (a) a de facto partner is a debtor subject to a personal insolvency agreement; and
- (b) the trustee of the agreement is a party to proceedings under this Act,

the court may set aside or restrain the making of an instrument or disposition —

- (c) which is made or proposed to be made by or on behalf of, or by direction or in the interest of, the debtor; and
- (d) which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.

”.

- (2) Section 222(2) is amended by deleting “such instrument or disposition” and inserting instead —

“

instrument or disposition referred to in subsection (1), (1a) or (1b)

”.

- (3) After section 222(4) the following subsection is inserted —

“

- (4aa) An application may be made to the court for an order under this section by —
 - (a) a party to the proceedings; or
 - (b) a creditor to the party to the proceedings if the creditor may not be able to recover his or her debt if the instrument or disposition were made; or
 - (c) any other person whose interests would be affected by the making of the instrument or disposition.

”.

194. Section 235A amended

After section 235A(3) the following subsections are inserted —

“

- (4) If a de facto partner is a bankrupt, a court may, on the application of the other de facto partner, by interlocutory order, grant an injunction under subsection (3) restraining the bankruptcy trustee from declaring and distributing dividends amongst the bankrupt’s creditors.

- (5) Subsection (4) does not limit subsection (3).
- (6) If a de facto partner is a debtor subject to a personal insolvency agreement, a court may, on the application of the other de facto partner, by interlocutory order, grant an injunction under subsection (3) restraining the trustee of the agreement from disposing of (whether by sale, gift or otherwise) property subject to the agreement.
- (7) Subsection (6) does not limit subsection (3).

”.

195. Transitional provisions

- (1) In this section —
 - “**commencement**” means the day on which this Part comes into operation;
 - “**relevant provisions**” means the following provisions of the *Family Court Act 1997*, as amended by this Part —
 - (a) section 205ZCA(2), (3) and (4); and
 - (b) section 205ZCA(8), to the extent to which it relates to section 205ZCA(2); and
 - (c) the definitions in section 5(1), to the extent to which those definitions relate to section 205ZCA(2), (3) and (4); and
 - (d) section 205ZG(11), (12) and (13); and
 - (e) section 205ZG(17), to the extent to which it relates to section 205ZG(11); and
 - (f) the definitions in section 5(1) to the extent to which those definitions relate to section 205ZG(11), (12) and (13).
- (2) Subject to subsection (3), the *Family Court Act 1997*, as amended by this Part, to the extent to which it relates to bankruptcies or personal insolvency agreements —
 - (a) applies in relation to —
 - (i) bankruptcies for which the date of the bankruptcy is after the commencement; and
 - (ii) personal insolvency agreements, whether executed before, at or after the commencement;and
 - (b) does not apply in relation to bankruptcies for which the date of the bankruptcy is before the commencement.

- (3) The relevant provisions apply to proceedings instituted after the commencement, whether the date of the bankruptcy is before, on or after the commencement.

”

¹³ ~~On the date as at which this compilation was prepared, the *Criminal Law and Evidence Amendment Act 2008* s. 77(2) had not come into operation. It reads as follows:~~

“

~~77. **Courts Legislation Amendment and Repeal Act 2004 amended**~~

~~(1) The amendments in this section are to the *Courts Legislation Amendment and Repeal Act 2004*.*~~

~~(2) Section 95 is amended in the Table to the section, in the row beginning with “s. 43(7)” by deleting “s. 243(6)”.~~

”