

Western Australia

## **Family Court Act 1975**

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# Family Court Act 1975

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**1<sup>st</sup> Schedule**

**2<sup>nd</sup> Schedule**

**3<sup>rd</sup> Schedule**

**NOTES**





Western Australia

## **Family Court Act 1975**

**An Act to create the Family Court of Western Australia, and for incidental purposes.**

## **Part I — Preliminary**

**1. Short title**

This Act may be cited as the *Family Court Act 1975*.

**2. Commencement**

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

[3. *Repealed by No. 19 of 1987 s.4.*]

**4. Interpretation**

In this Act, unless the contrary intention appears —

“**adopted**” in relation to a child means a child adopted under an adoption —

(a) under the *Adoption of Children Act 1896*; or

(b) recognized under the *Adoption of Children Act 1896*,

which adoption has not been rescinded;

“**Chief Judge**” means the Chief Judge of the Court and includes a Judge appointed to act in the office of Chief Judge under section 11 (1a);

“**child**” means a child in relation to whom the Court has a non-federal jurisdiction under this Act;

“**child agreement**” means an agreement in writing between the parents of a child, whether made before or after the commencement of section 4 of the *Family Court Amendment Act 1990*, that relates to child welfare matters in respect of the child, whether or not it makes provision with respect to other matters, and includes such an agreement that varies an earlier child agreement;

“**child of the marriage**”, in relation to the parties to a marriage, means —

(a) any child of both parties; and

(b) any child of either party who has been accepted as one of the family by the other party;

**“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 welfare matters”** means matters in relation to the custody or guardianship of, access to, or welfare of, a child, but does not include matters in relation to the maintenance of a child;

**“Collector of Maintenance”** means the person holding or acting in the office of Collector of Maintenance and includes an Assistant Collector of Maintenance;

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

**“Department”** means the Department for Community Services established by section 4 of the *Community Services Act 1972*;

**“Deputy Registrar”** means a person appointed under this Act to be a Deputy Registrar of the Court;

**“Director-General”** means the Director-General of the Department and includes the Assistant Director-General appointed under section 8 of the *Community Services Act 1972*;

**“Division”** means a Division of the Part in which that term is used;

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

**“Family Law Act”** means the *Family Law Act 1975* of the Parliament of the Commonwealth or any Act passed in amendment or substitution thereof, and includes regulations and proclamations in force thereunder;

**“federal jurisdiction of the Court”** means the jurisdiction referred to in section 27 (1);

**“financial matters”** means any matter referred to in Division 4 or Division 5 of Part III;

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

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

**“maintenance agreement”** means any agreement in writing between persons other than parties to a marriage whether made before or after the date of the coming into operation of section 4 of the *Family Court Act Amendment and Acts Repeal Act 1979*<sup>1</sup> that relates to financial matters and whether or not it makes provision with respect to other matters and includes any agreement in variation thereof;

**“Marshal”** means the person appointed under this Act to be the Marshal of the Court;

**“metropolitan region”** means such region as is prescribed to be the metropolitan region for the purposes of this Act;

**“non-federal jurisdictions of the Court”** means the jurisdictions referred to in section 27 (2) and (3);

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

**“parent”**, in relation to a child who has been adopted, means an adoptive parent of the child;

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

**“party to a marriage”** includes a person who was party to a void marriage;

**“preliminary expenses”** in respect of the confinement of a woman means the expenses of the maintenance of the woman during the period of 2 months immediately preceding the confinement, reasonable medical, surgical, hospital and nursing expenses attendant upon the

confinement, and the expenses of the maintenance of the woman and the child or children born to the woman during the confinement and for 3 months immediately after the birth;

**“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;

**“Registrar”** means the person appointed under this Act to be the Registrar of the Court and includes an Acting Registrar of the Court and also includes a Deputy Registrar of the Court;

**“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 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;

**“ward”** means a ward as defined under the *Child Welfare Act 1947*;

**“welfare officer”** includes the Director of Court Counselling appointed under this Act and any other counselling or welfare officer of the Court.

*[Section 4 amended by No. 30 of 1978 s.3; No. 58 of 1979 s.4; No. 94 of 1981 s.3; No. 7 of 1982 s.13; No. 19 of 1987 s.5; No. 41 of 1988 s.4; No. 64 of 1990 s.4.]*

## **5. Amendments and savings**

- (1) The Acts set out in the First Schedule are amended to the extent specified therein, and the Acts set out in the Third Schedule are repealed.

**s. 5**

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- (2) In subsections (3) and (3a) “**decree**” means judgment or order, and includes an order dismissing an application or complaint or refusing to make an order.
- (3) Where a decree of a court created by the Parliament of the State was made before the date of the coming into operation of this section, in the exercise of a jurisdiction conferred by one of the Acts specified in the First Schedule that jurisdiction being on and after that date one of the non-federal jurisdictions of the Family Court of Western Australia —
- (a) the decree shall have or continue to have effect; and
  - (b) that Act as expressly amended and otherwise affected by this Act shall apply to and in relation to the decree,
- as if the decree were made under that Act as so amended and affected.
- (3a) Where a decree made in the exercise of a jurisdiction conferred by one of the Acts specified in the Third Schedule was in force immediately before the date of the repeal of that Act and that jurisdiction is on and after that date one of the non-federal jurisdictions of the Family Court of Western Australia —
- (a) the decree shall have or continue to have effect; and
  - (b) this Act shall apply to and in relation to the decree,
- as if the decree was made in the exercise of a jurisdiction conferred by this Act, as in force on and after the date of that repeal.
- (4) A reference in any other Act or in any regulation, rule, by-law, or instrument made under any Act, to a court created by the Parliament of the State, a member thereof, an officer thereof, or a Registry or central or other office thereof, in respect of a matter in a jurisdiction that is one of the non-federal jurisdictions of the Family Court of Western Australia or of courts of summary jurisdiction referred to in section 75, shall be read as a reference to the Family Court of Western Australia, a Family Court Judge, the corresponding officer, or the Registry

or central or other office, of the Family Court of Western Australia, or as a reference to such courts of summary jurisdiction, the stipendiary magistrates constituting them, the corresponding officers thereof, or the offices thereof, as the case requires.

*[Section 5 amended by No. 58 of 1979 s.5.]*

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

### **Division 1 — Creation**

#### **6. Creation of the Court**

- (1) A court, to be known as the Family Court of Western Australia, is hereby created for this State.
- (2) The Court shall be constituted in the manner provided by this Act.

#### **7. The Court to be a court of record and constitution thereof**

- (1) The Court —
  - (a) is a court of record; and
  - (b) shall be constituted by a Judge as provided by this Act.
- (2) The jurisdiction of the Court is exercisable by one Judge.
- (3) The Court constituted by one Judge may sit and exercise the jurisdiction of the Court notwithstanding that the Court constituted by another Judge is at the same time sitting and exercising the jurisdiction of the Court.
- (4) In this section “a Judge” includes an acting Judge, if any, who for the time being holds an appointment as such pursuant to section 11.

#### **8. Judicial notice of seals and stamps**

All courts, judges, and persons acting judicially shall take judicial notice of the seals and stamps used in the Court.

### **Division 2 — Judges**

#### **9. Appointment of Judges**

- (1) The Governor may, by commission in Her Majesty’s name appoint as many persons as are, in the opinion of the Governor,



needed for the conduct of the business of the Court to be Family Court Judges.

- (2) A person shall not be appointed a Family Court Judge unless —
- (a) he is or has been a Judge of a court created by the Parliament of the Commonwealth;
  - (b) he is or has been a Judge or an acting Judge a court created by the Parliament of the State;
  - (c) he is or has been a barrister or solicitor of the Supreme Court of not less than 8 years standing; or
  - (d) he is a practising barrister of the High Court of Australia, of not less than 8 years standing,

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

- (3) A person so appointed shall be a Judge for the whole of the state and under his commission is empowered to act in the Court sitting at any place in the State.
- (4) The Governor shall appoint one of the Judges to be the Chief Judge<sup>2</sup>.

*[Section 9 amended by No. 58 of 1979 s.6; No. 19 of 1987 s.6.]*

## **10. Seniority**

- (1) The Chief Judge is senior to all other Judges of the Court.
- (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.

*[Section 10 Amended by No. 19 of 1987 s.7.]*

**11. Acting appointments**

(1) Whenever —

- (a) the Chief Judge is absent from the State or from duty; or
- (b) there is a vacancy in the office of Chief Judge,

and no Judge is specifically appointed under subsection (1a) to act in the office of Chief Judge for the period of such absence or vacancy, the next senior Judge who is in the State and is available and willing to do so shall perform the duties and may exercise the powers of the Chief Judge.

(1a) Where the Chief Judge is, or is expected to be, absent from duty or there is a vacancy in the office of Chief Judge, the Governor may appoint a Judge to act in the office of Chief Judge for such period as the Governor thinks fit and specifies in the instrument of appointment.

(2) Where —

- (a) a Judge including the Chief Judge is, or is expected to be, absent from duty, the Governor may appoint a person qualified to be appointed a Judge, to act as a Judge during the absence from duty of the first mentioned Judge or until he completes the trial or hearing of any cause or matter that he had entered upon and not completed before that Judge returns to duty, which ever is the later; or
- (b) for any reason the conduct of the business of the Court, in the opinion of the Governor, requires such an appointment to be made, the Governor may appoint a person so qualified to act as a Judge for such period as the Governor thinks fit and specifies in the instrument of appointment.

(3) A person appointed to be an acting Judge under subsection (2) —

- (a) shall not hold office after he attains the age of 70 years;

- (b) has the same right of resignation as a Judge; and
- (c) is liable to be removed from office in the same manner and upon the same grounds as a Judge.

*[Section 11 amended by No. 7 of 1982 s.14; No. 19 of 1987 ss.7 and 8; No. 24 of 1991 s.4.]*

**12. Tenure of office**

- (1) Each Judge shall retire from his office upon attaining the age of 70 years.
- (2) A Judge may resign his office by writing under his hand addressed to the Governor and the resignation takes effect on the day on which it is received by the Governor or on such later day as is specified in the writing.
- (3) Subject to subsections (1) and (2), the commission of each Judge shall continue in force during good behaviour but the Governor may, upon the address of both Houses of Parliament, remove any Judge from his office and revoke his commission.

*[Section 12 amended by No. 24 of 1991 s.5.]*

**13. Oaths or affirmations of allegiance and office**

Each person appointed to be a Judge under section 9 or acting Judge under section 11 shall, before proceeding to discharge the duties of his office, take before the Governor an oath or affirmation of allegiance and an oath or affirmation of office in accordance with the forms set out in the Second Schedule.

*[Section 13 amended by No. 19 of 1987 s.9; No. 37 of 1989 s.11.]*

*[14. Repealed by No. 19 of 1987 s.10.]*

**15. Style and title of Judges**

- (1) The Chief Judge is in relation to his office entitled to a like style and title to that which a Puisne Judge of the Supreme Court is entitled in relation to his office.
- (2) Each Judge other than the Chief Judge is in relation to his office entitled to the style and title of "His Honour".

*[Section 15 amended by No. 19 of 1937 s. 7.]*

**16. Salaries and allowances of Judges**

- (1) The Chief Judge shall receive salary and allowances or reimbursements at the same rate as a Puisne Judge of the Supreme Court.
- (2) Each Judge other than the Chief Judge shall be paid salary and allowances or reimbursements at the same rate as a District Court Judge other than the Chairman of District Court Judges.
- (3) A Judge who is appointed to act in the office of Chief Judge under section 11 (1a) shall be entitled, for so long as his appointment to act as Chief Judge remains in force, to receive salary and allowances or reimbursements at the same rate as if he had been substantively appointed to the office of Chief Judge under section 9 (4).

*[Section 16 amended by No. 7 of 1982 s. 15; No. 19 of 1987 ss. 7 and 11.]*

**17. Leave of Judge**

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

**18. Application of Act No. 35 of 1950 to Family Court Judges**

- (1) 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 each Family Court Judge, and to and in relation to his widow and children after his

death, in the same manner as they apply to and in relation to a Judge of the Supreme Court appointed as such after the coming into operation of that Act, and to and in relation to his widow and children after his death, and for that purpose the term “Judge” in that Act includes a Family Court Judge.

[(2) *repealed*]

- (3) If an acting Family Court Judge is appointed a Family Court Judge his service as an acting Family Court Judge shall be regarded for the purposes of the *Judges’ Salaries and Pensions Act 1950* as service as a Family Court Judge.

*[Section 18 amended by No. 19 of 1987 s.12; No. 82 of 1987 s.8.]*

**19. Application of Act No. 34 of 1938 to a person appointed a Judge**

- (1) If a person is a contributor within the meaning of the *Superannuation and Family Benefits Act 1938* immediately before he is appointed a Judge, he may continue to be such a contributor notwithstanding his appointment as a Judge.
- (2) While a person to whom subsection (1) applies, continues to be a contributor under the *Superannuation and Family Benefits Act 1938*, that Act applies to the person, and if he ceases to be a contributor —
- (a) before he attains the age of 60 years he shall be deemed to have resigned;
  - (b) on or after he attains the age of 60 years but before he attains the age of 65 years he shall be deemed to have elected to retire; or
  - (c) on attaining 65 years he shall be deemed to have retired,

under that Act on the day he so ceases to be a contributor and, in each case referred to in paragraphs (b) and (c) a pension is payable to him, and his widow and children after his death, without affecting any pension that may be payable to, him, and

his widow and children after his death, under the *Judges' Salaries and Pensions Act 1950*, but the pension otherwise payable under that last-mentioned Act to him, and his widow and children after his death, shall be reduced in accordance with the provisions of that Act by the amount of the State share of the firstmentioned pension paid to him, and his widow and children after his death.

**20. 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 he is entitled to receive salary and allowances or reimbursements as a Judge of the Family Court of Australia, he is not entitled to receive salary and allowances or reimbursements under this Act except to the extent that the salary and allowances or reimbursements that would be payable to him under this Act apart from this section exceeds the salary and allowances or reimbursements payable to him as a Judge of the Family Court of Australia;
- (b) while he is, and his widow and children after his death are, entitled to receive a pension under the *Judges' Pensions Act 1968* of the Parliament of the Commonwealth or any Act passed in amendment or substitution thereof, he is not, and his widow and children after his death are not, entitled to receive a pension under the *Judges' Salaries and Pensions Act 1950* of the State except to the extent that the pension that would be payable to him, and his widow and children after his death, under that State Act exceeds the pension payable to him, and his widow and children after his death, under that Act of the Parliament of the Commonwealth or any Act passed in amendment or substitution thereof;

- (c) if, after ceasing to be a Judge of the Family Court of Western Australia, he remains a Judge of the Family Court of Australia, any pension to which he is otherwise entitled under the *Judges' Salaries and Pensions Act 1950* of the State shall not be payable except to the extent, if any, that it exceeds the salary payable to him as a Judge of the Family Court of Australia; and
- (d) if, after ceasing to be a Judge of the Family Court of Australia, he remains a Judge of the Family Court of Western Australia, the salary to which he is otherwise entitled under this Act shall not be payable except to the extent, if any, that it exceeds any pension payable to him under the *Judges' Pensions Act 1968* of the Parliament of the Commonwealth or any Act passed in amendment or substitution thereof.

### **Division 3 — Sittings**

#### **21. Sittings of the Court**

Sittings of the Court shall be held from time to time as required.

### **Division 4 — Officers**

#### **22. Officers of the Court**

- (1) There shall be —
  - (a) a Registrar of the Court, and such Deputy Registrars of the Court as are necessary for the proper functioning thereof;
  - (b) a Marshal of the Court;
  - (c) a Director of Court Counselling of the Court;
  - (d) a Collector of Maintenance of the Court and such Assistant Collectors of Maintenance of the Court as are required; and
  - (e) such other officers and other staff of the Court as are necessary for the proper functioning thereof.

- (2) Subject to section 23, the officers of the Court —
  - (a) shall be appointed by the Governor;
  - (b) shall hold office subject to and in accordance with Part 3 of the *Public Sector Management Act 1994*; and
  - (c) may hold office as such in conjunction with any other office in the Public Service of the State.
- (3) Subject to this Act, where an officer of the Court is or is expected to be absent from duty the Attorney General may appoint another person who is a member of the Public Service of the State to act in the place of that officer during the period of his absence from duty, and that other person has during that period the duties, powers; and functions imposed and conferred on that officer.
- (4) The other staff of the Court —
  - (a) shall be appointed and hold office subject to and in accordance with Part 3 of the *Public Sector Management Act 1994*; and
  - (b) may hold office as such in conjunction with any other office in the Public Service of the State.
- (5) In respect of the federal jurisdiction of the Court, the officers of the Court have such duties, powers, and functions as are authorized by the Family Law Act and as are provided by or under this Act.
- (6) In respect of the non-federal jurisdictions of the Court, the officers of the Court have such duties, powers, and functions as are provided by or under the Act and any other Act of the State.
- (7) All courts, judges, and persons acting judicially shall take judicial notice of the official signature of every person who is and every person who has at any time been an officer or acting officer of the Court and of the office or acting office he holds or has held as such an officer or acting officer.



*[Section 22 amended by No. 58 of 1979 s.7; No. 32 of 1994 s.3(2).]*

**23. Registrar may be a stipendiary magistrate**

- (1) The Registrar and a Deputy Registrar or Deputy Registrars may be appointed and hold office as a stipendiary magistrate under and subject to the *Stipendiary Magistrates Act 1957* if qualified under that Act to be so appointed.
- (2) During any period the Registrar or a Deputy Registrar holds office as a stipendiary magistrate under and subject to the *Stipendiary Magistrates Act 1957* he is not a member of the Public Service of the State and references thereto in this Act and to Part 3 of the *Public Sector Management Act 1994* do not apply to and in relation to him.

*[Section 23 inserted by No. 58 of 1979 s.8; amended by No. 94 of 1981 s.4; No. 32 of 1994 s.3(2).]*

**24. Marshal**

- (1) The Marshal —
  - (a) is charged with the service and execution of all writs, orders, decrees, warrants, precepts, processes, and commands of the Court that are directed to him; and
  - (b) shall take, receive, and detain any person who is committed to his custody by the Court, and shall discharge all such persons when directed by the Court or required by law.
- (2) The Marshal may authorize such persons as he thinks fit to assist him in the exercise of any power or the performance of any function.

*[Section 24: formerly section 23 redesignated as section 24 by No. 58 of 1979 s.9.]*

**Division 5 — Counselling and reconciliation**

*[Formerly heading to Division 6 and repealed and re-enacted as heading to Division 5 by Act No. 58 of 1979 s.10.]*

**25. Facilities**

There shall be available to the Court like counselling and welfare facilities to those available to the Family Court of Australia.

*[Section 25: formerly section 27 repealed and re-enacted as section 25 by No. 58 of 1979 s.10.]*

**26. Advice as to counselling**

- (1) The Director of Court Counselling of the Court may advertise the existence and availability of the counselling and welfare facilities of the Court.
- (2) Any person may seek the assistance of the counselling facilities of the Court and when such assistance is sought the Director of Court Counselling of the Court shall, as far as practicable, make those facilities available.

*[Section 26: formerly section 28 and redesignated as section 26 and amended by No. 58 of 1979 s.10.]*

## **Part III — Jurisdiction of the Court**

*[Heading inserted by No. 58 of 1979 s.11.]*

### **Division 1 — General**

*[Heading to Division 1 inserted by No. 58 of 1979 s.12.]*

#### **27. Jurisdiction of the Court**

- (1) The Court has throughout the State the federal jurisdiction with which it is invested by the Family Law Act and any other Act of the Parliament of the Commonwealth and any regulations and proclamations in force under such an Act.
- (2) The Court has throughout the State the non-federal jurisdictions conferred on it by or under this or any other Act, and without derogating therefrom, has non-federal jurisdiction throughout the State —
  - (a) subject to the Family Law Act, in respect of the property of parties to a marriage or either of them except the interest of a party to the marriage in a partnership with a person who is neither a party to the marriage nor a child of the marriage; and
  - (b) subject to —
    - (i) the Family Law Act;
    - (ii) the *Adoption of Children Act 1896*; and
    - (iii) the *Child Welfare Act 1947*,in respect of the —
    - (iv) custody, guardianship of, access to, and welfare of;
    - (v) maintenance of; and
    - (vi) preliminary 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) Where a child the subject of proceedings appears to be a child in need of care and protection as defined by the *Child Welfare Act 1947* 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 of Western Australia established under the *Children's Court of Western Australia Act 1988*.
- (4) Where a child the subject of proceedings appears to be a child in need of care and protection as defined by the *Child Welfare Act 1947* the Director-General may intervene in any proceedings with respect to the child and where he does so the Director-General shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.
- (5) Subject to this Act, the court has non-federal jurisdiction under this Act to make an order containing a provision for the custody of, guardianship of, access to, or welfare of, a child —
  - (a) if the child in respect of whom the order is sought is then present in the State; and
  - (b) if the applicant or the respondent in the proceedings in which the order is sought is resident in the State.
- (6) Subject to this Act, the court in exercising its non-federal jurisdictions under this Act may make an order, not being an order containing a provision for the custody of, or guardianship of, or access to, or welfare of, a child —
  - (a) if the person against whom the order is sought; or
  - (b) if the person for whose benefit the order is sought,is resident in this State.
- (7) Subject to this section, the Court has non-federal jurisdiction to make an order under this Act whether or not the facts or

circumstances, or any of them, the existence or occurrence of which is necessary for the making of the order took place or arose before the coming into operation of this Act or outside the State.

- (8) An application issued pursuant to this Act may be served outside the State.

*[Section 27: former section 24 repealed and re-enacted as section 27 by No. 58 of 1979 s.13; amended by No. 19 of 1987 s.13; No. 49 of 1988 s.49; No. 15 of 1991 s.21.]*

**28. Principles to be applied by the Court in its non-federal jurisdiction**

- (1) The Court in the exercise of its non-federal jurisdiction shall in so far as those principles are capable of application to the case have regard to the following principles —
- (a) the need to preserve and protect the institution of marriage as the union of man and 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 children;
  - (c) the need to protect the rights of children and to promote their welfare;
  - (d) 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; and
  - (e) the effect of any order on the stability of the marriage and the welfare of the children of the marriage.
- (2) In the exercise of its non-federal jurisdictions with respect to a child the Court shall have regard to the welfare of the child as the paramount consideration.

- (3) Subject to this Act, in exercising its non-federal jurisdictions with respect to a child the Court may —
- (a) make such order in respect of those matters as it thinks proper;
  - (b) make an order until further order;
  - (c) discharge or vary an order or suspend any part of an order and may revive the operation of any part of an order so suspended.

*[Section 28 amended by No. 58 of 1979 s.14.]*

**28A. Injunctions**

- (1) The court in exercising its non-federal jurisdictions under this Act may grant an injunction, either unconditionally or upon such terms and conditions as the Court thinks appropriate, by interlocutory order or otherwise (including an injunction in aid of the enforcement of an order), in any case in which it appears to the court, having regard to the principles set out in section 28, to be just or convenient to do so.
- (2) If the Court in the exercise of its non-federal jurisdictions is satisfied that a person has knowingly and without reasonable cause contravened or failed to comply with an injunction or order under this section, the court may —
- (a) order that person to pay a fine not exceeding \$1 000;
  - (b) require that person to enter into a recognizance, with or without sureties, in such reasonable amount as the Court thinks fit, that he will comply with the injunction or order;
  - (c) order that person to deliver up to the Court such documents as the Court thinks fit; and
  - (d) make such other orders as the Court considers necessary to enforce compliance with the injunction or order.
- (3) Where an act or omission referred to in subsection (2) is an offence against any other law, the person committing the

offence may be prosecuted and convicted under that law, but nothing in this section renders any person liable to be punished twice in respect of the same offence.

*[Section 28A inserted by No. 19 of 1987 s.15; amended by No. 78 of 1995 s.147.]*

### **Division 2 — Powers with respect to property**

*[Heading inserted by No. 58 of 1979 s.16.]*

#### **29. Declarations of interests in property**

- (1) In proceedings between the parties to a marriage with respect to existing title or rights in respect of the property of such parties or either of them except the interest of a party to the marriage in a partnership with a person who is neither a party to the marriage nor a child of the marriage, the Court may declare the title or rights, if any, that a party has in respect of the property.
- (2) Where the Court makes a declaration under subsection (1), it may, if it thinks having regard to the principles set out in section 28 and all the circumstances of the case that it is just and equitable to do so, make consequential orders to give effect to the declaration, including orders as to sale or partition and interim or permanent orders as to possession.

*[Section 29: formerly section 26A redesignated as section 29 and amended by No. 58 of 1979 s.17.]*

#### **30. Alteration of property interests**

- (1) In proceedings between the parties to a marriage with respect to the property of such parties or either of them except the interest of a party to the marriage in a partnership with a person who is neither a party to the marriage nor a child of the marriage, the Court may make such order as it thinks fit 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 parties to

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make, for the benefit of either or both parties or a child of the marriage, such settlement or transfer of property as the Court determines.

- (2) In proceedings under this section the Court may adjourn the proceedings upon such terms and conditions as it thinks fit for any period including such period as may be expedient to enable the Court to consider the likely effect if any of an order on the marriage and the children of the marriage, and shall not make an order unless it is satisfied having regard to the principles set out in section 28 and all the circumstances of the case that it is just and equitable to do so.
- (3) In considering what order should be made under this section the Court shall take into account —
  - (a) the financial contribution made directly or indirectly by or on behalf of a party or a child to the acquisition, conservation or improvement of the property, or otherwise in relation to the property;
  - (b) the contribution made directly or indirectly to the acquisition, conservation or improvement of the property by either party, including any contribution made in the capacity of homemaker or parent;
  - (c) the effect of any proposed order upon the earning capacity of either party;
  - (d) the matters referred to in section 75 (2) of the Family Law Act so far as they are relevant; and
  - (e) any other order made under this or any other Act affecting a party.

*[Section 30 formerly section 26B redesignated as section 30 and amended by No. 58 of 1979 s.18.]*

**31. Setting aside of orders altering property interests**

- (1) Where, on application by a person affected by an order made by the Court under section 30, 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, but subject to section 30 (2) and (3), make another order under section 30 in substitution for the order so set aside.

- (2) In the exercise of its powers under subsection (1), the Court shall 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 31: formerly section 26C repealed and re-enacted as section 31 by No. 58 of 1979 s.19.]*

**32. Execution of instruments by order of court**

- (1) Where —
- (a) an order under this Division has directed a person to execute a deed or instrument; and
  - (b) that person has refused or neglected to comply with the direction or, for any other reason, the court thinks it necessary to exercise the powers of the Court under this subsection,

the Court may appoint an officer of the Court or other person to execute the deed or instrument in the name of the person to whom the direction was given and to do all acts and things necessary to give validity and operation to the deed or instrument.

- (2) The execution of the deed or instrument by the person so appointed has the same force and validity as if it had been executed by the person directed by the order to execute it.
- (3) The 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 32: formerly section 26E redesignated as section 32 by No. 58 of 1979 s.21.]*

**33. Transactions to defeat claim**

- (1) In proceedings under this Division, the Court may set aside or restrain the making of an instrument or disposition by or on behalf of, or by direction or in the interest of, a party which is made or proposed to be made to defeat an existing or anticipated order in proceedings for costs, maintenance or the declaration or alteration of any interests in property or which, irrespective of intention, is likely to defeat any such order.
- (2) The Court 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 shall be paid into Court to abide its order.
- (3) The Court shall have regard to the interests of, and shall make any order proper for the protection of, a *bona fide* purchaser or other person interested.
- (4) A party or a person acting in collusion with a party may be ordered to pay the costs of any other party or of a *bona fide* purchaser or other person interested of and incidental to any such instrument or disposition and the setting aside or restraining of the instrument or disposition.
- (5) In this section, “disposition” includes a sale and a gift.

*[Section 33: formerly section 26F redesignated as section 33 by No. 58 of 1979 s.21.]*

**Division 3 — Custody, guardianship, access and welfare**

*[Division 3 inserted by No. 58 of 1979 s.23:  
Heading amended by No. 19 of 1987 s.16.]*

**34. Meaning of guardianship and custody**

- (1) A person who is the guardian of a child under this Act has responsibility for the long-term welfare of the child and has, in relation to that child, all the powers, rights and duties that are,

apart from this Act, vested by law or custom in the guardian of a child, other than —

- (a) the right to have the daily care and control of the child;  
and
  - (b) the right and responsibility to make decisions concerning the daily care and control of the child.
- (2) A person who has or is granted custody of a child under this Act has —
- (a) the right to have the daily care and control of the child;  
and
  - (b) the right and responsibility to make decisions concerning the daily care and control of the child.
- (3) The operation of subsection (1) or (2) in relation to a child may be varied by any order made by the Court in relation to the child.
- (4) An order made under section 36 or which has effect by virtue of section 5 (3a) being an order in force immediately before the commencement of section 17 of the *Family Court Amendment Act 1987* that granted to a person the care and control of a child shall, after the commencement of that section, have effect for the purposes of this Act as if it were an order granting to the person the custody of the child.
- (5) An order made under section 36 or which has effect by virtue of section 5 (3a) being an order in force immediately before the commencement of section 17 of the *Family Court Amendment Act 1987* that granted to a person the custody of a child, shall, after the commencement of that section, have effect for the purposes of this Act —

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- (a) where, by that order or another order in force immediately before the commencement of that section, the care and control of the child had been granted to another person, as if the firstmentioned order were an order granting to the firstmentioned person the guardianship of the child; or
- (b) in any other case, as if the first-mentioned order were an order granting to the firstmentioned person the guardianship and the custody of the child.

*[Section 34: former section 34 repealed by No. 19 of 1987 s.15<sup>3</sup>; s.34 inserted by No. 19 of 1987 s.17.]*

**35. Custody and guardianship**

Subject to the *Adoption of Children Act 1896* and any order made pursuant to this Division, where the parents of a child who has not attained the age of 18 years were not married at the time of the birth of the child or subsequently, the mother of the child has the custody and guardianship of the child.

*[Section 35 inserted by No. 58 of 1979 s.23.]*

**36. Application for custody and guardianship**

An application to the Court for an order with respect to the custody or guardianship of, access to, or welfare of, a child may be made by —

- (a) either parent;
- (aa) the child or a person acting on behalf of the child;
- (b) any guardian, whether appointed under the provisions of this Act or by will or otherwise;
- (c) any person having custody or care and control of the child;

- (d) any person acting in a fiduciary capacity who is, under any will, gift, or 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 by law be applied for the maintenance or education of the child; or
- (e) any other person, who on the hearing of the application can establish to the satisfaction of the Court that his paramount interest in the matter is the welfare of the child.

*[Section 36 inserted by No. 58 of 1979 s.23; amended by No. 19 of 1987 s.18.]*

**36A. Order of Court**

Without limiting section 28 (2) or (3), the Court, in making an order relating to any matter referred to in section 36 —

- (a) shall, unless in the opinion of the Court it is not practicable, make the order that, in the opinion of the Court, is least likely to lead to the institution of further proceedings with respect to the custody or Guardianship of the Child; and
- (b) may, if it is satisfied that it is desirable to do so, make one or more of the following orders —
  - (i) an order placing the child in the custody of any person or of any 2 or more persons jointly;
  - (ii) an order placing the child in the guardianship of any person or of any 2 or more persons jointly;
  - (iii) an order granting to any person rights of access to the child.

*[Section 36A inserted by No. 19 of 1987 s.19.]*

**37. Limitation on and cessation of order**

An order with respect to custody or guardianship of, or access to a child —

- (a) shall not be made in respect of a child who has attained the age of 18 years or has been married; and
- (b) ceases to be in force when the child attains the age of 18 years or marries.

*[Section 37 inserted by No. 58 of 1979 s.23.]*

**38. Death of party to whom custody or guardianship has been granted**

On the death of a party in whose favour a custody order has been made in respect of a child —

- (a) the other party to the application is entitled to the custody of the child only if the Court so orders;
- (b) the other party to the application or any other person may make an application to the Court for an order placing the child in the custody of the applicant; and
- (c) in an application under paragraph (b) by a person who does not, at the time of the application, have the care and control of the child, any person who, at that time, has the care and control of the child is entitled to be a party to the proceedings.

*[Section 38 inserted by No. 58 of 1979 s.23.]*

**39. Welfare conferences**

- (1) Where application is made to the Court under section 36 the Court may at any stage of the proceedings of its own motion, upon the request of a party to the proceedings, or upon the request of a person who is representing the child pursuant to an order under section 82, make an order directing the applicant and respondent to the proceedings to attend a conference with a welfare officer to discuss the welfare of the child and, if there are any differences between the parties as to matters affecting the welfare of the child, to endeavour to resolve those differences.

- (1a) The Court shall not make an order under section 36 (other than an order until further order or an order made with the consent of all the parties to the proceedings who appear at the hearing at which the order is made) unless —
- (a) the parties to the proceedings have attended a conference with a welfare officer in relation to the matter to which the proceedings relate;
  - (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, having regard to the counselling and welfare facilities of the Court, it is not practicable to require the parties to the proceedings to attend a conference as mentioned in paragraph (a).
- (2) Where the Court makes an order under subsection (1), it may fix a place and time for the conference to take place or direct that the conference shall take place at a time and at a place to be fixed by a welfare officer.
- (3) If a party fails to attend a conference in respect of which an order has been made under subsection (1), it is the duty of the welfare officer to report the failure to the Court.
- (3a) Where, under subsection (3), a welfare officer reports to the Court that a party to the proceedings has failed to attend a conference, the Court may, of its own motion, upon the request of a party to the proceedings, or upon the request of a person who is representing the child pursuant to an order under section 82 give such further directions in relation to the conference as the Court considers appropriate.
- (4) Evidence of anything said or any admission made at a conference that takes place in pursuance of an order made under this section is not admissible in any court but nothing in this

subsection prevents a court from admitting evidence of anything said or any admission made at a conference upon the trial of a person for an offence committed at the conference.

*[Section 39 inserted by No. 58 of 1979 s.23; amended by No. 19 of 1987 s.20.]*

**39A. Certain matters to be taken into account**

- (1) In proceedings under this Division —
  - (a) the Court shall consider any wishes expressed by the child in relation to the custody or guardianship of, or access to, the child, or in relation to any other matter relevant to the proceedings, and shall give those wishes such weight as the Court considers appropriate in the circumstances of the case; and
  - (b) the Court shall take the following matters into account —
    - (i) the nature of the relationship of the child with each of the parents of the child and with other persons;
    - (ii) the effect on the child of any separation from —
      - (A) either parent of the child; or
      - (B) any child, or other person, with whom the child has been living;
    - (iii) the desirability of, and the effect of, any change in the existing arrangements for the care of the child;
    - (iv) the attitude to the child, and to the responsibilities and duties of parenthood, demonstrated by each parent of the child;
    - (v) the capacity of each parent, or of any other person, to provide adequately for the needs of the child, including the emotional and intellectual needs of the child;



- (vi) any other fact or circumstance (including the education and upbringing of the child) that, in the opinion of the court, the welfare of the child requires to be taken into account.
- (2) For the purpose of complying with the requirements of subsection (1) (a) the Court may —
- (a) have regard to anything contained in a report furnished to the Court in accordance with a direction under section 86; and
  - (b) inform itself as to the wishes of the child by such other means as it considers appropriate,

but nothing in this section permits the Court or any person to require a child to express his wishes (if any) in relation to his custody or guardianship, in relation to access to him or in relation to any other matter relevant to the proceedings.

*[Section 39A inserted by No. 19 of 1987 s.21.]*

#### **40. Supervision of orders**

Where the Court makes an order under this Division with respect to a child, the Court may also, if it thinks the welfare of the child so requires, make one or both of the following orders —

- (a) an order that compliance with the first-mentioned order shall, as far as practicable, be supervised by a welfare officer;
- (b) an order that a welfare officer give to any party to the first-mentioned order such assistance as is reasonably requested by that party in relation to compliance with, and the carrying out of, the first-mentioned order.

*[Section 40 inserted by No. 19 of 1987 s.22.]*

**41. Registration of child agreements**

- (1) A child agreement may be registered in any court having jurisdiction under this Act.
- (2) Where a child agreement is registered in a court —
  - (a) a party to the agreement shall not institute proceedings under this Division seeking an order in relation to child welfare matters;
  - (b) subject to subsection (4), the agreement, in so far as it relates to child welfare matters, is enforceable as if the agreement were an order of the Court; and
  - (c) the court may, by order, vary the agreement, in so far as it relates to child welfare matters, if it considers that the welfare of a child requires variation of the agreement.
- (3) Paragraphs (a) and (b) of subsection (2) do not apply to a child agreement to the extent, if any, that the agreement purports to confer the custody or guardianship of the child concerned upon a person who is not a parent of the child.
- (4) The court in which a child agreement is registered under subsection (1) shall not enforce the agreement, in so far as it relates to child welfare matters, if it considers that to do so would be contrary to the best interests of a child.
- (5) The court in which a child agreement is registered under subsection (1) may set aside the agreement if, and only if, the court is satisfied that —
  - (a) the concurrence of a party was obtained by fraud or undue influence;
  - (b) the parties desire the agreement to be set aside; or
  - (c) the welfare of the child requires the agreement to be set aside.
- (6) In exercising powers under this section, a court shall have regard to the provisions of sections 28 (2) and 39A.

*[Section 41 inserted by No. 64 of 1990 s.5.]*

**42. Agreements between parents**

No agreement made between the parents of a child shall be held to be invalid by reason only of its providing that one of the parents shall give up the custody or guardianship of the child to the other.

*[Section 42 inserted by No. 58 of 1979 s.23; amended by No. 19 of 1987 s.24.]*

**43. Guardian dead, etc.**

Where no person is acting as guardian of a child and there is no appointed guardian of the child, or where a guardian has been appointed but is dead or cannot be found or refuses to act, the Court may appoint a person to be the guardian of the child.

*[Section 43 inserted by No. 19 of 1987 s.21.]*

**44. Guardianship by will or deed**

- (1) Subject to this section, a person who is the guardian or a joint guardian of 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 his death, and an appointment so made has effect after his death accordingly.
- (2) An appointment under subsection (1) —
  - (a) may not be made by any person, or if made is of no effect, if the Court has declared that the person shall not exercise the power in subsection (1) or that any exercise of that power is of no effect; and
  - (b) has effect after the death of the appointor —
    - (i) only if he is at the time of his death the sole guardian of the child; and
    - (ii) subject to any order of the Court.

*[Section 44 inserted by No. 19 of 1987 s.25.]*

**45. Court may appoint guardian**

The Court may, on being satisfied that it is for the welfare of the child, remove from his 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 for the welfare of the child, appoint another guardian in place of the guardian so removed.

*[Section 45 inserted by No. 19 of 1987 s.21.]*

**46. Delivery of passport**

Where the Court is of the opinion that there is a possibility or a threat that a child will be removed from the State, it may order the passport of the child and of any other person concerned to be delivered on such conditions as the Court thinks fit.

*[Section 46 inserted by No. 19 of 1987 s.21.]*

**47. Warrants**

- (1) On the application of a person entitled to custody or guardianship of a child the Court may issue a warrant authorizing or directing the person, or any of the persons, to whom it is addressed, for the purpose of giving effect to the entitlement —
  - (a) at any time, with such assistance as he requires or they require, and if necessary by force —
    - (i) to stop and search any vehicle, vessel or aircraft, and to enter and search any premises or place, named or described in the warrant or in which there is reasonable cause to believe that the child may be found; and
    - (ii) to take possession of the child; and
  - (b) to deliver the child to the person entitled to custody or guardianship or to some other person or authority named in the order on behalf of the person entitled to custody or guardianship.

- (2) On the application of a person entitled to access to a child the Court may issue a warrant authorizing or directing the person, or any of the persons, to whom it is addressed, for the purpose of giving effect to the entitlement —
- (a) at any time, with such assistance as he requires or they require, and if necessary by force —
    - (i) to stop and search any vehicle, vessel or aircraft, and to enter and search any premises or place, named or described in the warrant or in which there is reasonable cause to believe that the child may be found; and
    - (ii) to take possession of the child; and
  - (b) to deliver the child to the person entitled to access or some other person or authority named in the order on behalf of the person entitled to access.
- (3) A warrant under subsection (1) or (2) may be addressed to —
- (a) a named person or named persons; or
  - (b) every person from time to time holding or acting in a specified office or offices of the State.
- (4) Without limiting the generality of subsection (3), a warrant under subsection (1) or (2) may be addressed to —
- (a) a named person being a person who holds an appointment as an enforcement officer under subsection (7); or
  - (b) every person from time to time holding or acting in an office of enforcement officer.
- (5) Where an order entitles more than one person to the custody of a child, a warrant shall not be issued under this section for the removal of the child from the possession of one of those persons and the delivery of the child to another of them.
- (5a) Where —

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- (a) a warrant has been issued under subsection (1) or (2) in relation to a child; and
- (b) the Court is satisfied that person (in this subsection referred to as the “relevant person”) is likely to have information in relation to the child or in relation to a person who the Court has reasonable cause to believe has possession of the child,

the Court may order the relevant person to furnish, to an officer of the Court specified in the order, such information (if any) as the relevant person has in relation to the address at which the child, or the person who the Court has reasonable cause to believe has possession of the child, may be found.

(5b) Where —

- (a) a warrant has been issued under subsection (1) or (2) in relation to a child; and
- (b) the Court is satisfied that the records of a Department of the Government or a State instrumentality are likely to contain information in relation to the child or in relation to a person who the Court has reasonable cause to believe has possession of the child,

the Court may order the Permanent Head of the Department or the person who holds an office or position specified in the order in, or in relation to, the instrumentality, as the case may be, to furnish, to an officer of the Court specified in the order, such information (if any) as is contained in the records of the Department or the instrumentality, as the case may be, in relation to the address at which the child, or the person who the Court has reasonable cause to believe has possession of the child, may be found and, where such an order is made, the Permanent Head of the Department or the person who holds that office or position, as the case may be, shall comply with that order notwithstanding anything contained in any other Act.

- (6) A warrant issued under this section shall not be executed at any time after 6 months after the date of issue thereof.

- (7) The Attorney General may appoint persons to be enforcement officers for the purposes of this Division.
- (8) An appointment under subsection (7) may be an appointment of —
  - (a) a named person only; or
  - (b) every person from time to time holding or acting in a specified office of the State.
- (9) In subsection (5b) “**State instrumentality**” means a body or authority established for a public purpose by or under a law of the State.

*[Section 47 inserted by No. 19 of 1987 s.21; amended by No. 19 of 1987 s.26.]*

**48. Applicant in contempt**

The Court may proceed with the hearing of proceedings in relation to a child notwithstanding that the person by whom the proceedings were instituted has failed to comply with an order of the Court made under this Act or under another Act or of another court.

*[Section 48 inserted by No. 19 of 1987 s.21.]*

**49. Removal of child etc.**

Where an order is made under this Act granting to a person the custody of a child or guardianship of a child, another person shall not remove the child from the care and control of the first-mentioned person contrary to the order or interfere with the exercise of the first-mentioned person’s rights under the order in respect of the child.

*[Section 49 inserted by No. 19 of 1987 s.21.]*

**50. Delivery of child**

Where an order is made under this Act granting to a person the custody of a child or guardianship of a child, being a child who

is in the care and control of another person, that other person shall upon demand by the person entitled to the custody or guardianship of the child under the order, deliver the child to that person.

*[Section 50 inserted by No. 19 of 1987 s.21.]*

**51. Hindering of access**

Where an order under this Act provides for a person to have access to a child, a person shall not, without just cause or excuse hinder or prevent the first-mentioned person from obtaining access to the child accordance with the order or interfere with the access to the child that the first-mentioned person is entitled to in accordance with the order.

*[Section 51 inserted by No. 19 of 1987 s.21.]*

*[52. Repealed by No. 19 of 1987 s.27<sup>4</sup>.]*

**53. Breaches and penalties**

- (1) A person shall not prevent or hinder the execution of a warrant issued in pursuance of this Division.
- (2) If the Court is satisfied that a person has knowingly and without reasonable cause contravened or failed to comply with a provision of this Division or an order made under this Division, the Court may —
  - (a) order that person to pay a fine not exceeding \$1 000;
  - (b) require that person to enter into a recognizance, with or without sureties, in such reasonable amount as the Court thinks fit, that that person will comply with the relevant order;
  - (c) order that person to deliver up to the Court that person's passport and such other documents as the Court thinks fit; and
  - (d) make such other orders as the Court considers necessary to enforce compliance with this section.



- (3) Where an act or omission by a person that constitutes a contravention or failure to comply with a provision of this Division is an offence against any law, the person may be prosecuted and convicted under that law, but nothing in this subsection renders any person liable to be punished twice in respect of the same act or omission.
- (4) Subsection (2) does not prejudice the power of a court to punish a person for contempt of court.

*[Section 53 inserted by No. 19 of 1987 s.21; amended by No. 19 of 1987 s.28; No. 78 of 1995 s.147.]*

#### **Division 4 — Maintenance**

*[Division 4 inserted by No. 58 of 1979 s.23.]*

#### **54. Liability for maintenance**

- (1) Subject to this Act both the parents of a child who are not married to each other are liable for the maintenance of the child until the child attains the age of 18 years.
- (2) The principal object of this Division is to ensure that children receive a proper level of financial support from their parents.
- (3) Particular objects of this Division include ensuring that —
  - (a) 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) parents share equitably in the support of their children.
- (4) 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; and
  - (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.

*[Section 54 inserted by No. 58 of 1979 s.23; amended by No. 41 of 1988 s.5.]*

**55. Application for maintenance and other expenses**

- (1) Any person (including the child or a person acting on behalf of the child) may apply to the court for an order for maintenance with respect to a child.
- (2) An application for the maintenance of a child may be made together with an application under section 36.

*[Section 55 inserted by No. 58 of 1979 s.23; amended by No. 19 of 1987 s.29.]*

**55A. Orders of Court**

Subject to section 55B, on an application under section 55, the Court may, in accordance with this Division, make such order for maintenance as it thinks proper.

*[Section 55A inserted by No. 19 of 1987 s.30; amended by No. 64 of 1990 s.6.]*

**55B. Orders in respect of children to whom Child Support (Assessment) Act applies**

In exercising jurisdiction under this Part, the Court shall not, at any time, make, revive or vary an order for the maintenance of a child on the application of a person (in this section called “the applicant”) against, or in favour of, a person (in this section called “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,

whether or not such an application under that Act has in fact been made by the applicant, the respondent or another person.

*[Section 55B inserted by No. 64 of 1990 s.7.]*

**56. Finding of parenthood**

An order under this Division for the payment of maintenance shall recite a finding either —

- (a) of named persons as parents; or
- (b) of the person who is required by the order to pay the maintenance as a parent or step-parent,

of the child with respect to whom order is made.

*[Section 56 inserted by No. 19 of 1987 s.31; amended by No. 41 of 1988 s.6.]*

**57. Previous paternity proceedings**

The Court may be satisfied that a person who was not married to the mother of a child at the time of its birth is the father of the

child where that person has been found to be the father of the child in other proceedings.

*[Section 57 inserted by No. 58 of 1979 s.23.]*

**58. Matters to be considered**

- (1) In exercising jurisdiction under this Division, the court shall take into account only the matters referred to in sections 58A, 58B and 58C so far as they are relevant.
- (2) Where the term “party” or “parties” appears in section 58A, 58C or 58D (4), that term includes a guardian or guardians, as the case requires, and the matters referred to in sections 58A, 58B, 58C and 58D shall be taken into account in relation to a party who is a guardian.
- (3) Subject to subsection (4) —
  - (a) an order shall not be made for the maintenance of a child who has attained the age of 18 years; and
  - (b) an order for the maintenance of a child ceases to be in force when the child attains the age of 18 years.
- (4) The court may —
  - (a) provide in an order for the maintenance of a child who has not attained the age of 18 years that the order shall continue in force until a day that is later, or for a period that extends beyond the day on which the child will attain the age of 18 years; or
  - (b) make an order for the maintenance of a child who has attained the age of 18 years, being an order that is expressed to continue in force until a day, or for a period, specified in the order,

if the Court is satisfied that the provision of the maintenance is necessary to enable the child to complete his education (including vocational training or apprenticeship) or because he is mentally or physically handicapped, and, in that case, the

order continues in force until that day or the expiration of that period, as the case, may be.

*[Section 58 inserted by No. 58 of 1979 s.3; amended by No. 41 of 1988 s.7.]*

**58A. Approach to be adopted in child maintenance proceedings**

In proceedings in relation to the maintenance of a child, the Court shall —

- (a) consider the financial support necessary for the maintenance of the child; 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.

*[Section 58A inserted by No. 41 of 1988 s.8.]*

**58B. Matters to be taken into account in considering financial support necessary for maintenance of child**

- (1) In considering the financial support necessary for the maintenance of a child, the Court shall take into account, in addition to the matters referred to in sections 28 (2) and 54, the following matters only —
  - (a) the proper needs of the child; and
  - (b) the income, earning capacity, property and financial resources of the child.
- (2) In taking into account the proper needs of the child, the Court shall have regard to —
  - (a) the age of the child;
  - (b) the manner in which the child is being, and in which the parents expected the child to be, educated or trained; and
  - (c) any special needs of the child,

and may also have regard, to the extent to which it considers it 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, the Court shall —
- (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; or
    - (ii) any entitlement of the child or any other person to an income tested pension, allowance or benefit.
- (4) Subsections (2) and (3) shall not be taken to limit by implication the matters to which, the Court may have regard in taking into account the matters referred to in subsection (1).

*[Section 58B inserted by No. 41 of 1988 s.8]*

**58C. Matters to be taken into account in determining financial contribution that should be made by party, etc.**

- (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, the Court shall take into account, in addition to the matters referred to in sections 28 (2) and 54, the following matters only —
- (a) the income, earning capacity, property and financial resources of the party or each of those parties;

- (b) 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;
  - (c) the direct and indirect costs incurred by the parent or other person who has the custody of the child in providing care for the child; and
  - (d) 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, the Court shall 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 who has custody of the child in providing care for the child, the Court shall have regard to the income and earning capacity foregone 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, the Court shall disregard —
- (a) any entitlement of the child, or the person who has the custody of the child, 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, the Court shall 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) (inclusive) shall not be taken to limit by implication the matters to which the Court may have regard in taking into account matters referred to in subsection (1).

*[Section 58C inserted by No. 41 of 1988 s.8.]*

**58D. Step-parents to assist in maintenance of step-children in certain circumstances, etc.**

- (1) The step-parent of a child has, subject to this Division, the duty of maintaining the child only if —
  - (a) the step-parent —
    - (i) is a guardian of the child; or
    - (ii) has custody of the child under an order of a court (whether or not made under this Act and whether made before or after the commencement of this section);
  - or
  - (b) the Court, by order, determines that it is proper for the step-parent to have that duty.



- (2) In determining whether it is proper for a step-parent to have the duty of maintaining a step-child, the Court shall take into account, in addition to the matters referred to in sections 28 (2) and 54, the following matters only —
- (a) the length and circumstances of the marriage to the relevant parent of the child;
  - (b) the relationship that has existed between the step-parent and the child;
  - (c) the arrangements that have existed for the maintenance of the child; and
  - (d) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.
- (3) 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.
- (4) 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 to the proceedings who is a step-parent of the child or by parties to the proceedings (one or more of whom is or are a step-parent or step-parents of the child), the Court shall take into account, in addition to the matters referred to in sections 28 (2), 54 and 58C, the extent to which the primary duty of the parents to maintain the child is being, and can be, fulfilled.

*[Section 58D inserted by No. 41 of 1988 s.8.]*

**59. Cessation on death**

An order with respect to the maintenance of a child ceases to have effect upon the death of the child.

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*[Section 59 inserted by No. 58 of 1979 s.23; amended by No. 41 of 1988 s.9.]*

**60. Cessation on adoption or marriage**

- (1) An order with respect to the maintenance of a child ceases to have effect upon the adoption or marriage of the child.
- (2) Where a marriage referred to in subsection (1) takes place or an order for the adoption of a child is made, it is the duty of the person for whose benefit the order for maintenance was made to inform without delay the person liable to make payments under the order of the date of the marriage.
- (3) Any moneys paid in respect of a period after either of the events referred to in subsection (1), may be recovered in the court.
- (4) Nothing in this section affects the recovery of arrears due under an order at the time when the order ceases to have effect.

*[Section 60 inserted by No. 58 of 1979 s.23.]*

**61. Interim orders**

Where in proceedings with respect to the maintenance of a child it appears to the Court that the child 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 61 inserted by No. 58 of 1979 s.23.]*

**Division 5 — Preliminary and other expenses**

*[Inserted by No. 58 of 1979 s.23.]*

**62. Liability for preliminary expenses**

- (1) A person is liable to provide for or contribute towards, the payment of the preliminary expenses of a woman who, not

being his wife, is pregnant by him or has been delivered of a child or a stillborn child of which he is the father.

- (2) A woman or any person on her behalf may apply to the court for an order against a person, not being the woman's husband, that —
- (a) the woman —
    - (i) is pregnant by the respondent; or
    - (ii) has been delivered of a child or a stillborn child of whom the respondent is, or was the father;
  - and
  - (b) the respondent has not provided for, or contributed towards, the payment of the woman's preliminary expenses.
- (3) On the hearing of an application under subsection (2), the Court may make an order containing provision for the payment by the respondent to the Collector of Maintenance or an officer of the Court for disbursement to a person or persons named in that order of such preliminary expenses as the Court —
- (a) having regard to the means of both the respondent and the woman; but
  - (b) disregarding any entitlement of the woman to an income tested pension, allowance or benefit,
- considers reasonable in all the circumstances of the case.
- (4) An order made under this section shall recite the finding, as the case may require, that the woman is pregnant by the respondent or that the woman has been delivered of a child or a stillborn child of which the respondent is, or was, the father.
- (5) The Court shall not make an order under this section where —
- (a) the woman is pregnant, unless the respondent admits or unless the Court is satisfied by the evidence, or a certificate, of a legally qualified medical practitioner, that the woman is pregnant; or

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- (b) the woman is delivered of a child or a stillborn child, unless the application is made within a period of 12 months after the happening of that event.
- (6) For the purposes of subsection (5) (a) a respondent may admit that a woman is pregnant without prejudice to any allegation by him that the woman is not pregnant by him.
- (7) Any moneys paid pursuant to an order made under this section and not disbursed shall, if —
  - (a) the order ceases to have effect on a date specified in it pursuant to section 67 be repaid to the defendant; or
  - (b) the order ceases to have effect on the delivery of a stillborn child, be —
    - (i) paid to the woman;
    - (ii) paid to the respondent; or
    - (iii) divided, in such proportions as the Court thinks fit, between the woman and the respondent,as the Court may, on the application of any party or of its own motion, direct.

*[Section 62 inserted by No. 58 of 1979 s.23; amended by No. 41 of 1988 s.10.]*

**63. Court may order maintenance**

- (1) Where the Court makes an order under this Division for preliminary expenses, whether before or after the birth of the child to whom it relates, the Court may, subject to section 55B, upon the hearing of the application for an order for payment of preliminary expenses, make an order for maintenance of the child in accordance with Division 4.
- (2) An order made under this section does not take effect until 3 months after the birth of the child to whom it relates or until the production, to the Registrar or officer of the Court, of a certified copy of the entry in the register of the birth of the child, whichever is the later; and does not take effect at all,

where the child is stillborn or where the child dies or is adopted before it would otherwise take effect.

- (3) When an order made under this section takes effect, the Registrar shall, forthwith, send by post to the person against whom the order was made, at his last known place of residence or business, a notice setting out —
- (a) the name of the child or, as the case may be, the fact that the child is unnamed;
  - (b) the date and place the birth of the child; and
  - (c) the date on which, and the place at which the first payment pursuant to the order is required to be made.

*[Section 63 inserted by No. 58 of 1979 s.23; No. 64 of 1990 s.8.]*

**64. Plural births**

Where an order is made under this Act for the maintenance of a child, or in respect of the payment of the preliminary expenses of a woman, before the birth of the child to which that order relates, and 2 or more children are born, an application may be made for variation of the order to provide for the maintenance of the additional child or children or for the additional expenses occasioned thereby.

*[Section 64 inserted by No. 58 of 1979 s.23.]*

**65. Funeral expenses**

- (1) Subject to the *Adoption of Children Act 1896*, where a child is stillborn or dies before he attains the age of 16 years and the parents of the child are not married to each other at the time of the birth of the child or subsequently, both parents of the child are liable to contribute towards the reasonable funeral expenses of the child.
- (2) Where a child referred to in subsection (1) was stillborn or has died before attaining the age of 16 years, any person may apply

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for an order against the person or persons liable to contribute towards the reasonable funeral expenses of the child and who has or have not, as the case requires, so contributed towards those expenses.

- (3) On the hearing of an application under subsection (2), the Court, on being satisfied that the respondent or respondents was or were the parent or parents of the child, may make an order for the payment to the Collector of Maintenance or an officer of the Court, for disbursement to a person named in the order of such funeral expenses in respect of the child as the Court, having regard to the means of both the respondent and the mother, considers reasonable in all the circumstances of the case.
- (4) The Court shall not make an order under this section unless —
  - (a) the Court is satisfied that the child was born or stillborn to the mother;
  - (b) the application is made within a period of 12 months after the death of the child.

*[Section 65 inserted by No. 58 of 1979 s.23.]*

**66. Medical expenses**

- (1) A person obliged to make payments under an order for preliminary expenses is liable to provide for, or to contribute towards, the payment of medical expenses reasonably incurred by, or in respect of, a person for whose benefit the order was made, if the amount payable under the order is not sufficient to enable adequate provision to be made thereout for, or towards, the payment of those expenses.
- (2) The person for whose benefit, or a person having the guardianship, custody or care of a child for whose benefit, an order containing a provision for maintenance or a provision for preliminary expenses has been made under this Division may apply to the Court, for an order for the payment of medical expenses and where an application might, but for that event, have been made under this section by a person who has died,

the application may be made by a person who has paid or is liable to pay those expenses.

- (3) On the hearing of an application made under subsection (2), the Court may make an order for the payment to the collector of Maintenance or an officer of the Court for disbursement as provided by subsection (4) of such medical expenses as the Court, having regard to the means of the respondent, considers reasonable in all the circumstances of the case.
- (4) The Court may, from time to time, of its own motion or on the application of a party to the proceedings, give such directions as to disbursement of moneys paid pursuant to an order made under subsection (3) as it thinks fit, but so that moneys are not disbursed, except to the respondent, before the care or treatment in respect of which medical expenses are to be incurred has been rendered.
- (5) An order shall not be made under this section upon an application made more than 12 months after the medical expenses have been incurred.
- (6) In this section, “**medical expenses**” means the reasonable cost of medical, surgical, psychiatric, dental, hospital or nursing care, or treatment, arising out of, or in connection with, the pregnancy of a woman.

*[Section 65 inserted by No. 58 of 1979 s.23.]*

**67. Date of effect of order**

Where an order is made under this Division during the pregnancy of a woman, the order shall specify a date, not later than 6 months after the date of the order, on which it ceases to have effect, if the woman has not then been delivered of a child, and if —

- (a) the woman is not delivered of a child before that date; or
- (b) the woman is delivered of a stillborn child before that date,

the order ceases to have effect on the date so specified or on the delivery of the stillborn child, as the case may be.

*[Section 67 inserted by No. 58 of 1979 s.23.]*

**Division 6 — Types of orders and variation of orders**

*[Inserted by No. 58 of 1979 s.23.]*

**68. Types of orders**

- (1) Subject to subsection (2), the Court, in exercising its powers under this Part, 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 payment of any sum ordered to be paid by wholly or partly secured in such manner as the Court directs;
  - (d) 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;
  - (e) appoint or remove trustees;
  - (f) order that payments be made direct to a party, to a trustee to be appointed or into Court or to an officer of the Court for the benefit or a named party;
  - (g) order that payment of maintenance in respect of a child be made to such person or to the Director-General or other public authority specified by the Court;
  - (h) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for 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 of this section), which it thinks it is necessary to make to do justice.
- (2) Where an order under this Part is an order for maintenance in respect of a child whose parents were not married to each other at the time of the birth of the child or subsequently an order pursuant to subsection (1) (g) may order that payments be made to any person or body referred to in that paragraph or to the Collector of Maintenance or other officer of the Court.

*[Section 68 inserted by No. 58 of 1979 s.23; amended by No. 19 of 1987 s.32.]*

**69. Variation of orders**

- (1) Where there is in force an order under Division 4 with respect to the maintenance of a child or under Division 5 with respect to preliminary expenses or other expenses (whether made before or after the commencement of this subsection) the Court may —
- (a) discharge the order if there is any 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 some future event;
  - (c) subject to section 55B, revive wholly or in part an order suspended under paragraph (b); or
  - (d) subject to section 55B and subsection (2), vary the order so as to increase or decrease any amount ordered to be paid or in any other manner.
- (1a) An order may be varied under subsection (1) by a court only if it was made by that court or is registered in that court in accordance with the Rules of Court.
- (2) The Court shall 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 who obtained the order have so changed;
    - (ii) the circumstances of the child or children referred to in the order have so changed;
    - (iii) the circumstances of the person or the person liable to make payments under the order have so changed; or
    - (iv) in the case of an order that is binding on a legal personal representative, the circumstances of the estate are such,  
as to justify its so doing;
  - (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; or
  - (c) that material facts were withheld from the court that made the order or from a court that varied the order or material evidence previously given before such a court was false.
- (3) Subsection (2) does not prevent the Court from making an order varying an order made before the date of commencement of this Act if the first mentioned order is made for the purpose of giving effect to this Division.
- (4) In satisfying itself for the purposes of subsection (2) (b) the Court shall have regard to any percentage movement in the table published under the authority of the *Census and Statistics Act 1905* of the Commonwealth and any Act passed in amendment or in substitution thereof and described as the “Consumer Price Index — Six Capital Cities Average”.
- (5) The Court shall 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.

- (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 thinks fit.
- (7) For the purposes of this section, the Court shall have regard to the provisions of sections 54 and 58.
- (8) Unless the Court otherwise orders, the discharge of an order does not affect the recovery of arrears due under the order at the time at which the discharge takes effect.

*[Section 69 inserted by No. 58 of 1979 s.23; amended by No. 19 of 1987 s.33; No. 64 of 1990 s.9.]*

**70. Registration of maintenance agreements**

- (1) A maintenance agreement may be registered in any court having jurisdiction under this Act.
- (2) Subject to subsection (4), where a maintenance agreement is registered in a court —
  - (a) the agreement is enforceable as if the agreement were an order of the Court; and
  - (b) the court may, in relation to the agreement, exercise any of the powers referred to in section 69 as if the agreement were an order of the Court.
- (3) The court in which a maintenance agreement is registered under subsection (1) may set aside the agreement if, and only if, the court is satisfied that the concurrence of a party was obtained by fraud or undue influence or that the parties desire the agreement to be set aside.
- (4) Where —
  - (a) a maintenance agreement is, at any time, registered under subsection (1);
  - (b) the maintenance agreement makes provision for the maintenance of a child; and

- (c) an application could properly be made, at that time, under the Child Support (Assessment) Act by one of the parties to the agreement for administrative assessment of child support (within the meaning of that Act) for the child, seeking payment of the child support by the other party to the agreement (whether or not such an application has in fact been made by the party or by another person),

the maintenance agreement, in so far as it makes provision for the maintenance of the child, has no effect and is not enforceable in any way.

*[Section 70 inserted by No.58 of 1979 s.23; amended by No. 64 of 1990 s.10.]*

**Division 7 — Enforcement of maintenance orders**

*[Inserted by No. 58 of 1979 s.23.]*

**71. Definition**

In this Division “maintenance” includes “preliminary expenses” and any other moneys ordered to be paid pursuant to an order under Division 5.

*[Section 71 inserted by No. 58 of 1979 s.23.]*

**72. Enforcement**

An order for maintenance made under this Act may be enforced as if it were an order of the Court made by the Court under the Family Law Act and the provisions of Part XIII of the Family Law Act and relations and Rules of Court made under that Act shall apply to and in relation to orders for maintenance made under this Act, with such modifications as are necessary.

*[Section 72 inserted by No. 58 of 1979 s.23; amended by No. 19 of 1987 s.34.]*

**Division 8 — Ex parte orders**

*[Inserted by No. 58 of 1979 s.23.]*

**73. Ex parte orders**

- (1) In the case of urgency, the Court may make an *ex parte* order —
  - (a) in accordance with Division 3 concerning the welfare or custody of, or guardianship of, or access to, a child;
  - (b) where a child is in immediate need of financial assistance or a woman is in immediate need of preliminary expenses, for such periodic or other sums as the Court considers reasonable; or
  - (c) in accordance with section 28A.
- (2) An application under this section may be made in writing or orally or in such form as the Court considers appropriate.
- (3) Where an application under this section is not made in writing, the Court shall not make an order under subsection (1) unless by reason of the extreme urgency of the case it considers that it is necessary to do so.
- (4) The Court may give such directions with respect to the filing of a written application, the service of the application and the further hearing of the application as it thinks fit.
- (5) An order under subsection (1) shall be expressed to operate only until a specified time or the further order of the Court.
- (6) Where a Court makes an order under subsection (1), it may give directions with respect to —
  - (a) the service of the order and such other documents as it thinks fit; and
  - (b) the hearing of an application for a further order.

*[Section 73 inserted by No. 58 of 1979 s.23; s.73 amended by No. 19 of 1987 s.35.]*

**Division 9 — Costs and related provisions**

*[Inserted by No. 19 of 1987 s.36.]*

**73A. Costs, general provision**

- (1) Subject to subsection (2) and section 82A, each party shall bear his own costs.
- (2) If the Court is of opinion that there are circumstances that justify it in doing so, the Court may, subject to subsection (3) and the Rules of Court, 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), the Court shall 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 the Court;
  - (e) whether any party to the proceedings has been wholly unsuccessful in the proceedings;

- (f) whether either party to the proceedings has, in accordance with section 73D or otherwise, made an offer in writing to the other party to the proceedings to settle the proceedings and the terms of any such offer; and
- (g) such other matters as the Court thinks relevant.

*[Section 73A inserted by No. 19 of 1987 s.36.]*

**73B.    Reparation for certain losses and expenses relating to children**

(1) Where —

- (a) the Court has found for the purposes of section 53 (2) that a person has knowingly and without reasonable cause contravened or failed to comply with section 49 or 50 by removing a child from the care and control of another person or by refusing or failing to deliver a child to another person;
- (b) the Court has found for the purposes of section 28A (2) that a person has knowingly and without reasonable cause contravened or failed to comply with an injunction granted or an order made under section 28A by removing a child from the possession of another person or by refusing or failing to deliver a child to another person; or
- (c) a person has been found to be in contempt of the Court by reason of having removed a child from the possession of another person or having refused or failed to deliver a child to another person,

the Court may, subject to subsection (2) —

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- (d) 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 restoring the child to the possession of the person entitled to that possession; or
  - (e) 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 restoring the child to the possession of the person entitled to that possession.
- (2) Nothing in subsection (1) empowers the 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 has, under Part 16 of the *Sentencing Act 1995* made a reparation order against the first-mentioned person in favour of the Commonwealth or the State Government, the Commonwealth or State instrumentality or 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 73B inserted by No. 19 of 1987 s.36; amended by No. 78 of 1995 s.39.]*

**73C. Interest on moneys ordered to be paid**

- (1) Subject to any order made by the Court under subsection (2), where the 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 of Court, from —

- (a) the date on which the order is made; or
- (b) the date on which the order takes effect,

whichever is later, on so much of the money as is from time to time unpaid.

- (2) Where the 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 of Court; 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).

*[Section 73C inserted by No. 19 of 1987 s.36.]*

**73D. Offers of settlement**

- (1) Where a party (other than a party to proceedings under Division 3 of Part III or proceedings to enforce an order made under that Division) has made an offer in writing to the other party to the proceedings to settle the proceedings on terms specified in the offer, the first-mentioned party may file in the Court a copy of the offer.
- (2) If a party withdraws an offer a copy of which has been filed as mentioned in subsection (1), that party shall file in the Court notice that the offer has been withdrawn.
- (3) The fact that an offer has been made as mentioned in subsection (1), or the terms of such an offer, shall not be disclosed to the Court except for the purposes of the

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consideration by the Court of whether it should make an order as to costs under section 73A and the terms of any such order.

*[Section 73D inserted by No. 19 of 1987 s.36.]*

## Part IV — Courts of summary jurisdiction and transfer of proceedings

*[Heading to Part IV: heading to Part III deleted and heading to Part IV substituted by No. 58 of 1979 s.24.]*

### 74. Federal jurisdiction of courts of summary jurisdiction

A court of summary jurisdiction constituted by a stipendiary magistrate, including such a court when constituted by a stipendiary magistrate who is the Registrar or a Deputy Registrar, has the federal jurisdiction with which it is invested by or under the Family Law Act.

*[Section 74: former section 29 repealed and re-enacted as section 74 by No. 58 of 1979 s.25; amended by No. 94 of 1981 s.5.]*

### 75. Non-federal jurisdictions of courts of summary jurisdiction

- (1) Subject to subsection (2), a court of summary jurisdiction constituted by a stipendiary magistrate sitting at places outside the metropolitan region, and a court of summary jurisdiction constituted by a stipendiary magistrate who is the Registrar or a Deputy Registrar, sitting at any place in the State, may exercise all the non-federal jurisdictions of the Family Court of Western Australia except those conferred by or under the *Adoption of Children Act 1896*, and in exercising such jurisdiction, shall have regard to the principles mentioned in section 28.
- (2) Where proceedings are instituted in a court of summary jurisdiction with respect to —
  - (a) property of a value exceeding \$1 000; or
  - (b) the custody of, or guardianship of, or access to a child,and the respondent, in answer to the application by which the proceedings were instituted, seeks an order different from that sought in the application the court of summary jurisdiction shall, unless the parties agree to the court of summary

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jurisdiction hearing and determining the proceedings, transfer the proceedings to the Court.

- (2a) The reference in subsection (2) to proceedings with respect to property does not include proceedings with respect to arrears of maintenance.
- (3) Where proceedings referred to in subsection (2) are before it, the court of summary jurisdiction may transfer the proceedings of its own motion, notwithstanding that the parties would be willing for the court of summary jurisdiction to hear and determine the proceedings.
- (4) Where proceedings are transferred to the Court under this section, it shall proceed as if the proceedings had been originally instituted in the Court.

*[Section 75: former section 30 repealed and re-enacted as section 75 by No. 58 of 1979 s.26; amended by No. 94 of 1981 s.6; No. 19 of 1987 s.37.]*

**76. Transfer of proceedings**

- (1) Without derogating from the provisions of section 75 where in the exercise of a non-federal jurisdiction it appears to the Court or to a court of summary jurisdiction that it is in the interests of justice that the proceedings before it be dealt with in another court the Court or the court; of summary jurisdiction, as the case may be, may transfer the proceedings to that other court.

[(2) *repealed*]

*[Section 76 inserted by No. 58 of 1979 s.27; amended by No. 19 of 1987 s.38.]*

**77. Stay or dismissal of proceedings**

Where in the exercise of a non-federal jurisdiction it appears to the Court or to a court of summary jurisdiction that related proceedings are pending in another court being proceedings within or outside the State and that it is in the interests of justice

to do so the first-mentioned court may stay the proceedings in that first-mentioned court for such time as it thinks fit or it may dismiss the proceedings.

*[Section 77 inserted by No. 58 of 1979 s.27.]*

**78. Orders on transfer or staying proceedings**

Before transferring or staying proceedings pursuant to this Part 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 welfare officer to discuss matters affecting the welfare of any child affected by the proceedings and to resolve the difference (if any) between the parties;
- (b) that a report in accordance with section 86 be obtained from a welfare officer; and
- (c) the payment of preliminary expenses, or, if it is not practicable to so direct, the payment of such periodic or other sums as the court thinks desirable.

*[Section 78 inserted by No. 58 of 1979 s.27.]*

**79. Duties, powers and functions of officers of courts of summary jurisdiction**

- (1) In respect of the federal jurisdiction of courts of summary jurisdiction referred to in section 74, the officers of such courts have such duties, powers, and functions as are authorized by the Family Law Act and as are provided by or under this Act.

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- (2) In respect of the non-federal jurisdictions of courts of summary jurisdiction referred to in section 75, the principal officers of those courts have the duties, powers and functions imposed or conferred on the Registrar by this Act, other than section 23.

*[Section 79: formerly section 31 redesignated as section 79 and amended by No. 58 of 1979 s.28; amended by No. 19 of 1987 s.39.]*

## Part V — Appeals

*[Heading to Part V: formerly heading to Part IV redesignated as heading to Part V by No. 58 of 1979 s.29.]*

### 80. 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 74, the appeal provisions of the Family Law Act apply.

*[Section 80: formerly section 32 redesignated as section 80 and amended by No. 58 of 1979 s.30.]*

### 81. Non-federal jurisdiction

- (1) In this section “**decree**” means judgment or order, and includes an order dismissing an application or complaint or refusing to make an order, and, in relation to a decree of the Family Court of Western Australia, includes an order dismissing an appeal from a court of summary jurisdiction.
- (2)<sup>5</sup> In respect of the non-federal jurisdiction of a court of summary jurisdiction an appeal lies from a decree of a court of summary jurisdiction to the Family Court of Western Australia and upon any such appeal the Court —
  - (a) shall 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 court of summary jurisdiction; and
  - (b) may make such decrees as it thinks fit, including a decree affirming, reversing or varying the decree the subject of the appeal.
- (2a)<sup>5</sup> 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 Full Court of the Supreme Court and upon

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any such appeal the Full Court of the Supreme Court may affirm, reverse, or vary the decree the subject of the appeal and may make such decree as, in the opinion of the Full Court, ought to have been made in the first instance.

- (3) Appeals under subsection (2) to the Family Court of Western Australia shall be made in the manner and within the time prescribed by Rules of Court made under this Act.
- (4) Appeals under subsection (2a) to the Full Court of the Supreme Court shall be made in the manner and within the time prescribed by the Rules of the Supreme Court.

*[Section 81: formerly section 33 redesignated and amended by No. 58 of 1979 s.31; amended by No. 19 of 1987 s.40.]*



## **Part VI — Miscellaneous**

*[Heading to Part VI: formerly heading to Part V redesignated as heading to Part VI by No. 58 of 1979 s.32.]*

### **82. Representation of children in proceedings**

Where it appears to the Court that a child ought to be separately represented, the Court may, of its own motion, or on the application of the child or of an organization concerned with the welfare of children or of any other person order that the child be separately represented, and the Court may make such other orders as it thinks fit for the purpose of securing such separate representation.

*[Section 82 inserted by No. 58 of 1979 s.33.]*

### **82A. Frivolous or vexatious proceedings**

- (1) The Court may at any stage of any 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 shall not, without leave of the Court, institute proceedings under this Act of the kind or kinds specified in the order,

and an order made by the Court under paragraph (c) has effect notwithstanding any other provision of this Act.

- (2) The Court may discharge or vary an order made under subsection (1) (c).

*[Section 82A inserted by No. 19 of 1987 s.41.]*

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**82B. Proceedings generally to be in open court**

- (1) Subject to subsection (2) and the Rules of Court, all proceedings shall be heard in open court.
- (2) In any proceedings, the 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, the Court shall proceed without undue formality and shall endeavour to ensure that the proceedings are not protracted.
- (4) Judges, magistrates and counsel shall not robe for proceedings under this Act.

*[Section 82B inserted by No. 19 of 1987 s.41.]*

**82C. Restriction on publication of court proceedings**

- (1) No person shall publish in a newspaper or periodical publication or by radio broadcast or television, 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: \$10 000 in the case of a body corporate and, in any other case, \$5 000 and imprisonment for 12 months.

(2) No person shall, except as permitted by the Rules of Court, publish in a newspaper or periodical publication or by radio broadcast or television, 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: \$10 000 in the case of a body corporate and, in any other case, \$5 000 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 shall be taken to identify 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

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- person or any official or honorary position held by the person;
- (v) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;
  - (vi) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person; or
  - (vii) any real or personal property in which the person has an interest or with which the person is otherwise associated, being particulars that are sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires;
- (b) in the case of a written or televised account, it is accompanied by a picture of the person; or
  - (c) in the case of a broadcast or televised account, 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 shall be construed as including 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 an indictable offence.
  - (6) Notwithstanding subsection (5), a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is appropriate to do so and the defendant and the prosecutor consent.

- (7) Where, in accordance with subsection (6), a court of summary jurisdiction convicts a person of an offence against subsection (1) or (2) the person is liable —
- (a) in the case of a body corporate, to a fine of \$5 000; or
  - (b) in any other case, to a fine of \$2 500 and imprisonment for 6 months.
- (8) Proceedings for an offence against subsection (1) or (2) shall not be commenced except by, or with the written consent of, the Attorney General.
- (9) Subsections (1) and (2) do not apply to or in relation to —
- (a) the communications, to persons concerned in proceedings in any court, of any pleading, transcript of evidence or other document for use in connection with those proceedings;
  - (b) the communication of any pleading, transcript of evidence or other document to —
    - (i) a body that is responsible for disciplining members of the legal profession; or
    - (ii) persons concerned in disciplinary proceedings against a member of the legal profession, being proceedings before a body that is responsible for disciplining members of the legal profession;
  - (c) the communication, to a body that grants assistance by way of legal aid, of any pleading, transcript of evidence or other document for the purpose of facilitating the making of a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case;
  - (d) the publishing of a notice or report in pursuance of the direction of a court;
  - (e) the publishing of any publication *bona fide* intended primarily for use by the members of any profession, being —

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- (i) a separate volume or part of a series of law reports;
  - 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 practise by that person of that profession or in the course of any form of professional training in which that person is involved; or
  - (ii) to a person who is a student, in connection with the studies of that person.
- (10) Rules of court made for the purposes of subsection (2) may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.
- (11) In this section, “court” includes —
  - (a) an officer of a court investigating or dealing with a matter in accordance with this Act or the Rules of Court; 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.

*[Section 82C inserted by No. 19 of 1987 s.41.]*

**82D. Evidence as to paternity**

Where the parentage of a child is a question in issue, the Court may make an order requiring any person to give such evidence as is material to the question.

*[Section 82D inserted by No. 19 of 1987 s.41; amended by No. 41 of 1988 s.11.]*

**82E. Medical procedures to determine parentage**

- (1) Without limiting the generality of section 82D, when the parentage of a child is in issue in proceedings under this Act, the Court may, on the request of a party to the proceedings, on the request of a person representing the child under an order made under section 82 or of its own motion, make an order requiring a parentage testing procedure to be carried out in relation to a person referred to in subsection (2) for the purpose of obtaining information to assist in determining the parentage of the child.
- (2) The order under subsection (1) 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 when the Court is of the opinion that the information that could be obtained if the parentage testing procedure were to be carried out in relation to the person might assist in determining the parentage of the child.
- (3) The order under subsection (1) may be made subject to terms and conditions.
- (4) When the Court makes an order under subsection (1), the Court may —
  - (a) make such other orders as it considers necessary or desirable —
    - (i) to enable the parentage testing procedure to be carried out; or
    - (ii) to make the parentage testing procedure more effective or reliable,including, without limiting the generality of the following, orders requiring a person to submit to a medical procedure, to provide a bodily sample or to furnish information relevant to the medical or family history of the person; and

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- (b) make such orders as it considers just in relation to costs incurred in relation to —
  - (i) the carrying out of the parentage testing procedure or other orders made by the Court in relation to the parentage testing procedure; or
  - (ii) the preparation of reports in relation to the information obtained as a result of the carrying out of the parentage testing procedure.
- (5) When a person who has attained 18 years of age contravenes an order under this section, the person is not liable to any penalty in relation to the contravention, but the Court may draw such inferences as appear just in the circumstances.
- (6) When an order under this section is directed to a child who has not attained 18 years of age, a medical procedure or other act shall not be carried out in relation to the child under the order unless a guardian of the child consents to the medical procedure or act being carried out, but the Court may draw such inferences from a failure or refusal to consent as appear just in the circumstances.
- (7) If a guardian of the child consents to a medical procedure or other act being carried out in relation to the child under the order, a person who carries out, or assists in the carrying out of, the medical procedure or act is not liable to any civil or criminal action in relation to the proper carrying out of the medical procedure or act.
- (8) Nothing in subsection (7) affects any liability of a person for an act done negligently, or negligently omitted to be done, in relation to the carrying out of the medical procedure or act.
- (9) The regulations may make provision with respect to —
  - (a) the carrying out of parentage testing procedures under orders made under subsection (1); and



- (b) the preparation of reports in relation to the information obtained as the result of the carrying out of parentage testing procedures.
- (10) A report made in accordance with regulations made under subsection (9) (b) may be received in evidence in any proceedings under this Act.
- (11) When a report referred to in subsection (10) is received in evidence in any proceedings under this Act, the Court may, on the request of a party to the proceedings, on the request of a person representing the relevant child under an order made under section 82 or of its own motion, 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.

*[Section 82E inserted by No. 41 of 1988 s.12.]*

**83. Power to give directions**

The Court or the Registrar may give such directions in relation to proceedings generally or in a particular case as are desirable or necessary for the purposes of this Act.

*[Section 83 inserted by No. 58 of 1979 s.33.]*

**84. Certificates of birth**

In proceedings under this Act, the 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 certificate, entry or record of a birth, death or marriage alleged to have taken place whether in Australia or elsewhere.

*[Section 84 inserted by No. 58 of 1979 s.33.]*

**85. Saving**

- (1) Nothing in this Act shall be deemed to confer any power on the Court to order the release of any ward under the *Child Welfare*

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*Act 1947* or of any child under the control of the Department from any detention centre, Departmental facility or any other facility within the meaning of that Act.

- (2) Subsection (1) of this section does not apply where the child is a ward pursuant to an order of the Court.

*[Section 85 inserted by No. 58 of 1979 s.33; amended by No. 19 of 1987 s.42; No. 49 of 1988 s.50.]*

**86. Reports by welfare officers**

- (1) The Court may direct a welfare officer to furnish to the court a report on such matters relevant to the proceedings as the Court thinks desirable and may, if it thinks necessary, adjourn the proceedings until the report has been furnished to the Court.
- (2) A welfare officer may include in a report prepared pursuant to a direction under subsection (1), in addition to the matters required to be included in the report, any other matters that relate to the welfare of the child.
- (3) For the purpose of the preparation of a report by a welfare officer pursuant to a direction under subsection (1), the Court may make such orders, or give such further directions, as it considers appropriate in relation to the preparation of the report including, if the Court considers it appropriate, orders or directions in relation to the attendance upon the welfare officer of a party to the proceedings or of the child.
- (4) If a person fails to comply with any order or direction under subsection (3), it is the duty of the welfare officer to report the failure to the Court.
- (5) Where, under subsection (4), a welfare officer reports to the Court a failure of the kind referred to in that subsection, the Court may give such further directions in relation to the preparation of the report as the Court considers appropriate.

- (6) A report furnished to the Court in accordance with a direction given under this section may be received in evidence in any proceedings under this Act.

*[Section 86 inserted by No. 19 of 1987 s.43.]*

**87. Intervention by Attorney General**

- (1) The Attorney General may intervene in, and contest or argue any question arising in —
- (a) any proceedings in any court in the State relating to any non-federal jurisdiction under this Act where the court in which the proceedings are, requests him to do so or a matter arises that affects the public interest; or
  - (b) any proceedings in any court in the State relating to any non-federal jurisdiction under this Act with respect to the custody or guardianship of, access to, or welfare of children.
- (2) Where the Attorney General intervenes in any proceedings, he shall be deemed to be a party to the proceedings with all the rights, duties, and liabilities of a party.

*[Section 87 inserted by No. 58 of 1979 s.33; amended by No. 19 of 1987 s.44.]*

**87A. Intervention by other persons**

- (1) Any person may apply for leave to intervene in any proceedings, and the Court 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 thinks fit.
- (3) Where a person intervenes in any proceedings by leave of the Court he shall, unless the Court otherwise orders, be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

*[Section 87A inserted by No. 19 of 1987 s.45.]*

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**88. Contempt**

- (1) Notwithstanding any other provision of law, a court having jurisdiction under this Act may punish persons for —
  - (a) contempt in the face of the court when exercising that jurisdiction;
  - (b) contempt by wilful disobedience of any order made by a court in the exercise of jurisdiction under this Act; and
  - (c) contempt by breach of any undertaking given to a court when exercising that jurisdiction.
- (2) Where a person in contempt is not a body corporate, the court may punish the contempt by committal to prison or fine or both.
- (3) Where a body corporate is in contempt, the court may punish the contempt by sequestration or fine or both.
- (4) The court may make an order for —
  - (a) punishment on terms;
  - (b) suspension of punishment; or
  - (c) the giving of security for good behaviour.
- (5) Where a person is committed to prison for a term for contempt, the court may order his discharge before the expiry of that term.

*[Section 88 inserted by No. 58 of 1979 s.33.]*

**88A. Rules of Court**

- (1) The Judges, or a majority of them, may make Rules of Court not inconsistent with this Act or regulations made under section 89, providing for or in relation to the practice and procedure to be followed in the Court and in courts of summary jurisdiction exercising jurisdiction under this Act, and for and in relation to all matters and things incidental to any such practice and procedure, or necessary or convenient to be prescribed for the conduct of any business in those courts and, in particular —

- (a) providing for the places and times of sitting of the Court and of courts of summary jurisdiction exercising federal jurisdiction and non-federal jurisdictions under this Act;
- (b) providing for and in relation to the attendance of witnesses;
- (c) providing for and in relation to the manner of service of process of the Court or any court of summary jurisdiction exercising jurisdiction under this Act, and for and in relation to dispensing with such service;
- (d) making provision for and in relation to 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;
- (e) providing for and in relation to the functions of officers of the Court;
- (f) authorizing an officer of the Court or of a court of summary jurisdiction exercising jurisdiction under this Act to perform functions, on behalf of the court or otherwise, in relation to proceedings instituted in the Court or proceedings instituted in a court of summary jurisdiction exercising jurisdiction under this Act, and enabling the court concerned to review the decision of that officer in relation to the performance of any function;
- (g) prescribing the seals and stamps to be used in the Court and in courts of summary jurisdiction exercising jurisdiction under this Act;
- (h) prescribing 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;
- (j) authorizing the Court and courts of summary jurisdiction 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;

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- (k) authorizing an officer making an investigation referred to in paragraph (j) to take evidence on oath or affirmation and to obtain and receive in evidence a report from a court counsellor or welfare officer, and enabling the summoning of witnesses before an officer making such an investigation for the purpose of giving evidence or producing books and documents;
- (l) regulating the procedure of the Court and courts of summary jurisdiction exercising jurisdiction under this Act upon receiving a report of an officer who has made an investigation referred to in paragraph (j);
- (m) prescribing the practice and procedure as to charging with contempt and the hearing of the charge;
- (n) 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 relation thereto —
  - (i) the imposition of differing requirements depending on different classes of cases, different classes of matters, or other different circumstances; and
  - (ii) the conferring of a discretionary authority;
- (o) providing for and in relation to the appointment of a next friend for a party;
- (p) providing for and in relation to the enforcement and execution of the judgments and orders of the Court and courts of summary jurisdiction exercising jurisdiction under this Act;

- (q) providing for and in relation to the attachment of moneys payable by the Commonwealth, the State or another State, a Territory or the Administration of a Territory, or by an authority of the Commonwealth, of the State or another State or of a Territory (other than moneys as to which it is provided by any law of the Commonwealth, of the State or another State or of a Territory that they are not liable to attachment);
  - (r) providing for and in relation to —
    - (i) the attendance, by parties to proceedings, at conferences conducted by welfare officers; and
    - (ii) the use by the Court and courts of summary jurisdiction exercising jurisdiction under this Act, and by officers of such courts, for the purposes of proceedings, of reports prepared by welfare officers in relation to conferences attended by parties to the proceedings pursuant to Rules of Court made under subparagraph (i), being reports relating to the future conduct of the proceedings;
  - (s) prescribing matters incidental to the matters specified in the preceding paragraphs; and
  - (t) prescribing penalties not exceeding \$500 for offences against the Rules of Court.
- (2) Rules of Court made under this section may adopt or apply for the purpose of this Act any Rules of Court made under the Family Law Act.

*[Section 88A inserted by No. 19 of 1987 s.46.]*

## **89. 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 or are

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necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without limiting the generality of subsection (1) the regulations may make provision for or in relation to —
- (a) the establishment of registries of the Court;
  - (b) prescribing court fees to be payable in respect of proceedings under this Act;
  - (c) prescribing the metropolitan region for the purposes of this Act;
  - (d) authorizing any justice of the peace, any police officer or constable in charge at any police station or lockup or any court having jurisdiction under this Act to grant bail in the federal or non-federal jurisdictions under this Act;
  - (e) prescribing matters incidental to the matters specified in the preceding paragraphs of this subsection; and
  - (f) prescribing penalties not exceeding \$500 for offences against the regulations.

*[(3) and (4) repealed]*

- (5) Court fees payable in pursuance of regulations made under this section in respect of proceedings under this Act are payable to the State.

*[Section 89: formerly section 34 amended by No. 111 of 1976 s.6 redesignated as section 89 and amended by No. 58 of 1979 s.34; amended by No. 19 of 1987 s.47.]*

**90. Transitional**

- (1) Regulations, rules and by-laws in force immediately before the date of the coming into operation of this section as re-enacted and redesignated by the *Family Court Act Amendment and Acts Repeal Act 1979* for or in relation to any matter under the non-federal jurisdictions of the Court, or of courts of summary jurisdiction referred to in section 75, shall continue in force



after that date for and in relation to that matter with such modifications as are necessary and subject to subsection (2) and the regulations made under section 89.

- (2) Regulations, rules and by-laws continued in force by subsection (1) may be revoked by the Governor at any time.

*[Section 90: formerly section 35 repealed and re-enacted as section 90 by No. 58 of 1979 s.35.]*

**91. Pending proceedings**

- (1) In this section —

**“amending date”** means the date of the coming into operation of this section as re-enacted and redesignated by the *Family Court Act Amendment and Acts Repeal Act 1979*;

**“appeal”** includes —

- (a) an application for leave or special leave to appeal; and
- (b) an application for a re-hearing;

**“decree”** means a judgment or order, and includes an order dismissing a complaint or refusing to make an order;

**“pending proceedings”** means proceedings that were instituted before the amending date but were not completed before that date; and

**“proceedings”** means proceedings in a court created by the Parliament of the State in a jurisdiction conferred by an Act specified in the First or Third Schedule that is on and after the amending date one of the non-federal jurisdictions of the Family Court of Western Australia, whether between parties or not, and includes cross proceedings or an incidental, proceedings in the course of or in connection with a proceedings.

- (2) Subject to subsection (3) and to the regulations, pending proceedings may be continued and shall be dealt with as if they

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were proceedings instituted under this Act as in force on and after the amending date.

- (3) The Court or the Registrar may give such directions in relation to pending proceedings generally or in a particular case as are desirable or necessary for the purposes of this Act.
- (4) Where in any proceedings a decree has been made before the amending date the provisions of this Act as in force immediately before the amending date shall apply to and in relation to any appeal in respect of the decree.

*[Section 91: formerly section 36 repealed and re-enacted as section 91 by No. 58 of 1979 s.36.]*

1<sup>st</sup> Schedule

[S. 5.]

1. The *Adoption of Children Act 1896* is amended as set out below.

Provision Amended	Amendment
Section 2 . . . . .	<p>Insert after the interpretation “country” an interpretation as follows —</p> <p>“Family Court” means the Family Court of Western Australia created by the <i>Family Court Act 1975</i>.</p> <p>Insert after the interpretation “guardian” an interpretation as follows —</p> <p>“Judge” means a Judge of the Family Court and includes an acting Judge of that Court, if any, who for the time being holds an appointment as such pursuant to section 11 of the <i>Family Court Act 1975</i>.</p>
Section 4D (3) . . . .	Delete “Supreme” in line 4, substitute “Family”.
Section 4H (5) . . . .	Delete “Supreme” in line 9, substitute “Family”.
Section 4H (13) (g)	Delete “the”, the first word in line 1, substitute “a”.
Section 5A (1) . . . .	Delete “Supreme” in line 2, substitute “Family”.
Section 5A (2) . . . .	Delete “Supreme” in lines 7 and 11, substitute in each case “Family”.
Section 5B . . . . .	Delete “Supreme” in line 3, substitute “Family”.
Section 5C . . . . .	Delete “Supreme” in line 11, substitute “Family”.
Section 9A . . . . .	Delete “Supreme” in line 2, substitute “Family”.
Section 11 . . . . .	Insert after “Court” in line 2 “or the Family Court”.

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Provision Amended	Amendment
Section 11	Insert after “Master” in line 5 “of the Supreme Court or the Registrar of the Family Court, as the case requires”.
Section 12 . . . . .	Delete “Supreme” in line 2, substitute “Family”.
Section 12A (1) . . .	Delete “Supreme” in line 9, substitute “Family”.
Section 13A (2) . . .	Delete “Supreme” in line 10, substitute “Family”.
Section 13B (1) . . .	Delete “Supreme” in lines 7 and 10, substitute “Family” in each case.
Section 16 (6) . . . .	Delete “Supreme” in line 7, substitute “Family”.
Section 25 . . . . .	Delete “Governor” in line 1, substitute “Judges or a majority of them”.
Section 25 . . . . .	Delete “such rules and regulations as he thinks fit” in line 2, substitute “rules not inconsistent with the <i>Family Court Act 1975</i> and regulations in force thereunder”.

[2. *Repealed*]

3. The *Child Welfare Act 1947* is amended as set out below.

Provision Amended	Amendment
Section 40A . . . . .	Repeal and re-enact subsection (3) as follows —  (3) Where an order is made under this section for the payment of maintenance, the court shall cause a certified copy of the order to be sent to the Family Court of Western Australia created by the <i>Family Court Act 1975</i> for registration in the manner provided by the regulations in force under that Act or by the rules in force of that Family Court; and the order shall, when so registered,

be deemed, for purposes, to be an order of  
that Family Court.

Section 40A . . . . . Repeal subsection (4).

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*[First Schedule amended by No. 58 of 1979 s.38.]*

**2<sup>nd</sup> Schedule**

[S.13.]

1. ALLEGIANCE

(a) Oath:

I, . . . . ., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law. So help me God.

Or

(b) Affirmation:

I, . . . . ., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law.

(Note:— The name of the reigning Sovereign for the time being is to be substituted from time to time).

2. OFFICE

(a) Oath:

I, . . . . ., do swear that I will well and truly serve in the office of (Chairman of Judges, or Judge, as the case may be) of the Family Court of Western Australia and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God.

or

(b) Affirmation:

I, . . . . ., do solemnly and sincerely affirm and declare that I will well and truly serve in the office of (Chairman of Judges, or Judge, as the case may be) of the Family Court of Western Australia and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

### 3<sup>rd</sup> Schedule

[S.5.]

*The Married Persons and Children (Summary Relief) Act 1965.*

*The Guardianship of Children Act 1972.*

*[Third Schedule inserted by No. 58 of 1979 s.39.]*

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**NOTES**

- <sup>1.</sup> This is a compilation of the *Family Court Act 1975* and includes all amendments effected by the other Acts referred to in the following Table.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Family Court Act 1975</i>	106 of 1975	1 Dec 1975	Section 1, 2, 3, 37 and Third Schedule 5 Jan 1976 (see <i>Gazette</i> 19 Dec 1975 pp.4563-64); Balance 1 Jun 1976 (see <i>Gazette</i> 7 May 1976 p.1381)
<i>Family Court Act Amendment Act 1976</i>	16 of 1976	31 May 1976	Same date as principal Act (see section 2)
<i>Acts Amendment (Expert Evidence) Act 1976, Part IV</i>	111 of 1976	25 Nov 1976	25 Nov 1976
<i>Family Court Act Amendment Act 1978</i>	30 of 1978	22 May 1978	16 Jun 1978 (see <i>Gazette</i> 16 Jun 1978 p.1871)
<i>Family Court Act Amendment and Acts Repeal Act 1979</i> <sup>5</sup>	58 of 1979	12 Nov 1979	14 Dec 1979 (see <i>Gazette</i> 7 Dec 1979 p.3770)
<i>Family Court Amendment Act 1981</i>	94 of 1981	4 Dec 1981	11 Dec 1981 (see <i>Gazette</i> 11 Dec 1981 p.5085)
<i>Acts Amendment (Judicial Appointments) Act 1982, Part IV</i>	7 of 1982	6 May 1982	6 May 1982
<i>Family Court Amendment Act 1987</i> <sup>2, 3, 4, 6</sup>	19 of 1987	25 Jun 1987	15 Jan 1988 (see <i>Gazette</i> 15 Jan 1988 p.67)
<i>Judges' Salaries and Pensions Amendment Act 1987, section 8</i>	82 of 1987	1 Dec 1987	1 Dec 1987 (see section 2)
<i>Family Court Amendment Act 1988</i>	41 of 1988	30 Nov 1988	Section 9: Deemed operative 14 Dec 1979 (see section 3 (2)); Balance: 4 Aug 1989 (see <i>Gazette</i> 4 Aug 1989 p.2491)



<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Act Amendment (Children's Court) Act 1988, Part 5</i>	49 of 1988	22 Dec 1988	1 Dev 1989 (see <i>Gazette</i> 24 Nov 1989 p.4327)
<i>Supreme and Family Courts (Miscellaneous Amendments) Act 1989, Part 3</i>	37 of 1989	21 Dec 1989	21 Dec 1989
<i>Family Court Amendment Act 1990</i>	64 of 1990	17 Dec 1990	19 Jan 1991 (see section 2)
<i>Children's Court of Western Australia Amendment Act (No. 2) 1991, section 21</i>	15 of 1991	21 Jun 1991	9 Aug 1991 (see <i>Gazette</i> 9 Aug 1991 p.4101)
<i>Family Court Amendment Act 1991</i>	24 of 1991	28 Oct 1991	5 Nov 1991 (see <i>Gazette</i> 1 Nov 1991 p.5585)
<i>Acts Amendment (Public Sector Management) Act 1994, Part 2</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see <i>Gazette</i> 30 Sep 1994 p.4948)
<i>Sentencing (Consequential Provisions) Act 1995, Part 30 and section 147</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see section 2 and <i>Gazette</i> 25 Oct 1996 p.5632)

<sup>2</sup> Section 6 (2) and (3) of the *Family Court Amendment Act 1987* (Act No. 19 of 1987) reads as follows —

“

- (2) A reference (however expressed) in any written law or in any instrument to the Chairman of Judges of the Family Court of Western Australia shall, unless the context is such that it would be incorrect or inappropriate, be read as a reference to the Chief Judge of the Family Court of Western Australia.
- (3) the person holding office under section 9 (4) of the principal Act immediately before the commencement of this section shall continue to hold office notwithstanding the change of title effected by this section.

3. Section 15 (2) of the *Family Court Amendment Act 1987* (Act No. 19 of 1987) reads as follows —
- “
- (2) The repeal of section 34 of the principal Act by subsection (1) does not affect an injunction that was in force immediately before that repeal; any such injunction continues in force as if it had been granted under section 28A of the principal Act inserted by section 14.
- ”.
4. Section 27 (2) of the *Family Court Amendment Act 1987* (Act No. 19 of 1987) reads as follows —
- “
- (2) The repeal of section 52 of the principal Act by subsection (1) does not affect any order under that section that was in force immediately before that repeal; any such order continues in force as if it had been granted under section 28A of the principal Act inserted by section 14.
- ”.
5. Section 31 (2) of the *Family Court Act Amendment and Acts Repeal Act 1979* (Act No. 58 of 1979) reads as follows —
- “
- (2) The amendment effected by paragraph (b) of subsection (1) of this section does not apply in relation to an appeal the hearing of which commenced before the coming into operation of this section.
- ”.
6. Section 48 of the *Family Court Amendment Act 1987* (Act No. 19 of 1987) reads as follows —
- “
- 48. Transitional provisions**
- (1) In this section —
- “**appeal**” includes —
- (a) an application for leave or special leave to appeal; and
- ”.

(b) an application for a re-hearing;

**“commencement day”** means the day on which this Act comes into operation;

**“decree”** has the same meaning as it has in section 81 (1) of the principal Act;

**“pending proceedings”** means proceedings under the principal Act that were instituted before the commencement day but were not completed before that day.

- (2) Subject to subsections (3), (4) and (5), pending proceedings may be continued and shall be dealt with as if they were proceedings instituted under the principal Act as in force on and after the commencement day.
- (3) Rules may be made under section 88A of the principal Act providing for or in relation to the completion of pending proceedings.
- (4) The Court or the Registrar may give such directions in relation to pending proceedings, generally or in a particular case, as are necessary or desirable for the purposes of the principal Act.
- (5) Rules referred to in subsection (3) and directions referred to in subsection (4) may, if it is appropriate to do so, make provision inconsistent with subsection (2).
- (6) Where in any proceedings a decree has been made before the commencement day the provisions of the principal Act as in force immediately before the commencement day shall apply to and in relation to any appeal in respect of the decree.
- (7) Words used in this section have the same meanings as they have in the principal Act .

”.