

WESTERN AUSTRALIA

FAMILY COURT AMENDMENT ACT

No. 19 of 1987

AN ACT to amend the *Family Court Act 1975*.

[Assented to 25 June 1987]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the *Family Court Amendment Act 1987*.

Commencement

2. This Act shall come into operation on such day as is fixed by proclamation.

Principal Act

3. In this Act the *Family Court Act 1975** is referred to as the principal Act.

[*Reprinted as approved 17 March 1980 and amended by Acts Nos. 94 of 1981 and 7 of 1982.]

Section 3 repealed

4. Section 3 of the principal Act is repealed.

Section 4 amended

5. Section 4 of the principal Act is amended—

- (a) by deleting the definitions of “Chairman”, “Department for Community Welfare”, and “Director” and inserting the following definitions in the appropriate alphabetical positions—

“ “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);

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

“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*; ”; and

- (b) in the definition of “non-federal jurisdictions of the Court” by deleting “subsection (2) of section 27” and substituting the following—

“ section 27 (2) and (3) ”.

Section 9 amended and transitional provisions

6. (1) Section 9 of the principal Act is amended in subsection (4) by deleting "Chairman of Judges" and substituting the following—

“ Chief Judge ”.

(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.

References to “Chairman” amended

7. The principal Act is amended by deleting “Chairman” wherever it occurs in the provisions referred to in the Table to this section and substituting in each case the following—

“Chief Judge”

TABLE

section 10 (1)	section 15 (1)
section 10 (2)	section 15 (2)
section 11 (1)	section 16 (1)
section 11 (2)	section 16 (3)

Section 11 amended

8. Section 11 of the principal Act is amended in subsection (1a)—

(a) by deleting “Chairman” in the first 2 places where it occurs and substituting the following—

“ Chief Judge ”; and

(b) by deleting “Chairman of Judges” and substituting the following—

“ Chief Judge ”.

Section 13 amended

9. Section 13 of the principal Act is amended by inserting after “Judge” the following—

“ under section 9 or 11 ”.

Section 14 repealed

10. Section 14 of the principal Act is repealed.

Section 16 amended

11. Section 16 of the principal Act is amended in subsection (2) by deleting “Chairman” in the first place where it occurs and substituting the following—

“ Chief Judge ”.

Section 18 amended

12. Section 18 of the principal Act is amended in subsection (4) by inserting after “1950 as” the following—

“ service as ”.

Section 27 amended

13. Section 27 of the principal Act is amended—

- (a) in subsection (2) (b) (iv), by deleting “and access to” and substituting the following—

“ , access to, and welfare of ”;

- (b) in subsection (4), by deleting “Director” in both places where it occurs and substituting the following—

“ Director-General ”;

- (c) in subsection (5), by deleting “or access to” and substituting the following—

“ access to, or welfare of ”; and

- (d) in subsection (6) by inserting after “access to” the following—

“ , or welfare of ”.

Section 28A inserted

14. After section 28 of the principal Act the following section is inserted—

Injunctions

- “ 28A. (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, or order him to be imprisoned until he enters into such a recognizance or until the expiration of 3 months, whichever first occurs;
- (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 34 repealed and saving provision

15. (1) Section 34 of the principal Act is repealed.

(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.

Heading to Division 3 of Part III amended

16. Part III of the principal Act is amended in the heading to Division 3 by deleting “*and Guardianship*” and substituting the following—

“ , *Guardianship, Access and Welfare* ”.

Section 34 inserted

17. Immediately before section 35 of the principal Act, the following section is inserted—

Meaning of guardianship and custody

“ 34. (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—

- (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 first-mentioned order were an order granting to the first-mentioned person the guardianship of the child; or
- (b) in any other case, as if the first-mentioned order were an order granting to the first-mentioned person the guardianship and the custody of the child. ”.

Section 36 amended

18. Section 36 of the principal Act is amended—

- (a) by deleting “for the custody, guardianship of or access to” and substituting the following—

“ with respect to the custody or guardianship of, access to, or welfare of, ”;

- (b) by inserting after paragraph (a) the following paragraph—
 - “ (aa) the child or a person acting on behalf of the child; ”;
- (c) in paragraph (e), by deleting “child,” and substituting the following—
 - “ child. ”; and
- (d) by deleting “and the Court may grant or refuse to make the order.”.

Section 36A inserted

19. After section 36 of the principal Act, the following section is inserted—

Order of Court

- “ 36A. 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 39 amended**20. Section 39 of the principal Act is amended—**

- (a) in subsection (1), by deleting “or upon the request of a party to the proceedings” and substituting the following—

“ , 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 ”;

- (b) by inserting after subsection (1) the following subsection—

“ (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). ”; and

- (c) by inserting after subsection (3) the following subsection—

“ (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. ”.

Section 39A inserted

21. After section 39 of the principal Act, the following section is inserted—

Certain matters to be taken into account

“ 39A. (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 40 repealed and a section substituted

22. Section 40 of the principal Act is repealed and the following section is substituted—

Supervision of orders

“ 40. 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 41 repealed

23. Section 41 of the principal Act is repealed.

Section 42 amended

24. Section 42 of the principal Act is amended by deleting control”.

Section 44 repealed and a section substituted

25. Section 44 of the principal Act is repealed and the following section is substituted—

Guardianship by will or deed

“ 44. (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 47 amended

26. Section 47 of the principal Act is amended—

(a) in subsections (1) and (2), by deleting “a Court having jurisdiction under this Act” in each subsection and substituting in each case the following—

“ the Court ”;

(b) by inserting after subsection (5) the following subsections—

“ (5a) Where—

(a) a warrant has been issued under subsection (1) or (2) in relation to a child; and

(b) the Court is satisfied that a 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. ”;

and

(c) by inserting after subsection (8) the following subsection—

- “ (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 52 repealed and transitional provision

27. (1) Section 52 of the principal Act is repealed.

(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.

Section 53 amended

28. Section 53 of the principal Act is amended by repealing subsection (3) and substituting the following subsection—

“ (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. ”.

Section 55 amended

29. Section 55 of the principal Act is amended—

(a) in subsection (1) by inserting after “person” the following—

“ (including the child or a person acting on behalf of the child) ”;

(b) in subsection (2), by deleting “for the custody of or guardianship of the child”; and

(c) by repealing subsection (3).

Section 55A inserted

30. After section 55 of the principal Act, the following section is inserted—

Orders of Court

“ 55A. On an application under section 55, the Court may, in accordance with this Division, make such order for maintenance as it thinks proper. ”.

Section 56 repealed and a section substituted

31. Section 56 of the principal Act is repealed and the following section is substituted—

Finding of parenthood

“ 56. 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,

of the child with respect to whom the order is made. ”.

Section 68 amended

32. Section 68 of the principal Act is amended in subsection (1) (g) by deleting “Director” and substituting the following—

“ Director-General ”.

Section 69 amended

33. Section 69 of the principal Act is amended by repealing subsection (1) and substituting the following subsections—

“ (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) revive wholly or in part an order suspended under paragraph (b); or
- (d) subject to 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. ”.

Section 72 amended

34. Section 72 of the principal Act is amended by deleting “Part XV of the regulations” and substituting the following—

“ regulations and Rules of Court made ”.

Section 73 amended

35. Section 73 of the principal Act is amended in subsection (1) (c) by deleting “34” and substituting the following—

“ 28A ”.

Division 9 of Part III inserted

36. After Division 8 of Part III of the principal Act, the following Division is inserted—

“ *Division 9—Costs and related provisions*

Costs, general provision

73A. (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.

Reparation for certain losses and expenses relating to children

73B. (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)—

- (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 section 719 of The Criminal Code, ordered the first-mentioned person to make reparation to the Commonwealth or the State Government, to the Commonwealth or State instrumentality or to that other person, as the case may be, in respect of the same loss suffered or expense incurred.

(3) In this section “Commonwealth or State instrumentality” means a body or authority established for a public purpose by or under a law of the Commonwealth or of the State.

Interest on moneys ordered to be paid

73C. (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).

Offers of settlement

73D. (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 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 75 amended

37. Section 75 of the principal Act is amended—

(a) by inserting after subsection (2) the following subsection—

“ (2a) The reference in subsection (2) to proceedings with respect to property does not include proceedings with respect to arrears of maintenance. ”; and

(b) by inserting after subsection (3) the following subsection—

“ (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 76 amended

38. Section 76 of the principal Act is amended by repealing subsection (2).

Section 79 amended

39. Section 79 of the principal Act is amended by repealing subsection (2) and substituting the following subsection—

“ (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 81 amended

40. Section 81 of the principal Act is amended in subsection (3) by deleting “regulations” and substituting the following—

“ Rules of Court ”.

Sections 82A to 82E inserted

41. After section 82 of the principal Act, the following sections are inserted—

Frivolous or vexatious proceedings

“ 82A. (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).

Proceedings generally to be in open court

82B. (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.

Restriction on publication of court proceedings

82C. (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 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 communication, to persons concerned in proceedings in any court, of any pleading, transcript of evidence or other document for use in connection with those proceedings;
- (b) the communication of any pleading, transcript of evidence or other document to—
 - (i) a body that is responsible for disciplining members of the legal profession; or
 - (ii) persons concerned in disciplinary proceedings against a member of the legal profession, being proceedings before a body that is responsible for disciplining members of the legal profession;
- (c) the communication, to a body that grants assistance by way of legal aid, of any pleading, transcript of evidence or other document for the purpose of facilitating the making of a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case;
- (d) the publishing of a notice or report in pursuance of the direction of a court;
- (e) the publishing of any publication *bona fide* intended primarily for use by the members of any profession, being—
 - (i) a separate volume or part of a series of law reports; or
 - (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.

Evidence as to paternity

82D. Where the paternity 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.

Paternity tests

82E. (1) Without limiting the generality of section 82D, where the paternity of a child is a question in issue, 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—

(a) subject to such conditions as are specified in the direction, direct any of the persons referred to in subsection (2) to submit to a prescribed medical procedure for the purpose of enabling the preparation of a report concerning the paternity of the child; and

(b) give such other directions as are necessary to give effect to a direction made under paragraph (a).

(2) The persons who may, under subsection (1), be directed to submit to a prescribed medical procedure are—

- (a) the child;
- (b) the mother of the child; and
- (c) any other person who is a relevant person in relation to the child.

(3) A person is a relevant person in relation to a child if, in the opinion of the Court, the information that could be obtained if the prescribed medical procedure were performed on that person might assist the preparation of a report concerning the paternity of the child.

(4) Where a person who has attained the age of 18 years fails to comply with a direction given under subsection (1) to submit to a prescribed medical procedure, the person is not liable to any penalty in respect of the failure to comply, but the Court may draw such inferences from the failure to comply as appear proper in the circumstances.

(5) Where the Court directs a child who has not attained the age of 18 years to submit to a prescribed medical procedure, the prescribed medical procedure shall not be performed on the child unless a person who is, for the purposes of this Act, a guardian of the child consents to that prescribed medical procedure being performed on the child, but the Court may draw such inferences from a refusal or failure to consent to that prescribed medical procedure being performed on the child as appear proper in the circumstances.

(6) Where a person who is a guardian of a child as mentioned in subsection (5) consents to a prescribed medical procedure being performed on the child pursuant to a direction of the Court given under subsection (1), a prescribed person who performs the prescribed medical procedure on the child in reliance on that consent is not liable to any criminal or civil action at the instance of any person in respect of the proper performance of that prescribed medical procedure, but nothing in this subsection detracts from any liability of the prescribed person arising out of negligent performance of that prescribed medical procedure.

(7) A report in the prescribed form made by a person with prescribed qualifications concerning the paternity of a child, being a report setting out information obtained as the result of the carrying out of prescribed medical procedures pursuant to a direction given under subsection (1) in the course of proceedings under this Act, and conclusions that may be drawn from that information, may be received in evidence in the proceedings.

(8) Where a report is received in evidence as provided in subsection (7)—

(a) the Court may; or

(b) a party to the proceedings may, with the leave of the Court but not otherwise,

require the person who made the report, or any person involved in the performance of prescribed medical procedures for the purposes of the report, to appear before the Court.

(9) A person who appears before the Court pursuant to a requirement made under subsection (8) may be examined by the Court and may be cross-examined by or on behalf of any party to the proceedings.

(10) The Court may make such order as it thinks just in relation to costs incurred in obtaining reports for the purposes of this section, including the costs of having prescribed medical procedures performed. ”.

Section 85 amended

42. Section 85 of the principal Act is amended in subsection (1) by deleting “or a court of summary jurisdiction”.

Section 86 repealed and a section substituted

43. Section 86 of the principal Act is repealed and the following section is substituted—

Reports by welfare officers

“ 86. (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 87 amended

44. Section 87 of the principal Act is amended, in subsection (1)(b), by deleting “or access to” and substituting the following—

“ access to, or welfare of ”.

Section 87A inserted

45. After section 87 of the principal Act the following section is inserted—

Intervention by other persons

“ 87A. (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 88A inserted

46. After section 88 of the principal Act, the following section is inserted—

Rules of Court

- “ 88A. (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;
- (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 in 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 purposes of this Act any Rules of Court made under the Family Law Act. ”.

Section 89 amended

47. Section 89 of the principal Act is amended by repealing subsections (2), (3) and (4) and substituting the following subsection—

- “ (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. ”.

Transitional provisions

48. (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.