



# Family Law Act 1975

No. 53, 1975

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**Volume 1:** sections 1–90

**Volume 2:** sections 90AA–125  
**Schedule**  
**Endnotes**

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Family Law Act 1975* that shows the text of the law as amended and in force on 1 September 2018 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **Part VIIIAA—Orders and injunctions binding third parties**

### **Division 1—Preliminary**

#### **Subdivision A—Scope of this Part**

##### **90AA Object of this Part**

The object of this Part is to allow the court, in relation to the property of a party to a marriage, to:

- (a) make an order under section 79 or 114; or
  - (b) grant an injunction under section 114;
- that is directed to, or alters the rights, liabilities or property interests of a third party.

##### **90AB Definitions**

In this Part:

*marriage* includes a void marriage.

*third party*, in relation to a marriage, means a person who is not a party to the marriage.

##### **90AC This Part overrides other laws, trust deeds etc.**

- (1) This Part has effect despite anything to the contrary in any of the following (whether made before or after the commencement of this Part):
  - (a) any other law (whether written or unwritten) of the Commonwealth, a State or Territory;
  - (b) anything in a trust deed or other instrument.
- (2) Without limiting subsection (1), nothing done in compliance with this Part by a third party in relation to a marriage is to be treated as

**Part VIII** Orders and injunctions binding third parties

**Division 1** Preliminary

**Section 90A**

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resulting in a contravention of a law or instrument referred to in subsection (1).

**90ACA This Part not to apply to certain annuities**

The powers of the court under this Part do not apply to superannuation annuities (within the meaning of the *Income Tax Assessment Act 1997*).

**90AD Extended meaning of *matrimonial cause* and *property***

- (1) For the purposes of this Part, a debt owed by a party to a marriage is to be treated as property for the purposes of paragraph (ca) of the definition of *matrimonial cause* in section 4.
- (2) For the purposes of paragraph 114(1)(e), *property* includes a debt owed by a party to a marriage.

**90ADA Other provisions of this Act not affected by this Part**

This Part does not affect the operation of any other provision of this Act.

Example: Paragraph 90AE(3)(e) and subsection 90AE(4) do not limit the operation of any other provisions of this Act that require or permit the court to take matters into account in making an order in proceedings under section 79.

## **Division 2—Orders under section 79**

### **90AE Court may make an order under section 79 binding a third party**

- (1) In proceedings under section 79, the court may make any of the following orders:
  - (a) an order directed to a creditor of the parties to the marriage to substitute one party for both parties in relation to the debt owed to the creditor;
  - (b) an order directed to a creditor of one party to a marriage to substitute the other party, or both parties, to the marriage for that party in relation to the debt owed to the creditor;
  - (c) an order directed to a creditor of the parties to the marriage that the parties be liable for a different proportion of the debt owed to the creditor than the proportion the parties are liable to before the order is made;
  - (d) an order directed to a director of a company or to a company to register a transfer of shares from one party to the marriage to the other party.
- (2) In proceedings under section 79, the court may make any other order that:
  - (a) directs a third party to do a thing in relation to the property of a party to the marriage; or
  - (b) alters the rights, liabilities or property interests of a third party in relation to the marriage.
- (3) The court may only make an order under subsection (1) or (2) if:
  - (a) the making of the order is reasonably necessary, or reasonably appropriate and adapted, to effect a division of property between the parties to the marriage; and
  - (b) if the order concerns a debt of a party to the marriage—it is not foreseeable at the time that the order is made that to make the order would result in the debt not being paid in full; and

**Part VIIIAA** Orders and injunctions binding third parties

**Division 2** Orders under section 79

**Section 90AE**

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- (c) the third party has been accorded procedural fairness in relation to the making of the order; and
  - (d) the court is satisfied that, in all the circumstances, it is just and equitable to make the order; and
  - (e) the court is satisfied that the order takes into account the matters mentioned in subsection (4).
- (4) The matters are as follows:
- (a) the taxation effect (if any) of the order on the parties to the marriage;
  - (b) the taxation effect (if any) of the order on the third party;
  - (c) the social security effect (if any) of the order on the parties to the marriage;
  - (d) the third party's administrative costs in relation to the order;
  - (e) if the order concerns a debt of a party to the marriage—the capacity of a party to the marriage to repay the debt after the order is made;
    - Note: See paragraph (3)(b) for requirements for making the order in these circumstances.
    - Example: The capacity of a party to the marriage to repay the debt would be affected by that party's ability to repay the debt without undue hardship.
  - (f) the economic, legal or other capacity of the third party to comply with the order;
    - Example: The legal capacity of the third party to comply with the order could be affected by the terms of a trust deed. However, after taking the third party's legal capacity into account, the court may make the order despite the terms of the trust deed. If the court does so, the order will have effect despite those terms (see section 90AC).
  - (g) if, as a result of the third party being accorded procedural fairness in relation to the making of the order, the third party raises any other matters—those matters;
    - Note: See paragraph (3)(c) for the requirement to accord procedural fairness to the third party.
  - (h) any other matter that the court considers relevant.

### **Division 3—Orders or injunctions under section 114**

#### **90AF Court may make an order or injunction under section 114 binding a third party**

- (1) In proceedings under section 114, the court may:
  - (a) make an order restraining a person from repossessing property of a party to a marriage; or
  - (b) grant an injunction restraining a person from commencing legal proceedings against a party to a marriage.
- (2) In proceedings under section 114, the court may make any other order, or grant any other injunction that:
  - (a) directs a third party to do a thing in relation to the property of a party to the marriage; or
  - (b) alters the rights, liabilities or property interests of a third party in relation to the marriage.
- (3) The court may only make an order or grant an injunction under subsection (1) or (2) if:
  - (a) the making of the order, or the granting of the injunction, is reasonably necessary, or reasonably appropriate and adapted, to effect a division of property between the parties to the marriage; and
  - (b) if the order or injunction concerns a debt of a party to the marriage—it is not foreseeable at the time that the order is made, or the injunction granted, that to make the order or grant the injunction would result in the debt not being paid in full; and
  - (c) the third party has been accorded procedural fairness in relation to the making of the order or injunction; and
  - (d) for an injunction or order under subsection 114(1)—the court is satisfied that, in all the circumstances, it is proper to make the order or grant the injunction; and

**Part VIII** Orders and injunctions binding third parties

**Division 3** Orders or injunctions under section 114

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- (e) for an injunction under subsection 114(3)—the court is satisfied that, in all the circumstances, it is just or convenient to grant the injunction; and
  - (f) the court is satisfied that the order or injunction takes into account the matters mentioned in subsection (4).
- (4) The matters are as follows:
- (a) the taxation effect (if any) of the order or injunction on the parties to the marriage;
  - (b) the taxation effect (if any) of the order or injunction on the third party;
  - (c) the social security effect (if any) of the order or injunction on the parties to the marriage;
  - (d) the third party's administrative costs in relation to the order or injunction;
  - (e) if the order or injunction concerns a debt of a party to the marriage—the capacity of a party to the marriage to repay the debt after the order is made or the injunction is granted;
    - Note: See paragraph (3)(b) for requirements for making the order or granting the injunction in these circumstances.
    - Example: The capacity of a party to the marriage to repay the debt would be affected by that party's ability to repay the debt without undue hardship.
  - (f) the economic, legal or other capacity of the third party to comply with the order or injunction;
    - Example: The legal capacity of the third party to comply with the order or injunction could be affected by the terms of a trust deed. However, after taking the third party's legal capacity into account, the court may make the order or grant the injunction despite the terms of the trust deed. If the court does so, the order or injunction will have effect despite those terms (see section 90AC).
  - (g) if, as a result of the third party being accorded procedural fairness in relation to the making of the order or the granting of the injunction, the third party raises any other matters—those matters;
    - Note: See paragraph (3)(c) for the requirement to accord procedural fairness to the third party.

(h) any other matter that the court considers relevant.

## **Division 4—Other matters**

### **90AG Orders and injunctions binding on trustees**

If an order or injunction binds a person in the capacity of trustee in relation to property, then the order or injunction is also binding (by force of this section) on any person who subsequently becomes the trustee.

### **90AH Protection for a third party**

A third party in relation to a marriage is not liable for loss or damage suffered by any person because of things done (or not done) by the third party in good faith in reliance on an order or injunction made or granted by a court in accordance with this Part.

### **90AI Service of documents on a third party**

- (1) If a document is required or permitted to be served for the purposes of this Part on a third party in relation to a marriage, the document may be served in any of the ways in which a document may be served under the applicable Rules of Court.
- (2) Subsection (1) is in addition to any other method of service permitted by law.

### **90AJ Expenses of third party**

- (1) Subsection (2) applies if:
  - (a) the court has made an order or granted an injunction in accordance with this Part in relation to a marriage; and
  - (b) a third party in relation to the marriage has incurred expense as a necessary result of the order or injunction.
- (2) The court may make such order as it considers just for the payment of the reasonable expenses of the third party incurred as a necessary result of the order or injunction.

- (3) In deciding whether to make an order under subsection (2), subject to what the court considers just, the court must take into account the principle that the parties to the marriage should bear the reasonable expenses of the third party equally.
- (4) The regulations may provide, in situations where the court has not made an order under subsection (2):
  - (a) for the charging by the third party of reasonable fees to cover the reasonable expenses of the third party incurred as a necessary result of the order or injunction; and
  - (b) if such fees are charged—that each of the parties to the marriage is separately liable to pay the third party an amount equal to half of those fees; and
  - (c) for conferring jurisdiction on a particular court or courts in relation to the collection or recovery of such fees.

### **90AK Acquisition of property**

- (1) The court must not make an order or grant an injunction in accordance with this Part if the order or injunction would:
  - (a) result in the acquisition of property from a person otherwise than on just terms; and
  - (b) be invalid because of paragraph 51(xxxi) of the Constitution.
- (2) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

## Part VIIIA—Financial agreements

### 90A Definitions

In this Part:

*dealt with* includes the meaning given by subsection 90F(2).

*marriage* includes a void marriage.

### 90B Financial agreements before marriage

- (1) If:
  - (a) people who are contemplating entering into a marriage with each other make a written agreement with respect to any of the matters mentioned in subsection (2); and
  - (aa) at the time of the making of the agreement, the people are not the spouse parties to any other binding agreement (whether made under this section or section 90C or 90D) with respect to any of those matters; and
  - (b) the agreement is expressed to be made under this section; the agreement is a ***financial agreement***. The people may make the financial agreement with one or more other people.
- (2) The matters referred to in paragraph (1)(a) are the following:
  - (a) how, in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of the spouse parties at the time when the agreement is made, or at a later time and before divorce, is to be dealt with;
  - (b) the maintenance of either of the spouse parties:
    - (i) during the marriage; or
    - (ii) after divorce; or
    - (iii) both during the marriage and after divorce.
- (3) A financial agreement made as mentioned in subsection (1) may also contain:

- (a) matters incidental or ancillary to those mentioned in subsection (2); and
  - (b) other matters.
- (4) A financial agreement (the ***new agreement***) made as mentioned in subsection (1) may terminate a previous financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

### **90C Financial agreements during marriage**

- (1) If:
- (a) the parties to a marriage make a written agreement with respect to any of the matters mentioned in subsection (2); and
  - (aa) at the time of the making of the agreement, the parties to the marriage are not the spouse parties to any other binding agreement (whether made under this section or section 90B or 90D) with respect to any of those matters; and
  - (b) the agreement is expressed to be made under this section;
- the agreement is a ***financial agreement***. The parties to the marriage may make the financial agreement with one or more other people.
- (2) The matters referred to in paragraph (1)(a) are the following:
- (a) how, in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of the spouse parties at the time when the agreement is made, or at a later time and during the marriage, is to be dealt with;
  - (b) the maintenance of either of the spouse parties:
    - (i) during the marriage; or
    - (ii) after divorce; or
    - (iii) both during the marriage and after divorce.
- (2A) For the avoidance of doubt, a financial agreement under this section may be made before or after the marriage has broken down.
- (3) A financial agreement made as mentioned in subsection (1) may also contain:

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- (a) matters incidental or ancillary to those mentioned in subsection (2); and
  - (b) other matters.
- (4) A financial agreement (the *new agreement*) made as mentioned in subsection (1) may terminate a previous financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

**90D Financial agreements after divorce order is made**

- (1) If:
- (a) after a divorce order is made in relation to a marriage (whether it has taken effect or not), the parties to the former marriage make a written agreement with respect to any of the matters mentioned in subsection (2); and
  - (aa) at the time of the making of the agreement, the parties to the former marriage are not the spouse parties to any other binding agreement (whether made under this section or section 90B or 90C) with respect to any of those matters; and
  - (b) the agreement is expressed to be made under this section; the agreement is a *financial agreement*. The parties to the former marriage may make the financial agreement with one or more other people.
- (2) The matters referred to in paragraph (1)(a) are the following:
- (a) how all or any of the property or financial resources that either or both of the spouse parties had or acquired during the former marriage is to be dealt with;
  - (b) the maintenance of either of the spouse parties.
- (3) A financial agreement made as mentioned in subsection (1) may also contain:
- (a) matters incidental or ancillary to those mentioned in subsection (2); and
  - (b) other matters.

- (4) A financial agreement (the *new agreement*) made as mentioned in subsection (1) may terminate a previous financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

**90DA Need for separation declaration for certain provisions of financial agreement to take effect**

- (1) A financial agreement that is binding on the parties to the agreement, to the extent to which it deals with how, in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of the spouse parties:
- (a) at the time when the agreement is made; or
  - (b) at a later time and before the termination of the marriage by divorce;

are to be dealt with, is of no force or effect until a separation declaration is made.

Note: Before the separation declaration is made, the financial agreement will be of force and effect in relation to the other matters it deals with (except for any matters covered by section 90DB).

- (1A) Subsection (1) ceases to apply if:
- (a) the spouse parties divorce; or
  - (b) either or both of them die.

Note: This means the financial agreement will be of force and effect in relation to the matters mentioned in subsection (1) from the time of the divorce or death(s).

- (2) A separation declaration is a written declaration that complies with subsections (3) and (4), and may be included in the financial agreement to which it relates.
- (3) The declaration must be signed by at least one of the spouse parties to the financial agreement.
- (4) The declaration must state that:
- (a) the spouse parties have separated and are living separately and apart at the declaration time; and

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(b) in the opinion of the spouse parties making the declaration, there is no reasonable likelihood of cohabitation being resumed.

(5) In this section:

*declaration time* means the time when the declaration was signed by a spouse party to the financial agreement.

*separated* has the same meaning as in section 48 (as affected by section 49).

**90DB Whether or when certain other provisions of financial agreements take effect**

- (1) A financial agreement that is binding on the parties to the agreement, to the extent to which it provides for a third party to contribute to the maintenance of a spouse party during the marriage, is of no force or effect.
- (2) A financial agreement that is binding on the parties to the agreement, to the extent to which it provides for matters covered by paragraph 90B(3)(b) or 90C(3)(b), is of no force or effect unless and until the marriage breaks down.

**90E Requirements with respect to provisions in financial agreements relating to the maintenance of a party or a child or children**

A provision of a financial agreement that relates to the maintenance of a spouse party to the agreement or a child or children is void unless the provision specifies:

- (a) the party, or the child or children, for whose maintenance provision is made; and
- (b) the amount provided for, or the value of the portion of the relevant property attributable to, the maintenance of the party, or of the child or each child, as the case may be.

**90F Certain provisions in agreements**

- (1) No provision of a financial agreement excludes or limits the power of a court to make an order in relation to the maintenance of a party to a marriage if subsection (1A) applies.
- (1A) This subsection applies if the court is satisfied that, when the agreement came into effect, the circumstances of the party were such that, taking into account the terms and effect of the agreement, the party was unable to support himself or herself without an income tested pension, allowance or benefit.
- (2) To avoid doubt, a provision in an agreement made as mentioned in subsection 90B(1), 90C(1) or 90D(1) that provides for property or financial resources owned by a spouse party to the agreement to continue in the ownership of that party is taken, for the purposes of that section, to be a provision with respect to how the property or financial resources are to be dealt with.

**90G When financial agreements are binding**

- (1) Subject to subsection (1A), a financial agreement is binding on the parties to the agreement if, and only if:
  - (a) the agreement is signed by all parties; and
  - (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the agreement; and
  - (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the agreement); and
  - (ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and

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- (d) the agreement has not been terminated and has not been set aside by a court.

Note: For the manner in which the contents of a financial agreement may be proved, see section 48 of the *Evidence Act 1995*.

(1A) A financial agreement is binding on the parties to the agreement if:

- (a) the agreement is signed by all parties; and
- (b) one or more of paragraphs (1)(b), (c) and (ca) are not satisfied in relation to the agreement; and
- (c) a court is satisfied that it would be unjust and inequitable if the agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and
- (d) the court makes an order under subsection (1B) declaring that the agreement is binding on the parties to the agreement; and
- (e) the agreement has not been terminated and has not been set aside by a court.

(1B) For the purposes of paragraph (1A)(d), a court may make an order declaring that a financial agreement is binding on the parties to the agreement, upon application (the *enforcement application*) by a spouse party seeking to enforce the agreement.

(1C) To avoid doubt, section 90KA applies in relation to the enforcement application.

(2) A court may make such orders for the enforcement of a financial agreement that is binding on the parties to the agreement as it thinks necessary.

### 90H Effect of death of party to financial agreement

A financial agreement that is binding on the parties to the agreement continues to operate despite the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party.

**90J Termination of financial agreement**

- (1) The parties to a financial agreement may terminate the agreement only by:
- (a) including a provision to that effect in another financial agreement as mentioned in subsection 90B(4), 90C(4) or 90D(4); or
  - (b) making a written agreement (a *termination agreement*) to that effect.
- (2) Subject to subsection (2A), a termination agreement is binding on the parties if, and only if:
- (a) the agreement is signed by all parties to the agreement; and
  - (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the agreement; and
  - (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the agreement); and
  - (ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and
  - (d) the agreement has not been set aside by a court.
- (2A) A termination agreement is binding on the parties if:
- (a) the agreement is signed by all parties to the agreement; and
  - (b) one or more of paragraphs (2)(b), (c) and (ca) are not satisfied in relation to the agreement; and
  - (c) a court is satisfied that it would be unjust and inequitable if the agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and

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- (d) the court makes an order under subsection (2B) declaring that the agreement is binding on the parties to the agreement; and
  - (e) the agreement has not been set aside by a court.
- (2B) For the purposes of paragraph (2A)(d), a court may make an order declaring that a termination agreement is binding on the parties to the agreement, upon application (the *enforcement application*) by a spouse party seeking to enforce the agreement.
- (2C) To avoid doubt, section 90KA applies in relation to the enforcement application.
- (3) A court may, on an application by a person who was a party to the financial agreement that has been terminated, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.

Note: For the manner in which the contents of a financial agreement may be proved, see section 48 of the *Evidence Act 1995*.

**90K Circumstances in which court may set aside a financial agreement or termination agreement**

- (1) A court may make an order setting aside a financial agreement or a termination agreement if, and only if, the court is satisfied that:
- (a) the agreement was obtained by fraud (including non-disclosure of a material matter); or
  - (aa) a party to the agreement entered into the agreement:
    - (i) for the purpose, or for purposes that included the purpose, of defrauding or defeating a creditor or creditors of the party; or
    - (ii) with reckless disregard of the interests of a creditor or creditors of the party; or
  - (ab) a party (the *agreement party*) to the agreement entered into the agreement:

- (i) for the purpose, or for purposes that included the purpose, of defrauding another person who is a party to a de facto relationship with a spouse party; or
  - (ii) for the purpose, or for purposes that included the purpose, of defeating the interests of that other person in relation to any possible or pending application for an order under section 90SM, or a declaration under section 90SL, in relation to the de facto relationship; or
  - (iii) with reckless disregard of those interests of that other person; or
- (b) the agreement is void, voidable or unenforceable; or
  - (c) in the circumstances that have arisen since the agreement was made it is impracticable for the agreement or a part of the agreement to be carried out; or
  - (d) since the making of the agreement, a material change in circumstances has occurred (being circumstances relating to the care, welfare and development of a child of the marriage) and, as a result of the change, the child or, if the applicant has caring responsibility for the child (as defined in subsection (2)), a party to the agreement will suffer hardship if the court does not set the agreement aside; or
  - (e) in respect of the making of a financial agreement—a party to the agreement engaged in conduct that was, in all the circumstances, unconscionable; or
  - (f) a payment flag is operating under Part VIIIB on a superannuation interest covered by the agreement and there is no reasonable likelihood that the operation of the flag will be terminated by a flag lifting agreement under that Part; or
  - (g) the agreement covers at least one superannuation interest that is an unsplitable interest for the purposes of Part VIIIB.
- (1A) For the purposes of paragraph (1)(aa), **creditor**, in relation to a party to the agreement, includes a person who could reasonably have been foreseen by the party as being reasonably likely to become a creditor of the party.

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- (2) For the purposes of paragraph (1)(d), a person has ***caring responsibility*** for a child if:
- (a) the person is a parent of the child with whom the child lives; or
  - (b) a parenting order provides that:
    - (i) the child is to live with the person; or
    - (ii) the person has parental responsibility for the child.
- (3) A court may, on an application by a person who was a party to the financial agreement that has been set aside, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.
- (4) An order under subsection (1) or (3) may, after the death of a party to the proceedings in which the order was made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (5) If a party to proceedings under this section dies before the proceedings are completed:
- (a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and
  - (b) if the court is of the opinion:
    - (i) that it would have exercised its powers under this section if the deceased party had not died; and
    - (ii) that it is still appropriate to exercise those powers; the court may make any order that it could have made under subsection (1) or (3); and
  - (c) an order under paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

- (6) The court must not make an order under this section if the order would:
- (a) result in the acquisition of property from a person otherwise than on just terms; and
  - (b) be invalid because of paragraph 51(xxxi) of the Constitution.
- For this purpose, *acquisition of property* and *just terms* have the same meanings as in paragraph 51(xxxi) of the Constitution.

### **90KA Validity, enforceability and effect of financial agreements and termination agreements**

The question whether a financial agreement or a termination agreement is valid, enforceable or effective is to be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts, and, in proceedings relating to such an agreement, the court:

- (a) subject to paragraph (b), has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction; and
- (b) has power to make an order for the payment, by a party to the agreement to another party to the agreement, of interest on an amount payable under the agreement, from the time when the amount became or becomes due and payable, at a rate not exceeding the rate prescribed by the applicable Rules of Court; and
- (c) in addition to, or instead of, making an order or orders under paragraph (a) or (b), may order that the agreement, or a specified part of the agreement, be enforced as if it were an order of the court.

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**90L Financial and other agreements etc. not liable to duty**

None of the following is subject to any duty or charge under any law of a State or Territory or any law of the Commonwealth that applies only in relation to a Territory:

- (a) a financial agreement;
- (b) a termination agreement;
- (c) a deed or other instrument executed by a person for the purposes of, or in accordance with, an order or financial agreement made under this Part.

**90M Notification of proceeds of crime orders etc.**

- (1) If:
  - (a) a person makes an application for an order, under this Part, with respect to:
    - (i) the property of the parties to a marriage or either of them; or
    - (ii) the maintenance of a party to a marriage; and
  - (b) the person knows that the property of the parties to the marriage or either of them is covered by:
    - (i) a proceeds of crime order; or
    - (ii) a forfeiture application;the person must:
  - (c) disclose in the application the proceeds of crime order or forfeiture application; and
  - (d) give to the court a sealed copy of that order or application.
- (2) A person who does not comply with subsection (1) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.
- (3) If:
  - (a) a person is a party to property settlement or spousal maintenance proceedings under this Part; and

- (b) the person is notified by the proceeds of crime authority that the property of the parties to the marriage or either of them is covered by:
  - (i) a proceeds of crime order; or
  - (ii) a forfeiture application;the person must:
  - (c) notify the Registry Manager in writing of the proceeds of crime order or forfeiture application; and
  - (d) give the Registry Manager:
    - (i) a copy of the notification referred to in paragraph (b) (if the notification is in writing); and
    - (ii) a copy of the proceeds of crime order or forfeiture application (if the notification is accompanied by a copy of the order or application).
- (4) A person who does not comply with subsection (3) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

**90N Court to stay property or spousal maintenance proceedings affected by proceeds of crime orders etc.**

- (1) A court in which property settlement or spousal maintenance proceedings are pending must stay those proceedings if notified under section 90M in relation to the proceedings.
- (1A) The court may, before staying proceedings under subsection (1), invite or require the proceeds of crime authority to make submissions relating to staying the proceedings.
- (2) A court must, on the application of the proceeds of crime authority, stay property settlement or spousal maintenance proceedings under this Part if the property of the parties to the marriage or either of them is covered by:
  - (a) a proceeds of crime order; or
  - (b) a forfeiture application.

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- (3) A court must notify the proceeds of crime authority if the court stays property settlement or spousal maintenance proceedings under subsection (1) or (2).
- (4) The proceeds of crime authority must notify the Registry Manager if:
  - (a) a proceeds of crime order ceases to be in force; or
  - (b) a forfeiture application is finally determined.
- (5) For the purposes of subsection (4), a forfeiture application is taken to be finally determined when:
  - (a) the application is withdrawn; or
  - (b) if the application is successful—the resulting forfeiture order comes into force; or
  - (c) if the application is unsuccessful—the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.

**90P Lifting a stay**

- (1) A court that stayed the property settlement or spousal maintenance proceedings under section 90N must wholly or partially lift the stay if:
  - (a) either party to the proceedings makes an application for the stay to be lifted and the proceeds of crime authority consents to such an application; or
  - (b) the proceeds of crime authority makes an application for the stay to be lifted.
- (2) A court that stayed the property settlement or spousal maintenance proceedings under section 90N may, on its own motion, wholly or partially lift the stay if the proceeds of crime authority consents to such a motion.
- (3) Giving the Registry Manager written notice of the proceeds of crime authority's consent under this section is taken to be the giving of that consent, unless the court requires the authority to

appear in the proceedings. The notice may be given by the authority or by a party to the proceedings.

**90Q Intervention by proceeds of crime authority**

- (1) The proceeds of crime authority may intervene in any property settlement or spousal maintenance proceedings in relation to which a court is notified under section 90M, or in any proceedings under section 90N or 90P in which the authority is not already a party.
- (2) If the proceeds of crime authority intervenes, the authority is taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

## Part VIIIAB—Financial matters relating to de facto relationships

### Division 1—Preliminary

#### Subdivision A—Meaning of key terms

##### 90RA Participating jurisdictions

###### *Participating jurisdictions*

- (1) For the purposes of this Act, the following are the ***participating jurisdictions***:
- (a) each referring State;
  - (b) each Territory.

###### *Referring States*

- (2) A State is a ***referring State*** if:
- (a) the Parliament of the State has referred, or refers, to the Parliament of the Commonwealth financial matters relating to the parties to de facto relationships arising out of the breakdown of those de facto relationships; and
  - (b) the referral of the financial matters is made:
    - (i) for the purposes of paragraph 51(xxxvii) of the Constitution; and
    - (ii) to the extent that the financial matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution).

This subsection has effect subject to subsection (5).

- (3) To avoid doubt, a State is not a ***referring State*** if its Parliament has referred, or refers, to the Parliament of the Commonwealth only a limited class of the matters referred to in paragraph (2)(a).

- (4) A State is a *referring State* even if a law of the State provides that a reference to the Commonwealth Parliament described in subsection (2) is to terminate in particular circumstances.
- (5) A State ceases to be a *referring State* if the State's reference to the Commonwealth Parliament described in subsection (2) terminates.

### **90RB Meaning of *child of a de facto relationship***

For the purposes of this Part, a child is a *child of a de facto relationship* if the child is the child of both of the parties to the de facto relationship.

Note: To determine who is a child of a person see Subdivision D of Division 1 of Part VII.

## **Subdivision B—Relationship with State and Territory laws**

### **90RC Relationship with State and Territory laws**

#### *De facto financial provisions*

- (1) In this section:

*de facto financial provisions* means the following provisions:

- (a) this Part;
- (b) Part VIII AA (as applied by section 90TA);
- (c) Part VIII B, to the extent to which it relates to a superannuation interest to be allocated between the parties to a de facto relationship;
- (d) subsection 114(2A).

#### *State and Territory laws do not apply to financial matters*

- (2) Parliament intends that the de facto financial provisions are to apply to the exclusion of any law of a State or Territory to the extent that the law:

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- (a) deals with financial matters relating to the parties to de facto relationships arising out of the breakdown of those de facto relationships; and
- (b) deals with those matters by referring expressly to de facto relationships (regardless of how the State or Territory law describes those relationships).

Note 1: If, for example, both this Part and a law of a non-referring State deal with the distribution of property between the parties to a de facto relationship that has broken down after the commencement of this section, then the parties can only seek to distribute the property under this Part. Subsection (2) has the effect of preventing the parties from seeking to distribute the property under the State law.

Note 2: For *de facto relationship*, see section 4AA.

*Exception—insufficient link to a participating jurisdiction or Division 2 not applicable because of section 90SB*

- (3) Despite subsection (2), Parliament does not intend that the de facto financial provisions are to apply to the exclusion of a law of a State or Territory in relation to a financial matter relating to the parties to a de facto relationship arising out of the breakdown of the relationship if:
  - (a) a court cannot make an order under this Part in relation to that financial matter because of section 90SB, 90SD or 90SK; and
  - (b) there is no Part VIIIAB financial agreement that is binding on the parties dealing with that financial matter.

Example 1: Abbey and Bob are parties to a de facto relationship that has broken down, and have never been ordinarily resident in a participating jurisdiction. Subsection (3) has the effect that State law will govern financial matters arising out of the breakdown of their relationship.

Example 2: Cleo and Dan are parties to a de facto relationship that has broken down after the commencement of this section. Early in their relationship, they made a financial agreement under the law of a non-referring State, but later spent most of their relationship in a participating jurisdiction. Cleo and Dan now have a sufficient geographical link with a participating jurisdiction for either of them to apply for an order under this Part in relation to financial matters arising out of the breakdown of their relationship. This means that subsection (3) will not apply and that their financial agreement will

not be enforceable under State law because of subsection (2).  
However, their financial agreement will be enforceable under this Part  
as a Part VIIIAB financial agreement (see section 90UE).

*Exception—laws facilitating this Act*

- (4) Despite subsection (2), Parliament does not intend that the de facto financial provisions are to apply to the exclusion of a law of a State or Territory to the extent that the law facilitates the operation of this Act.

Note: This Part is not intended to apply to the exclusion of, for example, a State law that deals with superannuation entitlements by acknowledging superannuation splitting under Part VIIIAB of this Act.

*Exception—prescribed State or Territory laws*

- (5) Despite subsection (2), Parliament does not intend that the de facto financial provisions are to apply to the exclusion of a law of a State or Territory if the law is prescribed in regulations made for the purposes of this subsection.

**Subdivision C—Declarations about existence  
of de facto relationships**

**90RD Declarations about existence of de facto relationships**

- (1) If:
- (a) an application is made for an order under section 90SE, 90SG or 90SM, or a declaration under section 90SL; and
  - (b) a claim is made, in support of the application, that a de facto relationship existed between the applicant and another person;
- the court may, for the purposes of those proceedings (the *primary proceedings*), declare that a de facto relationship existed, or never existed, between those 2 persons.
- (2) A declaration under subsection (1) of the existence of a de facto relationship may also declare any or all of the following:

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- (a) the period, or periods, of the de facto relationship for the purposes of paragraph 90SB(a);
- (b) whether there is a child of the de facto relationship;
- (c) whether one of the parties to the de facto relationship made substantial contributions of a kind mentioned in paragraph 90SM(4)(a), (b) or (c);
- (d) when the de facto relationship ended;
- (e) where each of the parties to the de facto relationship was ordinarily resident during the de facto relationship.

Note: For *child of a de facto relationship*, see section 90RB.

**90RE Effect of declarations**

- (1) A section 90RD declaration has effect as a judgment of the court.
- (2) For the purposes of this Act (other than Part VII), a section 90RD declaration has effect according to its terms.

**90RF Applying for declarations**

Any party to the primary proceedings may apply for a section 90RD declaration.

**90RG Geographical requirement**

A court may make a section 90RD declaration only if the court is satisfied that a person referred to in paragraph 90RD(1)(b), or both of those persons, were ordinarily resident in a participating jurisdiction when the primary proceedings commenced.

**90RH Setting aside declarations**

- (1) If, in the primary proceedings, a person (the *affected person*) affected by a section 90RD declaration made in those proceedings applies under this subsection, and the court is satisfied that:
  - (a) a fact or circumstance has arisen that has not previously been disclosed to the court; and

- (b) if the affected person was a party to the primary proceedings at the time the application for the declaration was made—the fact or circumstance was not within the affected person’s knowledge at that time;
- the court may do any of the following:
- (c) vary the declaration;
  - (d) set the declaration aside;
  - (e) set the declaration aside and make another section 90RD declaration in substitution for the declaration so set aside.
- (2) The setting aside of a declaration does not affect anything done in reliance on the declaration while it remained in force.
- (3) If the court sets aside a section 90RD declaration, the court may, on application by the affected person or any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of placing as far as practicable any person affected by the setting aside of the declaration in the same position as that person would have been in if the declaration had not been made.

**Division 2—Maintenance, declarations of property interests and alterations of property interests**

**Subdivision A—Application of Division**

**90SA This Division does not apply to certain matters covered by binding financial agreements**

- (1) This Division does not apply to any of the following matters to which a Part VIIIAB financial agreement that is binding on the parties to the agreement applies:
  - (a) the maintenance of one of the spouse parties;
  - (b) the property of the spouse parties or of either of them;
  - (c) the financial resources of the spouse parties or of either of them.
  
- (2) Subsection (1) does not apply in relation to:
  - (a) proceedings between:
    - (i) a party to a de facto relationship; and
    - (ii) the bankruptcy trustee of a bankrupt party to the de facto relationship;with respect to the maintenance of the first-mentioned party after the breakdown of the de facto relationship; or
  - (b) proceedings between:
    - (i) a party to a de facto relationship; and
    - (ii) the bankruptcy trustee of a bankrupt party to the de facto relationship;with respect to the distribution, after the breakdown of the de facto relationship, of any vested bankruptcy property in relation to the bankrupt party.
  
- (3) Despite subsection (1), a party to a de facto relationship is not prevented from bringing property settlement proceedings under this Part if a Part VIIIAB financial agreement is not binding on that party.

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Example: Before Amy and Ben's de facto relationship breaks down, Ben and Cathy make a Part VIIIAB financial agreement. Ben and Cathy's Part VIIIAB financial agreement does not prevent Amy from bringing property settlement proceedings against Ben.

**90SB When this Division applies—length of relationship etc.**

A court may make an order under section 90SE, 90SG or 90SM, or a declaration under section 90SL, in relation to a de facto relationship only if the court is satisfied:

- (a) that the period, or the total of the periods, of the de facto relationship is at least 2 years; or
- (b) that there is a child of the de facto relationship; or
- (c) that:
  - (i) the party to the de facto relationship who applies for the order or declaration made substantial contributions of a kind mentioned in paragraph 90SM(4)(a), (b) or (c); and
  - (ii) a failure to make the order or declaration would result in serious injustice to the applicant; or
- (d) that the relationship is or was registered under a prescribed law of a State or Territory.

Note: For *child of a de facto relationship*, see section 90RB.

**90SC This Division ceases to apply in relation to a de facto relationship if the parties marry each other**

- (1) This Division (other than subsections 90SJ(2) to (5)) ceases to apply in relation to a de facto relationship if the parties to the de facto relationship later marry each other.
- (2) Despite subsection (1), a declaration, order or injunction:
  - (a) made in property settlement proceedings under this Division in relation to the de facto relationship; and
  - (b) in force when the parties marry each other;may, after the marriage, be enforced, varied or set aside in accordance with this Act.

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- (3) If a declaration, order or injunction is set aside as described in subsection (2), another declaration, order or injunction may be made under this Division in substitution for that declaration, order or injunction.

**Subdivision B—Maintenance**

**90SD Geographical requirement**

- (1) A court may make an order under section 90SE or 90SG in relation to a de facto relationship only if the court is satisfied:
- (a) that either or both of the parties to the de facto relationship were ordinarily resident in a participating jurisdiction when the application for the order was made (the *application time*); and
  - (b) that either:
    - (i) both parties to the de facto relationship were ordinarily resident during at least a third of the de facto relationship; or
    - (ii) the applicant for the order made substantial contributions, in relation to the de facto relationship, of a kind mentioned in paragraph 90SM(4)(a), (b) or (c);in one or more States or Territories that are participating jurisdictions at the application time;
- or that the alternative condition in subsection (1A) is met.
- (1A) The alternative condition is that the parties to the de facto relationship were ordinarily resident in a participating jurisdiction when the relationship broke down.
- (2) For the purposes of paragraph (1)(b), a State need not have been a participating jurisdiction during the de facto relationship.
- (3) If each State is a referring State, the Governor-General may, by Proclamation, fix a day as the day on which paragraph (1)(b), and the alternative condition in subsection (1A), cease to apply in relation to new applications.

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Note: Paragraph (1)(b) and subsection (1A) will continue to apply in relation to applications made before the proclaimed day.

- (4) If:
- (a) a Proclamation under subsection (3) is in force; and
  - (b) a State ceases to be a referring State on a particular day;
- the Proclamation is revoked by force of this subsection on and from that day.
- (5) If, under subsection (4), a Proclamation under subsection (3) is revoked:
- (a) this section has effect as if the revoked Proclamation had not been made; but
  - (b) the effect of the revoked Proclamation on applications made before the specified day is not affected.

**90SE Power of court in maintenance proceedings**

- (1) After the breakdown of a de facto relationship, a court may make such order as it considers proper for the maintenance of one of the parties to the de facto relationship in accordance with this Division.

Note 1: The geographical requirement in section 90SD must be satisfied.

Note 2: The court must be satisfied of at least one of the matters in section 90SB.

- (2) If:
- (a) an application is made for an order under this section in proceedings between the parties to a de facto relationship with respect to the maintenance of a party to the de facto relationship; and
  - (b) either of the following subparagraphs apply to a party to the de facto relationship:
    - (i) when the application was made, the party was a bankrupt;
    - (ii) after the application was made but before the proceedings are finally determined, the party became a bankrupt; and

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- (c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and
  - (d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings;
- the court must join the bankruptcy trustee as a party to the proceedings.
- (3) If, under subsection (2), a bankruptcy trustee is a party to proceedings with respect to the maintenance of a party to a de facto relationship, then, except with the leave of the court, the bankrupt party to the de facto relationship is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.
  - (4) The court must not grant leave under subsection (3) unless the court is satisfied that there are exceptional circumstances.
  - (5) If:
    - (a) an application is made for an order under this section in proceedings between the parties to a de facto relationship with respect to the maintenance of a party to the de facto relationship; and
    - (b) either of the following subparagraphs apply to a party to the de facto relationship (the *debtor party*):
      - (i) when the application was made, the debtor party was a debtor subject to a personal insolvency agreement;
      - (ii) after the application was made but before it is finally determined, the debtor party becomes a debtor subject to a personal insolvency agreement; and
    - (c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and
    - (d) the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings;
- the court must join the trustee of the agreement as a party to the proceedings.

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- (6) If, under subsection (5), the trustee of a personal insolvency agreement is a party to proceedings with respect to the maintenance of a party to a de facto relationship, then, except with the leave of the court, the debtor party is not entitled to make a submission to the court in connection with any property subject to the agreement.
- (7) The court must not grant leave under subsection (6) unless the court is satisfied that there are exceptional circumstances.
- (8) For the purposes of subsections (2) and (5), an application for an order under this section is taken to be finally determined when:
  - (a) the application is withdrawn or dismissed; or
  - (b) an order (other than an interim order) is made as a result of the application.

**90SF Matters to be taken into consideration in relation to maintenance**

- (1) In exercising jurisdiction under section 90SE (after being satisfied of the matters in subsections 44(5) and (6) and sections 90SB and 90SD), the court must apply the principle that a party to a de facto relationship must maintain the other party to the de facto relationship:
  - (a) only to the extent that the first-mentioned party is reasonably able to do so; and
  - (b) only if the second-mentioned party is unable to support himself or herself adequately whether:
    - (i) by reason of having the care and control of a child of the de facto relationship who has not attained the age of 18 years; or
    - (ii) by reason of age or physical or mental incapacity for appropriate gainful employment; or
    - (iii) for any other adequate reason.

Note: For *child of a de facto relationship*, see section 90RB.

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- (2) In applying this principle, the court must take into account only the matters referred to in subsection (3).
- (3) The matters to be so taken into account are:
- (a) the age and state of health of each of the parties to the de facto relationship (the *subject de facto relationship*); and
  - (b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment; and
  - (c) whether either party has the care or control of a child of the de facto relationship who has not attained the age of 18 years; and
  - (d) commitments of each of the parties that are necessary to enable the party to support:
    - (i) himself or herself; and
    - (ii) a child or another person that the party has a duty to maintain; and
  - (e) the responsibilities of either party to support any other person; and
  - (f) subject to subsection (4), the eligibility of either party for a pension, allowance or benefit under:
    - (i) any law of the Commonwealth, of a State or Territory or of another country; or
    - (ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia;and the rate of any such pension, allowance or benefit being paid to either party; and
  - (g) a standard of living that in all the circumstances is reasonable; and
  - (h) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish

- himself or herself in a business or otherwise to obtain an adequate income; and
- (i) the effect of any proposed order on the ability of a creditor of a party to recover the creditor's debt, so far as that effect is relevant; and
  - (j) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party; and
  - (k) the duration of the de facto relationship and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration; and
  - (l) the need to protect a party who wishes to continue that party's role as a parent; and
  - (m) if either party is cohabiting with another person—the financial circumstances relating to the cohabitation; and
  - (n) the terms of any order made or proposed to be made under section 90SM in relation to:
    - (i) the property of the parties; or
    - (ii) vested bankruptcy property in relation to a bankrupt party; and
  - (o) the terms of any order or declaration made, or proposed to be made, under this Part in relation to:
    - (i) a party to the subject de facto relationship (in relation to another de facto relationship); or
    - (ii) a person who is a party to another de facto relationship with a party to the subject de facto relationship; or
    - (iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or
    - (iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii); and
  - (p) the terms of any order or declaration made, or proposed to be made, under Part VIII in relation to:
    - (i) a party to the subject de facto relationship; or

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- (ii) a person who is a party to a marriage with a party to the subject de facto relationship; or
  - (iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or
  - (iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii); and
  - (q) any child support under the *Child Support (Assessment) Act 1989* that a party to the subject de facto relationship has provided, is to provide, or might be liable to provide in the future, for a child of the subject de facto relationship; and
  - (r) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; and
  - (s) the terms of any Part VIIIAB financial agreement that is binding on either or both of the parties to the subject de facto relationship; and
  - (t) the terms of any financial agreement that is binding on a party to the subject de facto relationship.
- (4) In exercising its jurisdiction under section 90SE, a court must disregard any entitlement of the party whose maintenance is under consideration to an income tested pension, allowance or benefit.

**90SG Urgent maintenance cases**

If, in proceedings with respect to the maintenance of a party to a de facto relationship in accordance with this Division, it appears to the court that:

- (a) the party is in immediate need of financial assistance; and
- (b) it is not practicable in the circumstances to determine immediately what order, if any, should be made;

the court may order the payment, pending the disposal of the proceedings, of such periodic sum or other sums as the court considers reasonable.

Note 1: The geographical requirement in section 90SD must be satisfied.

Note 2: The court must be satisfied of at least one of the matters in section 90SB.

**90SH Specification in orders of payments etc. for maintenance purposes**

(1) If:

- (a) a court makes an order under this Act (whether or not the order is made in proceedings in relation to the maintenance of a party to a de facto relationship in accordance with this Division, is made by consent or varies an earlier order), and the order has the effect of requiring:
  - (i) payment of a lump sum, whether in one amount or by instalments; or
  - (ii) the transfer or settlement of property; and
- (b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a party to a de facto relationship in relation to the breakdown of the de facto relationship;

the court must:

- (c) express the order to be an order to which this section applies; and
- (d) specify the portion of the payment, or the value of the portion of the property, attributable to the maintenance of the party.

(2) If:

- (a) a court makes an order of a kind referred to in paragraph (1)(a); and
- (b) the order:
  - (i) is not expressed to be an order to which this section applies; or
  - (ii) is expressed to be an order to which this section applies, but does not comply with paragraph (1)(d);

any payment, transfer or settlement of a kind referred to in paragraph (1)(a), that the order has the effect of requiring, must be

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taken not to make provision for the maintenance of a party to the relevant de facto relationship.

**90SI Modification of maintenance orders**

- (1) If there is in force an order with respect to the maintenance of a party to a de facto relationship in accordance with this Division:
  - (a) made by the court; or
  - (b) made by another court and registered in the first-mentioned court in accordance with the applicable Rules of Court;the court may:
  - (c) discharge the order if there is any just cause for so doing; or
  - (d) suspend its operation wholly or in part and either until further order or until a fixed time or the happening of some future event; or
  - (e) revive wholly or in part an order suspended under paragraph (d); or
  - (f) subject to subsection (3), vary the order so as to increase or decrease any amount ordered to be paid or in any other manner.
- (2) The court's jurisdiction under subsection (1) may be exercised:
  - (a) in any case—in proceedings with respect to the maintenance of a party to the de facto relationship in accordance with this Division; or
  - (b) if there is a bankrupt party to the de facto relationship—on the application of the bankruptcy trustee; or
  - (c) if a party to the de facto relationship is a debtor subject to a personal insolvency agreement—on the application of the trustee of the agreement.
- (3) The court must not make an order increasing or decreasing an amount ordered to be paid by an order unless it is satisfied:
  - (a) that, since the order was made or last varied:
    - (i) the circumstances of a person for whose benefit the order was made have so changed (including the person

- entering into a stable and continuing de facto relationship); or
- (ii) the circumstances of the person liable to make payments under the order have so changed; or
  - (iii) in the case of an order that operates in favour of, or is binding on, a legal personal representative—the circumstances of the estate are such; as to justify its so doing; or
- (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) in a case where the order was made by consent—that the amount ordered to be paid is not proper or adequate; or
  - (d) that:
    - (i) material facts were withheld from the court that made the order, or from a court that varied the order; or
    - (ii) material evidence previously given before such a court was false.
- (4) In satisfying itself for the purposes of paragraph (3)(b), the court must have regard to any changes that have occurred in the Consumer Price Index published by the Australian Statistician.
- (5) The court must not, in considering the variation of an order, have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or was last varied having regard to a change in the cost of living.
- (6) In satisfying itself for the purposes of paragraph (3)(c), the court must have regard to any payments, and any transfer or settlement of property, previously made by a party to the de facto relationship, or by the bankruptcy trustee of a party to the de facto relationship, to:
- (a) the other party; or
  - (b) any other person for the benefit of the other party.

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- (7) An order decreasing the amount of a periodic sum payable under an order or discharging an order may be expressed to be retrospective to such date as the court considers appropriate.
- (8) If, as provided by subsection (7), an order decreasing the amount of a periodic sum payable under an order is expressed to be retrospective to a specified date, any money paid under the second-mentioned order since the specified date, being money that would not have been required to be paid under the second-mentioned order as varied by the first-mentioned order, may be recovered in a court having jurisdiction under this Act.
- (9) If, as provided by subsection (7), an order discharging an order is expressed to be retrospective to a specified date, any money paid under the second-mentioned order since the specified date may be recovered in a court having jurisdiction under this Act.
- (10) For the purposes of this section, the court must have regard to the provisions of section 90SF.
- (11) The discharge of an order does not affect the recovery of arrears due under the order at the time as at which the discharge takes effect.

**90SJ Cessation of maintenance orders**

- (1) An order with respect to the maintenance of a party to a de facto relationship in accordance with this Division ceases to have effect upon:
  - (a) the death of the party; or
  - (b) the death of the person liable to make payments under the order.
- (2) An order with respect to the maintenance of a party to a de facto relationship in accordance with this Division ceases to have effect upon the marriage of the party unless in special circumstances a court having jurisdiction under this Act otherwise orders.

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- (3) If a marriage referred to in subsection (2) takes place, it is the duty of the person for whose benefit the order was made to inform without delay the person liable to make payments under the order of the date of the marriage.
- (4) Any money paid in respect of a period after the event referred to in subsection (2) may be recovered in a court having jurisdiction under this Act.
- (5) Nothing in this section affects the recovery of arrears due under an order at the time when the order ceased to have effect.

**Subdivision C—Declarations and alterations of property interests**

**90SK Geographical requirement**

- (1) A court may make a declaration under section 90SL, or an order under section 90SM, in relation to a de facto relationship only if the court is satisfied:
  - (a) that either or both of parties to the de facto relationship were ordinarily resident in a participating jurisdiction when the application for the declaration or order was made (the **application time**); and
  - (b) that either:
    - (i) both parties to the de facto relationship were ordinarily resident during at least a third of the de facto relationship; or
    - (ii) the applicant for the declaration or order made substantial contributions in relation to the de facto relationship, of a kind mentioned in paragraph 90SM(4)(a), (b) or (c);in one or more States or Territories that are participating jurisdictions at the application time;or that the alternative condition in subsection (1A) is met.

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- (1A) The alternative condition is that the parties to the de facto relationship were ordinarily resident in a participating jurisdiction when the relationship broke down.
- (2) For the purposes of paragraph (1)(b), a State need not have been a participating jurisdiction during the de facto relationship.
- (3) If each State is a referring State, the Governor-General may, by Proclamation, fix a day as the day on which paragraph (1)(b), and the alternative condition in subsection (1A), cease to apply in relation to new applications.

Note: Paragraph (1)(b) and subsection (1A) will continue to apply in relation to applications made before the proclaimed day.

- (4) If:
  - (a) a Proclamation under subsection (3) is in force; and
  - (b) a State ceases to be a referring State on a particular day;the Proclamation is revoked by force of this subsection on and from that day.
- (5) If, under subsection (4), a Proclamation under subsection (3) is revoked:
  - (a) this section has effect as if the revoked Proclamation had not been made; but
  - (b) the effect of the revoked Proclamation on applications made before the specified day is not affected.

**90SL Declaration of interests in property**

- (1) In proceedings between the parties to a de facto relationship:
  - (a) after the breakdown of the de facto relationship; and
  - (b) with respect to existing title or rights in respect of property;the court may declare the title or rights, if any, that a party has in respect of the property.

Note 1: The geographical requirement in section 90SK must be satisfied.

Note 2: The court must be satisfied of at least one of the matters in section 90SB.

- (2) If a court makes a declaration under subsection (1), it may make consequential orders to give effect to the declaration, including orders as to sale or partition and interim or permanent orders as to possession.

### **90SM Alteration of property interests**

- (1) In property settlement proceedings after the breakdown of a de facto relationship, the court may make such order as it considers appropriate:
- (a) in the case of proceedings with respect to the property of the parties to the de facto relationship or either of them—altering the interests of the parties to the de facto relationship in the property; or
  - (b) in the case of proceedings with respect to the vested bankruptcy property in relation to a bankrupt party to the de facto relationship—altering the interests of the bankruptcy trustee in the vested bankruptcy property;
- including:
- (c) an order for a settlement of property in substitution for any interest in the property; and
  - (d) an order requiring:
    - (i) either or both of the parties to the de facto relationship; or
    - (ii) the relevant bankruptcy trustee (if any);to make, for the benefit of either or both of the parties to the de facto relationship or a child of the de facto relationship, such settlement or transfer of property as the court determines.

Note 1: The geographical requirement in section 90SK must be satisfied.

Note 2: The court must be satisfied of at least one of the matters in section 90SB.

Note 3: For *child of a de facto relationship*, see section 90RB.

- (2) If a party to the de facto relationship dies after the breakdown of the de facto relationship, an order made under subsection (1) in

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property settlement proceedings may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

- (3) The court must not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.
- (4) In considering what order (if any) should be made under this section in property settlement proceedings, the court must take into account:
  - (a) the financial contribution made directly or indirectly by or on behalf of a party to the de facto relationship, or a child of the de facto relationship:
    - (i) to the acquisition, conservation or improvement of any of the property of the parties to the de facto relationship or either of them; or
    - (ii) otherwise in relation to any of that last-mentioned property;  
whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the de facto relationship or either of them; and
  - (b) the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a party to the de facto relationship, or a child of the de facto relationship:
    - (i) to the acquisition, conservation or improvement of any of the property of the parties to the de facto relationship or either of them; or
    - (ii) otherwise in relation to any of that last-mentioned property;  
whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the de facto relationship or either of them; and
  - (c) the contribution made by a party to the de facto relationship to the welfare of the family constituted by the parties to the de facto relationship and any children of

- the de facto relationship, including any contribution made in the capacity of homemaker or parent; and
- (d) the effect of any proposed order upon the earning capacity of either party to the de facto relationship; and
  - (e) the matters referred to in subsection 90SF(3) so far as they are relevant; and
  - (f) any other order made under this Act affecting a party to the de facto relationship or a child of the de facto relationship; and
  - (g) any child support under the *Child Support (Assessment) Act 1989* that a party to the de facto relationship has provided, is to provide, or might be liable to provide in the future, for a child of the de facto relationship.
- (5) Without limiting the power of any court to grant an adjournment in proceedings under this Act, if, in property settlement proceedings in relation to the parties to a de facto relationship, a court is of the opinion:
- (a) that there is likely to be a significant change in the financial circumstances of the parties to the de facto relationship or either of them and that, having regard to the time when that change is likely to take place, it is reasonable to adjourn the proceedings; and
  - (b) that an order that the court could make with respect to:
    - (i) the property of the parties to the de facto relationship or either of them; or
    - (ii) the vested bankruptcy property in relation to a bankrupt de facto party to the de facto relationship;if that significant change in financial circumstances occurs is more likely to do justice as between the parties to the de facto relationship than an order that the court could make immediately with respect to:
    - (iii) the property of the parties to the de facto relationship or either of them; or
    - (iv) the vested bankruptcy property in relation to a bankrupt party to the de facto relationship;

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the court may, if so requested by either party to the de facto relationship or the relevant bankruptcy trustee (if any), adjourn the proceedings until such time, before the expiration of a period specified by the court, as that party to the de facto relationship or the relevant bankruptcy trustee, as the case may be, applies for the proceedings to be determined, but nothing in this subsection requires the court to adjourn any proceedings in any particular circumstances.

- (6) If a court proposes to adjourn proceedings as provided by subsection (5), the court may, before so adjourning the proceedings, make such interim order or orders or such other order or orders (if any) as it considers appropriate with respect to:
- (a) any of the property of the parties to the de facto relationship or of either of them; or
  - (b) any of the vested bankruptcy property in relation to a bankrupt party to the de facto relationship.
- (7) The court may, in forming an opinion for the purposes of subsection (5) as to whether there is likely to be a significant change in the financial circumstances of either or both of the parties to the de facto relationship, have regard to any change in the financial circumstances of a party to the de facto relationship that may occur by reason that the party to the de facto relationship:
- (a) is a contributor to a superannuation fund or scheme, or participates in any scheme or arrangement that is in the nature of a superannuation scheme; or
  - (b) may become entitled to property as the result of the exercise in his or her favour, by the trustee of a discretionary trust, of a power to distribute trust property;
- but nothing in this subsection limits the circumstances in which the court may form the opinion that there is likely to be a significant change in the financial circumstances of a party to the de facto relationship.
- (8) If a party to the de facto relationship dies after the breakdown of the de facto relationship, but before property settlement proceedings are completed:

- (a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and
  - (b) if the court is of the opinion:
    - (i) that it would have made an order with respect to property if the deceased party had not died; and
    - (ii) that it is still appropriate to make an order with respect to property;the court may make such order as it considers appropriate with respect to:
    - (iii) any of the property of the parties to the de facto relationship or either of them; or
    - (iv) any of the vested bankruptcy property in relation to a bankrupt de facto party to the de facto relationship; and
  - (c) an order made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (9) The Family Court must not make an order under this section in property settlement proceedings (other than an order until further order or an order made with the consent of all the parties to the proceedings) unless:
- (a) the parties to the proceedings have attended a conference in relation to the matter to which the proceedings relate with a Registrar or Deputy Registrar of the Family Court; or
  - (b) the court is satisfied that, having regard to the need to make an order urgently, or to any other special circumstance, it is appropriate to make the order notwithstanding that the parties to the proceedings have not attended a conference as mentioned in paragraph (a); or
  - (c) the court is satisfied that it is not practicable to require the parties to the proceedings to attend a conference as mentioned in paragraph (a).

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- (10) The following are entitled to become a party to proceedings in which an application is made for an order under this section by a party to a de facto relationship (the *subject de facto relationship*):
- (a) a creditor of a party to the proceedings if the creditor may not be able to recover his or her debt if the order were made;
  - (b) a person:
    - (i) who is a party to a de facto relationship (the *other de facto relationship*) with a party to the subject de facto relationship; and
    - (ii) who could apply, or has an application pending, for an order under section 90SM, or a declaration under section 90SL, in relation to the other de facto relationship;
  - (c) a person who is a party to a Part VIIIAB financial agreement (that is binding on the person) with a party to the subject de facto relationship;
  - (d) a person:
    - (i) who is a party to a marriage with a party to the subject de facto relationship; and
    - (ii) who could apply, or has an application pending, for an order under section 79, or a declaration under section 78, in relation to the marriage (or void marriage);
  - (e) a person who is a party to a financial agreement (that is binding on the person) with a party to the subject de facto relationship;
  - (f) any other person whose interests would be affected by the making of the order.
- (11) Subsection (10) does not apply to a creditor of a party to the proceedings:
- (a) if the party is a bankrupt—to the extent to which the debt is a provable debt (within the meaning of the *Bankruptcy Act 1966*); or

- (b) if the party is a debtor subject to a personal insolvency agreement—to the extent to which the debt is covered by the personal insolvency agreement.
- (12) If a person becomes a party to proceedings under this section because of paragraph (10)(b), the person may, in the proceedings, apply for:
- (a) an order under section 90SM; or
  - (b) a declaration under section 90SL;
- in relation to the other de facto relationship described in that paragraph.
- (13) If a person becomes a party to proceedings under this section because of paragraph (10)(d), the person may, in the proceedings, apply for:
- (a) an order under section 79; or
  - (b) a declaration under section 78;
- in relation to the marriage (or void marriage) described in that paragraph.
- (14) If:
- (a) an application is made for an order under this section in proceedings between the parties to a de facto relationship with respect to the property of the parties to the de facto relationship or either of them; and
  - (b) either of the following subparagraphs apply to a party to the de facto relationship:
    - (i) when the application was made, the party was a bankrupt;
    - (ii) after the application was made but before it is finally determined, the party became a bankrupt; and
  - (c) the bankruptcy trustee applies to the court to be joined as a party to the proceedings; and
  - (d) the court is satisfied that the interests of the bankrupt's creditors may be affected by the making of an order under this section in the proceedings;

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the court must join the bankruptcy trustee as a party to the proceedings.

- (15) If a bankruptcy trustee is a party to property settlement proceedings in relation to the parties to a de facto relationship, then, except with the leave of the court, the bankrupt party to the de facto relationship is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.
- (16) The court must not grant leave under subsection (15) unless the court is satisfied that there are exceptional circumstances.
- (17) If:
- (a) an application is made for an order under this section in proceedings between the parties to a de facto relationship with respect to the property of the parties to the de facto relationship or either of them; and
  - (b) either of the following subparagraphs apply to a party to the de facto relationship (the *debtor party*):
    - (i) when the application was made, the party was a debtor subject to a personal insolvency agreement;
    - (ii) after the application was made but before it is finally determined, the party becomes a debtor subject to a personal insolvency agreement; and
  - (c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and
  - (d) the court is satisfied that the interests of the debtor party's creditors may be affected by the making of an order under this section in the proceedings;
- the court must join the trustee of the agreement as a party to the proceedings.

- (18) If the trustee of a personal insolvency agreement is a party to property settlement proceedings in relation to the parties to a de facto relationship, then, except with the leave of the court, the party to the de facto relationship who is the debtor subject to the

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agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.

- (19) The court must not grant leave under subsection (18) unless the court is satisfied that there are exceptional circumstances.
- (20) For the purposes of subsections (14) and (17), an application for an order under this section is taken to be finally determined when:
  - (a) the application is withdrawn or dismissed; or
  - (b) an order (other than an interim order) is made as a result of the application.

**90SN Varying and setting aside orders altering property interests**

- (1) If, on application by a person affected by an order made by a court under section 90SM in property settlement proceedings, the court is satisfied that:
  - (a) there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence (including failure to disclose relevant information), the giving of false evidence or any other circumstance; or
  - (b) in the circumstances that have arisen since the order was made it is impracticable for the order to be carried out or impracticable for a part of the order to be carried out; or
  - (c) a person has defaulted in carrying out an obligation imposed on the person by the order and, in the circumstances that have arisen as a result of that default, it is just and equitable to vary the order or to set the order aside and make another order in substitution for the order; or
  - (d) in the circumstances that have arisen since the making of the order, being circumstances of an exceptional nature relating to the care, welfare and development of a child of the de facto relationship, the child or, where the applicant has caring responsibility for the child (as defined in subsection (3)), the applicant, will suffer hardship if the court does not vary the order or set the order aside and make another order in substitution for the order; or

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- (e) a proceeds of crime order has been made covering property of the parties to the de facto relationship or either of them, or a proceeds of crime order has been made against a party to the de facto relationship;

the court may, in its discretion, vary the order or set the order aside and, if it considers appropriate, make another order under section 90SM in substitution for the order so set aside.

Note: For *child of a de facto relationship*, see section 90RB.

- (2) A court may, on application by a person affected by an order made by a court under section 90SM in property settlement proceedings, and with the consent of all the parties to the proceedings in which the order was made, vary the order or set the order aside and, if it considers appropriate, make another order under section 90SM in substitution for the order so set aside.
- (3) For the purposes of paragraph (1)(d), a person has ***caring responsibility*** for a child if:
- (a) the person is a parent of the child with whom the child lives; or
  - (b) a parenting order provides that:
    - (i) the child is to live with the person; or
    - (ii) the person has parental responsibility for the child.
- (4) An order varied or made under subsection (1) or (2) may, after the death of a party to the de facto relationship in relation to which the order was so varied or made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (5) If, before proceedings under this section in relation to an order made under section 90SM are completed, a party to the de facto relationship dies:
- (a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and

- (b) if the court is of the opinion:
    - (i) that it would have exercised its powers under subsection (1) or (2) in relation to the order if the deceased party had not died; and
    - (ii) that it is still appropriate to exercise its powers under subsection (1) or (2) in relation to the order;the court may vary the order, set the order aside, or set the order aside and make another order under section 90SM in substitution for the order so set aside; and
  - (c) an order varied or made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (6) In the exercise of its powers under subsection (1), (2) or (5), a court must have regard to the interests of, and must make any order proper for the protection of, a bona fide purchaser or other person interested.
- (7) For the purposes of this section, a creditor of a party to the proceedings in which the order under section 90SM was made is taken to be a person whose interests are affected by the order if the creditor may not be able to recover his or her debt because the order has been made.
- (8) For the purposes of this section, if:
- (a) an order is made by a court under section 90SM in proceedings with respect to the property of the parties to a de facto relationship or either of them; and
  - (b) either of the following subparagraphs apply to a party to the de facto relationship:
    - (i) when the order was made, the party was a bankrupt;
    - (ii) after the order was made, the party became a bankrupt;the bankruptcy trustee is taken to be a person whose interests are affected by the order.
- (9) For the purposes of this section, if:
- (a) a party to a de facto relationship is a bankrupt; and

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- (b) an order is made by a court under section 90SM in proceedings with respect to the vested bankruptcy property in relation to the bankrupt party;  
the bankruptcy trustee is taken to be a person whose interests are affected by the order.
- (10) For the purposes of this section, if:
- (a) an order is made by a court under section 90SM in proceedings with respect to the property of the parties to a de facto relationship or either of them; and
- (b) either of the following subparagraphs apply to a party to the de facto relationship:
- (i) when the order was made, the party was a debtor subject to a personal insolvency agreement;
- (ii) after the order was made, the party became a debtor subject to a personal insolvency agreement;
- the trustee of the agreement is taken to be a person whose interests are affected by the order.

**Subdivision D—Notification of application**

**90SO Notifying third parties about application**

The applicable Rules of Court may specify the circumstances in which a person who:

- (a) applies for an order under this Division; or
- (b) is a party to a proceeding for an order under this Division;
- is to give notice of the application to a person who is not a party to the proceedings.

Note: The applicable Rules of Court may, for example, make provision for the notification of a person married to, or in a de facto relationship with, the applicant or respondent to the proceedings.

**90SP Notifying bankruptcy trustee etc. about application under section 90SE, 90SL, 90SM or 90SN**

- (1) The applicable Rules of Court may make provision for a bankrupt who becomes a party to a proceeding for an application under section 90SE, 90SL, 90SM or 90SN to give notice of the application to the bankruptcy trustee.
- (2) The applicable Rules of Court may make provision for a debtor subject to a personal insolvency agreement who becomes a party to a proceeding for an application under section 90SE, 90SL, 90SM or 90SN to give notice of the application to the trustee of the agreement.

**90SQ Notifying court about bankruptcy etc.**

*Bankruptcy*

- (1) The applicable Rules of Court may make provision for a person who:
  - (a) is a party to a de facto relationship that has broken down; and
  - (b) is a party to a proceeding for an application under section 90SE, 90SL, 90SM or 90SN; and
  - (c) before that application is finally determined, becomes a bankrupt;to notify a court exercising jurisdiction under this Act that the person has become a bankrupt.

*Debtor subject to a personal insolvency agreement*

- (2) The applicable Rules of Court may make provision for a person who:
  - (a) is a party to a de facto relationship that has broken down; and
  - (b) is a party to a proceeding for an application under section 90SE, 90SL, 90SM or 90SN; and
  - (c) before that application is finally determined, becomes a debtor subject to a personal insolvency agreement;

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to notify a court exercising jurisdiction under this Act that the person has become a debtor subject to a personal insolvency agreement.

*Institution of proceeding under the Bankruptcy Act 1966*

- (3) The applicable Rules of Court may make provision for a person who:
- (a) is a party to a de facto relationship that has broken down; and
  - (b) is a party to a proceeding for an application under section 90SE, 90SL, 90SM or 90SN; and
  - (c) before that application is finally determined, becomes a party to a proceeding before the Federal Court or the Federal Circuit Court of Australia under the *Bankruptcy Act 1966* that relates to:
    - (i) the bankruptcy of the person; or
    - (ii) the person's capacity as a debtor subject to a personal insolvency agreement;

to notify a court exercising jurisdiction under this Act of the institution of the proceeding under the *Bankruptcy Act 1966*.

- (4) The applicable Rules of Court may make provision for a person who:
- (a) is the bankruptcy trustee of a bankrupt party to a de facto relationship; and
  - (b) the de facto relationship has broken down; and
  - (c) applies under section 139A of the *Bankruptcy Act 1966* for an order under Division 4A of Part VI of that Act;

to notify a court exercising jurisdiction under this Act of the making of the application.

*When application finally determined*

- (5) For the purposes of this section, an application for an order under section 90SE, 90SM or 90SN is taken to be finally determined when:
- (a) the application is withdrawn or dismissed; or

- (b) an order (other than an interim order) is made as a result of the application.
- (6) For the purposes of this section, an application for a declaration under section 90SL is taken to be finally determined when:
  - (a) the application is withdrawn or dismissed; or
  - (b) a declaration is made as a result of the application.

**90SR Notifying non-bankrupt de facto party about application under section 139A of the *Bankruptcy Act 1966***

The applicable Rules of Court may make provision for a person who:

- (a) is the bankruptcy trustee of a bankrupt party to a de facto relationship; and
- (b) applies under section 139A of the *Bankruptcy Act 1966* for an order under Division 4A of Part VI of that Act in relation to an entity (other than the other party to the de facto relationship);

to notify the other party to the de facto relationship of the making of the application if that bankruptcy trustee is aware that the de facto relationship has broken down.

**Subdivision E—Court powers**

**90SS General powers of court**

*General powers*

- (1) The court, in exercising its powers under this Division, may do any or all of the following:
  - (a) order payment of a lump sum, whether in one amount or by instalments;
  - (b) order payment of a weekly, monthly, yearly or other periodic sum;

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- (c) order that a specified transfer or settlement of property be made by way of maintenance for a party to a de facto relationship;
- (d) order that payment of any sum ordered to be paid be wholly or partly secured in such manner as the court directs;
- (e) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
- (f) appoint or remove trustees;
- (g) order that payments be made direct to a party to the de facto relationship, to a trustee to be appointed or into court or to a public authority for the benefit of a party to the de facto relationship;
- (h) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for a life or during joint lives or until further order;
- (i) impose terms and conditions;
- (j) make an order by consent;
- (k) make any other order, or grant any other injunction, (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;
- (l) subject to this Act and the applicable Rules of Court, make an order under this Division at any time before or after the making of a decree under another provision of this Act.

Note: The court also has specific powers in relation to third parties (see Division 3 of Part VIIIAB (as that Division has effect because of section 90TA)).

*Limitation for orders or injunctions covered by section 90AF*

- (2) Subsection (1) has effect subject to subsection 90AF(3) (as that subsection has effect because of section 90TA).

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Note: An order or injunction made or granted under subsection (1) that is of a kind covered by subsection 90AF(1) or (2) can only be made or granted in accordance with subsection 90AF(3).

*Maintenance orders*

- (3) The making of an order of a kind referred to in paragraph (1)(c), or of any other order under this Division, in relation to the maintenance of a party to a de facto relationship does not prevent a court from making a subsequent order in relation to the maintenance of the party.
- (4) The applicable Rules of Court may make provision with respect to the making of orders under this Division in relation to the maintenance of parties to de facto relationships (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.

*Injunctions*

- (5) Without limiting paragraph (1)(k), the court may:
  - (a) grant:
    - (i) an interlocutory injunction; or
    - (ii) an injunction in aid of the enforcement of a decree; in any case in which it appears to the court to be just or convenient to do so; and
  - (b) grant an injunction either unconditionally or upon such terms and conditions as the court considers appropriate.

*Bankruptcy and insolvency*

- (6) If a bankruptcy trustee is a party to a proceeding before the court, the court may make an order under paragraph (1)(e) directed to the bankrupt.
- (7) If the trustee of a personal insolvency agreement is a party to a proceeding before the court, the court may make an order under paragraph (1)(e) directed to the debtor subject to the agreement.

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- (8) Subsections (6) and (7) do not limit paragraph (1)(e).
- (9) If a party to a de facto relationship is a bankrupt, a court may, on the application of the other party to the de facto relationship, by interlocutory order, grant an injunction under subsection (1) restraining the bankruptcy trustee from declaring and distributing dividends amongst the bankrupt's creditors.
- (10) If a party to a de facto relationship is a debtor subject to a personal insolvency agreement, a court may, on the application of the other party to the de facto relationship, by interlocutory order, grant an injunction under subsection (1) restraining the trustee of the agreement from disposing of (whether by sale, gift or otherwise) property subject to the agreement.
- (11) Subsections (9) and (10) do not limit subsections (1) and (5).

**90ST Duty of court to end financial relations**

In proceedings under this Division, other than proceedings under section 90SL, the court must, as far as practicable, make such orders as will finally determine the financial relationships between the parties to the de facto relationship and avoid further proceedings between them.

## Division 3—Orders and injunctions binding third parties

### 90TA Orders and injunctions binding third parties

- (1) In addition to the effect Part VIIIAB has apart from this section, that Part also has effect in relation to:
- (a) orders and injunctions under Division 2; and
  - (b) proceedings for orders or injunctions under Division 2;
- with the modifications provided for in subsections (2) and (3).
- (2) Part VIIIAB has effect in accordance with subsection (1) as if the following substitutions were made:

Substitutions to be made		
Item	For a reference in Part VIIIAB to ...	substitute a reference to ...
1	marriage	de facto relationship
2	section 79	section 90SM
3	section 114	section 90SS
4	paragraph (ca) of the definition of <i>matrimonial cause</i>	paragraph (c) of the definition of <i>de facto financial cause</i>
5	orders or injunctions under section 114	orders or injunctions under Division 2 of Part VIIIAB
6	proceedings under section 114	proceedings under Division 2 of Part VIIIAB
7	an injunction under subsection 114(3)	an injunction covered by subsection 90SS(5)

- (3) Part VIIIAB has effect in accordance with subsection (1) as if:
- (a) subsection 90AD(2) were replaced with the following:  
“(2) For the purposes of section 90SS (to the extent that it provides for the granting of an injunction in relation to the property of a party to a de facto relationship), *property* includes a debt owed by a party to the de facto relationship.”; and
  - (b) paragraph 90AF(3)(d) were omitted; and

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(c) the following paragraph were inserted after paragraph 90AF(3)(e):

“(ea) for any other injunction—the court is satisfied that, in all the circumstances, it is necessary to grant the injunction to do justice; and”; and

(d) the following subsection were added at the end of section 90AF:

“(5) Subsections (1) and (2) do not limit subsection 90SS(1).”.

## **Division 4—Financial agreements**

### **90UA Geographical requirement for agreements made in participating jurisdictions**

Two or more people can make a Part VIIIAB financial agreement under section 90UB, 90UC or 90UD only if the spouse parties are ordinarily resident in a participating jurisdiction when they make the agreement.

### **90UB Financial agreements before de facto relationship**

- (1) If:
  - (a) people who are contemplating entering into a de facto relationship with each other make a written agreement with respect to any of the matters mentioned in subsection (2) in the event of the breakdown of the de facto relationship; and
  - (b) at the time of the making of the agreement, the people are not the spouse parties to any other Part VIIIAB financial agreement that is binding on them with respect to any of those matters; and
  - (c) the agreement is expressed to be made under this section; the agreement is a ***Part VIIIAB financial agreement***. The people may make the Part VIIIAB financial agreement with one or more other people.
- (2) The matters referred to in paragraph (1)(a) are the following:
  - (a) how all or any of the:
    - (i) property; or
    - (ii) financial resources;of either or both of the spouse parties at the time when the agreement is made, or at a later time and during the de facto relationship, is to be distributed;
  - (b) the maintenance of either of the spouse parties.

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- (3) A Part VIIIAB financial agreement made as mentioned in subsection (1) may also contain matters incidental or ancillary to those mentioned in subsection (2).
- (4) A Part VIIIAB financial agreement (the *new agreement*) made as mentioned in subsection (1) may terminate a previous Part VIIIAB financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

**90UC Financial agreements during de facto relationship**

- (1) If:
  - (a) while in a de facto relationship, the parties to the de facto relationship make a written agreement about any of the matters mentioned in subsection (2) in the event of the breakdown of the de facto relationship; and
  - (b) at the time of the making of the agreement, the parties to the de facto relationship are not the spouse parties to any other Part VIIIAB financial agreement that is binding on them with respect to any of those matters; and
  - (c) the agreement is expressed to be made under this section; the agreement is a *Part VIIIAB financial agreement*. The parties to the de facto relationship may make the Part VIIIAB financial agreement with one or more other people.
- (2) The matters referred to in paragraph (1)(a) are the following:
  - (a) how all or any of the:
    - (i) property; or
    - (ii) financial resources;of either or both of the spouse parties at the time when the agreement is made, or at a later time and during the de facto relationship, is to be distributed;
  - (b) the maintenance of either of the spouse parties.
- (3) A Part VIIIAB financial agreement made as mentioned in subsection (1) may also contain matters incidental or ancillary to those mentioned in subsection (2).

- (4) A Part VIIIAB financial agreement (the *new agreement*) made as mentioned in subsection (1) may terminate a previous Part VIIIAB financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

**90UD Financial agreements after breakdown of  
a de facto relationship**

- (1) If:
- (a) after the breakdown of a de facto relationship, the parties to the former de facto relationship make a written agreement with respect to any of the matters mentioned in subsection (2); and
  - (b) at the time of the making of the agreement, the parties to the former de facto relationship are not the spouse parties to any other Part VIIIAB financial agreement that is binding on them with respect to any of those matters; and
  - (c) the agreement is expressed to be made under this section; the agreement is a *Part VIIIAB financial agreement*. The parties to the former de facto relationship may make the Part VIIIAB financial agreement with one or more other people.
- (2) The matters referred to in paragraph (1)(a) are the following:
- (a) how all or any of the:
    - (i) property; or
    - (ii) financial resources;that either or both of the spouse parties had or acquired during the former de facto relationship is to be distributed;
  - (b) the maintenance of either of the spouse parties.
- (3) A Part VIIIAB financial agreement made as mentioned in subsection (1) may also contain matters incidental or ancillary to those mentioned in subsection (2).
- (4) A Part VIIIAB financial agreement (the *new agreement*) made as mentioned in subsection (1) may terminate a previous Part VIIIAB

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financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

**90UE Agreements made in non-referring States that become Part VIIIAB financial agreements**

*How State agreements can become Part VIIIAB financial agreements*

- (1) This section applies if:
- (a) 2 people (the ***couple***) have made a written agreement, signed by both of them, with respect to any of the matters (the ***eligible agreed matters***) mentioned in subsection (3); and
  - (b) the agreement was made under a non-referring State de facto financial law; and
  - (c) either:
    - (i) a court could not, because of that law, make an order under that law that is inconsistent with the agreement with respect to any of the eligible agreed matters; or
    - (ii) a court could not, because of that law, make an order under that law that is with respect to any of the eligible agreed matters to which the agreement applies; and
  - (d) at the time the agreement was made, the members of the couple were not the spouse parties to any Part VIIIAB financial agreement that is binding on them with respect to any of the eligible agreed matters; and
  - (e) at a later time (the ***transition time***), the couple's circumstances change so that:
    - (i) if the de facto relationship has not broken down—sections 90SB, 90SD and 90SK would not prevent a court from making an order or declaration under this Part in relation to the eligible agreed matters if the de facto relationship were to break down; or
    - (ii) if the de facto relationship has broken down—sections 90SB, 90SD and 90SK do not prevent a court from making an order or declaration under this Part in relation to the eligible agreed matters; and

- (f) immediately before the transition time:
- (i) the agreement was in force under the non-referring State de facto financial law; and
  - (ii) the couple were not married to each other.

Paragraph (a) extends to agreements made before the commencement of this section, and to agreements made with one or more other people.

Note 1: This section extends to agreements made in contemplation of a de facto relationship, during a de facto relationship or after a de facto relationship has broken down.

Note 2: Part 2 of Schedule 1 to the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* deems certain agreements, made under a law of a State that is or becomes a participating jurisdiction, or made under a law of a Territory, to be Part VIIIAB financial agreements.

- (2) For the purposes of this Act, the agreement is taken, on and after the transition time, to be a **Part VIIIAB financial agreement** to the extent that the agreement deals with:
- (a) the eligible agreed matters; and
  - (b) matters incidental or ancillary to the eligible agreed matters.

Note: This means that, after the transition time, the agreement can only be enforced, varied, terminated or otherwise set aside under this Act.

*Eligible agreed matters*

- (3) The matters referred to in paragraph (1)(a) are the following:
- (a) how all or any of the:
    - (i) property; or
    - (ii) financial resources;of either member, or both members, of the couple at the time when the agreement is made, or at a later time and during a de facto relationship between them, is to be distributed;
  - (b) the maintenance of either member of the couple; in the event of the breakdown of a de facto relationship between them, or in relation to a de facto relationship between them that has broken down, as the case requires.

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- (4) For the purposes of paragraph (1)(c), disregard whether the non-referring State de facto financial law permits the court to make such an order if the court varies or sets aside the agreement.

**90UF Need for separation declaration for certain provisions of financial agreement to take effect**

- (1) A Part VIIIAB financial agreement that is binding on the parties to the agreement, to the extent to which it deals with how, in the event of the breakdown of the de facto relationship, all or any of the property or financial resources of either or both of the spouse parties:

- (a) at the time when the agreement is made; or  
(b) at a later time and during the de facto relationship;

are to be dealt with, is of no force or effect until a separation declaration is made.

Note: Before the separation declaration is made, the financial agreement will be of force and effect in relation to the other matters it deals with (except for any matters covered by section 90UG).

- (2) Subsection (1) ceases to apply if either or both of the spouse parties die.

Note: This means the financial agreement will be of force and effect in relation to the matters mentioned in subsection (1) from the time of the death(s).

*Requirements for a valid separation declaration*

- (3) A separation declaration is a written declaration that complies with subsections (4) and (5), and may be included in the Part VIIIAB financial agreement to which it relates.
- (4) The declaration must be signed by at least one of the spouse parties to the Part VIIIAB financial agreement.
- (5) The declaration must state that:
- (a) the spouse parties lived in a de facto relationship; and  
(b) the spouse parties have separated and are living separately and apart at the declaration time; and

- (c) in the opinion of the spouse parties making the declaration, there is no reasonable likelihood of cohabitation being resumed.

*Meaning of declaration time*

- (6) In this section:

*declaration time* means the time when the declaration was signed by a spouse party to the Part VIIIAB financial agreement.

**90UG Whether or when certain other provisions of financial agreements take effect**

A Part VIIIAB financial agreement that is binding on the parties to the agreement, to the extent to which it provides for matters covered by subsection 90UB(3) or 90UC(3) or paragraph 90UE(2)(b), is of no force or effect unless and until the de facto relationship breaks down.

**90UH Requirements with respect to provisions in financial agreements relating to the maintenance of a party or a child or children**

- (1) A provision of a Part VIIIAB financial agreement that relates to the maintenance of a spouse party to the agreement or a child or children is void unless the provision specifies:
- (a) the party, or the child or children, for whose maintenance provision is made; and
  - (b) the amount provided for, or the value of the portion of the relevant property attributable to, the maintenance of the party, or of the child or each child, as the case may be.

Note: While Part VIIIAB financial agreements are not made with respect to child maintenance, provisions about child maintenance could be included in the same document for child support (or other non-Part VIIIAB) purposes.

- (2) Subsection (1) does not apply in relation to a Part VIIIAB financial agreement covered by section 90UE.

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**90UI Certain provisions in financial agreements**

- (1) No provision of a Part VIIIAB financial agreement excludes or limits the power of a court to make an order under Division 2 in relation to the maintenance of a party to the agreement if subsection (2) applies.
- (2) This subsection applies if the court is satisfied that, when the agreement came into effect, the circumstances of the party were such that, taking into account the terms and effect of the agreement, the party was unable to support himself or herself without an income tested pension, allowance or benefit.
- (3) To avoid doubt, a provision in a Part VIIIAB financial agreement:
  - (a) made as mentioned in subsection 90UB(1), 90UC(1) or 90UD(1); or
  - (b) covered by section 90UE;that provides for property or financial resources owned by a spouse party to the agreement to continue in the ownership of that party is taken, for the purposes of that subsection or section, to be a provision with respect to how the property or financial resources are to be distributed.

**90UJ When financial agreements are binding**

- (1) Subject to subsection (1A), a Part VIIIAB financial agreement (other than an agreement covered by section 90UE) is binding on the parties to the agreement if, and only if:
  - (a) the agreement is signed by all parties; and
  - (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the agreement; and
  - (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b)

was provided to that party (whether or not the statement is annexed to the agreement); and

- (ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and
- (d) the agreement has not been terminated and has not been set aside by a court.

Note: For the manner in which the contents of a financial agreement may be proved, see section 48 of the *Evidence Act 1995*.

- (1A) A Part VIIIAB financial agreement (other than an agreement covered by section 90UE) is binding on the parties to the agreement if:
  - (a) the agreement is signed by all parties; and
  - (b) one or more of paragraphs (1)(b), (c) and (ca) are not satisfied in relation to the agreement; and
  - (c) a court is satisfied that it would be unjust and inequitable if the agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and
  - (d) the court makes an order under subsection (1B) declaring that the agreement is binding on the parties to the agreement; and
  - (e) the agreement has not been terminated and has not been set aside by a court.
- (1B) For the purposes of paragraph (1A)(d), a court may make an order declaring that a Part VIIIAB financial agreement is binding on the parties to the agreement, upon application (the ***enforcement application***) by a spouse party seeking to enforce the agreement.
- (1C) To avoid doubt, section 90UN applies in relation to the enforcement application.
- (2) A Part VIIIAB financial agreement covered by section 90UE is binding on the parties to the agreement if, and only if, the agreement has not been terminated and has not been set aside by a court.

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- (3) A Part VIIIAB financial agreement ceases to be binding if, after making the agreement, the parties to the agreement marry each other.
- (4) A court may make such orders for the enforcement of a Part VIIIAB financial agreement that is binding on the parties to the agreement as it thinks necessary.

**90UK Effect of death of party to financial agreement**

A Part VIIIAB financial agreement that is binding on the parties to the agreement continues to operate despite the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party.

Note: If the parties are still in the de facto relationship when one of them dies, the de facto relationship is not taken to have broken down for the purposes of enforcing the matters mentioned in the financial agreement (see the definition of *breakdown* in subsection 4(1)).

**90UL Termination of financial agreement**

- (1) The parties to a Part VIIIAB financial agreement may terminate the agreement for the purposes of this Act only by:
  - (a) including a provision to that effect in another Part VIIIAB financial agreement as mentioned in subsection 90UB(4), 90UC(4) or 90UD(4); or
  - (b) making a written agreement (a *Part VIIIAB termination agreement*) to that effect.
- (2) Subject to subsection (2A), a Part VIIIAB termination agreement is binding on the parties if, and only if:
  - (a) the termination agreement is signed by all parties to the Part VIIIAB financial agreement; and
  - (b) before signing the termination agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the termination agreement on the rights of that party and about the advantages and

- disadvantages, at the time that the advice was provided, to that party of making the termination agreement; and
- (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the termination agreement); and
  - (ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and
  - (d) the termination agreement has not been set aside by a court.
- (2A) A Part VIIIAB termination agreement is binding on the parties if:
- (a) the termination agreement is signed by all parties to the Part VIIIAB financial agreement; and
  - (b) one or more of paragraphs (2)(b), (c) and (ca) are not satisfied in relation to the termination agreement; and
  - (c) a court is satisfied that it would be unjust and inequitable if the termination agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and
  - (d) the court makes an order under subsection (2B) declaring that the termination agreement is binding on the parties to the agreement; and
  - (e) the termination agreement has not been set aside by a court.
- (2B) For the purposes of paragraph (2A)(d), a court may make an order declaring that a Part VIIIAB termination agreement is binding on the parties to the agreement, upon application (the ***enforcement application***) by a spouse party seeking to enforce the agreement.
- (2C) To avoid doubt, section 90UN applies in relation to the enforcement application.
- (3) A court may, on an application by:
- (a) a person who was a party to the Part VIIIAB financial agreement; or
  - (b) any other interested person;
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make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of:

- (c) persons who were parties to the Part VIIIAB financial agreement; and
- (d) any other interested persons.

Note: For the manner in which the contents of a Part VIIIAB financial agreement may be proved, see section 48 of the *Evidence Act 1995*.

**90UM Circumstances in which court may set aside a financial agreement or termination agreement**

- (1) A court may make an order setting aside, for the purposes of this Act, a Part VIIIAB financial agreement or a Part VIIIAB termination agreement if, and only if, the court is satisfied that:
  - (a) the agreement was obtained by fraud (including non-disclosure of a material matter); or
  - (b) a party to the agreement entered into the agreement:
    - (i) for the purpose, or for purposes that included the purpose, of defrauding or defeating a creditor or creditors of the party; or
    - (ii) with reckless disregard of the interests of a creditor or creditors of the party; or
  - (c) a party (the ***agreement party***) to the agreement entered into the agreement:
    - (i) for the purpose, or for purposes that included the purpose, of defrauding another person who is a party to a de facto relationship (the ***other de facto relationship***) with a spouse party; or
    - (ii) for the purpose, or for purposes that included the purpose, of defeating the interests of that other person in relation to any possible or pending application for an order under section 90SM, or a declaration under section 90SL, in relation to the other de facto relationship; or

- (iii) with reckless disregard of those interests of that other person; or
- (d) a party (the ***agreement party***) to the agreement entered into the agreement:
  - (i) for the purpose, or for purposes that included the purpose, of defrauding another person who is a party to a marriage with a spouse party; or
  - (ii) for the purpose, or for purposes that included the purpose, of defeating the interests of that other person in relation to any possible or pending application for an order under section 79, or a declaration under section 78, in relation to the marriage (or void marriage); or
  - (iii) with reckless disregard of those interests of that other person; or
- (e) the agreement is void, voidable or unenforceable; or
- (f) in the circumstances that have arisen since the agreement was made it is impracticable for the agreement or a part of the agreement to be carried out; or
- (g) since the making of the agreement, a material change in circumstances has occurred (being circumstances relating to the care, welfare and development of a child of the de facto relationship) and, as a result of the change, the child or, if the applicant has caring responsibility for the child (as defined in subsection (4)), a party to the agreement will suffer hardship if the court does not set the agreement aside; or
- (h) in respect of the making of a Part VIIIAB financial agreement—a party to the agreement engaged in conduct that was, in all the circumstances, unconscionable; or
- (i) a payment flag is operating under Part VIIIIB on a superannuation interest covered by the agreement and there is no reasonable likelihood that the operation of the flag will be terminated by a flag lifting agreement under that Part; or
- (j) the agreement covers at least one superannuation interest that is an unspittable interest for the purposes of Part VIIIIB; or

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- (k) if the agreement is a Part VIIIAB financial agreement covered by section 90UE—subsection (5) applies.

Note: For *child of a de facto relationship*, see section 90RB.

- (2) For the purposes of paragraph (1)(b), **creditor**, in relation to a party to the agreement, includes a person who could reasonably have been foreseen by the party as being reasonably likely to become a creditor of the party.
- (3) For the purposes of the application of subparagraph (1)(c)(ii) to a Part VIIIAB financial agreement covered by section 90UE:
- (a) the reference in that subparagraph to an order under section 90SM is taken to include a reference to an order (however described) under a corresponding provision (if any) of the non-referring State de facto financial law concerned; and
  - (b) the reference in that subparagraph to a declaration under section 90SL is taken to include a reference to a declaration (however described) under a corresponding provision (if any) of the non-referring State de facto financial law concerned.
- (4) For the purposes of paragraph (1)(g), a person has **caring responsibility** for a child if:
- (a) the person is a parent of the child with whom the child lives; or
  - (b) a parenting order provides that:
    - (i) the child is to live with the person; or
    - (ii) the person has parental responsibility for the child.
- (5) This subsection applies if:
- (a) at least one of the spouse parties to the agreement was not provided, before signing the agreement, with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages to that party of making the agreement; or
  - (b) if this advice was provided to at least one of the spouse parties to the agreement—that party was not provided with a

signed statement by the legal practitioner stating that this advice was given to that party;  
and it would be unjust and inequitable, having regard to the eligible agreed matters (within the meaning of section 90UE) for the agreement, if the court does not set the agreement aside.

- (6) A court may, on an application by a person who was a party to the Part VIIIAB financial agreement that has been set aside, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.
- (7) An order under subsection (1) or (6) may, after the death of a party to the proceedings in which the order was made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (8) If a party to proceedings under this section dies before the proceedings are completed:
- (a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and
  - (b) if the court is of the opinion:
    - (i) that it would have exercised its powers under this section if the deceased party had not died; and
    - (ii) that it is still appropriate to exercise those powers; the court may make any order that it could have made under subsection (1) or (6); and
  - (c) an order under paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (9) The court must not make an order under this section if the order would:

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(a) result in the acquisition of property from a person otherwise than on just terms; and

(b) be invalid because of paragraph 51(xxxi) of the Constitution.

For this purpose, *acquisition of property* and *just terms* have the same meanings as in paragraph 51(xxxi) of the Constitution.

**90UN Validity, enforceability and effect of financial agreements and termination agreements**

The question whether a Part VIIIAB financial agreement or a Part VIIIAB termination agreement is valid, enforceable or effective is to be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts, and, in proceedings relating to such an agreement, the court:

(a) subject to paragraph (b), has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction; and

(b) has power to make an order for the payment, by a party to the agreement to another party to the agreement, of interest on an amount payable under the agreement, from the time when the amount became or becomes due and payable, at a rate not exceeding the rate prescribed by the applicable Rules of Court; and

(c) in addition to, or instead of, making an order or orders under paragraph (a) or (b), may order that the agreement, or a specified part of the agreement, be enforced as if it were an order of the court.

## **Division 5—Proceeds of crime and forfeiture**

### **90VA Notification of proceeds of crime orders etc.**

- (1) If:
- (a) a person makes an application for an order, under this Part, with respect to:
    - (i) the property of the parties to a de facto relationship or either of them; or
    - (ii) the maintenance of a party to a de facto relationship; and
  - (b) the person knows that the property of the parties to the de facto relationship or either of them is covered by:
    - (i) a proceeds of crime order; or
    - (ii) a forfeiture application;
- the person must:
- (c) disclose in the application the proceeds of crime order or forfeiture application; and
  - (d) give to the court a sealed copy of that order or application.
- (2) A person who does not comply with subsection (1) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.
- (3) If:
- (a) a person is a party to de facto property settlement or maintenance proceedings under this Part; and
  - (b) the person is notified by the proceeds of crime authority that the property of the parties to the de facto relationship or either of them is covered by:
    - (i) a proceeds of crime order; or
    - (ii) a forfeiture application;
- the person must:
- (c) notify the Registry Manager in writing of the proceeds of crime order or forfeiture application; and

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- (d) give the Registry Manager:
  - (i) a copy of the notification referred to in paragraph (b) (if the notification is in writing); and
  - (ii) a copy of the proceeds of crime order or forfeiture application (if the notification is accompanied by a copy of the order or application).
- (4) A person who does not comply with subsection (3) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

**90VB Court to stay property or maintenance proceedings affected by proceeds of crime orders etc.**

- (1) A court in which property settlement, or maintenance proceedings, are pending must stay those proceedings if notified under section 90VA in relation to the proceedings.
- (2) The court may, before staying proceedings under subsection (1), invite or require the proceeds of crime authority to make submissions relating to staying the proceedings.
- (3) A court must, on the application of the proceeds of crime authority, stay de facto property settlement or maintenance proceedings under this Part if the property of the parties to the de facto relationship or either of them is covered by:
  - (a) a proceeds of crime order; or
  - (b) a forfeiture application.
- (4) A court must notify the proceeds of crime authority if the court stays de facto property settlement or maintenance proceedings under subsection (1) or (3).
- (5) The proceeds of crime authority must notify the Registry Manager if:
  - (a) a proceeds of crime order ceases to be in force; or
  - (b) a forfeiture application is finally determined.

- (6) For the purposes of subsection (5), a forfeiture application is taken to be *finally determined* when:
- (a) the application is withdrawn; or
  - (b) if the application is successful—the resulting forfeiture order comes into force; or
  - (c) if the application is unsuccessful—the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.

### **90VC Lifting a stay**

- (1) A court that stayed the de facto property settlement or maintenance proceedings under section 90VB must wholly or partially lift the stay if:
- (a) either party to the proceedings makes an application for the stay to be lifted and the proceeds of crime authority consents to such an application; or
  - (b) the proceeds of crime authority makes an application for the stay to be lifted.
- (2) A court that stayed the de facto property settlement or maintenance proceedings under section 90VB may, on its own motion, wholly or partially lift the stay if the proceeds of crime authority consents to such a motion.
- (3) Giving the Registry Manager written notice of the proceeds of crime authority's consent under this section is taken to be the giving of that consent, unless the court requires the authority to appear in the proceedings. The notice may be given by the authority or by a party to the proceedings.

### **90VD Intervention by proceeds of crime authority**

- (1) The proceeds of crime authority may intervene in any de facto property settlement or maintenance proceedings in relation to which a court is notified under section 90VA, or in any proceedings under section 90VB or 90VC in which the authority is not already a party.

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- (2) If the proceeds of crime authority intervenes, the authority is taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

## **Division 6—Instruments not liable to duty**

### **90WA Certain instruments not liable to duty**

- (1) None of the following is subject to any duty or charge under any law of a State or Territory or any law of the Commonwealth that applies only in relation to a Territory:
  - (a) a deed or other instrument executed by a person for the purposes of, or in accordance with, an order made under Division 2;
  - (b) a Part VIIIAB financial agreement;
  - (c) a Part VIIIAB termination agreement;
  - (d) a deed or other instrument executed by a person for the purposes of, or in accordance with, an order or Part VIIIAB financial agreement made under Division 4.
- (2) Subsection (1) does not apply to a liability to pay duty or charge (if any) in relation to a Part VIIIAB financial agreement covered by section 90UE if the liability arises before the transition time (within the meaning of that section) for the agreement.
- (3) Despite any State law, a failure to discharge a liability covered by subsection (2) in relation to an agreement has no effect for the purposes of this Act. In particular, the failure does not affect whether the agreement may be presented in evidence in a court for the purposes of this Act.

## Part VIII B—Superannuation interests

### Division 1—Preliminary

#### Subdivision A—Scope of this Part

##### 90MA Object of this Part

The object of this Part is to allow certain payments (splittable payments) in respect of a superannuation interest to be allocated between:

- (a) the parties to a marriage; or
  - (b) the parties to a de facto relationship;
- either by agreement or by court order.

##### 90MB This Part overrides other laws, trust deeds etc.

- (1) Subject to subsection (3), this Part has effect despite anything to the contrary in any of the following instruments (whether made before or after the commencement of this Part):
  - (a) any other law of the Commonwealth;
  - (b) any law of a State or Territory;
  - (c) anything in a trust deed or other instrument.
- (2) Without limiting subsection (1), nothing done in compliance with this Part by the trustee of an eligible superannuation plan is to be treated as resulting in a contravention of a law or instrument referred to in subsection (1).
- (3) This Part has effect subject to the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

**90MC Extended meanings of matrimonial cause  
and de facto financial cause**

- (1) A superannuation interest is to be treated as property for the purposes of paragraph (ca) of the definition of *matrimonial cause* in section 4.
- (2) A superannuation interest is to be treated as property for the purposes of paragraph (c) of the definition of *de facto financial cause* in section 4.

**Subdivision B—Interpretation****90MD Definitions**

In this Part, unless the contrary intention appears:

*approved deposit fund* has the same meaning as in the SIS Act.

*declaration time*, in relation to a separation declaration, means the time when the declaration was signed by a spouse (or last signed by a spouse, if both spouses have signed).

Note: If a spouse has died, the spouse's legal personal representative may sign a declaration (see subsection 90MP(2)).

*eligible superannuation plan* means any of the following:

- (a) a superannuation fund within the meaning of the SIS Act;
- (b) an approved deposit fund;
- (c) an RSA;
- (d) an account within the meaning of the *Small Superannuation Accounts Act 1995*;
- (e) a superannuation annuity (within the meaning of the *Income Tax Assessment Act 1997*).

*flagging order* means an order mentioned in subsection 90MU(1).

*flag lifting agreement* has the meaning given by section 90MN.

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***in force***, in relation to an agreement, has the meaning given by section 90MG.

***interest*** includes a prospective or contingent interest, and also includes an expectancy.

***marriage*** includes a void marriage.

***member***, in relation to an eligible superannuation plan, includes a beneficiary (including a contingent or prospective beneficiary).

***member spouse***, in relation to a superannuation interest, means the spouse who has the superannuation interest.

***non-member spouse***, in relation to a superannuation interest, means the spouse who is not the member spouse in relation to that interest.

***operative time***:

- (a) in relation to a payment split under a superannuation agreement or flag lifting agreement—has the meaning given by section 90MI; or
- (b) in relation to a payment flag under a superannuation agreement—has the meaning given by section 90MK or paragraph 90MLA(2)(c) as appropriate; or
- (c) in relation to a payment split under a court order—means the time specified in the order.

***payment flag*** means:

- (a) the application of section 90ML in relation to a superannuation interest; or
- (b) the application of a flagging order in relation to a superannuation interest.

***payment split*** means:

- (a) the application of section 90MJ in relation to a splittable payment; or
- (b) the application of a splitting order in relation to a splittable payment.

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**percentage-only interest** means a superannuation interest prescribed by the regulations for the purposes of this definition.

**regulated superannuation fund** has the same meaning as in the SIS Act.

**reversionary beneficiary** means a person who becomes entitled to a benefit in respect of a superannuation interest of a spouse, after the spouse dies.

**reversionary interest** has the meaning given by section 90MF.

**RSA** means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997*.

**secondary government trustee** means a trustee that:

- (a) is the Commonwealth, a State or Territory; and
- (b) is a trustee only because of the operation of section 90MDA.

**separation declaration** has the meaning given by section 90MP.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993*.

**splittable payment** has the meaning given by section 90ME.

**splitting order** means an order mentioned in subsection 90MT(1).

**spouse** means:

- (a) a party to a marriage; or
- (b) a party to a de facto relationship.

**superannuation agreement** has the meaning given by sections 90MH and 90MHA.

**superannuation interest** means an interest that a person has as a member of an eligible superannuation plan, but does not include a reversionary interest.

**trustee**, in relation to an eligible superannuation plan, means:

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- (a) if the plan is a fund that has a trustee (within the ordinary meaning of that word)—the trustee of the plan; or
- (b) if paragraph (a) does not apply and a person is identified in accordance with the regulations as the trustee of the plan for the purposes of this definition—the person identified in accordance with the regulations; or
- (c) in any other case—the person who manages the plan.

***unflaggable interest*** means a superannuation interest prescribed by the regulations for the purposes of this definition.

***unsplittable interest*** means a superannuation interest prescribed by the regulations for the purposes of this definition.

**90MDA Extended meaning of trustee**

If a person who is not the trustee of an eligible superannuation plan nevertheless has the power to make payments to members of the plan, then references in this Part to the trustee of the plan include references to that person.

**90ME Splittable payments**

- (1) Each of the following payments in respect of a superannuation interest of a spouse is a ***splittable payment***:
  - (a) a payment to the spouse;
  - (b) a payment to another person for the benefit of the spouse;
  - (c) a payment to the legal personal representative of the spouse, after the death of the spouse;
  - (d) a payment to a reversionary beneficiary, after the death of the spouse;
  - (e) a payment to the legal personal representative of a reversionary beneficiary covered by paragraph (d), after the death of the reversionary beneficiary.
- (2) A payment is not a splittable payment if it is prescribed by the regulations for the purposes of this subsection. The regulations may prescribe a payment either:

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- (a) generally (that is, for the purposes of all payment splits in respect of a superannuation interest); or
  - (b) only for the purposes of applying this Part to a particular payment split in respect of a superannuation interest.
- (3) If a payment is made to another person for the benefit of 2 or more persons who include the spouse, then the payment is nevertheless a splittable payment, to the extent to which it is paid for the benefit of the spouse.

**90MF Reversionary interest**

For the purposes of this Part, a person's interest in an eligible superannuation plan is a *reversionary interest* at any time while the person's entitlement to benefits in respect of the interest is conditional on the death of another person who is still living.

**90MG Meaning of *in force***

- (1) A financial agreement is *in force* at any time when it is binding on the parties in accordance with section 90G.
- (1A) A Part VIIIAB financial agreement is *in force* at any time when it is binding on the parties in accordance with section 90UJ.
- (2) A superannuation agreement is *in force* at any time when the relevant financial agreement, or relevant Part VIIIAB financial agreement, is in force.
- (3) A flag lifting agreement is *in force* if, and only if:
  - (a) it meets the requirements set out in subsection 90MN(3); and
  - (b) it has not been set aside by a court and has not been terminated.

## **Division 2—Payment splitting or flagging by agreement**

### **Subdivision A—Superannuation agreements**

#### **90MH Superannuation agreement to be included in financial agreement if about a marriage**

- (1) A financial agreement under Part VIIIA may include an agreement that deals with superannuation interests of either or both of the spouse parties to the agreement as if those interests were property. It does not matter whether or not the superannuation interests are in existence at the time the agreement is made.
- (2) The part of the financial agreement that deals with superannuation interests is a *superannuation agreement* for the purposes of this Part.
- (3) A superannuation agreement has effect only in accordance with this Part. In particular, it cannot be enforced under Part VIIIA.
- (4) A superannuation agreement that is included in a financial agreement under section 90B (in contemplation of marriage) has no effect unless and until the spouse parties marry.
- (5) In applying sections 90B, 90C and 90D for the purposes of this Division, a superannuation interest of a spouse party to a financial agreement is treated as being acquired at the time when that party first becomes a member of the eligible superannuation plan in respect of that interest.

#### **90MHA Superannuation agreement to be included in Part VIIIAB financial agreement if about a de facto relationship**

- (1) A Part VIIIAB financial agreement may include an agreement that deals with superannuation interests of either or both of the spouse parties to the agreement as if those interests were property. It does not matter whether or not the superannuation interests are in existence at the time the agreement is made.

- (2) The part of the Part VIIIAB financial agreement that deals with superannuation interests is a ***superannuation agreement*** for the purposes of this Part.
- (3) A superannuation agreement has effect only in accordance with this Part. In particular, it cannot be enforced under Part VIIIAB.
- (4) A superannuation agreement that is included in a Part VIIIAB financial agreement under section 90UB (in contemplation of a de facto relationship) has no effect unless and until the spouse parties enter into that de facto relationship.
- (5) In applying sections 90UB, 90UC, 90UD and 90UE for the purposes of this Division, a superannuation interest of a spouse party to a Part VIIIAB financial agreement is treated as being acquired at the time when that party first becomes a member of the eligible superannuation plan in respect of that interest.

### **Subdivision B—Payment splitting**

#### **90MI Operative time for payment split**

- (1) The ***operative time*** for a payment split under a superannuation agreement or flag lifting agreement is the beginning of the fourth business day after the day on which a copy of the agreement is served on the trustee, accompanied by:
  - (a) if the parties are divorced—a copy of the divorce order that has terminated the marriage; and
  - (aa) if, in the case of a payment split under a superannuation agreement:
    - (i) the parties are not divorced; and
    - (ii) a separation declaration is not part of the superannuation agreement;  
a separation declaration; and
  - (b) if the agreement specifies a method for calculating a base amount—a document setting out the amount calculated using that method; and

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- (c) if a form of declaration is prescribed for the purposes of this paragraph—a declaration in that form.

Note: The base amount is used to calculate the entitlement of the non-member spouse under the regulations.

- (2) For the purposes of subsection (1), the separation declaration must have a declaration time that is not more than 28 days before the service on the trustee.

**90MJ Payment split under superannuation agreement or flag lifting agreement**

- (1) This section applies to a superannuation interest if:
- (a) the interest is identified in a superannuation agreement or flag lifting agreement; and
  - (b) if the interest is a percentage-only interest—the agreement does one of the following:
    - (i) it specifies a percentage that is to apply for the purposes of this sub-paragraph;
    - (ii) it specifies a percentage that is to apply to all splittable payments in respect of the interest; and
  - (c) if the interest is not a percentage-only interest—the agreement does one of the following:
    - (i) it specifies an amount as a base amount in relation to the interest for the purposes of this Part;
    - (ii) it specifies a method by which such a base amount can be calculated at the time when the agreement is served on the trustee under section 90MI;
    - (iii) it specifies a percentage that is to apply to all splittable payments in respect of the interest; and
  - (d) the agreement is in force at the operative time; and
  - (da) if the agreement relates to a marriage—the marriage is broken down at the operative time; and
  - (db) if the agreement relates to a de facto relationship—the de facto relationship is broken down at the operative time; and

(e) the interest is not an unsplittable interest.

Note: The base amount is used to calculate the entitlement of the non-member spouse under the regulations.

- (2) The following provisions begin to apply to the interest at the operative time.
- (3) Whenever a splittable payment becomes payable in respect of the interest:
  - (a) the non-member spouse is entitled to be paid the amount (if any) that is calculated under subsection (4); and
  - (b) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the payment split.
- (4) The amount is calculated as follows:
  - (a) if the agreement specifies a percentage as mentioned in subparagraph (1)(b)(ii) or subparagraph (1)(c)(iii)—the amount is calculated by applying the specified percentage to the splittable payment; or
  - (b) otherwise—the amount is calculated in accordance with the regulations.
- (5) Subject to section 90MV, this section continues to apply to the superannuation interest even if the agreement referred to in subsection (1) later ceases to be in force.

### **Subdivision C—Payment flagging**

#### **90MK Operative time for payment flag**

- (1) The *operative time* for a payment flag under a superannuation agreement is:
  - (a) the service time, if the eligible superannuation plan is a self-managed superannuation fund; or
  - (b) otherwise, the beginning of the fourth business day after the day on which the service time occurs.

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(2) In this section:

*self-managed superannuation fund* has the same meaning as in the SIS Act.

*service time* means the time when a copy of the agreement is served on the trustee, accompanied by:

- (a) if the parties are divorced—a copy of the divorce order that has terminated the marriage; and
- (aa) if the parties are not divorced—a separation declaration with a declaration time that is not more than 28 days before the service on the trustee; and
- (b) if a form of declaration is prescribed for the purposes of this paragraph—a declaration in that form.

**90ML Payment flag**

(1) This section applies to a superannuation interest if:

- (a) the interest is identified in a superannuation agreement; and
- (b) the agreement provides that the interest is to be subject to a payment flag under this Part; and
- (c) the agreement is in force at the operative time; and
- (d) the interest is not an unflaggable interest.

(2) A payment flag starts to operate on the superannuation interest at the operative time and continues to operate until either:

- (a) a court terminates the operation of the payment flag by an order mentioned in section 90MM; or
- (b) a flag lifting agreement is served on the trustee as mentioned in section 90MI in respect of the superannuation interest.

(3) If a payment flag ceases to operate because of paragraph (2)(b), the cessation is not affected by a later termination of the flag lifting agreement.

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- (4) While a payment flag is operating on a superannuation interest, the trustee must not make any splittable payment to any person in respect of the interest.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

- (4A) Subsection (4) does not apply if the splittable payment is made in circumstances in which section 90MLA applies.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4A) (see subsection 13.3(3) of the *Criminal Code*).

- (5) If a splittable payment becomes payable in respect of a superannuation interest while a payment flag is operating, the trustee must, within 14 days after it became payable, give written notice to the member spouse and the non-member spouse.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

- (6) Subsection (5) does not apply if the trustee has previously given a notice under that subsection, for an earlier splittable payment, in respect of the payment flag.

- (7) If either spouse dies while a payment flag is operating:
- (a) the payment flag nevertheless continues to operate; and
  - (b) the legal personal representative of the deceased spouse has all the rights the deceased spouse would have had in respect of the payment flag.

Note: The rights of the legal personal representative under paragraph (b) include the right to enter into a flag lifting agreement under section 90MN.

**90MLA Some splittable payments payable if payment flag operating**

- (1) This section applies if:

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- (a) a superannuation interest (*original interest*) a person has in an eligible superannuation plan (*old ESP*) is identified in a superannuation agreement; and
  - (b) a payment flag under section 90ML is operating on the original interest; and
  - (c) a splittable payment is made by the trustee of the old ESP to the trustee of another eligible superannuation plan (*new ESP*) in respect of the original interest as part of a successor fund transfer.
- (2) If this section applies, then:
- (a) the new interest in the new ESP is taken to be the original interest identified in the superannuation agreement; and
  - (b) the payment flag operates on the new interest; and
  - (c) despite section 90MK, the operative time for the payment flag in respect of the new interest is the time that the payment to the trustee of the new ESP is made.
- (3) In this section:

*successor fund transfer* means the transfer of a person's superannuation interest in the old ESP in circumstances where:

- (a) the new ESP confers on the person, in relation to the new interest, equivalent rights to the rights the person had in relation to the original interest; and
- (b) before the transfer, the trustee of the new ESP had agreed with the trustee of the old ESP to the conferral of such rights.

**90MM Payment flag may be terminated by court**

- (1) If a court makes an order under section 90K setting aside a financial agreement in respect of which a payment flag is operating, the court may also make an order terminating the operation of the flag.

Note: Under section 90MH, a superannuation agreement must be part of a financial agreement. Therefore, setting aside the financial agreement also has the effect of setting aside the superannuation agreement.

- (2) If a court makes an order under section 90UM setting aside a Part VIIIAB financial agreement in respect of which a payment flag is operating, the court may also make an order terminating the operation of the flag.

Note: Under section 90MHA, a superannuation agreement relating to a de facto relationship must be part of a Part VIIIAB financial agreement. Therefore, setting aside the financial agreement also has the effect of setting aside the superannuation agreement.

### **90MN Flag lifting agreement etc.**

- (1) At any time when a payment flag is operating on a superannuation interest, the spouses may make an agreement (a ***flag lifting agreement***) that either:
- (a) provides that the flag is to cease operating without any payment split; or
  - (b) specifies an amount, method or percentage in accordance with subsection 90MJ(1).
- (2) If the flag lifting agreement provides for a payment split, the spouses may at any time make an agreement (a ***termination agreement***) that terminates the flag lifting agreement.
- (3) A flag lifting agreement or termination agreement has no effect unless it complies with the following requirements:
- (a) the agreement must be signed by both spouses;
  - (b) for each spouse, the agreement must contain a statement that the spouse has been provided with independent legal advice from a legal practitioner as to the legal effect of the agreement;
  - (c) a certificate must be attached to the agreement, signed by the person who provided the legal advice and stating that the advice was provided;
  - (d) after the agreement is signed by the spouses, each spouse must be provided with a copy of the agreement.
- (4) A court may make an order setting aside a flag lifting agreement or termination agreement if, and only if, the court is satisfied as to:

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- (a) if the spouses are parties to a marriage—any of the grounds set out in subsection 90K(1) (other than paragraph 90K(1)(f)); or
  - (b) if the spouses are parties to a de facto relationship—any of the grounds set out in subsection 90UM(1) (other than paragraph 90UM(1)(i)).
- (5) An order setting aside a flag lifting agreement also operates to set aside the related financial agreement or Part VIIIAB financial agreement.
  - (6) An order under section 90K setting aside a financial agreement also operates to set aside the related flag lifting agreement.
  - (7) An order under section 90UM setting aside a Part VIIIAB financial agreement also operates to set aside the related flag lifting agreement.

**Subdivision D—Miscellaneous**

**90MO Limitation on section 79 or 90SM order**

- (1) A court cannot make an order under section 79 or 90SM with respect to a superannuation interest if:
  - (a) the superannuation interest is covered by a superannuation agreement that is in force; or
  - (b) the non-member spouse has served a waiver notice on the trustee under section 90MZA in respect of the interest; or
  - (c) a payment flag is operating on the superannuation interest.

Note: Under section 90MM, the court can terminate the operation of a payment flag in certain circumstances.

- (2) Subsection (1) does not prevent the court taking superannuation interests into account when making an order with respect to other property of the spouses.

### **90MP Separation declaration**

- (1) A *separation declaration* is a written declaration that complies with this section, and may be included in the superannuation agreement to which it relates.
- (2) The declaration must be signed by at least one of the spouses. For this purpose, if a spouse has died the spouse's legal personal representative may sign the declaration.

*Spouses who are parties to a marriage*

- (2A) Subsections (3) to (5) apply if the spouses are parties to a marriage.
- (3) If section 90MQ applies to the declaration, then the declaration must state that:
  - (a) the spouses are married; and
  - (b) the spouses separated and thereafter lived separately and apart for a continuous period of at least 12 months immediately before the declaration time; and
  - (c) in the opinion of the spouse (or spouses) making the declaration, there is no reasonable likelihood of cohabitation being resumed.
- (4) If section 90MQ does not apply to the declaration, then the declaration must state that the spouses are married, but are separated, at the declaration time.
- (4A) If either or both of the spouses have died, then the declaration must state:
  - (a) if section 90MQ applies to the declaration—that at the most recent time when both spouses were alive:
    - (i) the spouses were married; but
    - (ii) the spouses were separated and had lived separately and apart for a continuous period of at least 12 months immediately before that time; or
  - (b) if section 90MQ does not apply to the declaration—that the spouses were married, but separated, at the most recent time when both spouses were alive.

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Subsections (3) and (4) have effect subject to this subsection.

(5) For the purposes of subsections (3) to (4A), the question whether spouses lived separately and apart for a continuous period of not less than 12 months before a particular date is to be determined in the same way as it is under section 48.

(6) In subsections (3) to (5):

*separated* has the same meaning as in section 48 (as affected by sections 49 and 50).

*Spouses who are parties to a de facto relationship*

(7) Subsections (8) to (12) apply if the spouses are parties to a de facto relationship.

(8) If section 90MQ applies to the declaration, then the declaration must state that:

- (a) the spouses lived in a de facto relationship; and
- (b) the spouses separated and thereafter lived separately and apart for a continuous period of at least 12 months immediately before the declaration time; and
- (c) in the opinion of the spouse (or spouses) making the declaration, there is no reasonable likelihood of cohabitation being resumed.

(9) If section 90MQ does not apply to the declaration, then the declaration must state that the spouses lived in a de facto relationship, but are separated, at the declaration time.

(10) If either or both of the spouses have died, then the declaration must state:

- (a) if section 90MQ applies to the declaration—that:
  - (i) the spouses lived in a de facto relationship; but
  - (ii) at the most recent time when both spouses were alive, the spouses were separated and had lived separately and apart for a continuous period of at least 12 months immediately before that time; or

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- (b) if section 90MQ does not apply to the declaration—that the spouses:
- (i) lived in a de facto relationship; but
  - (ii) were separated at the most recent time when both spouses were alive.
- Subsections (8) and (9) have effect subject to this subsection.
- (11) For the purposes of subsection (8) and paragraph (10)(a), the spouses can have separated and be living separately and apart even if:
- (a) their cohabitation was brought to an end by the action or conduct of one only of them; or
  - (b) they have continued to reside in the same residence; or
  - (c) either of them has rendered some household services to the other.
- (12) For the purposes of subsection (8) and paragraph (10)(a), if, after the spouses separated, they resumed cohabitation on one occasion but, within a period of 3 months after the resumption of cohabitation, they again separated and thereafter lived separately and apart up to the relevant time referred to in paragraph (8)(b) or (10)(a):
- (a) the periods of living separately and apart before and after the period of cohabitation may be aggregated as if they were one continuous period; but
  - (b) the period of cohabitation shall not be taken to be part of the period of living separately and apart.

**90MQ Superannuation interests in excess of low rate cap amount**

- (1) This section applies to a declaration if:
- (a) if both spouses are alive at the declaration time—at the declaration time; or
  - (b) otherwise—at the most recent time when both spouses were alive;

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the total withdrawal value for all the superannuation interests of the member spouse is more than the member spouse's low rate cap amount for the income year in which that time occurs.

- (2) This section does not apply in the circumstances (if any) prescribed by the regulations.
- (3) In this section:

*low rate cap amount* has the meaning given by the *Income Tax Assessment Act 1997* (disregarding subsection 307-345(2) of that Act and section 307-345 of the *Income Tax (Transitional Provisions) Act 1997*).

*total withdrawal value* means the amount determined in accordance with the regulations.

**90MR Enforcement by court order**

- (1) A court may make such orders as it thinks necessary for the enforcement of a payment split or payment flag under this Division.
- (2) The question whether a superannuation agreement or flag lifting agreement is valid, enforceable or effective is to be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts.
- (3) Without limiting subsection (2), in proceedings relating to a superannuation agreement or flag lifting agreement, the court has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction.

### **Division 3—Payment splitting or flagging by court order**

#### **90MS Order under section 79 or 90SM may include orders in relation to superannuation interests**

- (1) In proceedings under section 79 or 90SM with respect to the property of spouses, the court may, in accordance with this Division, also make orders in relation to superannuation interests of the spouses.

Note 1: Although the orders are made in accordance with this Division, they will be made under either section 79 or 90SM. Therefore they will be generally subject to all the same provisions as other orders made under that section.

Note 2: Sections 71A and 90MO limit the scope of section 79.

Note 3: Subsections 44(5) and (6) and sections 90SB, 90SK and 90MO limit the scope of section 90SM.

- (2) A court cannot make an order under section 79 or 90SM in relation to a superannuation interest except in accordance with this Part.

#### **90MT Splitting order**

- (1) A court, in accordance with section 90MS, may make the following orders in relation to a superannuation interest (other than an unsplitable interest):

- (a) if the interest is not a percentage-only interest—an order to the effect that, whenever a splittable payment becomes payable in respect of the interest:
  - (i) the non-member spouse is entitled to be paid the amount (if any) calculated in accordance with the regulations; and
  - (ii) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order;
- (b) an order to the effect that, whenever a splittable payment becomes payable in respect of the interest:

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- (i) the non-member spouse is entitled to be paid a specified percentage of the splittable payment; and
    - (ii) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order;
  - (c) if the interest is a percentage-only interest—an order to the effect that, whenever a splittable payment becomes payable in respect of the interest:
    - (i) the non-member spouse is entitled to be paid the amount (if any) calculated in accordance with the regulations by reference to the percentage specified in the order;
    - (ii) there is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order;
  - (d) such other orders as the court thinks necessary for the enforcement of an order under paragraph (a), (b) or (c).
- (2) Before making an order referred to in subsection (1), the court must make a determination under paragraph (a) or (b) as follows:
- (a) if the regulations provide for the determination of an amount in relation to the interest, the court must determine the amount in accordance with the regulations;
  - (b) otherwise, the court must determine the value of the interest by such method as the court considers appropriate.
- (2A) The amount determined under paragraph (2)(a) is taken to be the value of the interest.
- (3) Regulations for the purposes of paragraph (2)(a) may provide for the amount to be determined wholly or partly by reference to methods or factors that are approved in writing by the Minister for the purposes of the regulations.
- (4) Before making an order referred to in paragraph (1)(a), the court must allocate a base amount to the non-member spouse, not exceeding the value determined under subsection (2).

Note: The base amount is used to calculate the entitlement of the non-member spouse under the regulations.

### **90MU Flagging order**

- (1) A court, in accordance with section 90MS, may make an order in relation to a superannuation interest (other than an unflaggable interest):
  - (a) directing the trustee not to make any splittable payment in respect of the interest without the leave of the court; and
  - (b) requiring the trustee to notify the member spouse and the non-member spouse, within a period specified in the order, of the next occasion when a splittable payment becomes payable in respect of the interest.
- (2) In deciding whether to make an order in accordance with this section, the court may take into account such matters as it considers relevant and, in particular, may take into account the likelihood that a splittable payment will soon become payable in respect of the superannuation interest.

### **90MUA Some splittable payments may be made without leave of court**

- (1) A flagging order made under subsection 90MU(1) in relation to a superannuation interest (*original interest*) a person has in an eligible superannuation plan (*old ESP*) does not apply to a splittable payment if the splittable payment is made by the trustee of the old ESP to the trustee of another eligible superannuation plan (*new ESP*) in respect of the original interest as part of a successor fund transfer.
- (2) If the splittable payment is made, then the flagging order is taken to be made in relation to the new interest from the time that the payment to the trustee of the new ESP is made.
- (3) In this section:

*successor fund transfer* means the transfer of a person's superannuation interest in the old ESP in circumstances where:

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- (a) the new ESP confers on the person, in relation to the new interest, equivalent rights to the rights the person had in relation to the original interest; and
- (b) before the transfer, the trustee of the new ESP had agreed with the trustee of the old ESP to the conferral of such rights.

## **Division 4—General provisions about payment splitting**

### **90MV Court may cancel payment split**

- (1) A court may, under section 79 or 90SM, make an order terminating the operation of a payment split if:
  - (a) the superannuation agreement in respect of the payment split has ceased to be in force; and
  - (b) the non-member spouse has not served a waiver notice on the trustee under section 90MZA in respect of the payment split.
- (2) The termination has effect for splittable payments that become payable after the date specified in the order.

### **90MW Deductions from splittable payment before calculating payment split**

Any deduction that the trustee is entitled to make from a splittable payment is to be deducted from the splittable payment before calculating any payment split and before applying section 90MX.

### **90MX Multiple payment splits applying to the same splittable payment**

- (1) This section applies if 2 or more payment splits apply to the same splittable payment.
- (2) The payments splits are to be calculated in order of their operative times, starting with the earliest time.
- (3) For the purpose of calculating each of those payment splits (other than the one with the earliest operative time), the amount of the splittable payment is taken to be reduced by the amount to which a person other than the member spouse is entitled under the payment split with the next earlier operative time.

Example 1: W has a superannuation interest that is subject to 3 payment splits in respect of W's marriages to X, Y and Z (in that order). The operative times of the payment splits are in the same order as the marriages.

**Part VIII B Superannuation interests**

**Division 4 General provisions about payment splitting**

**Section 90MY**

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Assume each payment split provides for a 50% share to the non-member spouse. W becomes entitled to a splittable payment of \$100. The final payment entitlements are as follows: X gets \$50. Y gets \$25. Z gets \$12.50. W gets the remaining \$12.50.

Example 2: W has a superannuation interest that is subject to 3 payment splits in respect of W's de facto relationship with X, W's marriage to Y and W's de facto relationship with Z (in that order). The operative times of the payment splits are in the same order as the relationships. Assume each payment split provides for a 50% share to the non-member spouse. W becomes entitled to a splittable payment of \$100. The final payment entitlements are as follows: X gets \$50. Y gets \$25. Z gets \$12.50. W gets the remaining \$12.50.

**90MY Fees payable to trustee**

- (1) The regulations may:
  - (a) allow trustees to charge reasonable fees:
    - (i) in respect of a payment split; or
    - (ii) otherwise in respect of the operation of this Part in relation to a superannuation interest; and
  - (b) prescribe the person or persons liable to pay those fees.
- (2) If any such fee remains unpaid after the time it is due for payment, then the trustee may recover any unpaid amount by deduction from amounts that would otherwise become payable by the trustee, in respect of the superannuation interest, to the person who is liable to pay the fee.

**90MZ Superannuation preservation requirements**

- (1) If the eligible superannuation plan for a payment split is a regulated superannuation fund or approved deposit fund, then the entitlement of the non-member spouse is subject to any regulations made under the SIS Act that provide for payment of that entitlement to a regulated superannuation fund, approved deposit fund, RSA or exempt public sector superannuation scheme within the meaning of the SIS Act for the benefit of the non-member spouse.

- (2) If the eligible superannuation plan for a payment split is an RSA, then the entitlement of the non-member spouse is subject to any regulations made under the *Retirement Savings Accounts Act 1997* that provide for payment of that entitlement to a regulated superannuation fund, approved deposit fund, RSA or exempt public sector superannuation scheme within the meaning of the SIS Act for the benefit of the non-member spouse.
- (3) If the eligible superannuation plan for a payment split is a constitutionally protected fund (within the meaning of the *Income Tax Assessment Act 1997*) or an exempt public sector superannuation scheme within the meaning of the SIS Act, then the entitlement of the non-member spouse is subject to any law or other instrument that provides for payment of that entitlement to a regulated superannuation fund, approved deposit fund, RSA or exempt public sector superannuation scheme within the meaning of the SIS Act for the benefit of the non-member spouse.

#### **90MZA Waiver of rights under payment split**

- (1) If the non-member spouse serves a waiver notice on the trustee in respect of a payment split, then the following provisions apply for each splittable payment that becomes payable after the date specified in the waiver notice:
  - (a) the non-member spouse is not entitled to be paid any amount under the payment split in respect of the splittable payment;
  - (b) the entitlement of the person to whom the splittable payment would have been made but for the payment split continues to be reduced in the same way as it would have been reduced if the entitlement of the non-member spouse had not been terminated.

Example: X has a superannuation interest that is subject to a 50:50 payment split in favour of Y. Y serves a waiver notice on the trustee, in exchange for a lump sum payment made by the trustee to another fund for the benefit of Y. The effect is that X's payments will continue to be reduced by half, but Y will receive no further payments under the payment split.

**Section 90M ZB**

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- (2) To be effective for the purposes of this section, a waiver notice must be in the prescribed form and must be accompanied by:
- (a) a statement to the effect that the non-member spouse has been provided with independent financial advice from a prescribed financial adviser as to the financial effect of the waiver notice; and
  - (b) a certificate signed by the person who provided the financial advice, stating that the advice was provided.

**90M ZB Trustee to provide information**

- (1) An eligible person may make an application to the trustee of an eligible superannuation plan for information about a superannuation interest of a member of the plan.
- (2) The application must be accompanied by:
- (a) a declaration, in the prescribed form, stating that the applicant requires the information for either or both of the following purposes:
    - (i) to assist the applicant to properly negotiate a superannuation agreement;
    - (ii) to assist the applicant in connection with the operation of this Part in relation to the applicant; and
  - (b) the fee (if any) payable under regulations made for the purposes of section 90M Y.
- (3) If the trustee receives an application that complies with this section, the trustee must, in accordance with the regulations, provide information about the superannuation interest to the applicant.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

- (4) Regulations for the purposes of subsection (3) may specify circumstances in which the trustee is not required to provide information.

Example: The regulations might provide that a secondary government trustee is not required to provide information where there is another trustee of the eligible superannuation plan who is better able to provide the information.

- (5) The trustee must not, in response to an application under this section by a spouse of the member, provide the spouse with any address of the member. For this purpose, **address** includes a postal address.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

- (6) If the trustee receives an application under this section from a person other than the member, the trustee must not inform the member that the application has been received.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

- (7) The regulations may require the trustee of an eligible superannuation plan, after the operative time for a payment split, to provide information to the non-member spouse about the superannuation interest concerned. Such regulations may prescribe penalties for contravention, not exceeding 10 penalty units.

- (8) In this section:

**eligible person**, in relation to a superannuation interest of a member of an eligible superannuation plan, means:

- (a) the member; or
- (aa) if the member has died—the legal personal representative of the member; or
- (b) a spouse of the member; or
- (ba) if a spouse of the member has died—the legal personal representative of the spouse; or
- (c) a person who intends to enter into a superannuation agreement with the member.

**90MZC Death of non-member spouse**

If the non-member spouse dies after the operative time for a payment split:

- (a) the payment split nevertheless continues to operate; and
- (b) the payment split then operates in favour of the legal personal representative of the deceased spouse and is binding on that legal personal representative; and
- (c) the legal personal representative has all the rights the deceased spouse would have had in respect of the payment split, including the right to serve a waiver notice under section 90MZA.

## **Division 5—Miscellaneous**

### **90MZD Orders binding on trustee**

- (1) An order under this Part in relation to a superannuation interest may be expressed to bind the person who is the trustee of the eligible superannuation plan at the time when the order takes effect. However:
  - (a) in the case of a trustee who is not a secondary government trustee—the court cannot make such an order unless the trustee has been accorded procedural fairness in relation to the making of the order; and
  - (b) in the case of a secondary government trustee:
    - (i) the court cannot make such an order unless another trustee of the eligible superannuation plan has been accorded procedural fairness in relation to the making of the order; and
    - (ii) the court may, if it thinks fit, require that the secondary government trustee also be accorded procedural fairness.
- (2) If an order is binding on the person who is the trustee of an eligible superannuation plan at the time when the order takes effect, then the order is also binding (by force of this subsection) on:
  - (a) any person who subsequently becomes the trustee of that eligible superannuation plan; or
  - (b) in a case where section 90MUA applies—a person who is the trustee, or any person who subsequently becomes the trustee, of the new ESP.

### **90MZE Protection for trustee**

The trustee of an eligible superannuation plan is not liable for loss or damage suffered by any person because of things done (or not done) by the trustee in good faith in reliance on:

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- (a) any document served on the trustee for the purposes of this Part; or
- (b) an order made by a court in accordance with this Part.

**90MZF Service of documents on trustee**

- (1) If a document is required or permitted to be served for the purposes of this Part on the trustee of an eligible superannuation plan, the document may be served in any of the ways in which a document may be served under the Rules of Court.
- (2) Subsection (1) is in addition to any other method of service permitted by law.

**90MZG False declarations**

- (1) A person commits an offence if:
  - (a) the person makes a statement in a declaration, knowing that the statement is false or misleading; and
  - (b) the declaration is served on the trustee of an eligible superannuation plan for the purposes of this Part.
- (2) An offence against subsection (1) is punishable by imprisonment for a period of up to 12 months.
- (3) Subsection (1) does not apply if the statement is not false or misleading in a material particular.
- (4) Subsection (1) does not apply in relation to a declaration if a spouse to which the declaration relates died before the declaration was made.

**90MZH Terminating employment because of payment flag etc.**

A person must not terminate the employment of an employee on either of the following grounds:

- (a) a payment flag is operating in respect of a superannuation interest of the employee;

- (b) a superannuation agreement or splitting order is in force in respect of a superannuation interest of the employee.

Penalty: 100 penalty units.

Note: The penalty for a body corporate is 500 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

## Part IX—Intervention

### 91 Intervention by Attorney-General

- (1) The Attorney-General may intervene in, and contest or argue any question arising in:
  - (a) any proceedings under this Act where the court requests the Attorney-General to do so or a matter arises that affects the public interest; or
  - (b) any proceedings under this Act for or in relation to:
    - (i) a parenting order, other than a child maintenance order; or
    - (ii) an order under section 67ZC.
- (1A) At any time after a divorce order has been made in any proceedings and before it has taken effect, the Attorney-General may intervene in the proceedings for the purpose of bringing to the notice of the court matters relevant to the exercise of its powers under section 58.
- (2) Where the Attorney-General intervenes in any proceedings, the Attorney-General shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

### 91A Delegation by Attorney-General

- (1) Where, in a State, there is a Family Court of the State, the Attorney-General may, either generally or as otherwise provided by the instrument of delegation, by writing, delegate all or any of his or her powers and functions under section 91 in respect of intervention in proceedings in the Family Court of that State and in other courts of that State to the person occupying from time to time, while the delegation is in force, the office of Attorney-General of that State.

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- (2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Attorney-General.
- (4) Where the Attorney-General of a State intervenes in any proceedings in accordance with a delegation under this section, the Attorney-General of the State shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

**91B Intervention by child welfare officer**

- (1) In any proceedings under this Act that affect, or may affect, the welfare of a child, the court may request the intervention in the proceedings of an officer of a State, of a Territory or of the Commonwealth, being the officer who is responsible for the administration of the laws of the State or Territory in which the proceedings are being heard that relate to child welfare.
- (2) Where the court has, under subsection (1), requested an officer to intervene in proceedings:
  - (a) the officer may intervene in those proceedings; and
  - (b) where the officer so intervenes, the officer shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

Note: If an officer intervenes in proceedings and acts in good faith in relation to the proceedings, an order for costs, or for security for costs, cannot be made under subsection 117(2) against the officer: see subsection 117(4A).

**92 Intervention by other persons**

- (1) In proceedings (other than divorce or validity of marriage proceedings), any person may apply for leave to intervene in the proceedings, and the court may make an order entitling that person to intervene in the proceedings.

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- (1A) In divorce or validity of marriage proceedings, a person in relation to whom an order has been made under subsection 69W(1) requiring a parentage testing procedure to be carried out may apply for leave to intervene in the proceedings, and the court may make an order entitling the person to intervene in the proceedings.
- (2) An order under this section may be made upon such conditions as the court considers appropriate.
- (3) Where a person intervenes in any proceedings by leave of the court the person 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.

**92A Intervention in child abuse cases**

- (1) This section applies to proceedings under this Act in which it has been alleged that a child has been abused or is at risk of being abused.
- (2) Each of the following persons is entitled to intervene in the proceedings:
  - (a) a guardian of the child;
  - (b) a parent of the child with whom the child lives;
  - (ba) a person with whom the child is to live under a parenting order;
  - (bb) a person who has parental responsibility for the child under a parenting order;
  - (c) any other person responsible for the care, welfare or development of the child;
  - (d) a prescribed child welfare authority;
  - (e) a person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.
- (3) Where a person intervenes in proceedings pursuant to this section, the person is, unless the court otherwise orders, to be taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

## **Part X—Appeals**

### **93 No appeal after divorce order takes effect**

An appeal does not lie from a divorce order after the order has taken effect.

### **93A Appellate jurisdiction of Family Court**

- (1) The Family Court has jurisdiction with respect to matters arising under this Act or under any other law made by the Parliament in respect of which:
  - (a) appeals referred to in section 94 are instituted; or
  - (aa) appeals referred to in subsection 94AAA(1) or (1A) are instituted; or
  - (b) appeals referred to in section 96 are instituted.
- (2) Subject to section 96, in an appeal the Family Court shall have regard to the evidence given in the proceedings out of which the appeal arose and has power to draw inferences of fact and, in its discretion, to receive further evidence upon questions of fact, which evidence may be given:
  - (a) by affidavit; or
  - (b) by oral examination before the Family Court or a Judge; or
  - (c) as provided for in Division 2 of Part XI.

### **94 Appeals to Family Court from courts other than Federal Circuit Court and Magistrates Court of Western Australia**

- (1) Subject to sections 94AAA and 94AA, an appeal lies to a Full Court of the Family Court from:
  - (a) a decree of the Family Court, constituted otherwise than as a Full Court, exercising original or appellate jurisdiction:
    - (i) under this Act; or
    - (ii) under any other law; or

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- (b) a decree of:
- (i) a Family Court of a State; or
  - (ii) a Supreme Court of a State or Territory constituted by a single Judge;
- exercising original or appellate jurisdiction under this Act or in proceedings continued in accordance with any of the provisions of section 9.

Note: This subsection applies to appeals from the making, variation and revocation of court security orders under the *Court Security Act 2013* as described in section 94AB.

- (1AA) An appeal lies to a Full Court of the Family Court from a decree or decision of a Judge exercising original or appellate jurisdiction under this Act rejecting an application that he or she disqualify himself or herself from further hearing a matter.
- (1A) An appeal under subsection (1) or (1AA) shall be instituted within the time prescribed by the standard Rules of Court or within such further time as is allowed in accordance with the standard Rules of Court.
- (2) Upon such an appeal, the Full Court may affirm, reverse or vary the decree or decision the subject of the appeal and may make such decree or decision as, in the opinion of the court, ought to have been made in the first instance, or may, if it considers appropriate, order a re-hearing, on such terms and conditions, if any, as it considers appropriate.
- (2A) If, in dismissing an appeal under subsection (1) or (1AA), the Full Court is of the opinion that the appeal does not raise any question of general principle, it may give reasons for its decision in short form.
- (2B) A Full Court of the Family Court, or a Judge of the Appeal Division or other Judge if there is no Judge of the Appeal Division available, may:
- (a) join or remove a party to an appeal under subsection (1) or (1AA); or

- (b) make an order by consent disposing of an appeal under subsection (1) or (1AA) (including an order for costs); or
  - (c) give directions about the conduct of an appeal under subsection (1) or (1AA), including directions about the use of written submissions and limiting the time for oral argument.
- (2C) The standard Rules of Court may make provision enabling matters of the kind mentioned in subsection (2B) to be dealt with, subject to conditions prescribed by the standard Rules of Court, without an oral hearing.
- (2D) Applications of a procedural nature, including applications:
- (a) for an extension of time within which to institute an appeal under subsection (1) or (1AA); or
  - (b) for leave to amend the grounds of an appeal under subsection (1) or (1AA); or
  - (c) to reinstate an appeal under subsection (1) or (1AA) that, because of the standard Rules of Court, was taken to have been abandoned; or
  - (d) to stay an order of a Full Court of the Family Court made in connection with an appeal under subsection (1) or (1AA); or
  - (e) for an extension of time within which to file an application for leave to appeal; or
  - (f) for security for costs in relation to an appeal; or
  - (g) to reinstate an appeal dismissed under a provision of the Rules of Court; or
  - (h) to adjourn the hearing of an appeal; or
  - (i) to vacate the hearing date of an appeal; or
  - (j) to expedite the hearing of an appeal;
- may be heard and determined by a Judge of the Appeal Division or other Judge if there is no Judge of the Appeal Division available, or by a Full Court of the Family Court.
- (2E) The standard Rules of Court may make provision enabling applications of a kind mentioned in subsection (2D) to be dealt with, subject to conditions prescribed by the standard Rules of Court, without an oral hearing.

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- (2F) No appeal lies under this section from an order or decision made under subsection (2B) or (2D).
- (3) This section does not apply in relation to a proceeding that is transferred to the Court from the Federal Court of Australia.

**94AAA Appeals to Family Court from Federal Circuit Court and Magistrates Court of Western Australia**

- (1) An appeal lies to the Family Court from:
- (a) a decree of the Federal Circuit Court of Australia exercising original jurisdiction under this Act; or
  - (b) a decree or decision of a Judge of the Federal Circuit Court of Australia exercising original jurisdiction under this Act rejecting an application that he or she disqualify himself or herself from further hearing a matter.
- (1A) An appeal lies to the Family Court from:
- (a) a decree of the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia exercising original jurisdiction under this Act; or
  - (b) a decree or decision of a Family Law Magistrate of Western Australia exercising in the Magistrates Court of Western Australia original jurisdiction under this Act rejecting an application that he or she disqualify himself or herself from further hearing a matter.
- Note: This subsection applies to appeals from the making, variation and revocation of court security orders under the *Court Security Act 2013* as described in section 94AB.
- (2) Subsections (1) and (1A) have effect subject to section 94AA.
- (3) The jurisdiction of the Family Court in relation to an appeal under subsection (1) or (1A) is to be exercised by a Full Court unless the Chief Justice considers that it is appropriate for the jurisdiction of the Family Court in relation to the appeal to be exercised by a single Judge.
- (4) Subsection (3) has effect subject to subsections (8) and (10).

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- (5) An appeal under subsection (1) or (1A) is to be instituted within:
- (a) the time prescribed by the standard Rules of Court; or
  - (b) such further time as is allowed in accordance with the standard Rules of Court.
- (6) On an appeal under subsection (1) or (1A), the Family Court may affirm, reverse or vary the decree or decision the subject of the appeal and may make such decree or decision as, in the opinion of the court, ought to have been made in the first instance, or may, if it considers appropriate, order a re-hearing on such terms and conditions, if any, as it considers appropriate.
- (7) If, in dismissing an appeal under subsection (1) or (1A), the Family Court is of the opinion that the appeal does not raise any question of general principle, it may give reasons for its decision in short form.
- (8) A single Judge or a Full Court may:
- (a) join or remove a party to an appeal under subsection (1) or (1A); or
  - (b) make an order by consent disposing of an appeal under subsection (1) or (1A) (including an order for costs); or
  - (c) give directions about the conduct of an appeal under subsection (1) or (1A), including directions about:
    - (i) the use of written submissions; and
    - (ii) limiting the time for oral argument.
- (9) The standard Rules of Court may make provision enabling matters of the kind mentioned in subsection (8) to be dealt with, subject to conditions prescribed by the standard Rules of Court, without an oral hearing.
- (10) Applications of a procedural nature, including applications:
- (a) for an extension of time within which to institute an appeal under subsection (1) or (1A); or
  - (b) for leave to amend the grounds of an appeal under subsection (1) or (1A); or

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- (c) to reinstate an appeal under subsection (1) or (1A) that, because of the standard Rules of Court, was taken to have been abandoned; or
  - (d) to stay an order of the Family Court made in connection with an appeal under subsection (1) or (1A); or
  - (e) for an extension of time within which to file an application for leave to appeal; or
  - (f) for security for costs in relation to an appeal; or
  - (g) to reinstate an appeal dismissed under a provision of the Rules of Court; or
  - (h) to adjourn the hearing of an appeal; or
  - (i) to vacate the hearing date of an appeal; or
  - (j) to expedite the hearing of an appeal;
- may be heard and determined by a single Judge or by a Full Court.
- (11) The standard Rules of Court may make provision enabling applications of a kind mentioned in subsection (10) to be dealt with, subject to conditions prescribed by the standard Rules of Court, without an oral hearing.
  - (12) An appeal does not lie to a Full Court from a decision of a single Judge exercising jurisdiction under this section.
  - (13) The single Judge referred to in subsection (3), (8) or (10) need not be a member of the Appeal Division.

**94AAB Appeals, and applications for leave, without oral hearing**

- (1) Subject to subsection (2), an appeal under section 94 or 94AAA may be dealt with without an oral hearing if all the parties to the appeal consent to the appeal being dealt with in that way.
- (2) Subsection (1) does not apply to an appeal if the court to which the appeal is made otherwise orders.
- (3) A consent given under subsection (1) may only be withdrawn with the leave of the court.

**94AA Leave to appeal needed in some cases**

(1) The following table sets out the circumstances in which leave to appeal is required:

<b>Requirements for leave to appeal</b>			
<b>Item</b>	<b>Appeal from</b>	<b>Appeal to</b>	<b>Who determines the application for leave to appeal</b>
1	a prescribed decree of the Family Court (constituted otherwise than as a Full Court)	a Full Court of the Family Court	a Full Court of the Family Court
2	a prescribed decree of a Family Court of a State	a Full Court of the Family Court	a Full Court of the Family Court
3	a prescribed decree of a Supreme Court of a State or Territory constituted by a single Judge	a Full Court of the Family Court	a Full Court of the Family Court
4	a prescribed decree of the Federal Circuit Court of Australia	the Family Court	(a) a single Judge of the Family Court (who need not be a member of the Appeal Division); or (b) a Full Court of the Family Court
5	a prescribed decree of the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia	the Family Court	(a) a single Judge of the Family Court (who need not be a member of the Appeal Division); or (b) a Full Court of the Family Court

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- (2) Despite subsection (1), an order by consent disposing of an application under this section for leave to appeal under subsection 94(1) or (1AA) (including an order for costs) may be made by:
- (a) a Full Court of the Family Court; or
  - (b) a Judge of the Appeal Division; or
  - (c) another Judge if there is no Judge of the Appeal Division available.
- (2A) Despite subsection (1), an order by consent disposing of an application under this section for leave to appeal under subsection 94AAA(1) or (1A) (including an order for costs) may be made by:
- (a) a Full Court of the Family Court; or
  - (b) a single Judge of the Family Court (who need not be a member of the Appeal Division).
- (3) The standard Rules of Court may make provision for enabling applications for leave to be dealt with, subject to conditions prescribed by the Rules, without an oral hearing.

**94AB Appeals relating to court security orders**

- (1) This section deals with the application of this Part in relation to the making, variation or revocation of a court security order under Part 4 of the *Court Security Act 2013* by a member (as defined in that Act) of:
- (a) the Family Court; or
  - (b) the Family Court of Western Australia.
- (2) This Part applies as if the making, variation or revocation were a decree of the member's court in the exercise of original jurisdiction under this Act.

Note: As a result, an appeal from the making, variation or revocation lies under subsection 94(1), if the member is a member of the Family Court or a member of the Family Court of Western Australia other than a Family Law Magistrate of Western Australia.

- (3) However, if the member is a member of the Family Court of Western Australia because he or she is a Family Law Magistrate of Western Australia, this Part applies as if:
- (a) the making, variation or revocation were a decree of the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia exercising original jurisdiction under this Act; and
  - (b) proceedings for the making, variation or revocation were proceedings in the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia.

Note: As a result, an appeal from the making, variation or revocation by the member lies under subsection 94AAA(1A).

### **94A Case stated**

- (1) If, in proceedings in a court, being proceedings in which a decree or decision to which subsection 94(1) or (1AA) applies could be made, a question of law arises which the Judge and at least one of the parties wish to have determined by a Full Court of the Family Court before the proceedings are further dealt with, the Judge shall state the facts and question in the form of a special case for the opinion of a Full Court, and a Full Court shall hear and determine the question.
- (2) The Full Court may draw from the facts and the documents any inference, whether of fact or of law, which could have been drawn from them by the Judge.
- (3) If, in proceedings in the Federal Circuit Court of Australia, being proceedings in which a decree or decision to which subsection 94AAA(1) applies could be made, a question of law arises which:
- (a) the Judge of the Federal Circuit Court of Australia; and
  - (b) at least one of the parties;
- wish to have determined by a Full Court of the Family Court before the proceedings are further dealt with:

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- (c) the Judge of the Federal Circuit Court of Australia must state the facts and question in the form of a special case for the opinion of a Full Court of the Family Court; and
  - (d) a Full Court of the Family Court must hear and determine the question.
- (4) The Full Court may draw from the facts and the documents any inference, whether of fact or of law, which could have been drawn from them by the Judge of the Federal Circuit Court of Australia.
- (5) If, in proceedings in the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia, being proceedings in which a decree or decision to which subsection 94AAA(1A) applies could be made, a question of law arises which:
- (a) the Magistrate; and
  - (b) at least one of the parties;
- wish to have determined by a Full Court of the Family Court before the proceedings are further dealt with:
- (c) the Magistrate must state the facts and question in the form of a special case for the opinion of a Full Court of the Family Court; and
  - (d) a Full Court of the Family Court must hear and determine the question.
- (6) The Full Court may draw from the facts and the documents any inference, whether of fact or of law, which could have been drawn from them by the Magistrate.

## 95 Appeals to High Court

Despite anything contained in any other Act, an appeal does not lie to the High Court from a decree of a court exercising jurisdiction under this Act, whether original or appellate, except by special leave of the High Court.

**96 Appeals from courts of summary jurisdiction**

(1AA) This section does not apply to a decree of the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia.

Note: Appeals from these decrees are dealt with in section 94AAA.

- (1) An appeal lies from a decree of a court of summary jurisdiction of a State or Territory exercising jurisdiction under this Act to the Family Court or to the Supreme Court of that State or Territory.
- (1A) An appeal under subsection (1) shall be instituted within the time prescribed by the standard Rules of Court or within such further time as is allowed in accordance with the standard Rules of Court.
- (2) The Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred on the Supreme Court of each Territory, with respect to matters arising under this Act in respect of which appeals are instituted under this section.
- (3) The Governor-General may, by Proclamation, fix a date as the date on or after which appeals to the Supreme Court of a specified State or Territory under this section may not be instituted.
- (4) The court hearing an appeal under this section:
  - (a) shall, subject to subsection (5), proceed by way of a hearing de novo, 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 considers appropriate, including a decree affirming, reversing or varying the decree the subject of the appeal.
- (5) The court hearing an appeal under this section may, on the application of a party or of its own motion, refer the appeal to a Full Court of the Family Court.
- (6) Where an appeal is referred to a Full Court of the Family Court under subsection (5), the Full Court may:

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- (a) proceed by way of a hearing de novo, but may receive as evidence any record of evidence given, including any affidavit filed or exhibit received in the court of summary jurisdiction;
- (b) order that questions of fact arising in the proceedings be tried by a Judge;
- (c) determine questions of law arising in the proceedings and remit the appeal to a Judge for hearing in accordance with directions given by it; and
- (d) make such other decrees as it considers appropriate, including a decree affirming, reversing or varying the decree the subject of the appeal.

*Section 69GA proceedings treated like proceedings in courts of summary jurisdiction*

- (7) This section applies to section 69GA proceedings in the same way as this section would apply if the proceedings were heard in a court of summary jurisdiction.

**96AA Appeal may be dismissed if no reasonable prospect of success**

- (1) If:
  - (a) an appeal has been instituted in a court under this Part; and
  - (b) having regard to the grounds of appeal as disclosed in the notice of appeal, it appears to the court that the appeal has no reasonable prospect of success (whether generally or in relation to a particular ground of appeal);the court may, at any time, order that the proceedings on the appeal be dismissed (either generally or in relation to that ground).
- (2) This section does not limit any powers that the court has apart from this section.

**96A Part does not apply to section 111C jurisdiction**

This Part does not apply in relation to jurisdiction conferred on a federal court or a court of a Territory, or invested in a court of a State, by regulations made for the purposes of section 111C.

Note: Those regulations may provide for courts to have jurisdiction in respect of appeals arising from matters dealt with by those regulations: see subsection 111C(5).

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**Part XI—Procedure and evidence**

Note: Division 12A of Part VII has provisions about procedure and evidence that apply to child-related proceedings (within the meaning of Part VII).

**Division 1—General matters concerning procedure and evidence**

**97 Procedure**

- (1) Subject to this Act, to the regulations and to the applicable Rules of Court, all proceedings in the Family Court, in the Federal Circuit Court of Australia, or in a court of a Territory (other than the Northern Territory) when exercising jurisdiction under this Act, shall be heard in open court.
- (1A) The regulations and the applicable Rules of Court may authorise proceedings to be heard by a Judge, Judicial Registrar, Registrar or magistrate sitting in Chambers.
- (2) In any proceedings in the Family Court, or in another court when exercising jurisdiction under this Act, 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 proceedings under this Act, the court shall proceed without undue formality and shall endeavour to ensure that the proceedings are not protracted.

### **98 Evidence by affidavit**

- (1) The standard Rules of Court may provide for evidence of any material matter to be given on affidavit at the hearing of:
- (a) divorce or validity of marriage proceedings that are undefended at the time of hearing; and
  - (b) proceedings other than divorce or validity of marriage proceedings.
- (2) This section does not apply to proceedings in the Federal Circuit Court of Australia.

Note: For provisions relating to the Federal Circuit Court of Australia, see the *Federal Circuit Court of Australia Act 1999*.

### **98AA Oaths and affirmations**

- (1) A Judge of the Family Court may require and administer all necessary oaths and affirmations for the purposes of the Family Court.
- (2) A Judge of the Family Court may cause to be administered all necessary oaths and affirmations for the purposes of the Family Court. For this purpose, the Family Court may, either orally or in writing, authorise any person (whether in or outside Australia) to administer oaths and affirmations.
- (3) The Chief Executive Officer may, in writing, authorise:
- (a) a Registrar of the Family Court; or
  - (b) a staff member of the Family Court;
- to administer oaths and affirmations for the purposes of the Family Court.

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**98AB Swearing of affidavits etc.**

- (1) An affidavit to be used in a proceeding in the Family Court may be sworn or affirmed in Australia before:
- (a) a Judge of the Family Court; or
  - (b) a Registrar of the Family Court; or
  - (c) a justice of the peace; or
  - (d) a commissioner for affidavits; or
  - (e) a commissioner for declarations; or
  - (f) a person who is authorised to administer oaths or affirmations for the purposes of:
    - (i) the Family Court; or
    - (ii) the High Court; or
    - (iii) the Federal Court of Australia; or
    - (iv) the Supreme Court of a State or Territory; or
    - (v) the Federal Circuit Court of Australia; or
  - (g) a person before whom affidavits can be sworn or affirmed under the *Evidence Act 1995*.
- (2) An affidavit to be used in a proceeding in the Family Court may be sworn or affirmed at a place outside Australia before:
- (a) an Australian Diplomatic Officer or an Australian Consular Officer, as defined by the *Consular Fees Act 1955*, who is exercising his or her function in that place; or
  - (b) an employee of the Commonwealth who is:
    - (i) authorised under paragraph 3(c) of the *Consular Fees Act 1955*; and
    - (ii) exercising his or her function in that place; or
  - (c) an employee of the Australian Trade and Investment Commission who is:
    - (i) authorised under paragraph 3(d) of the *Consular Fees Act 1955*; and
    - (ii) exercising his or her function in that place; or
  - (d) a notary public who is exercising his or her function in that place; or

- (e) a person who is:
  - (i) qualified to administer an oath or affirmation in that place; and
  - (ii) certified by a person mentioned in any of paragraphs (a), (b), (c) and (d), or by the superior court of that place, to be so qualified.
- (3) An affidavit sworn or affirmed outside Australia otherwise than before a person referred to in subsection (2) may be used in a proceeding in the Family Court in circumstances provided by the standard Rules of Court.

### **98A Proceedings in absence of parties**

- (1) The applicable Rules of Court may provide that where, at the date fixed for the hearing of proceedings for a divorce order in relation to a marriage instituted by one party to the marriage:
  - (a) the proceedings are undefended;
  - (b) there are no children of the marriage who have not attained the age of 18 years;
  - (c) the applicant has requested the court to determine the proceedings in the absence of the parties; and
  - (d) the respondent has not requested the court not to determine the proceedings in the absence of the parties;the court may, in its discretion, determine the proceedings notwithstanding that neither the parties to the proceedings nor their legal representatives are present in court.
- (2) The applicable Rules of Court may provide that where, at the date fixed for the hearing of proceedings for a divorce order in relation to a marriage instituted jointly by the parties to the marriage:
  - (a) one of the parties to the marriage has requested the court to determine the proceedings in the absence of the parties and the other party to the marriage has not requested the court not to determine the proceedings in the absence of the parties; or
  - (b) both parties to the marriage have requested the court to determine the proceedings in the absence of the parties;

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the court may, in its discretion, determine the proceedings notwithstanding that neither the parties to the proceedings nor their legal representatives are present in court.

- (2A) The court must not determine proceedings for the divorce order in relation to the marriage under subsection (2) if:
- (a) there are any children of the marriage who are under 18; and
  - (b) the court is not satisfied that proper arrangements in all the circumstances have been made for the care, welfare and development of those children.
- (2B) The court may determine proceedings under subsection (1) or (2) in chambers.
- (3) For the purposes of this section, a child (including an ex-nuptial child of either party to the marriage, a child adopted by either of them or a child who is not a child of either of them) is a child of the marriage if the child was treated by both parties to the marriage as a child of their family at the relevant time.
- (4) For the purposes of subsection (3), the relevant time is the time immediately before the time when the parties to the marriage separated or, if they have separated on more than one occasion, the time immediately before the time when they last separated before the institution of the proceedings for the divorce order in relation to the marriage.

**100 Evidence of husbands, wives or spouses**

- (1) The parties to proceedings under this Act are competent and compellable witnesses.
- (2) In proceedings under this Act, the parties to a marriage are competent and compellable to disclose communications made between them during the marriage.
- (3) Subsection (2) applies to communications made before, as well as to communications made after, the date of commencement of this Act.

**100B Children swearing affidavits, being called as witnesses or being present in court**

- (1) A child, other than a child who is or is seeking to become a party to proceedings, must not swear an affidavit for the purposes of proceedings, unless the court makes an order allowing the child to do so.
- (2) A child must not be called as a witness in, or be present during, proceedings in the Family Court, or in another court when exercising jurisdiction under this Act, unless the court makes an order allowing the child to be called as a witness or to be present (as the case may be).
- (3) In this section:  
*child* means a child under 18 years of age.

**101 Protection of witnesses**

- (1) The court shall forbid the asking of, or excuse a witness from answering, a question that it regards as offensive, scandalous, insulting, abusive or humiliating, unless the court is satisfied that it is essential in the interests of justice that the question be answered.
- (2) The court must forbid an examination of a witness that it regards as oppressive, repetitive or hectoring, or excuse a witness from answering questions asked during such an examination, unless the court is satisfied that it is essential in the interests of justice for the examination to continue or for the questions to be answered.

**102 Proof of birth, parentage, death or marriage**

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) a certificate, entry or record of a birth, death or marriage alleged to have taken place, whether in Australia or elsewhere; or

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- (b) an entry in a register of parentage information kept under the law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction.

**102A Restrictions on examination of children**

- (1) Subject to this section, where a child is examined without the leave of the court, the evidence resulting from the examination which relates to the abuse of, or the risk of abuse of, the child is not admissible in proceedings under this Act.
- (2) Where a person causes a child to be examined for the purpose of deciding:
  - (a) to bring proceedings under this Act involving an allegation that the child has been abused or is at risk of being abused; or
  - (b) to make an allegation in proceedings under this Act that the child has been abused or is at risk of being abused;subsection (1) does not apply in relation to evidence resulting from the first examination which the person caused the child to undergo.
- (3) In considering whether to give leave for a child to be examined, the court must have regard to the following matters:
  - (a) whether the proposed examination is likely to provide relevant information that is unlikely to be obtained otherwise;
  - (b) the qualifications of the person who proposes to conduct the examination to conduct that examination;
  - (c) whether any distress likely to be caused to the child by the examination will be outweighed by the value of the information that might be obtained from the examination;
  - (d) any distress already caused to the child by any previous examination associated with the proceedings or with related proceedings;
  - (e) any other matter that the court thinks is relevant.
- (4) In proceedings under this Act, a court may admit evidence which is otherwise inadmissible under this section where it is satisfied that:
  - (a) the evidence relates to relevant matters on which the evidence already before the court is inadequate; and

- (b) the court will not be able to determine the proceedings properly unless the evidence is admitted; and
  - (c) the welfare of the child concerned is likely to be served by the admission of the evidence.
- (5) In this section:

*examined*, in relation to a child, means:

- (a) subjected to a medical procedure; or
- (b) examined or assessed by a psychiatrist or psychologist (other than by a family counsellor or family consultant).

Note: Section 69ZV is relevant to evidence of a representation by a child, if the admissibility of the evidence would otherwise be affected by the law against hearsay.

### **102B Assessors**

In any proceedings under this Act (other than prescribed proceedings), the court may, in accordance with the applicable Rules of Court, get an assessor to help it in the hearing and determination of the proceedings, or any part of them or any matter arising under them.

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**Division 2—Use of video link, audio link or other appropriate means to give testimony, make appearances and give submissions etc.**

**102C Testimony**

- (1) The court or a Judge may, for the purposes of any proceedings, direct or allow testimony to be given by video link, audio link or other appropriate means.

Note: See also section 102F.

- (2) The testimony must be given on oath or affirmation unless:
- (a) the person giving the testimony is in a foreign country; and
  - (b) either:
    - (i) the law in force in that country does not permit the person to give testimony on oath or affirmation for the purposes of the proceedings; or
    - (ii) the law in force in that country would make it inconvenient for the person to give testimony on oath or affirmation for the purposes of the proceedings; and
  - (c) the court or a Judge is satisfied that it is appropriate for the testimony to be given otherwise than on oath or affirmation.
- (3) If the testimony is given otherwise than on oath or affirmation, the court or a Judge must give the testimony such weight as the court or the Judge thinks fit in the circumstances.
- (4) The power conferred on the court or a Judge by subsection (1) may be exercised:
- (a) on the application of a party to the proceedings concerned; or
  - (b) on the court's own initiative or on the Judge's own initiative, as the case may be.
- (5) This section applies whether the person giving testimony is in or outside Australia, but does not allow testimony to be given by a person who is in New Zealand.

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Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

### **102D Appearance of persons**

- (1) The court or a Judge may, for the purposes of any proceedings, direct or allow a person to appear before the court or the Judge by way of video link, audio link or other appropriate means.

Note: See also section 102F.

- (2) The power conferred on the court or a Judge by subsection (1) may be exercised:
  - (a) on the application of a party to the proceedings concerned; or
  - (b) on the court's own initiative or on the Judge's own initiative, as the case may be.
- (3) This section applies whether the person appearing is in or outside Australia, but does not apply if the person appearing is in New Zealand.

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

### **102E Making of submissions**

- (1) The court or a Judge may, for the purposes of any proceedings, direct or allow a person to make a submission to the court or the Judge by way of video link, audio link or other appropriate means.

Note: See also section 102F.

- (2) The power conferred on the court or a Judge by subsection (1) may be exercised:
  - (a) on the application of a party to the proceedings concerned; or
  - (b) on the court's own initiative or on the Judge's own initiative, as the case may be.
- (3) This section applies whether the person making the submission is in or outside Australia, but does not apply if the person making the submission is in New Zealand.

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

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**102F Conditions for use of links**

*Video link*

- (1) The court or a Judge must not exercise the power conferred by subsection 102C(1), 102D(1) or 102E(1) in relation to a video link unless the court or the Judge is satisfied that the following conditions are met in relation to the video link:
  - (a) the courtroom is equipped with facilities (for example, television monitors) that enable all eligible persons present in that courtroom to see and hear the person (the **remote person**) who is:
    - (i) giving the testimony; or
    - (ii) appearing; or
    - (iii) making the submission;as the case may be, by way of the video link;
  - (b) the place at which the remote person is located is equipped with facilities (for example, television monitors) that enable all eligible persons present in that place to see and hear each eligible person who is present in the courtroom;
  - (c) such other conditions (if any) as are prescribed by the applicable Rules of Court in relation to the video link;
  - (d) such other conditions (if any) as are imposed by the court or a Judge.
- (2) The conditions that may be prescribed by the applicable Rules of Court in accordance with paragraph (1)(c) include conditions relating to:
  - (a) the form of the video link; and
  - (b) the equipment, or class of equipment, used to establish the link; and
  - (c) the layout of cameras; and
  - (d) the standard of transmission; and
  - (e) the speed of transmission; and
  - (f) the quality of communication.

*Audio link*

- (3) The court or a Judge must not exercise the power conferred by subsection 102C(1), 102D(1) or 102E(1) in relation to an audio link unless the court or a Judge is satisfied that the following conditions are met in relation to the audio link:
- (a) the courtroom is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that courtroom to hear the person (the *remote person*) who is:
    - (i) giving the testimony; or
    - (ii) appearing; or
    - (iii) making the submission;as the case may be, by way of the audio link;
  - (b) the place at which the remote person is located is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that place to hear each eligible person who is present in the courtroom or other place where the court or the Judge is sitting;
  - (c) such other conditions (if any) as are prescribed by the applicable Rules of Court in relation to the audio link;
  - (d) such other conditions (if any) as are imposed by the court or a Judge.
- (4) The conditions that may be prescribed by the applicable Rules of Court in accordance with paragraph (3)(c) include conditions relating to:
- (a) the form of the audio link; and
  - (b) the equipment, or class of equipment, used to establish the audio link; and
  - (c) the standard of transmission; and
  - (d) the speed of transmission; and
  - (e) the quality of communication.

*Other appropriate means*

- (5) The court or a Judge must not exercise the power conferred by subsection 102C(1), 102D(1) or 102E(1) in relation to appropriate
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means other than video link or audio link unless the court or the Judge is satisfied that the following conditions are met in relation to that means:

- (a) the conditions (if any) as are prescribed by the applicable Rules of Court in relation to that other appropriate means;
- (b) such other conditions (if any) as are imposed by the court or the Judge.

*Eligible persons*

- (6) For the purposes of the application of this section to particular proceedings, *eligible persons* are such persons as the court or the Judge considers should be treated as eligible persons for the purposes of the proceedings.

*Meaning of courtroom*

- (7) In this section:

*courtroom* means:

- (a) in relation to a Judge or a court that is not a split court—the courtroom or other place where the Judge or court is sitting; or
- (b) in relation to a split court—each of the courtrooms or places where the Judges of the split court are sitting.

**102G Putting documents to a person**

- (1) This section applies if, in the course of an examination or appearance of a person by video link, audio link or other appropriate means in accordance with this Division, it is necessary to put a document to the person.
- (2) A court (that is not a split court) or a Judge may direct or allow the document to be put to the person:
  - (a) if the document is physically present in the courtroom or other place where the court or the Judge is sitting:

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- (i) by causing a copy of the document to be transmitted to the place where the person is located; and
    - (ii) by causing the transmitted copy to be put to the person; or
  - (b) if the document is physically present in the place where the person is located:
    - (i) by causing the document to be put to the person; and
    - (ii) by causing a copy of the document to be transmitted to the courtroom or other place where the court or the Judge is sitting.
- (3) A split court may direct or allow the document to be put to the person:
- (a) if the document is physically present in a courtroom or other place where a Judge of the split court is sitting:
    - (i) by causing a copy of the document to be transmitted to the place where the person is located; and
    - (ii) by causing the transmitted copy to be put to the person; or
  - (b) if the document is physically present in the place where the person is located:
    - (i) by causing the document to be put to the person; and
    - (ii) by causing a copy of the document to be transmitted to each of the courtrooms or other places where the Judges of the split court are sitting.

### **102H Putting documents to a split court**

- (1) If proceedings are before a split court and it is necessary or appropriate to put a document to the court, the court may direct or allow the document to be put to the court:
  - (a) if the document is physically present in a courtroom or other place where a Judge of the split court is sitting:
    - (i) by causing the document to be put to the Judge; and

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- (ii) by causing a copy of the document to be transmitted to each courtroom or other place where the other Judge or Judges of the split court are sitting; and
  - (iii) by causing a copy of the document to be transmitted to such other place where an eligible person is located as the court directs; or
- (b) if the document is not physically present in a courtroom or other place where a Judge of the split court is sitting:
- (i) by causing a copy of the document to be transmitted to each of the courtrooms or other places where the Judges of the split court are sitting; and
  - (ii) by causing a copy of the document to be transmitted to such other place where an eligible person is located as the court directs.

*Eligible persons*

- (2) For the purposes of the application of this section to particular proceedings, *eligible persons* are such persons as the court considers should be treated as eligible persons for the purposes of the proceedings.

**102J Administration of oaths and affirmations**

- (1) An oath to be sworn, or an affirmation to be made, by a person (the *remote person*) who is to give testimony by video link, audio link or other appropriate means in accordance with this Division may be administered:
- (a) by means of the video link or audio link, as the case may be, in a way that, as nearly as practicable, corresponds to the way in which the oath or affirmation would be administered if the remote person were to give testimony in the courtroom or other place where the court or the Judge is sitting; or
  - (b) if the court or the Judge allows another person who is present at the place where the remote person is located to administer the oath or affirmation—by that other person.

(2) In this section:

*courtroom or other place where the court or the Judge is sitting*,  
in relation to a split court, means the courtroom or other place  
where the presiding Judge of the split court is sitting.

### **102K Expenses**

- (1) The court or a Judge may make such orders as the court or the  
Judge thinks just for the payment of expenses, including the court's  
expenses, incurred in connection with:
- (a) the giving of testimony by video link, audio link or other  
appropriate means in accordance with this Division; or
  - (b) the appearance of a person by video link, audio link or other  
appropriate means in accordance with this Division; or
  - (c) the making of submissions by video link, audio link or other  
appropriate means in accordance with this Division; or
  - (d) the court sitting as a split court in accordance with this  
Division and Division 3.
- (2) Subsection (1) has effect subject to the regulations.

### **102L New Zealand proceedings**

This Division does not affect the operation of the *Trans-Tasman  
Proceedings Act 2010*.

## Division 3—Split court

### 102M Determination that there is to be a split court

(1) If proceedings are to be heard and determined by 2 or more Judges, then a directing Judge may determine:

- (a) that the Family Court is to be a split court; and
- (b) which form of electronic communication is to be used to facilitate the proceedings.

(2) In subsection (1):

*directing Judge* means:

- (a) the Chief Justice; or
- (b) the Presiding Judge in respect of the proceedings.

*electronic communication* means:

- (a) video link; or
- (b) audio link; or
- (c) other appropriate means of communication.

### 102N Conditions for split court

*Conditions to be satisfied before direction under section 102M may be given*

(1) A direction must not be made under subsection 102M(1) in respect of facilitating the sitting of a split court by a form of electronic communication unless the directing Judge is satisfied:

- (a) that each courtroom is equipped with facilities that enable eligible persons present in the courtroom to communicate with eligible persons present in the other courtrooms:
  - (i) using the particular form of electronic communication; and
  - (ii) as required by the proceedings before the court; and

- (b) that such conditions of a kind referred to in section 102F (if any) as are prescribed by the Rules of Court in relation to the particular form of electronic communication are met.

*Judges may impose own conditions*

- (2) Each Judge of the split court may, in relation to the Judge's courtroom, impose such other conditions in respect of the form of electronic communication to be used to facilitate the split court as the Judge considers appropriate.

*Eligible persons*

- (3) For the purposes of the application of this section to particular proceedings, **eligible persons** are such persons as a Judge of the split court considers should be treated as eligible persons for the purposes of the proceedings as facilitated in the Judge's courtroom.
- (4) In this section:

**communicate with**, in relation to eligible persons, means:

- (a) in the case of video link—seeing and hearing the eligible persons; and  
(b) in the case of audio link—hearing the eligible persons; and  
(c) in the case of other appropriate means of communication—as provided for in the applicable Rules of Court.

**courtroom** means the courtroom or other place where a Judge of the split court is sitting.

**electronic communication** means:

- (a) video link; or  
(b) audio link; or  
(c) other appropriate means of communication.

## Part XIA—Suppression and non-publication orders

### Division 1—Preliminary

#### 102P Definitions

In this Part:

**information** includes any document.

**news publisher** means a person engaged in the business of publishing news or a public or community broadcasting service engaged in the publishing of news through a public news medium.

**non-publication order** means an order that prohibits or restricts the publication of information (but that does not otherwise prohibit or restrict the disclosure of information).

**party** to proceedings includes the complainant or victim (or alleged victim) in criminal proceedings and any person named in evidence given in proceedings and, in relation to proceedings that have concluded, means a person who was a party to the proceedings before the proceedings concluded.

**publish** means disseminate or provide access to the public or a section of the public by any means, including by:

- (a) publication in a book, newspaper, magazine or other written publication; or
- (b) broadcast by radio or television; or
- (c) public exhibition; or
- (d) broadcast or publication by means of the internet.

**suppression order** means an order that prohibits or restricts the disclosure of information (by publication or otherwise).

**102PA Powers of a court not affected**

This Part does not limit or otherwise affect any powers that a court has apart from this Part to regulate its proceedings or to deal with a contempt of the court.

**102PB Other laws not affected**

This Part does not limit or otherwise affect the operation of a provision made by or under any Act (other than this Act) that prohibits or restricts, or authorises a court to prohibit or restrict, the publication or other disclosure of information in connection with proceedings.

**102PC Relationship with section 121**

This Part and section 121 do not limit each other.

## **Division 2—Suppression and non-publication orders**

### **102PD Safeguarding public interest in open justice**

In deciding whether to make a suppression order or non-publication order, the court concerned must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

### **102PE Power to make orders**

- (1) A court exercising jurisdiction in proceedings under this Act may, by making a suppression order or non-publication order on grounds permitted by this Part, prohibit or restrict the publication or other disclosure of:
  - (a) information tending to reveal the identity of or otherwise concerning any party to or witness in the proceedings or any person who is related to or otherwise associated with any party to or witness in the proceedings; or
  - (b) information that relates to the proceedings and is:
    - (i) information that comprises evidence or information about evidence; or
    - (ii) information obtained by the process of discovery; or
    - (iii) information produced under a subpoena; or
    - (iv) information lodged with or filed in the court.
- (2) The court may make such orders as it thinks appropriate to give effect to an order under subsection (1).

### **102PF Grounds for making an order**

- (1) The court may make a suppression order or non-publication order on one or more of the following grounds:
  - (a) the order is necessary to prevent prejudice to the proper administration of justice;

- (b) the order is necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
  - (c) the order is necessary to protect the safety of any person;
  - (d) the order is necessary to avoid causing undue distress or embarrassment to a party to or witness in criminal proceedings involving an offence of a sexual nature (including an act of indecency).
- (2) A suppression order or non-publication order must specify the ground or grounds on which the order is made.

### **102PG Procedure for making an order**

- (1) The court may make a suppression order or non-publication order on its own initiative or on the application of:
- (a) a party to the proceedings concerned; or
  - (b) any other person considered by the court to have a sufficient interest in the making of the order.
- (2) Each of the following persons is entitled to appear and be heard by the court on an application for a suppression order or non-publication order:
- (a) the applicant for the order;
  - (b) a party to the proceedings concerned;
  - (c) the Government (or an agency of the Government) of the Commonwealth or a State or Territory;
  - (d) a news publisher;
  - (e) any other person who, in the court's opinion, has a sufficient interest in the question of whether a suppression order or non-publication order should be made.
- (3) A suppression order or non-publication order may be made at any time during proceedings or after proceedings have concluded.
- (4) A suppression order or non-publication order may be made subject to such exceptions and conditions as the court thinks fit and specifies in the order.

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- (5) A suppression order or non-publication order must specify the information to which the order applies with sufficient particularity to ensure that the court order is limited to achieving the purpose for which the order is made.

**102PH Interim orders**

- (1) If an application is made to the court for a suppression order or non-publication order, the court may, without determining the merits of the application, make the order as an interim order to have effect, subject to revocation by the court, until the application is determined.
- (2) If an order is made as an interim order, the court must determine the application as a matter of urgency.

**102PI Duration of orders**

- (1) A suppression order or non-publication order operates for the period decided by the court and specified in the order.
- (2) In deciding the period for which an order is to operate, the court is to ensure that the order operates for no longer than is reasonably necessary to achieve the purpose for which it is made.
- (3) The period for which an order operates may be specified by reference to a fixed or ascertainable period or by reference to the occurrence of a specified future event.

**102PJ Exception for court officials**

A suppression order does not prevent a person from disclosing information if the disclosure is not by publication and is in the course of performing functions or duties or exercising powers in a public official capacity:

- (a) in connection with the conduct of proceedings or the recovery or enforcement of any penalty imposed in proceedings; or

- (b) in compliance with any procedure adopted by the court for informing a news publisher of the existence and content of a suppression order or non-publication order made by the court.

**102PK Contravention of order**

- (1) A person commits an offence if:
  - (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes an order made by a court under section 102PE.

Penalty: Imprisonment for 12 months, 60 penalty units or both.

- (2) An act or omission that constitutes an offence under this section may be punished as a contempt of court even though it could be punished as an offence.
- (3) An act or omission that constitutes an offence under this section may be punished as an offence even though it could be punished as a contempt of court.
- (4) If an act or omission constitutes both an offence under this section and a contempt of court, the offender is not liable to be punished twice.
- (5) Part XIII A does not apply in relation to a contravention of an order made by a court under section 102PE.

## Part XIB—Vexatious proceedings

### Division 1—Preliminary

#### 102Q Definitions

(1) In this Part:

*appropriate court official* means:

- (a) in relation to the Family Court of Australia—the Chief Executive Officer of the Court; and
- (b) in relation to the Federal Circuit Court of Australia—the Chief Executive Officer and Principal Registrar of the Court; and
- (c) in relation to the Family Court of Western Australia—the Principal Registrar of the Court; and
- (d) in relation to any other court—the chief executive officer or principal registrar (however described) of the court.

*Australian court or tribunal* means a court or tribunal of the Commonwealth, a State or a Territory.

*institute*, in relation to proceedings, includes:

- (a) for civil proceedings—the taking of a step or the making of an application that may be necessary before proceedings can be started against a party; and
- (b) for proceedings before a tribunal—the taking of a step or the making of an application that may be necessary before proceedings can be started before the tribunal; and
- (c) for criminal proceedings—the making of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) for civil or criminal proceedings or proceedings before a tribunal—the taking of a step or the making of an application that may be necessary to start an appeal in relation to the

proceedings or to a decision made in the course of the proceedings.

***proceedings:***

- (a) in relation to a court—has the meaning given by subsection 4(1); and
- (b) in relation to a tribunal—means a proceeding in the tribunal, whether between parties or not, and includes an incidental proceeding in the course of, or in connection with, a proceeding.

***proceedings of a particular type*** includes:

- (a) proceedings in relation to a particular matter; and
- (b) proceedings against a particular person.

***vexatious proceedings*** includes:

- (a) proceedings that are an abuse of the process of a court or tribunal; and
- (b) proceedings instituted in a court or tribunal to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
- (c) proceedings instituted or pursued in a court or tribunal without reasonable ground; and
- (d) proceedings conducted in a court or tribunal in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

***vexatious proceedings order*** means an order made under subsection 102QB(2).

- (2) A reference in this Part to a person acting in concert with another person in instituting or conducting proceedings does not include a reference to a person who is so acting as a lawyer or representative of the other person.

**Part XIB** Vexatious proceedings

**Division 1** Preliminary

Section 102QA

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**102QA Powers of a court not affected**

This Part does not limit or otherwise affect any powers that a court has apart from this Part to deal with vexatious proceedings.

Note: For example, subsection 45A(4) allows a court to dismiss proceedings if it is satisfied that they are vexatious.

## **Division 2—Vexatious proceedings orders**

### **102QB Making vexatious proceedings orders**

- (1) This section applies if a court exercising jurisdiction in proceedings under this Act is satisfied:
  - (a) a person has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals; or
  - (b) a person, acting in concert with another person who is subject to a vexatious proceedings order or who is covered by paragraph (a), has instituted or conducted vexatious proceedings in an Australian court or tribunal.
  
- (2) The court may make any or all of the following orders:
  - (a) an order staying or dismissing all or part of any proceedings in the court already instituted by the person;
  - (b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act;
  - (c) any other order the court considers appropriate in relation to the person.

Note: Examples of an order under paragraph (c) are an order directing that the person may only file documents by mail, an order to give security for costs and an order for costs.
  
- (3) The court may make a vexatious proceedings order on its own initiative or on the application of any of the following:
  - (a) the Attorney-General of the Commonwealth or of a State or Territory;
  - (b) the appropriate court official;
  - (c) a person against whom another person has instituted or conducted vexatious proceedings;
  - (d) a person who has a sufficient interest in the matter.

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- (4) The court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.
- (5) An order made under paragraph (2)(a) or (b) is a final order.
- (6) For the purposes of subsection (1), the court may have regard to:
  - (a) proceedings instituted (or attempted to be instituted) or conducted in any Australian court or tribunal; and
  - (b) orders made by any Australian court or tribunal; and
  - (c) the person's overall conduct in proceedings conducted in any Australian court or tribunal (including the person's compliance with orders made by that court or tribunal);including proceedings instituted (or attempted to be instituted) or conducted, and orders made, before the commencement of this section.

**102QC Notification of vexatious proceedings orders**

- (1) A person may request the appropriate court official of a court for a certificate stating whether a person named in the request is or has been the subject of a vexatious proceedings order made by the court.
- (2) If a person makes a request under subsection (1) and the person named in the request is or has been the subject of a vexatious proceedings order made by the court, the appropriate court official must issue to the person making the request a certificate:
  - (a) specifying the date of the order; and
  - (b) specifying any other information prescribed by the applicable Rules of Court.
- (3) This section is subject to any law of the Commonwealth, or order of the court, restricting the publication or disclosure of the name of a party to proceedings in the court.

Note: Section 155 of the *Evidence Act 1995* deals with adducing evidence of Commonwealth records.

### **Division 3—Particular consequences of vexatious proceedings orders**

#### **102QD Proceedings in contravention of vexatious proceedings order**

- (1) If a person is subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act:
  - (a) the person must not institute proceedings, or proceedings of that type, in the court without the leave of the court under section 102QG; and
  - (b) another person must not, acting in concert with the person, institute proceedings, or proceedings of that type, in the court without the leave of the court under section 102QG.
- (2) If proceedings are instituted in contravention of subsection (1), the proceedings are stayed.
- (3) Without limiting subsection (2), the court may make:
  - (a) an order declaring proceedings are proceedings to which subsection (2) applies; and
  - (b) any other order in relation to the stayed proceedings it considers appropriate, including an order for costs.
- (4) The court may make an order under subsection (3) on its own initiative or on the application of any of the following:
  - (a) the Attorney-General of the Commonwealth or of a State or Territory;
  - (b) the appropriate court official;
  - (c) a person against whom another person has instituted or conducted vexatious proceedings;
  - (d) a person who has a sufficient interest in the matter.

### **102QE Application for leave to institute proceedings**

- (1) This section applies to a person (the *applicant*) who is:
  - (a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act; or
  - (b) acting in concert with another person who is subject to an order mentioned in paragraph (a).
- (2) The applicant may apply to the court for leave to institute proceedings that are subject to the order.
- (3) The applicant must file an affidavit with the application that:
  - (a) lists all the occasions on which the applicant has applied for leave under this section; and
  - (b) lists all other proceedings the applicant has instituted in any Australian court or tribunal, including proceedings instituted before the commencement of this section; and
  - (c) discloses all relevant facts about the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) The applicant must not serve a copy of the application or affidavit on a person unless an order is made under paragraph 102QG(1)(a). If the order is made, the applicant must serve the copy in accordance with the order.

### **102QF Dismissing application for leave**

- (1) The court may make an order dismissing an application under section 102QE for leave to institute proceedings if it considers the affidavit does not substantially comply with subsection 102QE(3).
- (2) The court must make an order dismissing an application under section 102QE for leave to institute proceedings if it considers the proceedings are vexatious proceedings.

- (3) The court may dismiss the application without an oral hearing (either with or without the consent of the applicant).
- (4) The court may make an order under this section in Chambers.

### **102QG Granting application for leave**

- (1) Before the court makes an order granting an application under section 102QE for leave to institute proceedings, it must:
  - (a) order that the applicant serve:
    - (i) the person against whom the applicant proposes to institute the proceedings; and
    - (ii) any other person specified in the order;with a copy of the application and affidavit and a notice that the person is entitled to be heard on the application; and
  - (b) give the applicant and each person described in subparagraph (a)(i) or (ii), on appearance, an opportunity to be heard at the hearing of the application.
- (2) At the hearing of the application, the court may receive as evidence any record of evidence given, or affidavit filed, in any proceedings in any Australian court or tribunal in which the applicant is, or at any time was, involved either as a party or as a person acting in concert with a party.
- (3) The court may make an order granting the application. The order may be made subject to the conditions the court considers appropriate.
- (4) The court may grant leave only if it is satisfied the proceedings are not vexatious proceedings.

## Part XII—Recognition of decrees

### 103 Decrees under this Act

A decree under this Act has effect throughout Australia and the external Territories.

### 104 Overseas decrees

- (1) In this section:

*applicant*, in relation to a divorce or the annulment of a marriage or the legal separation of the parties to a marriage, means:

- (a) the party at whose instance the divorce, annulment or legal separation was effected; or
- (b) where the divorce, annulment or legal separation was effected at the instance of both the parties—each of the parties.

*marriage* includes a purported marriage that is void.

*relevant date*, in relation to a divorce or the annulment of a marriage or the legal separation of the parties to a marriage, means the date of the institution of the proceedings that resulted in the divorce, annulment or legal separation.

*respondent*, in relation to a divorce or the annulment of a marriage or the legal separation of the parties to a marriage, means a party to the marriage, not being a party at whose instance the divorce, annulment or legal separation was effected.

- (2) For the purposes of this section, a person who is a national of a country of which an overseas jurisdiction forms part shall be deemed to be a national of that overseas jurisdiction.

- (3) A divorce or the annulment of a marriage, or the legal separation of the parties to a marriage, effected in accordance with the law of an overseas jurisdiction shall be recognised as valid in Australia where:
- (a) the respondent was ordinarily resident in the overseas jurisdiction at the relevant date;
  - (b) the applicant or, in a case referred to in paragraph (b) of the definition of **applicant** in subsection (1), one of the applicants, was ordinarily resident in the overseas jurisdiction at the relevant date and either:
    - (i) the ordinary residence of the applicant or of that applicant, as the case may be, had continued for not less than 1 year immediately before the relevant date; or
    - (ii) the last place of cohabitation of the parties to the marriage was in that jurisdiction;
  - (c) the applicant or the respondent or, in a case referred to in paragraph (b) of the definition of **applicant** in subsection (1), one of the applicants, was domiciled in the overseas jurisdiction at the relevant date;
  - (d) the respondent was a national of the overseas jurisdiction at the relevant date;
  - (e) the applicant or, in a case referred to in paragraph (b) of the definition of **applicant** in subsection (1), one of the applicants, was a national of the overseas jurisdiction at the relevant date and either:
    - (i) the applicant or that applicant, as the case may be, was ordinarily resident in that jurisdiction at that date; or
    - (ii) the applicant or that applicant, as the case may be, had been ordinarily resident in that jurisdiction for a continuous period of 1 year falling, at least in part, within the period of 2 years immediately before the relevant date; or
  - (f) the applicant or, in a case referred to in paragraph (b) of the definition of **applicant** in subsection (1), one of the applicants, was a national of, and present in, the overseas jurisdiction at the relevant date and the last place of

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cohabitation of the parties to the marriage was an overseas jurisdiction the law of which, at the relevant date, did not provide for divorce, the annulment of marriage or the legal separation of the parties to a marriage, as the case may be.

- (4) A divorce or the annulment of a marriage, or the legal separation of the parties to a marriage, shall not be recognised as valid by virtue of subsection (3) where:
- (a) under the common law rules of private international law, recognition of its validity would be refused on the ground that a party to the marriage had been denied natural justice; or
  - (b) recognition would manifestly be contrary to public policy.
- (5) Any divorce or any annulment of a marriage, or any legal separation of the parties to a marriage, that would be recognised as valid under the common law rules of private international law but to which none of the preceding provisions of this section applies shall be recognised as valid in Australia, and the operation of this subsection shall not be limited by any implication from those provisions.
- (6) Notwithstanding anything contained in this section, the annulment in accordance with the law of an overseas jurisdiction of a marriage solemnized under Part V of the *Marriage Act 1961*, being an annulment on the ground only of non-compliance with the formalities prescribed by the law of the jurisdiction in which the marriage was solemnized, shall not be recognised as valid in Australia.
- (7) For the purposes of this section, a court in Australia, in considering the validity of a divorce or an annulment of a marriage, or a legal separation of the parties to a marriage, effected under a law of an overseas jurisdiction:
- (a) where the respondent appeared in the proceedings for the divorce, annulment or separation:
    - (i) is bound by the findings of fact on the basis of which a court of the overseas jurisdiction assumed jurisdiction to grant the divorce, annulment or separation; and

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- (ii) may treat as proved any other facts found by a court of the overseas jurisdiction or otherwise established for the purposes of the law of the overseas jurisdiction; or
  - (b) where the respondent did not appear in the proceedings for the divorce, annulment or separation—may treat as proved any facts found by a court of the overseas jurisdiction or otherwise established for the purposes of the law of the overseas jurisdiction.
- (8) For the purposes of the preceding provisions of this section but without limiting the operation of those provisions, a divorce or the annulment of a marriage, or the legal separation of the parties to a marriage, shall be deemed to have been effected in accordance with the law of an overseas jurisdiction if it was effected in another overseas jurisdiction in circumstances in which, at the relevant date, it would have been recognised as valid by the law of the first-mentioned overseas jurisdiction.
- (9) Where a divorce or the annulment of a marriage is to be recognised as valid in accordance with this section, the capacity of a party to that marriage to re-marry in accordance with the law of Australia is not affected by the fact that the validity of the divorce or annulment is not recognised under the law of some other jurisdiction.
- (10) The preceding provisions of this section apply in relation to divorces, annulments and legal separations effected whether by decree, legislation or otherwise, whether before or after the commencement of this Act, and, for the purposes of this section, any decree, legislation or other process by which it is established that a purported marriage was or is to become void shall be deemed to be an annulment of the marriage.

**104A Recognition in external Territories**

- (1) In this section:

*external Territory* does not include Norfolk Island.

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*overseas jurisdiction* does not include an external Territory.

- (2) A divorce or the annulment of a marriage, or the legal separation of the parties to a marriage, effected in accordance with the law of an overseas jurisdiction that is recognised as valid in Australia shall be recognised as valid in every external Territory.
- (3) A divorce or the annulment of a marriage, or the legal separation of the parties to a marriage, effected in accordance with the law of an external Territory that is recognised as valid in Australia shall be recognised as valid in every other external Territory.

## **Part XIII—Enforcement of decrees**

### **105 Enforcement generally**

- (1) Subject to this Part, to the regulations and to the applicable Rules of Court, all decrees made under this Act may be enforced by any court having jurisdiction under this Act.

Note: For example, the Federal Circuit Court of Australia can enforce decrees made by the Family Court of Australia.

- (2) Except as prescribed, a court shall not entertain a proceeding under this Act for the enforcement of a decree made by another court unless the decree is registered in the first-mentioned court in accordance with the regulations.
- (2A) Subsection (2) does not prevent a court from making an order under paragraph 90KA(c) or 90UN(c).
- (3) Where a person bound by a decree made under this Act has died, the decree may, by leave of:
- (a) the court by which it was made; or
  - (b) any court in which the decree has been registered in accordance with the regulations (whether the decree was registered before or after the death of the person);
- and on such terms and conditions as the court considers appropriate, be enforced, in respect of liabilities that arose under the decree before the death of that person, against the estate of that person.

### **106 Maintenance orders—more than 12 months in arrears**

In determining whether to make an order enforcing a maintenance order, a court must not require that there be special circumstances that justify enforcing the maintenance order merely because the maintenance payable under it is more than 12 months in arrears.

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**106A Execution of instruments by order of court**

(1) If:

- (a) an order under this Act 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 considers 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) If:

- (a) a provision of a maintenance agreement that has been registered under section 86 or approved by a court under section 87 requires a person to execute a deed or instrument; and
- (b) that person has refused or neglected to comply with that provision of the maintenance agreement or, for any other reason, the court considers 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 required by that provision of the maintenance agreement to execute the deed or instrument and to do all acts and things necessary to give validity and operation to the deed or instrument.

(3) The execution of a deed or instrument by a person appointed under this section to execute that deed or instrument has the same force and validity as if the deed or instrument had been executed by the person directed by an order referred to in paragraph (1)(a), or required by a provision of a maintenance agreement referred to in paragraph (2)(a), to execute it.

- (4) The court may make such order as it considers just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

**106B Transactions to defeat claims**

- (1) In proceedings under this Act, 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 those proceedings or which, irrespective of intention, is likely to defeat any such order.

(1A) If:

- (a) a party to a marriage, or a party to a de facto relationship, is a bankrupt; and
- (b) the bankruptcy trustee is a party to proceedings under this Act;

the court may set aside or restrain the making of an instrument or disposition:

- (c) which is made or proposed to be made by or on behalf of, or by direction or in the interest of, the bankrupt; and
- (d) which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.

(1B) If:

- (a) a party to a marriage, or a party to a de facto relationship, is a debtor subject to a personal insolvency agreement; and
- (b) the trustee of the agreement is a party to proceedings under this Act;

the court may set aside or restrain the making of an instrument or disposition:

- (c) which is made or proposed to be made by or on behalf of, or by direction or in the interest of, the debtor; and

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- (d) which is made or proposed to be made to defeat an existing or anticipated order in those proceedings or which, irrespective of intention, is likely to defeat any such order.
- (2) The court may order that any money or real or personal property dealt with by any instrument or disposition referred to in subsection (1), (1A) or (1B) 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 must be paid into court to abide its order.
- (3) The court must 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.
- (4AA) An application may be made to the court for an order under this section by:
  - (a) a party to the proceedings; or
  - (b) a creditor of a party to the proceedings if the creditor may not be able to recover his or her debt if the instrument or disposition were made; or
  - (c) any other person whose interests would be affected by the making of the instrument or disposition.
- (4A) In addition to the powers the court has under this section, the court may also do any or all of the things listed in subsection 80(1) or 90SS(1).
- (5) In this section:
  - disposition** includes:
    - (a) a sale or gift; and

- (b) the issue, grant, creation, transfer or cancellation of, or a variation of the rights attaching to, an interest in a company or a trust.

***interest:***

- (a) in a company includes:
  - (i) a share in or debenture of the company; and
  - (ii) an option over a share in or debenture of the company (whether the share or debenture is issued or not); and
- (b) in a trust includes:
  - (i) a beneficial interest in the trust; and
  - (ii) the interest of a settlor in property subject to the trust; and
  - (iii) a power of appointment under the trust; and
  - (iv) a power to rescind or vary a provision of, or to rescind or vary the effect of the exercise of a power under, the trust; and
  - (v) an interest that is conditional, contingent or deferred.

**107 People not to be imprisoned for failure to comply with certain orders**

- (1) A person must not be imprisoned or otherwise placed in custody because of a contravention of an order for the payment of money made in a matrimonial cause or de facto financial cause.
- (2) This section does not affect the operation of:
  - (a) Division 13A of Part VII; or
  - (b) Part XIII A; or
  - (c) Part XIII B.

**109 Inter-State enforcement of child bearing expenses order**

- (1) This section applies to the following orders made under the law of a State or Territory:
  - (a) orders of a kind that may be made under section 67D;

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- (b) orders for the payment of an amount in relation to the maintenance of a child.
- (2) The regulations may make provision for and in relation to the enforcement in a State or Territory by a court having jurisdiction under this Act of orders to which this section applies made by a court in another State or Territory.

**109A Rules of Court relating to enforcement**

- (1) The power of the Judges, or a majority of them, under section 123 to make Rules of Court extends to making Rules of Court for or in relation to, or for or in relation to anything incidental to, the enforcement by the court of:
  - (a) an order under this Act affecting children; or
  - (b) an order under this Act (within the meaning of Part XIII A); or
  - (c) the *Child Support (Registration and Collection) Act 1988*; or
  - (d) the *Child Support (Assessment) Act 1989*;and, in particular, for or in relation to any of the specific matters mentioned in subsection (2).
- (2) The specific matters are as follows:
  - (a) requiring a person to do any one or more of the following:
    - (i) to attend before a court or Registrar and answer questions or produce documents;
    - (ii) to deliver a document or article to, or to a person specified by, a court or Registrar;
    - (iii) to transfer the ownership of specified property to another person;
    - (iv) to give another person possession (including exclusive possession) of specified property;
    - (v) to deliver a specified chattel to another person;
    - (vi) to do, or abstain from doing, any other act;
  - (b) prescribing the practice and procedure to be followed for a hearing before a court or Registrar for the purpose of giving

- effect to a requirement made as mentioned in subparagraph (a)(i);
- (c) taking any one or more of the actions mentioned in subsection (3) in respect of a person who:
- (i) fails to pay the amount of a fine imposed under Division 13A of Part VII or under Part XIII A; or
  - (ii) fails to pay an amount payable under a bond entered into under Division 13A of Part VII or under Part XIII A; or
  - (iii) fails to pay under section 66L an amount of maintenance for a person over the age of 18 years; or
  - (iv) fails to pay an amount payable under a registered maintenance liability under the *Child Support (Registration and Collection) Act 1988* or the *Child Support (Assessment) Act 1989*; or
  - (v) fails to comply with a requirement made as mentioned in paragraph (a);
- (d) delegating to a Registrar all or any of the powers conferred on a court under Rules of Court made under this section.
- (3) Subject to subsection (4), the actions in respect of a person the taking of which may be provided for by Rules of Court as mentioned in paragraph (2)(c) are as follows:
- (a) the issue of a warrant for the arrest of the person;
  - (b) the issue of a warrant of execution against property of the person;
  - (c) the making of an order authorising the taking of possession of property of the person;
  - (d) the making of an order for the sequestration, and if necessary the sale, of property of the person;
  - (e) the making of an order for the attachment, by garnishment or attachment of earnings, of debts owed to the person;
  - (f) the appointment of a receiver of property of the person.
- (4) A reference in paragraph (2)(c) to a failure to pay an amount is a reference to any such failure irrespective of the length of the period

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during which the failure has continued, and includes a reference to a failure to pay part of an amount.

(5) In this section:

*property* means real or personal property.

Note: Powers to make Rules of Court are also contained in sections 26B and 37A.

### **109B Rules of Court relating to enforcement—Federal Circuit Court**

- (1) Section 109A applies to the making of Rules of Court under section 81 of the *Federal Circuit Court of Australia Act 1999* in a corresponding way to the way in which it applies to the making of Rules of Court under section 123 of this Act.
- (2) For the purposes of the application of section 109A in accordance with subsection (1):
  - (a) the reference in subsection 109A(1) to the court is to be read as a reference to the Federal Circuit Court of Australia; and
  - (b) each reference in subsection 109A(2) to a court is to be read as a reference to the Federal Circuit Court of Australia; and
  - (c) each reference in subsection 109A(2) to a Registrar is to be read as a reference to a Registrar of the Federal Circuit Court of Australia.
- (3) Section 109A has no effect in relation to the Federal Circuit Court of Australia except as provided by subsections (1) and (2) of this section.

**Part XIII—International conventions,  
international agreements and international  
enforcement**

**Division 1—International maintenance orders and  
agreements etc.**

**110 Overseas enforcement of maintenance orders etc.**

(1) In this section:

*jurisdiction with restricted reciprocity* means a country, or part of a country, outside Australia declared by the regulations to be a jurisdiction with restricted reciprocity for the purposes of this section.

*maintenance order* means:

- (a) an order or determination (however described) with respect to the maintenance of a party to a marriage;
- (b) an order or determination (however described) with respect to the maintenance of a child who has not attained the age of 18 years, other than an order or determination of the kind referred to in paragraph (c);
- (c) an order or determination (however described) with respect to the maintenance of a child who has not attained the age of 18 years, being an order or determination that is expressed to continue in force until a day that is later than, or for a period that extends beyond, the day on which the child will attain that age, where the provision of maintenance for the child is necessary to enable the child to complete a course of study, vocational training or an apprenticeship or to continue his or her education in any other way, or because the child is mentally or physically handicapped;
- (d) an order or determination (however described) with respect to the maintenance of a child who has attained the age of 18

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years, being an order or determination that is expressed to continue in force until a day, or for a period, specified in the order or determination, where the provision of maintenance for the child is necessary to enable the child to complete a course of study, vocational training or an apprenticeship or to continue his or her education in any other way, or because the child is mentally or physically handicapped; and

- (e) to the extent provided by the regulations, an order made under section 67D, or an order or determination (however described) that deals with matters of a kind in relation to which orders may be made under that section.

***reciprocating jurisdiction*** means a country, or part of a country, outside Australia declared by the regulations to be a reciprocating jurisdiction for the purposes of this section.

- (2) The regulations may make provision for and in relation to:
- (a) the registration in, and enforcement by, courts having jurisdiction under this Act of maintenance orders made by courts or authorities of reciprocating jurisdictions or of jurisdictions with restricted reciprocity;
  - (aa) the institution and prosecution, by an officer of a court having jurisdiction under this Act, a prescribed authority of the Commonwealth, of a State or Territory, or of another country or a part of another country, or a person for the time being holding a prescribed office under a law of the Commonwealth, of a State or Territory, or of another country or a part of another country, in his, her or its discretion, of proceedings:
    - (i) on behalf of the person entitled to moneys payable under a maintenance order made by a court or authority of a reciprocating jurisdiction or of a jurisdiction with restricted reciprocity, for the enforcement by a court having jurisdiction under this Act of that maintenance order; or
    - (ii) for the making of orders for the confirmation of provisional orders made by courts of reciprocating

jurisdictions or of jurisdictions with restricted reciprocity, being provisional orders referred to in paragraph (d);

- (ab) the institution and prosecution, by an authority entitled to moneys payable under a maintenance order, in the authority's discretion, of proceedings for the enforcement of that maintenance order by a court having jurisdiction under this Act;
- (b) the transmission to appropriate courts or authorities of reciprocating jurisdictions or of jurisdictions with restricted reciprocity of maintenance orders made by courts having jurisdiction under this Act for the purpose of securing the enforcement of those orders in those jurisdictions;
- (ba) the making of provisional maintenance orders, and the transmission of such orders to appropriate courts of reciprocating jurisdictions or jurisdictions with restricted reciprocity, for the purposes of obtaining the confirmation, and securing the enforcement, of those orders in those jurisdictions, and the effect in Australia of those orders;
- (c) the making of orders (including provisional orders) for the variation, discharge, suspension or revival of maintenance orders registered in accordance with regulations under this section or of maintenance orders or provisional maintenance orders transmitted to other jurisdictions in accordance with regulations under this section, and the effect in Australia of orders under this paragraph;
- (d) the making of orders for the confirmation of provisional orders made by courts in reciprocating jurisdictions or in jurisdictions with restricted reciprocity, being provisional maintenance orders or provisional orders varying, discharging, suspending or reviving maintenance orders, and the effect in Australia of orders under this paragraph; and
- (e) the making of orders for giving effect to process certified or approved by a court in the United States of America, being process relating to the provision of maintenance, and the effect in Australia of orders under this paragraph.

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**Division 1** International maintenance orders and agreements etc.

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- (3) The regulations may make different provision under this section in relation to reciprocating jurisdictions from the provision made in relation to jurisdictions with restricted reciprocity.

### **110A Registration and enforcement in Australia of overseas maintenance agreements etc.**

The regulations may make provision for and in relation to the registration and enforcement in Australia of:

- (a) overseas maintenance agreements; or
- (b) overseas administrative assessments of maintenance liabilities.

### **110B Transmission of agreements etc. to overseas jurisdictions**

The regulations may make provision for and in relation to the transmission, to appropriate courts or authorities of prescribed overseas jurisdictions, of:

- (a) agreements registered under section 86; or
  - (b) agreements approved by courts under section 87; or
  - (c) financial agreements made as mentioned in subsection 90B(1) that contain matters referred to in paragraph 90B(2)(b); or
  - (d) financial agreements made as mentioned in subsection 90C(1) that contain matters referred to in paragraph 90C(2)(b); or
  - (e) financial agreements made as mentioned in subsection 90D(1) that contain matters referred to in paragraph 90D(2)(b); or
  - (f) administrative assessments of maintenance liabilities;
- for the purpose of securing the enforcement of those agreements or assessments in those jurisdictions.

## **111 Convention on Recovery Abroad of Maintenance**

The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Recovery Abroad of Maintenance signed at New York on 20 June 1956 but any such regulations shall not come into operation until the day on which that Convention enters into force for Australia.

## **111A Convention on Recognition and Enforcement of Decisions Relating to Maintenance Obligations**

The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations signed at The Hague on 2 October 1973 but any such regulations shall not come into operation until the day on which that Convention enters into force for Australia.

## **111AA Maintenance obligations with New Zealand**

- (1) This section has effect despite anything in Part VII.
- (2) A court must not determine an application for payment of child or spousal maintenance (whether under this Act or the regulations) if:
  - (a) the person seeking payment is habitually resident in New Zealand; and
  - (b) determining the application would require the court to make a decision mentioned in Article 1.2 of the Australia-New Zealand Agreement.

Note: Article 1.2 of the Agreement is as follows:

For the purposes of this Agreement a decision shall include:

- (a) a child support assessment issued by an administrative authority;

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**Division 1** International maintenance orders and agreements etc.

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- (b) an agreement to make payments for the maintenance of a child or spouse which has been registered with an administrative authority;
- (c) an assessment, order or agreement suspending, modifying or revoking a decision of the kind referred to in (a) or (b);
- (d) an order for child maintenance made by a judicial authority;
- (e) an order for spousal maintenance made by a judicial authority;
- (f) an agreement to make payments for the maintenance of a child or spouse which has been registered with a judicial authority;
- (g) an order or agreement suspending, modifying or revoking a decision of the kind referred to in (d), (e) or (f);
- (h) a liability to pay an amount to an administrative authority for the maintenance of a child or as contribution to the cost of government benefits paid to a payee for the maintenance of a child.

(3) In this section:

*Australia-New Zealand Agreement* means the Agreement between the Government of Australia and the Government of New Zealand on Child and Spousal Maintenance signed at Canberra on 12 April 2000.

**111AB Agreement between the Government of the United States of America and the Government of Australia for the enforcement of Maintenance (Support) Obligations**

The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Agreement between the Government of the United States of America and the Government of Australia for the enforcement of Maintenance (Support) Obligations, which was concluded and entered into force on 12 December 2002.

## **Division 2—International child abduction**

### **111B Convention on the Civil Aspects of International Child Abduction**

- (1) The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980 (the **Convention**) but any such regulations shall not come into operation until the day on which that Convention enters into force for Australia.
- (1A) In relation to proceedings under regulations made for the purposes of subsection (1), the regulations may make provision:
- (a) relating to the onus of establishing that a child should not be returned under the Convention; and
  - (b) establishing rebuttable presumptions in favour of returning a child under the Convention; and
  - (c) relating to a Central Authority within the meaning of the regulations applying on behalf of another person for a parenting order that deals with the person or persons with whom a child is to spend time or communicate if the outcome of the proceedings is that the child is not to be returned under the Convention.
- (1B) The regulations made for the purposes of this section must not allow an objection by a child to return under the Convention to be taken into account in proceedings unless the objection imports a strength of feeling beyond the mere expression of a preference or of ordinary wishes.
- (1C) A Central Authority within the meaning of the regulations may arrange to place a child, who has been returned to Australia under the Convention, with an appropriate person, institution or other body to secure the child's welfare until a court exercising

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jurisdiction under this Act makes an order (including an interim order) for the child's care, welfare or development.

- (1D) A Central Authority may do so despite any orders made by a court before the child's return to Australia.
- (1E) Any regulations made for the purposes of this section to give effect to Article 21 (rights of access) of the Convention may have effect regardless of:
- (a) whether an order or determination (however described) has been made under a law in force in another Convention country (within the meaning of the regulations made for the purposes of this section), with respect to rights of access to the child concerned; or
  - (b) if the child was removed to Australia—when that happened; or
  - (c) whether the child has been wrongfully removed to, or retained in, Australia.
- (2) Because of amendments of this Act made by the *Family Law Reform Act 1995*:
- (a) a parent or guardian of a child is no longer expressly stated to have custody of the child; and
  - (b) a court can no longer make an order under this Act expressed in terms of granting a person custody of, or access to, a child.
- (3) The purpose of subsection (4) is to resolve doubts about the implications of these changes for the Convention. That is the only purpose of the subsection.
- (4) For the purposes of the Convention:
- (a) each of the parents of a child should be regarded as having rights of custody in respect of the child unless the parent has no parental responsibility for the child because of any order of a court for the time being in force; and
  - (b) subject to any order of a court for the time being in force, a person:
    - (i) with whom a child is to live under a parenting order; or

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- (ii) who has parental responsibility for a child under a parenting order;  
should be regarded as having rights of custody in respect of the child; and
- (c) subject to any order of a court for the time being in force, a person who has parental responsibility for a child because of the operation of this Act or another Australian law and is responsible for the day-to-day or long-term care, welfare and development of the child should be regarded as having rights of custody in respect of the child; and
- (d) subject to any order of a court for the time being in force, a person:
  - (i) with whom a child is to spend time under a parenting order; or
  - (ii) with whom a child is to communicate under a parenting order;should be regarded as having a right of access to the child.

Note: The references in paragraphs (b) and (d) to parenting orders also cover provisions of parenting agreements registered under section 63E (see section 63F, in particular subsection (3)).

- (5) Subsection (4) is not intended to be a complete statement of the circumstances in which, under the laws of the Commonwealth, the States and the Territories, a person has, for the purposes of the Convention, custody of, or access to, a child, or a right or rights of custody or access in relation to a child.
- (5A) Subsections (1A) and (2) to (5) do not, by implication, limit subsection (1).
- (6) Expressions used in this section have the same meaning as they have in Part VII.

### **Division 3—International agreements about adoption etc.**

#### **111C International agreements about adoption etc.**

- (1) The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption signed at The Hague on 29 May 1993.
- (2) The regulations do not come into force until the day on which the Convention enters into force for Australia.
- (3) The regulations may make such provision as is necessary or convenient to give effect to any bilateral agreement or arrangement on the adoption of children made between:
  - (a) Australia, or a State or Territory of Australia; and
  - (b) a prescribed overseas jurisdiction.
- (4) Regulations made for the purposes of subsection (3) may, in particular:
  - (a) provide for the recognition of adoptions made under a law of the prescribed overseas jurisdiction; and
  - (b) provide that the regulations do not affect the operation of laws of a State or Territory that relate to adoptions; and
  - (c) if a State or Territory has made such a bilateral agreement or arrangement on behalf of other States or Territories—give effect to the agreement or arrangement so far as it relates to all of those States or Territories, or to such of them as the regulations specify.
- (5) Regulations made for the purposes of this section may:
  - (a) confer jurisdiction on a federal court (other than the High Court) or a court of a Territory; or
  - (b) invest a court of a State with federal jurisdiction.

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Such jurisdiction is in addition to any other jurisdiction provided for under this Act.

- (6) Regulations made for the purposes of subsection (5) may make different provision in respect of matters arising in relation to different States or Territories. (This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.)
- (7) Subsections (4), (5) and (6) of this section do not, by implication, limit subsections (1) and (3) of this section.
- (7A) The power of the Judges, or a majority of them, under section 123 to make Rules of Court extends to making Rules of Court for or in relation to the making of adoption orders.
- (8) In this section, despite subsection 4(1), **Territory** includes each external Territory.

**Part XIII** International conventions, international agreements and international enforcement

**Division 4** International protection of children

Section 111CA

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## **Division 4—International protection of children**

### **Subdivision A—Preliminary**

#### **111CA Definitions**

(1) In this Division:

***another country*** means a Convention country or a non-Convention country.

***Australia*** includes the external Territories.

***central authority*** of a Convention country means:

- (a) if there is one central authority of the Convention country under Article 29 of the Child Protection Convention—the Convention country’s central authority; or
- (b) otherwise—the central authority designated, under Article 29 of the Child Protection Convention, as the Convention country’s central authority to which any communication may be addressed for transmission to the appropriate central authority of the Convention country.

***Child Protection Convention*** means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children signed at The Hague on 19 October 1996, a copy of the English text of which is set out in Schedule 1.

***Commonwealth central authority*** means the Secretary of the Attorney-General’s Department.

***Commonwealth personal protection measure*** relating to a child means a measure (within the meaning of the Child Protection Convention) under this Act that is directed to the protection of the person of the child.

**Commonwealth property protection measure** relating to a child means a measure (within the meaning of the Child Protection Convention) under this Act for appointing, or deciding the powers of, a guardian of the child's property.

**competent authority**:

- (a) **competent authority** of Australia means an entity that has responsibility or authority under the law in force in Australia, or part of Australia, to take measures or make decisions about:
  - (i) protecting the person of a child; or
  - (ii) appointing or deciding the powers of a guardian of a child's property; and
- (b) **competent authority** of a Convention country means an entity that has responsibility or authority under the law in force in the Convention country to take, or make decisions about, a foreign measure relating to a child; and
- (c) **competent authority** of a non-Convention country means an entity that has responsibility or authority under the law in force in the country to take measures or make decisions about:
  - (i) protecting the person of a child; or
  - (ii) appointing or deciding the powers of a guardian of a child's property.

**Convention country** means a country, other than Australia, for which the Child Protection Convention has entered into force.

**country of refuge** of a child means a country in which the child is present as a refugee child.

**entity** includes the following:

- (a) an individual;
- (b) a corporation;
- (c) an unincorporated body;
- (d) a government authority or body;
- (e) a court or tribunal.

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**foreign measure** means:

- (a) a foreign personal protection measure; or
- (b) a foreign property protection measure.

**foreign personal protection measure** relating to a child means a measure (within the meaning of the Child Protection Convention) taken by a competent authority of a Convention country for protecting the person of the child.

**foreign property protection measure** relating to a child means a measure (within the meaning of the Child Protection Convention) taken by a competent authority of a Convention country for appointing, or deciding the powers of, a guardian of the child's property.

**non-Convention country** means a country for which the Child Protection Convention has not entered into force.

**parental responsibility** has the same meaning as in the Child Protection Convention.

**refugee child** means a child:

- (a) who is a refugee; or
- (b) who is internationally displaced due to disturbances occurring in his or her country of habitual residence; or
- (c) whose country of habitual residence cannot be determined.

**Territory** includes each external Territory.

- (2) Unless the contrary intention appears, expressions used:
- (a) in this Division; or
  - (b) in regulations made for the purposes of this Division;
- have the same meaning as they have in the Child Protection Convention.

**111CB Relationship between this Division and other provisions**

- (1) This Division has effect despite the rest of this Act, except sections 69ZK and 111B and the regulations made for the purposes of section 111B.
- (2) This Division, except section 111CZ, has effect subject to sections 69ZK and 111B and the regulations made for the purposes of section 111B.
- (3) Section 111CZ, and regulations made for the purposes of that section, have effect despite section 69ZK.

**Subdivision B—Jurisdiction for the person of a child**

**111CC Application of this Subdivision**

This Subdivision applies only if an issue under this Act is whether a court, as opposed to any of the following authorities, has jurisdiction to take measures directed to the protection of the person of a child:

- (a) a central authority or competent authority of a Convention country;
- (b) a competent authority of a non-Convention country.

**111CD Jurisdiction relating to the person of a child**

- (1) A court may exercise jurisdiction for a Commonwealth personal protection measure only in relation to:
  - (a) a child who is present and habitually resident in Australia; or
  - (b) a child who is present in Australia and habitually resident in a Convention country, if:
    - (i) the child's protection requires taking the measure as a matter of urgency; or
    - (ii) the measure is provisional and limited in its territorial effect to Australia; or
    - (iii) the child is a refugee child; or

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- (iv) a request to assume jurisdiction is made to the court by, or at the invitation of, a competent authority of the country of the child's habitual residence; or
- (v) a competent authority of the country of the child's habitual residence agrees to the court assuming jurisdiction; or
- (vi) the court is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3)); or
- (c) a child who is present in a Convention country, if:
  - (i) the child is habitually resident in Australia; or
  - (ii) the child has been wrongfully removed from or retained outside Australia and the court keeps jurisdiction under Article 7 of the Child Protection Convention; or
  - (iii) a request to assume jurisdiction is made to the court by, or at the invitation of, a competent authority of the country of the child's habitual residence or country of refuge; or
  - (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the court assuming jurisdiction; or
  - (v) the child is habitually resident in a Convention country and the court is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3)); or
- (d) a child who is present in Australia and is a refugee child; or
- (e) a child who is present in a non-Convention country, if:
  - (i) the child is habitually resident in Australia; and
  - (ii) any of paragraphs 69E(1)(b) to (e) applies to the child; or
- (f) a child who is present in Australia, if:
  - (i) the child is habitually resident in a non-Convention country; and

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- (ii) any of paragraphs 69E(1)(b) to (e) applies to the child.
- (2) A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(ii) if the measure is not incompatible with a foreign measure already taken by a competent authority of a Convention country under Articles 5 to 10 of the Child Protection Convention.
- (3) A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(vi) or (c)(v) for a Commonwealth personal protection measure relating to a child if:
- (a) one or both of the child's parents are habitually resident in Australia when the proceedings referred to in that subparagraph begin; and
  - (b) one or both of the parents have parental responsibility for the child; and
  - (c) the jurisdiction of the court to take the measure is accepted by the parents and each other person with parental responsibility for the child; and
  - (d) the exercise of jurisdiction to take the measure is in the best interests of the child; and
  - (e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.
- (4) Paragraphs 111CD(1)(a) to (d) are subject to the limitations in sections 111CE, 111CF and 111CH.

**111CE Limitation when a child is wrongfully removed from or retained outside a Convention country**

A court must not, other than in a case of urgency, exercise jurisdiction in accordance with paragraph 111CD(1)(a), (b), (c) or (d) to take a Commonwealth personal protection measure relating to a child if:

- (a) the child has been wrongfully removed from or retained outside a Convention country; and

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- (b) an authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

**111CF Limitations when prior proceedings pending in a Convention country**

- (1) This section applies to the exercise of jurisdiction by a court in accordance with paragraph 111CD(1)(a), subparagraph 111CD(1)(b)(iii), (iv), (v) or (vi) or paragraph 111CD(1)(c) or (d).
- (2) The court must not exercise that jurisdiction to take a Commonwealth personal protection measure relating to a child if:
- (a) a corresponding measure has been sought from a competent authority of a Convention country at the time of commencement of the proceedings before the court; and
  - (b) any of the following applies:
    - (i) the child is habitually resident in the Convention country;
    - (ii) the child is present in the Convention country and is a refugee child;
    - (iii) a request to assume jurisdiction is made to the competent authority of the Convention country by, or at the invitation of, a competent authority of the country of the child's habitual residence or country of refuge;
    - (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the competent authority of the Convention country assuming jurisdiction;
    - (v) the competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3));
    - (vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.
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- (3) Subparagraph (2)(b)(v) only applies (subject to subsection (4)) if:
- (a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph commence; and
  - (b) one or both of the parents has parental responsibility for the child; and
  - (c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and
  - (d) the exercise of jurisdiction to take the measure is in the best interests of the child; and
  - (e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.
- (4) Subsection (2) does not apply if the competent authority of the Convention country has declined jurisdiction or is no longer considering taking the measure sought.

**111CG If a court is asked to assume jurisdiction**

- (1) A court may, if it considers that it is in the child's best interests, accept or reject a request made under Article 8 of the Child Protection Convention by, or at the invitation of, a competent authority of a Convention country for the court to assume jurisdiction to take a Commonwealth personal protection measure relating to the child.
- (2) A court may order, or invite the parties to proceedings before the court to ask, the Commonwealth central authority to do both of the following in a way that the Commonwealth central authority considers appropriate:
- (a) to request, under Article 9 of the Child Protection Convention, that a competent authority of a Convention country agree to the court assuming jurisdiction to take a

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Commonwealth personal protection measure relating to the child;

- (b) to report to the court about the outcome of the request.
- (3) The court may only make the order or issue the invitation under subsection (2) if it considers that it is better placed than the competent authority to assess the child's best interests.

**111CH Limitation if a competent authority of a Convention country is asked to assume jurisdiction**

- (1) The court may order, or invite the parties to proceedings before the court to ask the Commonwealth central authority, in a way the Commonwealth central authority considers appropriate, to request a competent authority described in Article 8, paragraph 2, of the Child Protection Convention:
  - (a) to assume jurisdiction under Article 8 of the Convention for protecting the person of the child; and
  - (b) as the competent authority considers necessary, to take measures to protect the person of the child; and
  - (c) to report to the court about the outcome of the request.
- (2) In addition, the court may make any other order it considers necessary for an order under subsection (1).
- (3) The court may only make the order or issue the invitation under subsection (1) if the court considers that the competent authority is better placed to assess the child's best interests.
- (4) The court may accept or reject a request under Article 9 of the Child Protection Convention made by, or at the invitation of, a competent authority of a Convention country described in Article 8, paragraph 2 of the Convention, for the competent authority to assume jurisdiction to take a measure for protecting the person of the child.
- (5) If the competent authority assumes jurisdiction under the request, a court must not exercise jurisdiction in accordance with paragraph 111CD(1)(a), subparagraphs 111CD(1)(b)(iii) to (vi), or

paragraph 111CD(1)(c) or (d), while the competent authority continues to exercise its jurisdiction.

**111CI When a certain Commonwealth personal protection measure lapses**

- (1) A Commonwealth personal protection measure relating to a child that is taken by a court exercising jurisdiction in accordance with subparagraph 111CD(1)(b)(i) or (ii) lapses if:
  - (a) a foreign personal protection measure relating to the child is taken by a competent authority of a Convention country; and
  - (b) any of the following applies:
    - (i) the child is habitually resident in the Convention country;
    - (ii) the child is present in the Convention country and is a refugee child;
    - (iii) a request to assume jurisdiction is made to the competent authority of the Convention country by, or at the invitation of, a competent authority of the country of the child's habitual residence;
    - (iv) a competent authority of the country of the child's habitual residence agrees to the competent authority of the Convention country assuming jurisdiction;
    - (v) a competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (2));
    - (vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.
- (2) Subparagraph (1)(b)(v) only applies if:
  - (a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph are started; and

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- (b) one or both of the parents has parental responsibility for the child; and
  - (c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and
  - (d) the exercise of jurisdiction to take the measure is in the best interests of the child; and
  - (e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.
- (3) A Commonwealth personal protection measure relating to a child that is taken by a court exercising jurisdiction in a case of urgency, or in the taking of a measure of a provisional character, lapses if:
- (a) a measure required by the situation for protecting the person of the child is taken by a competent authority of a non-Convention country; and
  - (b) the measure is registered:
    - (i) in accordance with regulations made for the purposes of section 70G; or
    - (ii) under a law of a State or Territory.

**Subdivision C—Jurisdiction for decisions about a guardian of a child's property**

**111CJ Application of this Subdivision**

This Subdivision applies only if an issue under this Act is whether a court, as opposed to any of the following authorities, has jurisdiction to appoint, or determine the powers of, a guardian of a child's property:

- (a) a central authority or competent authority of a Convention country;
- (b) a competent authority of a non-Convention country.

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**111CK Jurisdiction to appoint, or determine the powers of, a guardian for a child's property**

- (1) A court may exercise jurisdiction for a Commonwealth property protection measure only in relation to:
- (a) a child who is habitually resident in Australia; or
  - (b) a child who is habitually resident in a Convention country, if:
    - (i) the protection of the child's property in Australia requires taking the measure as a matter of urgency; or
    - (ii) the measure is provisional and limited in its territorial effect to property in Australia; or
    - (iii) a request to assume jurisdiction is made to the court by, or at the invitation of, a competent authority of the country of the child's habitual residence or country of refuge; or
    - (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the court assuming jurisdiction; or
    - (v) the child has been wrongfully removed from or retained outside Australia and the court keeps jurisdiction under Article 7 of the Child Protection Convention; or
    - (vi) the court is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3)); or
  - (c) a child who is present in Australia and is a refugee child; or
  - (d) a child who is present in a non-Convention country, if:
    - (i) the child is habitually resident in Australia; and
    - (ii) any of paragraphs 69E(1)(b) to (e) applies to the child; or
  - (e) a child who is present in Australia, if:
    - (i) the child is habitually resident in a non-Convention country; and
    - (ii) any of paragraphs 69E(1)(b) to (e) applies to the child.

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- (2) A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(ii) if the measure is not incompatible with a foreign measure already taken by a competent authority of a Convention country under Articles 5 to 10 of the Child Protection Convention.
- (3) A court may only exercise jurisdiction in accordance with subparagraph (1)(b)(vi) for a Commonwealth property protection measure relating to a child if:
- (a) one or both of the child's parents are habitually resident in Australia when the proceedings referred to in that subparagraph begin; and
  - (b) one or both of the parents have parental responsibility for the child; and
  - (c) the jurisdiction of the court to take the measure is accepted by the parents and each other person with parental responsibility for the child; and
  - (d) the exercise of jurisdiction to take the measure is in the best interests of the child; and
  - (e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.
- (4) Paragraphs (1)(a) to (c) are subject to the limitations in sections 111CL, 111CM and 111CO.

**111CL Limitation when a child is wrongfully removed from or retained outside a Convention country**

A court must not, other than in a case of urgency, exercise jurisdiction in accordance with paragraph 111CK(1)(a), (b) or (c) to take a Commonwealth property protection measure relating to a child if:

- (a) the child has been wrongfully removed from or retained outside a Convention country; and
- (b) an authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

**111CM Limitations when prior proceedings pending in a  
Convention country**

- (1) This section applies to the exercise of jurisdiction by a court in accordance with paragraph 111CK(1)(a), subparagraph 111CK(1)(b)(iii), (iv), (v) or (vi) or paragraph 111CK(1)(c).
  - (2) The court must not exercise that jurisdiction to take a Commonwealth property protection measure relating to a child if:
    - (a) a corresponding measure has been sought from a competent authority of a Convention country at the time of commencement of proceedings before the court; and
    - (b) any of the following applies:
      - (i) the child is habitually resident in the Convention country;
      - (ii) the child is present in the Convention country and is a refugee child;
      - (iii) a request to assume jurisdiction is made to a competent authority of the country of the child's habitual residence or country of refuge;
      - (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the competent authority assuming jurisdiction;
      - (v) the competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3));
      - (vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.
  - (3) Subparagraph (2)(b)(v) only applies (subject to subsection (4)) if:
    - (a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph are commenced; and
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- (b) one or both of the parents have parental responsibility for the child; and
  - (c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and
  - (d) the exercise of jurisdiction to take the measure is in the best interests of the child; and
  - (e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.
- (4) Subsection (2) does not apply if the competent authority of the Convention country has declined jurisdiction or is no longer considering taking the measure sought.

**111CN If a court is asked to assume jurisdiction**

- (1) A court may, if it considers that it is in the child's best interests, accept or reject a request made under Article 8 of the Child Protection Convention by, or at the invitation of, a competent authority of a Convention country for the court to assume jurisdiction to take a Commonwealth property protection measure relating to the child.
- (2) A court may order, or invite the parties to proceedings before the court to ask, the Commonwealth central authority to do both of the following in a way that the Commonwealth central authority considers appropriate:
  - (a) to request, under Article 9 of the Child Protection Convention, that a competent authority of a Convention country agree to the court assuming jurisdiction to take a Commonwealth property protection measure relating to the child;
  - (b) to report to the court about the outcome of the request.

- (3) The court may only make the order or issue the invitation under subsection (2) if it considers that it is better placed than the competent authority to assess the child's best interests.

**111CO Limitation if a competent authority of a Convention country is asked to assume jurisdiction**

- (1) The court may order, or invite the parties to proceedings before the court to ask the Commonwealth central authority, in a way the Commonwealth central authority considers appropriate, to request a competent authority described in Article 8, paragraph 2, of the Child Protection Convention:
- (a) to assume jurisdiction under Article 8 of the Convention for appointing, or deciding the powers of, a guardian of the child's property; and
  - (b) as the competent authority considers necessary, to take a measure appointing, or deciding the powers of, a guardian of the child's property; and
  - (c) to report to the court about the outcome of the request.
- (2) In addition, the court may make any other order it considers necessary for an order under subsection (1).
- (3) The court may only make the order or issue the invitation under subsection (1) if the court considers that the competent authority is better placed to assess the child's best interests.
- (4) The court may accept or reject a request under Article 9 of the Child Protection Convention made by, or at the invitation of, a competent authority of a Convention country described in Article 8, paragraph 2 of the Convention, for the competent authority to assume jurisdiction to take a measure for the protection of the child's property.
- (5) If the competent authority assumes jurisdiction under the request, a court must not exercise jurisdiction in accordance with paragraph 111CK(a) or subparagraphs 111CK(1)(b)(iii) to (vi) or

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paragraph 111CK(1)(c), while the competent authority continues to exercise its jurisdiction.

**111CP When a certain Commonwealth property protection measure lapses**

- (1) A Commonwealth property protection measure relating to a child that is taken by a court exercising jurisdiction in accordance with subparagraph 111CK(1)(b)(i) or (ii) lapses if:
  - (a) a foreign property protection measure relating to the child is taken by a competent authority of a Convention country; and
  - (b) any of the following applies:
    - (i) the child is habitually resident in the Convention country;
    - (ii) the child is present in the Convention country and is a refugee child;
    - (iii) a request to assume jurisdiction is made to the competent authority of the Convention country by, or at the invitation of, a competent authority of the country of the child's habitual residence;
    - (iv) a competent authority of the country of the child's habitual residence agrees to the competent authority of the Convention country assuming jurisdiction;
    - (v) a competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (2));
    - (vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.
- (2) Subparagraph (1)(b)(v) only applies if:
  - (a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph are started; and

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- (b) one or both of the parents have parental responsibility for the child; and
  - (c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child; and
  - (d) the exercise of jurisdiction to take the measure is in the best interests of the child; and
  - (e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.
- (3) A Commonwealth property protection measure relating to a child that is taken by a court exercising jurisdiction in a case of urgency, or in the taking of a measure of a provisional character, lapses if:
- (a) a measure required by the situation for the appointment, or the determination of the powers, of a guardian for a child's property is taken by a competent authority of a non-Convention country; and
  - (b) the measure is registered:
    - (i) in accordance with regulations made for the purposes of section 70G; or
    - (ii) under a law of a State or Territory.

### **Subdivision D—Applicable law**

#### **111CQ Meaning of *law***

In this Subdivision:

*law* does not include choice of law rules.

#### **111CR Applicable law generally**

- (1) This section applies to a court exercising jurisdiction in accordance with Subdivision B or C.

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- (2) The court must apply the law of Australia in exercising that jurisdiction.
- (3) However, the court may in exceptional circumstances apply or take into account the law of another country with which:
  - (a) a child has a substantial connection; or
  - (b) a child's property is substantially connected;if the court considers the protection of the person of the child, or the child's property, requires the court to do so.
- (4) In subsection (2):

*law of Australia* means:

  - (a) law in force throughout Australia; or
  - (b) law in force in a part of Australia;and includes the principles and rules of the common law and of equity as so in force.

**111CS Applicable law concerning parental responsibility**

- (1) The principles set out in this section apply despite anything in this Act.
- (2) The circumstances in which parental responsibility for a child is attributed to a person, or extinguished, by operation of law (without the intervention of a court or appropriate authority) are governed by the law that applies in the country of the child's habitual residence.
- (3) The circumstances in which parental responsibility for a child is attributed to a person, or extinguished, by an agreement or a unilateral act (without the intervention of a court or appropriate authority) are governed by the law that applies in the country of the child's habitual residence when the agreement or act takes effect.
- (4) The exercise of parental responsibility for a child is governed by the law applying in the country of the child's habitual residence.

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- (5) If a child's country of habitual residence changes to another country:
- (a) parental responsibility for the child that exists under the law applying in the country in which the child was habitually resident continues to exist; and
  - (b) the circumstances in which parental responsibility for the child is attributed by operation of law to a person who does not already have such responsibility are governed by the law applying in the country of the new habitual residence; and
  - (c) the exercise of parental responsibility for the child is governed by the law applying in the country of the new habitual residence.
- (6) Despite subsections (2) to (5), if:
- (a) the law that applies because of this section is the law of a non-Convention country; and
  - (b) the choice of law rules of that non-Convention country designate that the law of another non-Convention country applies; and
  - (c) the other non-Convention country would apply its own law; the law of that other non-Convention country applies instead.
- (7) The parental responsibility referred to in subsection (2), (3), (4) or (5) may be ended, or the conditions of its exercise changed, by a measure taken in accordance with section 111CD or 111CK.
- (8) A court need not apply a principle set out in subsection (2), (3), (4) or (5) if, on the application of an interested person, the court considers that doing so would be manifestly contrary to public policy having regard to the best interests of the child concerned.

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**Subdivision E—Recognition of foreign measures**

**111CT Effect of registered foreign measures**

- (1) This section applies to a foreign measure that is registered in a court in accordance with regulations made for the purposes of section 111CZ.
- (2) The foreign measure:
  - (a) has the same force and effect as a Commonwealth personal protection measure or a Commonwealth property protection measure (as appropriate); and
  - (b) prevails over any earlier inconsistent measure in force in Australia, including:
    - (i) an order registered under section 70D or 70G; or
    - (ii) any other order made, or agreement registered, under this Act.

**Subdivision F—Co-operation**

**111CU Obligation to obtain consent to place child**

- (1) A court must obtain the consent of a competent authority of a Convention country before placing a child in a foster family, or in institutional care, in the Convention country.
- (2) Before placing a child, the court may order, or invite the parties to proceedings before the court to ask, the Commonwealth central authority to consult a competent authority of the Convention country concerned.
- (3) If the court orders the Commonwealth central authority to consult, then the court must provide the Commonwealth central authority with a report on the child and the reasons for the proposed placement.

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**111CV Obligation to inform competent authority about serious danger to a child**

- (1A) This section covers:
- (a) a court; and
  - (b) the Registrar or a Deputy Registrar of a Registry of the Family Court of Australia; and
  - (c) the Registrar or a Deputy Registrar of a Registry of the Family Court of a State; and
  - (d) a Registrar of the Federal Circuit Court of Australia; and
  - (e) a family consultant; and
  - (f) a family counsellor; and
  - (g) a family dispute resolution practitioner; and
  - (h) an arbitrator; and
  - (i) the provider of a course, program or service which a person is ordered to participate in under this Act.
- (1) A court or person covered by this section must inform a competent authority of another country about any information the court or person may have about any serious danger to a child:
- (a) whose residence has moved from Australia to the other country; or
  - (b) who is present in the other country.
- (2) Subsection (1) has effect despite any obligation of confidentiality imposed on the court or a person by this Act, any other law or anything else (including a contract or professional ethics).
- (3) A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of the provision of information under subsection (1).
- (4) Evidence of the provision of information under subsection (1) is not admissible in any:
- (a) court (whether or not exercising jurisdiction under this Act); or
  - (b) tribunal or other body concerned with professional ethics;

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except where that evidence is given by the person who provided the information.

**111CW Court proceedings dealing with whom a child spends time with**

- (1) A court hearing proceedings under Part VII (Children) or regulations made for the purposes of section 111B dealing with:
  - (a) whom a child is to spend time with; or
  - (b) whom a child is to communicate with;must admit into evidence and consider the findings (if any) of a competent authority of a Convention country on the suitability of a parent as a person for the child to spend time with or communicate with.
- (2) The court may adjourn the proceedings pending the outcome of a request by a parent of the child to a competent authority of a Convention country for a finding on the suitability of the parent as a person for the child to spend time with or communicate with.
- (3) On the application of a parent who is an Australian resident seeking to have, or to continue to have, a child spend time with or communicate with the parent, a court may:
  - (a) admit evidence; and
  - (b) make a finding on the suitability of that parent as a person for the child to spend time with or communicate with; and
  - (c) specify conditions on which the child is to spend time with or communicate with the person.

**111CX Jurisdiction for a location order or a Commonwealth information order**

A court may make a location order under section 67M or a Commonwealth information order under section 67N for the purposes of the Child Protection Convention.

**111CY Giving information to central authorities and competent authorities in Convention countries**

- (1) This section applies to:
  - (a) a court; and
  - (b) the Commonwealth central authority; and
  - (c) central authorities of Australia appointed as mentioned in Article 29, paragraph 2, of the Child Protection Convention; and
  - (d) other competent authorities of Australia.
- (2) If it would be consistent with this Division or the Child Protection Convention to do so, the court or authority may give information to:
  - (a) a court or an authority of Australia to which this section applies; or
  - (b) a central authority or other competent authority of a Convention country.

**Subdivision G—Regulations**

**111CZ Regulations to implement the Convention**

- (1) The regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Child Protection Convention.
- (2) Regulations made for the purposes of this section may, in particular:
  - (a) provide that the regulations do not affect the operation of laws of a State or Territory that relate to the implementation of the Child Protection Convention; and
  - (b) provide that specified provisions of the Child Protection Convention have the force of law in Australia; and
  - (c) include a list of Convention countries or territorial units of Convention countries.

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- (3) Regulations made for the purposes of this section may:
- (a) confer jurisdiction on a federal court (other than the High Court) or a court of a Territory; or
  - (b) invest a court of a State with federal jurisdiction.
- Such jurisdiction is in addition to any other jurisdiction provided for under this Act.
- (4) Regulations made for the purposes of subsection (3) may make different provision in respect of matters arising in relation to different States or Territories. This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (5) Subsections (2), (3) and (4) do not, by implication, limit subsection (1).

## **Division 5—Other matters**

### **111D Regulations may provide for rules of evidence**

- (1) Regulations made for the purposes of Part XIII A may make provision in relation to the rules of evidence that are to apply in proceedings under those regulations.
- (2) Such provisions have effect despite any inconsistency with the *Evidence Act 1995* or with any other law about evidence.

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

**Division 1** Interpretation

Section 112AA

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

### **Division 1—Interpretation**

#### **112AA Interpretation**

In this Part:

***applicable Rules of Court*** means:

- (a) in the case of the Federal Circuit Court of Australia—Rules of Court made under the *Federal Circuit Court of Australia Act 1999* to the extent to which those Rules of Court relate to this Act; or
- (b) in any other case—Rules of Court made under this Act.

***applied provisions***, in relation to a sentence passed or an order made pursuant to paragraph 112AD(2)(b), means the provisions of the laws of a State or Territory, as modified by regulations under subsection 112AG(5), that, because of regulations under that subsection, apply in relation to the sentence or order.

***court enforceable agreement*** means:

- (b) so much of a maintenance agreement as a court has, pursuant to paragraph 87(11)(c), ordered may be enforced as if it were an order of the court; or
- (c) a maintenance agreement registered in a court under subsection 86(1), or deemed, by subsection 87(6), to be registered in a court.

***maintenance order***, in relation to a court, means an order made by the court under this Act that deals with the maintenance of a person other than a child.

***order under this Act***, in relation to a court, means:

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- (a) an order (however described) made by the court under this Act (other than a parenting order); or
- (b) an injunction granted by the court under section 90SS or 114 except in so far as the injunction is for the protection of a child; or
- (c) an undertaking given to, and accepted by, the court in proceedings under this Act other than proceedings that relate wholly or partly to, or to the making of, a parenting order; or
- (d) a subpoena issued under the applicable Rules of Court in proceedings under this Act other than a subpoena issued in, and so issued to a party to, proceedings that relate wholly or partly to, or to the making of, a parenting order; or
- (e) a court enforceable agreement; or
- (f) a bond:
  - (i) entered into under an order of a court under this Act other than an order under Division 13A of Part VII; or
  - (ii) entered into for the purposes of subsection 112AE(5);and includes an order, injunction, agreement or bond that:
- (g) is an order under this Act made by another court because of paragraph (a), (b), (e) or (f); and
- (h) has been registered in the first-mentioned court.

**112AB Meaning of *contravene an order***

- (1) A person shall be taken for the purposes of this Part to have contravened an order under this Act if, and only if:
  - (a) where the person is bound by the order—he or she has:
    - (i) intentionally failed to comply with the order; or
    - (ii) made no reasonable attempt to comply with the order; or
  - (b) in any other case—he or she has:
    - (i) intentionally prevented compliance with the order by a person who is bound by it; or
    - (ii) aided or abetted a contravention of the order by a person who is bound by it.

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

**Division 1** Interpretation

Section 112AC

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**112AC Meaning of *reasonable excuse for contravening an order***

- (1) The circumstances in which a person may be taken to have had, for the purposes of this Part, a reasonable excuse for contravening an order under this Act include, but are not limited to, the circumstances set out in subsection (2).
- (2) A person (in this subsection called the *respondent*) shall be taken to have had a reasonable excuse for contravening an order under this Act if:
  - (a) the respondent contravened the order because, or substantially because, he or she did not, at the time of the contravention, understand the obligations imposed by the order on the person who was bound by it; and
  - (b) the court is satisfied that the respondent ought to be excused in respect of the contravention.

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

### **112AD Sanctions for failure to comply with orders**

- (1) If a court having jurisdiction under this Act is satisfied that a person has, without reasonable excuse, contravened an order under this Act, the court may make an order for the imposing, in respect of the person, of one or more of the sanctions available to be imposed under subsection (2), being a sanction or sanctions that the court considers to be the most appropriate in the circumstances.
- (1A) The power given to the court under subsection (1) in respect of a contravention of a maintenance order applies even if the order has been complied with before the matter of the contravention comes before the court.
- (2) The sanctions that are available to be imposed by the court are:
  - (a) to require the person to enter into a bond in accordance with section 112AF; or
  - (b) to impose a sentence by order on the person, or make an order directed to the person, in accordance with section 112AG; or
  - (c) to fine the person not more than 60 penalty units; or
  - (d) subject to subsection (2A), to impose a sentence of imprisonment on the person in accordance with section 112AE.
- (2A) The court must not impose a sentence of imprisonment on the person under paragraph (2)(d) in respect of a contravention of a maintenance order unless the court is satisfied that the contravention was intentional or fraudulent.
- (3) An order under subsection (1) may be expressed to take effect immediately, or at the end of a specified period or on the occurrence of a specified event.

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

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

### Section 112AE

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- (4) Where a court makes an order under subsection (1), the court may make such other orders as the court considers necessary to ensure compliance with the order that was contravened.

### 112AE Sentences of imprisonment

- (1) A sentence of imprisonment imposed on a person pursuant to paragraph 112AD(2)(d) shall be expressed to be:
- (a) for a specified period of 12 months or less; or
  - (b) for a period ending when the person:
    - (i) complies with the order concerned; or
    - (ii) has been imprisoned pursuant to the sentence for 12 months or such lesser period as is specified by the court; whichever happens first.
- (2) A court shall not sentence a person to imprisonment pursuant to paragraph 112AD(2)(d) unless the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention pursuant to any of the other paragraphs of subsection 112AD(2).
- (3) If a court sentences a person to imprisonment pursuant to paragraph 112AD(2)(d), the court shall:
- (a) state the reasons why it is satisfied as mentioned in subsection (2); and
  - (b) cause those reasons to be entered in the records of the court.
- (4) The failure of a court to comply with subsection (3) does not invalidate a sentence.
- (4A) A court that sentences a person to imprisonment under paragraph 112AD(2)(d) may:
- (a) suspend the sentence upon the terms and conditions determined by the court; and
  - (b) terminate a suspension made under paragraph (a).
- (5) A court, when sentencing a person to imprisonment under paragraph 112AD(2)(d) may, if it considers it appropriate to do so,

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direct that the person be released upon the person entering into a bond described in subsection (6) after he or she has served a specified part of the term of imprisonment.

- (6) A bond for the purposes of subsection (5) is a bond (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.
- (7) Without limiting the circumstances in which a court may discharge an order under section 112AK, a court that has sentenced a person to imprisonment for a period expressed as provided by paragraph (1)(b) may order the release of the person if it is satisfied that the person will, if he or she is released, comply with the order concerned.
- (8) To avoid doubt, the serving by a person of a period of imprisonment under a sentence imposed on the person under paragraph 112AD(2)(d) for a failure to make a payment under a maintenance order does not affect the person's liability to make the payment.

**112AF Bonds**

- (1) This section provides for bonds that a court may require a person to enter into under paragraph 112AD(2)(a).
- (2) A bond is to be for a specified period of up to 2 years.
- (3) A bond may be:
  - (a) with or without surety; and
  - (b) with or without security.
- (4) The conditions that may be imposed on a person by a bond include a condition requiring the person to be of good behaviour.
- (5) If a court proposes to require a person to enter into a bond, it must, before making the requirement, explain to the person, in language likely to be readily understood by the person:
  - (a) the purpose and effect of the proposed requirement; and

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

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

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- (b) the consequences that may follow if the person fails:
  - (i) to enter into the bond; or
  - (ii) having entered into the bond—to act in accordance with the bond.

### **112AG Additional sentencing alternatives**

- (1) Subject to this section, where:
  - (a) under the law of a participating State or a participating Territory, a court is empowered (whether generally or in particular cases) to impose a sentence by order or make an order of a kind to which subsection (3) applies in respect of a person convicted of an offence against the law of the State or Territory; and
  - (b) an arrangement under section 112AN in respect of the State or Territory makes provision for and in relation to the carrying out of sentences imposed, or orders made, of that kind under this Division;  
a court exercising jurisdiction in the State or Territory may, pursuant to paragraph 112AD(2)(b), impose a sentence or make an order of that kind.
- (2) A sentence imposed on a person, or an order directed to a person, pursuant to paragraph 112AD(2)(b):
  - (a) shall be such that the total number of hours during which the sentence or order regulates the conduct of the person does not exceed the maximum period in relation to the State or Territory in which the sentence is imposed or the order is made; and
  - (b) ceases to have effect 2 years after it was made, or after such lesser period as is specified in the order.
- (3) This subsection applies to sentences or orders of the following kinds:
  - (a) a sentence or order known as:
    - (i) a community service order;
    - (ii) a work order;

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- (iii) a sentence of periodic detention;
  - (iv) an attendance centre order;
  - (v) a sentence of weekend detention;
  - (vi) an attendance order; or
  - (vii) a community based order;
- (b) a sentence or order that is similar to a sentence or order referred to in paragraph (a);
- (c) a sentence or order prescribed for the purposes of this subsection.
- (4) Where a court proposes to impose a sentence on a person, or make an order directed to a person, pursuant to paragraph 112AD(2)(b), it shall, before doing so, explain or cause to be explained to the person, in language likely to be readily understood by the person:
- (a) the purpose and effect of the proposed sentence or order;
  - (b) the consequences that may follow if the person fails to comply with the proposed sentence or order or with any requirements made in relation to the proposed sentence or order by or under the applied provisions; and
  - (c) if the proposed sentence or order may be revoked or varied under the applied provisions—that the proposed sentence or order may be so revoked or varied.
- (5) Where a court exercising jurisdiction under section 112AD in a particular State or Territory imposes a sentence or makes an order pursuant to paragraph 112AD(2)(b), the provisions of the laws of the State or Territory with respect to a sentence or order of that kind that is imposed or made under those laws shall, to the extent provided by the regulations and subject to such modifications as are specified in the regulations, apply in relation to the sentence or order.
- (6) In this section:
- maximum period***, in relation to a State or Territory, means 500 hours or such lesser period as is prescribed in relation to the State or Territory.

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*participating State* means a State in relation to which an agreement under section 112AN is in force.

*participating Territory* means a Territory in relation to which an agreement under section 112AN is in force.

### **112AH Failure to comply with sentence passed, or order made, pursuant to paragraph 112AD(2)(b)**

- (1) This section applies where a court has, pursuant to paragraph 112AD(2)(b):
  - (a) imposed a sentence on a person; or
  - (b) made an order directed to a person.
- (2) If the court (whether or not constituted by the judge or magistrate who imposed the sentence or made the order) is satisfied that the person has, without reasonable excuse, failed to comply with:
  - (a) the sentence or order; or
  - (b) any requirements made in relation to the sentence or order by or under the applied provisions;the court may take action under subsection (8).
- (8) The court may:
  - (a) without prejudice to the continuance of the sentence or order, impose a fine not exceeding 10 penalty units on the person; or
  - (b) revoke the sentence or order and, subject to subsection (9), deal with the person, for the contravention in respect of which the sentence was passed or the order was made, in any manner in which he or she could have been dealt with for that contravention if:
    - (i) the sentence had not been imposed, or the order had not been made; and
    - (ii) the person was before the court under section 112AD in respect of the contravention.

Note: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

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- (9) In dealing with the person as mentioned in paragraph (8)(b), the court shall, in addition to any other matters that it considers should be taken into account, take into account:
- (a) the fact that the sentence was imposed or the order was made;
  - (b) anything done under the sentence or order; and
  - (c) any fine imposed, and any other order made, for or in respect of the contravention.

**112AK Variation and discharge of orders**

- (1) Subject to this section, an order made under section 112AD may be varied or discharged:
- (a) if the court that made the order is the Family Court—by the Family Court; or
  - (b) in any other case—by the court that made the order or the Family Court.
- (2) A variation of an order under section 112AD shall be such that the order, as varied, is an order that could have been made under that section in respect of the contravention in respect of which the first-mentioned order was made.
- (3) If a court discharges an order under section 112AD it may, subject to this Division, make another order under that section in respect of the contravention in respect of which the first-mentioned order was made.
- (4) Where a court varies or discharges an order made under section 112AD, the court may give such directions as to the effect of the variation or discharge as the court considers appropriate.

**112AM Relationship between Division and other laws**

- (1) This section applies where an act or omission by a person:
- (a) constitutes a contravention of an order under this Act; and
  - (b) is also an offence against any law.

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- (2) If the person is prosecuted in respect of the offence, a court in which proceedings have been brought under section 112AD in respect of the contravention of the order shall either:
  - (a) adjourn those proceedings until the prosecution has been completed; or
  - (b) dismiss those proceedings.
- (3) The person may be prosecuted for, and convicted of, the offence.
- (4) Nothing in this section renders the person liable to be punished twice in respect of the same act or omission.

### **112AN Arrangements with States and Territories for carrying out of sentences and orders**

- (1) The Governor-General may make arrangements with the relevant authority of a State or a Territory (other than Norfolk Island) for:
  - (a) the exercise of powers, and the performance of functions, by officers of the State or Territory; and
  - (b) the making available of facilities of the State or Territory; for and in relation to the carrying out of sentences imposed, and orders made, under this Division.
- (2) In this section:

**relevant authority** means:

  - (a) in relation to a State—the Governor of the State;
  - (b) in relation to the Australian Capital Territory—the Chief Minister of the Australian Capital Territory;
  - (c) in relation to the Northern Territory—the Administrator of the Northern Territory.

### **112AO Division does not limit operation of section 105**

Nothing in this Division is intended to limit the operation of section 105.

**Part XIII B—Contempt of court****112AP Contempt**

- (1) Subject to subsection (1A), this section applies to a contempt of a court that:
  - (a) does not constitute a contravention of an order under this Act; or
  - (b) constitutes a contravention of an order under this Act and involves a flagrant challenge to the authority of the court.
- (1A) This section does not apply to a contempt that constitutes a contravention of a maintenance order if the order has been complied with before the matter of the contravention comes before the court.
- (2) In spite of any other law, a court having jurisdiction under this Act may punish a person for contempt of that court.
- (3) The applicable Rules of Court may provide for practice and procedure as to charging with contempt and the hearing of the charge.
- (4) Where a natural person is in contempt, the court may punish the contempt by committal to prison or fine or both.
- (5) Where a corporation is in contempt, the court may punish the contempt by sequestration or fine or both.
- (6) The court may make an order for:
  - (a) punishment on terms;
  - (b) suspension of punishment; or
  - (c) the giving of security for good behaviour.
- (7) Where a person is committed to prison for a term for contempt, the court may order the person's discharge before the expiry of that term.

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- (8) To avoid doubt, the serving by a person of a period of imprisonment as a result of a contempt of a court arising out of a failure by the person to make a payment in respect of the maintenance of another person does not affect the first-mentioned person's liability to make the payment.
- (9) In this section:
- order under this Act*** means an order under this Act affecting children or an order under this Act within the meaning of Part XIII A.

## **Part XIV—Declarations and injunctions**

### **112A Interpretation**

In this Part, *marriage* includes a void marriage.

### **113 Proceedings for declarations**

In proceedings of the kind referred to in paragraph (b) of the definition of *matrimonial cause* in subsection 4(1), the court may make such declaration as is justified.

### **114 Injunctions**

- (1) In proceedings of the kind referred to in paragraph (e) of the definition of *matrimonial cause* in subsection 4(1), the court may make such order or grant such injunction as it considers proper with respect to the matter to which the proceedings relate, including:
  - (a) an injunction for the personal protection of a party to the marriage;
  - (b) an injunction restraining a party to the marriage from entering or remaining in the matrimonial home or the premises in which the other party to the marriage resides, or restraining a party to the marriage from entering or remaining in a specified area, being an area in which the matrimonial home is, or the premises in which the other party to the marriage resides are, situated;
  - (c) an injunction restraining a party to the marriage from entering the place of work of the other party to the marriage;
  - (d) an injunction for the protection of the marital relationship;
  - (e) an injunction in relation to the property of a party to the marriage; or
  - (f) an injunction relating to the use or occupancy of the matrimonial home.

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- (2A) In a de facto financial cause (other than proceedings referred to in, or relating to, paragraph (e) or (f) of the definition of *de facto financial cause* in subsection 4(1)) the court may:
- (a) make such order or grant such injunction as it considers proper with respect to the use or occupancy of a specified residence of the parties to the de facto relationship or either of them; and
  - (b) if it makes an order or grants an injunction under paragraph (a)—make such order or grant such injunction as it considers proper with respect to restraining a party to the de facto relationship from entering or remaining in:
    - (i) that residence; or
    - (ii) a specified area in which that residence is situated; and
  - (c) make such order or grant such injunction as it considers proper with respect to the property of the parties to the de facto relationship or either of them.

Sections 90SB and 90SK apply in relation to an order or injunction under this subsection in a corresponding way to the way in which those sections apply in relation to an order under section 90SM.

Note 1: This subsection does not apply to proceedings referred to in paragraph (g) of the definition of *de facto financial cause* that relate to proceedings referred to in paragraph (e) or (f) of that definition.

Note 2: The same requirements in sections 90SB (length of relationship etc.) and 90SK (geographical requirements) for section 90SM orders must be satisfied for orders and injunctions under this subsection.

- (3) A court exercising jurisdiction under this Act in proceedings other than proceedings to which subsection (1) applies may grant an injunction, by interlocutory order or otherwise (including an injunction in aid of the enforcement of a decree), in any case in which it appears to the court to be just or convenient to do so and either unconditionally or upon such terms and conditions as the court considers appropriate.
- (4) If a party to a marriage is a bankrupt, a court may, on the application of the other party to the marriage, by interlocutory order, grant an injunction under subsection (3) restraining the

bankruptcy trustee from declaring and distributing dividends amongst the bankrupt's creditors.

- (5) Subsection (4) does not limit subsection (3).
- (6) If a party to a marriage is a debtor subject to a personal insolvency agreement, a court may, on the application of the other party to the marriage, by interlocutory order, grant an injunction under subsection (3) restraining the trustee of the agreement from disposing of (whether by sale, gift or otherwise) property subject to the agreement.
- (7) Subsection (6) does not limit subsection (3).

### **114AA Powers of arrest**

- (1) Where:
  - (a) an injunction is in force under section 114 for the personal protection of a person; and
  - (b) a police officer believes, on reasonable grounds, that the person against whom the injunction is directed (in this section called the *respondent*) has, since the injunction was granted, breached the injunction by:
    - (i) causing, or threatening to cause, bodily harm to the person referred to in paragraph (a); or
    - (ii) harassing, molesting or stalking that person;the police officer may arrest the respondent without warrant.

Note: Section 122AA authorises the use of reasonable force in making an arrest.

- (3) Where a police officer arrests a person pursuant to subsection (1):
  - (a) the police officer shall:
    - (i) ensure that the person is brought before the court that granted the injunction, or another court having jurisdiction under this Act, before the expiration of the relevant period; and
    - (ii) take all reasonable steps to ensure that, before the person is so brought before a court, the person on whose

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application the injunction under section 114 was granted is aware that the first-mentioned person has been arrested and of the court before which the person is to be brought; and

- (b) the person shall not be released before the expiration of the relevant period except pursuant to an order of the court that granted the injunction or another court having jurisdiction under this Act;

but nothing in this subsection authorises the keeping of the person in custody after the expiration of the relevant period.

- (4) Where a person is brought before a court in accordance with subsection (3), the court shall:
- (a) if there is an application before the court for the person to be dealt with for breach of the injunction—forthwith proceed to hear and determine that application; or
  - (b) if there is no application before the court as mentioned in paragraph (a)—order that the person be released forthwith.
- (5) Where:
- (a) a person is brought before a court in accordance with subsection (3);
  - (b) the court proceeds to hear and determine an application for the person to be dealt with for breach of an injunction as mentioned in paragraph (4)(a); and
  - (c) at the expiration of the relevant period the proceedings have not been determined;
- the person may be kept in custody after the expiration of the relevant period until:
- (d) the court gives its decision on the proceedings;
  - (e) the court orders that the person be released; or
  - (f) the court adjourns the hearing for a period of more than 24 hours;
- whichever happens first.
- (7) In this section:

*relevant period*, in relation to a person's arrest, means the period starting when the person is arrested and ending at the close of business on the next day that is not a Saturday, Sunday or public holiday.

### **114AB Operation of State and Territory laws**

- (1) Sections 68B, 68C, 114 and 114AA are not intended to exclude or limit the operation of a prescribed law of a State or Territory that is capable of operating concurrently with those sections.
- (2) Where a person has instituted a proceeding or taken any other action under a prescribed law of a State or Territory in respect of a matter in respect of which the person would, but for this subsection, have been entitled to institute a proceeding under section 68B or 114, the person is not entitled to institute a proceeding under section 68B or 114 in respect of that matter, unless:
  - (a) where the person instituted a proceeding:
    - (i) the proceeding has lapsed, been discontinued, or been dismissed; or
    - (ii) the orders (if any) made as a result of the institution of the proceeding have been set aside or are no longer in force; and
  - (b) where the person took other action—neither that person nor any other person is required, at the time that the person institutes a proceeding under section 68B or 114, to do an act, or to refrain from doing an act.

## Part XIVA—The Australian Institute of Family Studies

### 114A Interpretation

In this Part, unless the contrary intention appears:

**Director** means the Director of the Institute.

**Institute** means the Australian Institute of Family Studies established by this Part.

### 114B Establishment of Institute

(1) There is established by this Part an Institute by the name of the Australian Institute of Family Studies.

(1A) There is to be a Director of the Institute.

(1B) The Institute consists of:

- (a) the Director; and
- (b) the staff referred to in section 114M.

Note: The Institute does not have a legal identity separate from the Commonwealth.

(1C) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

- (a) the Institute is a listed entity; and
- (b) the Director is the accountable authority of the Institute; and
- (c) the persons referred to in subsection (1B) are officials of the Institute; and
- (d) the purposes of the Institute include:
  - (i) the functions of the Director referred to in subsection (2); and
  - (ii) the function of the Institute referred to in subsection (2A).

- (2) The functions of the Director are:
- (a) to promote, by the conduct, encouragement and co-ordination of research and other appropriate means, the identification of, and development of understanding of, the factors affecting marital and family stability in Australia, with the object of promoting the protection of the family as the natural and fundamental group unit in society; and
  - (b) to advise and assist the Minister in relation to the making of grants, and with the approval of the Minister to make grants, out of moneys available under appropriations made by the Parliament, for purposes related to the functions of the Institute and the supervising of the employment of grants so made.
- (2A) The function of the Institute (other than the Director) is to assist the Director in the performance of his or her functions.
- (3) The Minister may:
- (a) request the Director to arrange for the Institute to engage in a particular activity (whether research or otherwise) in relation to a particular matter that is within the functions of the Institute; and
  - (b) after consultation with the Director, specify the priority that is to be given to the activity.

### **114C Minister may give directions to Director**

- (1) Subject to subsection (2), the Minister may, by legislative instrument, give directions to the Director as to the performance of his or her functions.
- (2) Directions given by the Minister under subsection (1) must be of a general nature only.
- (3) The Director must comply with any direction given by the Minister under subsection (1).

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### 114D Appointment of Director

- (1) The Director is to be appointed by the Minister by written instrument.

Note: The Director is eligible for reappointment: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) The Director is to be appointed on a full-time basis.

### 114E Term of appointment

The Director holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

### 114F Acting appointments

The Minister may appoint a person to act as the Director:

- (a) during a vacancy in the office of Director, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Director is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

### 114G Director's remuneration

- (1) The Director is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Director is to be paid the remuneration that is prescribed.
- (2) The Director is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **114H Outside employment**

The Director must not engage in paid employment outside the duties of the Director's office without the Minister's approval.

### **114J Leave of absence**

- (1) The Director has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Director leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

### **114L Other terms and conditions**

The Director holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

### **114LA Resignation**

- (1) The Director may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

### **114LB Termination of appointment**

- (1) The Minister may terminate the appointment of the Director for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Director if:
  - (a) the Director:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

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- (iii) compounds with his or her creditors; or
- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the Director is absent, except on leave of absence, without reasonable excuse; or
- (c) the Director fails, without reasonable excuse, to comply with section 114H (outside employment); or
- (d) the Director fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

### 114LD Delegation

- (1) The Director may delegate all or any of his or her functions or powers under this Part to an SES employee, or an acting SES employee, of the Institute. The delegation must be in writing.

Note: For other powers of delegation, see section 110 of the *Public Governance, Performance and Accountability Act 2013* and section 78 of the *Public Service Act 1999*.

- (2) In performing a delegated function or exercising a delegated power, a delegate must comply with any written directions of the Director.

### 114M Staff

- (1) The staff of the Institute are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Director and the APS employees assisting the Director together constitute a Statutory Agency; and
  - (b) the Director is the Head of that Statutory Agency.
- (3) The Director may, with the approval of the Minister, engage persons to assist the Institute as consultants or otherwise.

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- (4) The terms and conditions of engagement of persons under subsection (3) are as determined by the Director from time to time.

## Part XV—Miscellaneous

### 115 Family Law Council

- (1) The Attorney-General may establish a Family Law Council consisting of persons appointed by the Attorney-General in accordance with subsection (2).
- (2) The Council shall consist of a Judge of the Family Court and such other judges, persons appointed or engaged under the *Public Service Act 1999*, officers of the Public Service of a State, family counsellors, family dispute resolution practitioners and other persons as the Attorney-General thinks fit.
- (3) It is the function of the Council to advise and make recommendations to the Attorney-General, either of its own motion or upon request made to it by the Attorney-General, concerning:
  - (a) the working of this Act and other legislation relating to family law;
  - (b) the working of legal aid in relation to family law; and
  - (c) any other matters relating to family law.
- (4) The Attorney-General shall appoint one of its members to be Chairperson of the Council.
- (5) A member of the Council shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, the member shall be paid such remuneration as is prescribed.
- (5A) A member of the Council shall be paid such allowances as are prescribed.
- (5B) Subsections (5) and (5A) have effect subject to the *Remuneration Tribunal Act 1973*.

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- (5C) Subject to this section, a member of the Council holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.
- (6) A member (including the Chairperson) may resign by writing signed and delivered to the Attorney-General.
- (6A) The Attorney-General may terminate the appointment of a member by reason of the misbehaviour, or physical or mental incapacity, of the member.
- (6B) If a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Attorney-General shall terminate the appointment of that member.
- (7) Meetings of the Council shall be convened by the Chairperson or the Attorney-General.
- (8) The Council shall cause records to be kept of its meetings.
- (9) The Council shall, as soon as practicable after 30 June in each year, prepare and furnish to the Attorney-General a report of the operations of the Council during the year that ended on that 30 June.
- (10) The Attorney-General shall cause a copy of a report furnished under subsection (9) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.

**116C Payments to legal practitioners by legal aid bodies**

- (1) The regulations may, in relation to matters included in a class of matters arising under this Act, under the regulations or under the applicable Rules of Court, fix or limit, or provide for the fixing or limiting of, the amounts that may be paid by relevant authorities to legal practitioners acting in such matters.

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- (2) A relevant authority that pays, to a legal practitioner acting in a matter arising under this Act, an amount that exceeds the amount that the relevant authority is permitted, by regulations made under subsection (1), to pay to that legal practitioner in respect of that matter is, if the Minister so determines by instrument in writing, liable to pay to the Commonwealth such amount as the Minister specifies in the instrument, not being an amount greater than the amount of the excess.
- (3) An amount payable by a relevant authority to the Commonwealth in accordance with a determination of the Minister under subsection (2) is a debt due by the relevant authority to the Commonwealth.
- (4) This section, and regulations made under subsection (1), bind the Crown in right of the Commonwealth, of each of the States and of the Northern Territory.
- (5) In this section:

**relevant authority** means a person, authority or body (including an authority or body established by or under a law of a State or Territory) that, from time to time, receives relevant funding.

**relevant funding**, in relation to a person, authority or body, means funding received, whether directly or indirectly, by the person, authority or body from the Commonwealth for the purposes of, or in connection with, the provision of legal assistance by the person, authority or body in connection with matters arising under this Act.

### 117 Costs

- (1) Subject to subsection (2), subsections 45A(6) and 70NFB(1) and sections 117AA and 117AC, each party to proceedings under this Act shall bear his or her own costs.
- (2) If, in proceedings under this Act, the court is of opinion that there are circumstances that justify it in doing so, the court may, subject to subsections (2A), (4), (4A) and (5) and the applicable Rules of Court, make such order as to costs and security for costs, whether

by way of interlocutory order or otherwise, as the court considers just.

- (2A) 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 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 considers relevant.
- (3) To avoid doubt, in proceedings in which an independent children's lawyer for a child has been appointed, the court may make an order under subsection (2) as to costs or security for costs, whether by way of interlocutory order or otherwise, to the effect that each party to the proceedings bears, in such proportion as the court considers just, the costs of the independent children's lawyer in respect of the proceedings.
- (4) However, in proceedings in which an independent children's lawyer for a child has been appointed, if:
- (a) a party to the proceedings has received legal aid in respect of the proceedings; or

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- (b) the court considers that a party to the proceedings would suffer financial hardship if the party had to bear a proportion of the costs of the independent children's lawyer;
- the court must not make an order under subsection (2) against that party in relation to the costs of the independent children's lawyer.
- (4A) If:
- (a) under section 91B, an officer intervenes in proceedings; and
  - (b) the officer acts in good faith in relation to the proceedings;
- the court must not, because of the intervention, make an order under subsection (2) of this section against the officer, or against an entity (including the Commonwealth or a State or Territory) by or on behalf of whom the officer was engaged or employed.
- (5) In considering what order (if any) should be made under subsection (2) in proceedings in which an independent children's lawyer has been appointed, the court must disregard the fact that the independent children's lawyer is funded under a legal aid scheme or service established under a Commonwealth, State or Territory law or approved by the Attorney-General.

**117AA Costs in proceedings relating to overseas enforcement and international Conventions**

- (1) In proceedings under regulations made for the purposes of Part XIII AA, the court can only make an order as to costs (other than orders as to security for costs):
- (a) in favour of a party who has been substantially successful in the proceedings; and
  - (b) against a person or body who holds or held an office or appointment under those regulations and is a party to the proceedings in that capacity.

Note: For another case where the court can also make an order as to costs, see subsection (3).

- (2) However, the order can only be made in respect of a part of the proceedings if, during that part, the party against whom the order is

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to be made asserted a meaning or operation of this Act or those regulations that the court considers:

- (a) is not reasonable given the terms of the Act or regulations; or
  - (b) is not convenient to give effect to Australia's obligations under the Convention concerned, or to obtain for Australia the benefits of that Convention.
- (3) In proceedings under regulations made for the purposes of section 111B, the court can also make an order as to costs that is:
- (a) against a party who has wrongfully removed or retained a child, or wrongfully prevented the exercise of rights of access (within the meaning of the Convention referred to in that section) to a child; and
  - (b) in respect of the necessary expenses incurred by the person who made the application, under that Convention, concerning the child.

**117AC Security for costs**

Despite section 117, a court must not make an order for security for costs in a proceeding involving a Convention country that is listed in Schedule 4A to the regulations.

**117A Reparation for certain losses and expenses relating to children**

- (1) Where:
- (a) a court has found, for the purposes of Division 13A of Part VII, that a person has, by taking a child away from another person or by refusing or failing to deliver a child to another person, contravened a parenting order to the extent to which the order provides that:
    - (i) a child is to live with a person; or
    - (ii) a child is to spend time with a person; or
    - (iii) a child is to communicate with a person;
  - (b) a person has been convicted of an offence against section 65Y or 65Z in respect of a child;

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- (c) a court has found, for the purposes of Division 13A of Part VII, that a person has, by taking a child away from another person or by refusing or failing to deliver a child to another person, contravened an injunction granted, or an order made, under section 114; or
  - (d) a person has been found to be in contempt of a court exercising jurisdiction under this Act by reason of having taken a child away from another person or having refused or failed to deliver a child to another person;
- a court having jurisdiction under this Act may, subject to subsection (2):
- (e) on the application of the Commonwealth—order the person to make reparation to the Commonwealth or to a Commonwealth instrumentality, by way of money payment or otherwise, in respect of any loss suffered, or any expense incurred, by the Commonwealth or the Commonwealth instrumentality, as the case may be, in recovering the child and returning the child to a person; or
  - (f) on the application of any other person—order the first-mentioned person to make reparation to that other person, by way of money payment or otherwise, in respect of any loss suffered, or expense incurred, by that other person in recovering the child and, if applicable, returning the child to a person.
- (2) Nothing in subsection (1) empowers a court to order a person to make reparation to the Commonwealth, to a Commonwealth instrumentality or to another person in respect of any loss suffered, or any expense incurred, where a court has, under section 21B of the *Crimes Act 1914*, ordered the first-mentioned person to make reparation to the Commonwealth, to the Commonwealth instrumentality or to that other person, as the case may be, in respect of the same loss suffered or expense incurred.

**117B Interest on moneys ordered to be paid**

- (1) Subject to any order made by the court under subsection (2), where, in proceedings under this Act, a court makes an order for
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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 applicable 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) A court that makes an order for the payment of money as mentioned in subsection (1) 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 applicable Rules of Court; or
  - (b) that interest is payable from a date specified in the order, being a date other than the date from which the interest would be payable under subsection (1).

### **117C Offers of settlement**

- (1) This section applies to proceedings under this Act other than the following proceedings:
- (a) proceedings under Part VI;
  - (b) proceedings under Division 6, 9 or 13 of Part VII;
  - (c) proceedings to enforce a decree or injunction made under Division 6, 9 or 13 of Part VII.
- (2) If:
- (a) a party to proceedings to which this section applies makes an offer to the other party to the proceedings to settle the proceedings; and
  - (b) the offer is made in accordance with any applicable Rules of Court;

the fact that the offer has been made, or the terms of the offer, must not be disclosed to the court in which the proceedings are being heard except for the purposes of the consideration by the court of

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whether it should make an order as to costs under subsection 117(2) and the terms of any such order.

- (3) A judge of the court is not disqualified from sitting in the proceedings only because the fact that an offer has been made is, contrary to subsection (2), disclosed to the court.

**119 Married persons may sue each other**

Either party to a marriage may bring proceedings in contract or in tort against the other party.

**120 Criminal conversation, adultery and enticement**

After the commencement of this Act, no action lies for criminal conversation, damages for adultery, or for enticement of a party to a marriage.

**121 Restriction on publication of court proceedings**

- (1) A person who publishes in a newspaper or periodical publication, by radio broadcast or television or by other electronic means, or otherwise disseminates 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;
- commits an offence punishable, upon conviction by imprisonment for a period not exceeding one year.
- (2) A person who, except as permitted by the applicable Rules of Court, publishes in a newspaper or periodical publication, by radio broadcast or television or by other electronic means, or otherwise disseminates 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

the 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 a court commits an offence punishable, upon conviction by imprisonment for a period not exceeding one year.

- (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 or an account by other electronic means—it is accompanied by a picture of the person; or
  - (c) in the case of a broadcast or televised account or an account by other electronic means—it is spoken in whole or in part by the person and the person's voice is sufficient to identify

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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 72 of the *Family Law Amendment Act 1983*.
- (5) An offence against this section is an indictable offence.
- (8) Proceedings for an offence against this section shall not be commenced except by, or with the written consent of, the Director of Public Prosecutions.
- (9) The preceding provisions of this section do not apply to or in relation to:
  - (a) the communication, to persons concerned in proceedings in any court, of any pleading, transcript of evidence or other document for use in connection with those proceedings; or
  - (aa) the communication of any pleading, transcript of evidence or other document to authorities of States and Territories that have responsibilities relating to the welfare of children and are prescribed by the regulations for the purposes of this paragraph; or
  - (b) the communication of any pleading, transcript of evidence or other document to:
    - (i) a body that is responsible for disciplining members of the legal profession in a State or Territory; or
    - (ii) persons concerned in disciplinary proceedings against a member of the legal profession of a State or Territory, being proceedings before a body that is responsible for disciplining members of the legal profession in that State or Territory; or
  - (c) the communication, to a body that grants assistance by way of legal aid, of any pleading, transcript of evidence or other document for the purpose of facilitating the making of a

- decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case; or
- (d) the publishing of a notice or report in pursuance of the direction of a court; or
  - (da) the publication by the court of lists of proceedings under this Act, identified by reference to the names of the parties, that are to be dealt with by the court; or
  - (e) the publishing of any publication bona fide intended primarily for use by the members of any profession, being:
    - (i) a separate volume or part of a series of law reports; or
    - (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 practice by that person of that profession or in the course of any form of professional training in which that person is involved; or
    - (ia) to an individual who is a party to any proceedings under this Act, in connection with the conduct of those proceedings; or
    - (ii) to a person who is a student, in connection with the studies of that person; or
  - (g) publication of accounts of proceedings, where those accounts have been approved by the court.
- (10) Applicable 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.
- Note: Powers to make Rules of Court are also contained in sections 26B, 37A, 109A and 123.
- (11) In this section:
- court*** includes:
- (a) an officer of a court investigating or dealing with a matter in accordance with this Act, the regulations or the Rules of Court; and

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- (b) a tribunal established by or under a law of the Commonwealth, of a State or of a Territory.

*electronic means* includes:

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

### 122 Rights of legal practitioners

A person who is, under Part VIIIA of the *Judiciary Act 1903*, entitled to practise in any federal court as a barrister or solicitor, or as both, has the like right to practise in any State court exercising jurisdiction under this Act.

### 122AA Use of reasonable force in arresting persons

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

### 122A Powers of entry and search for purposes of arresting persons

- (1) Where:
  - (a) a person (in this subsection called the *authorised person*) is, by a provision of this Act, or by a warrant issued under a provision of this Act, authorised to arrest another person; and
  - (b) the authorised person reasonably believes that the other person is in or on a particular searchable place;the authorised person may, without warrant, enter and search the searchable place.

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- (2) Where a person may enter and search a vehicle, vessel or aircraft under subsection (1), the person may, for the purposes of effecting the entry and search, stop and detain the vehicle, vessel or aircraft.
- (3) In exercising powers under this section, a person may use such force and assistance as is necessary and reasonable to enable the exercise of the powers.
- (4) In this section:
  - searchable place* means:
    - (a) premises or a place; or
    - (b) a vehicle, vessel or aircraft.

**122B Arrangements with States and Territories**

- (1) The Governor-General may make an arrangement with the relevant authority of a State or internal Territory for the performance by an officer of the State or Territory of a function under this Act.
- (2) In this section:
  - officer* includes the holder of a judicial office.
  - relevant authority* means:
    - (a) in relation to a State—the Governor of the State; or
    - (b) in relation to the Australian Capital Territory—the Chief Minister for the Australian Capital Territory; or
    - (c) in relation to the Northern Territory—the Administrator of the Northern Territory.

**123 Rules of Court**

- (1) The Judges, or a majority of them, may make Rules of Court not inconsistent with this Act, providing for or in relation to the practice and procedure to be followed in the Family Court and, subject to subsection 69GA(3), any other courts exercising jurisdiction under this Act, and for and in relation to all matters and things incidental to any such practice and procedure, or necessary

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or convenient to be prescribed for the conduct of any business in those courts and, in particular:

- (a) providing for and in relation to the attendance of witnesses; and
- (b) providing for and in relation to the manner of service of process of the Family Court or another court exercising jurisdiction under this Act, and for and in relation to dispensing with such service; and
- (ba) providing for and in relation to trial management; and
- (bb) providing for and in relation to proceedings transferred to the Family Court under section 35A of the *Bankruptcy Act 1966*; and
- (c) providing for and in relation to the time and manner of institution of appeals in and to the Family Court; and
- (d) prescribing the duties of officers of the Family Court; and
- (e) providing for and in relation to the prevention or termination of vexatious proceedings; and
- (f) prescribing the seals and stamps to be used in the Family Court and in any other court exercising jurisdiction under this Act; and
- (g) 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; and
- (h) authorising a court to refer to an officer of the court for investigation, report and recommendation claims or applications for or relating to any matters before the court; and
- (j) authorising an officer making an investigation mentioned in paragraph (h) to:
  - (i) take evidence on oath or affirmation; and
  - (ii) receive in evidence a report from a family consultant under section 55A or 62G; and
  - (iii) receive in evidence a report from a person who has had dealings with a party to the matter under investigation under section 65F, 65L, 65LA, 70NEB or 70NEG; and

- (ja) enabling the summoning of witnesses before an officer making an investigation mentioned in paragraph (h) for the purposes of giving evidence or producing books or documents; and
- (k) regulating the procedure of a court upon receiving a report of an officer who has made an investigation referred to in paragraph (h); and
- (m) providing for and in relation to the procedure of a court exercising its powers under section 112AP to deal with a person for contempt of the court; and
- (ma) for the purposes of Divisions 2 and 3 of Part XI, providing for the conditions relating to the use of video links, audio links and other appropriate means of communication; and
- (n) providing for and in relation to the making of an application for a divorce order in relation to a marriage jointly by both parties to the marriage; and
- (o) providing for and in relation to the appointment, by the Attorney-General, of a guardian *ad litem* for a party to proceedings under this Act; and
- (q) providing for and in relation to:
  - (i) the forfeiture of bonds and recognisances entered into in pursuance of requirements made under this Act; and
  - (ii) the recovery of any money that may be due to the Commonwealth under such bonds and recognisances or from any person who has become a surety under this Act; and
- (r) providing for and in relation to the attachment of moneys payable by the Commonwealth, a State, a Territory or the Administration of a Territory, or by an authority of the Commonwealth, of a State or of a Territory (other than moneys as to which it is provided by any law of the Commonwealth, of a State or of a Territory that they are not liable to attachment); and
- (s) providing for and in relation to:
  - (i) the attendance at family counselling by parties to proceedings under this Act; and

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- (ii) the attendance at family dispute resolution by parties to proceedings under this Act; and
- (iii) the giving of advice and assistance by family consultants to people involved in proceedings under this Act; and
- (iv) the participation by parties to proceedings under this Act in courses, programs and other services (other than those mentioned in subparagraph (i), (ii) or (iii)) that the parties are ordered by the court to participate in; and
- (v) the use, for the purposes of proceedings under this Act, by courts exercising jurisdiction under this Act and officers of such courts, of reports about the future conduct of the proceedings that have been prepared by persons who dealt with the parties in accordance with Rules of Court made under subparagraphs (i), (ii), (iii) or (iv); and
- (sa) prescribing the functions and duties of assessors and of family consultants and arbitrators; and
- (sb) providing for and in relation to the making of applications under this Act for arbitration and for orders under sections 13E and 13F; and
- (sc) prescribing the disputes, proceedings or matters that may or may not be arbitrated under this Act; and
- (sca) prescribing the disputes, proceedings or matters in relation to which family consultants may, or must not, perform their functions; and
- (sd) providing for and in relation to:
  - (i) the functions to be performed by family consultants; and
  - (ii) the procedures to be followed in performing those functions; and
  - (iii) the procedures to be followed by persons involved in proceedings in relation to which a family consultant is performing functions; and
  - (iv) the procedures to be followed when a family consultant ceases performing functions in relation to a dispute, proceeding or matter; and

- (sda) providing for and in relation to:
  - (i) the procedures to be followed by a family counsellor authorised under subsection 38BD(1) of this Act or engaged under subsection 18ZI(2) of the *Federal Court of Australia Act 1976*; and
  - (ii) the procedures to be followed by persons attending family counselling with such a counsellor; and
  - (iii) the procedures to be followed when family counselling with such a counsellor ends; and
- (sdb) providing for and in relation to:
  - (i) the procedures to be followed by a family dispute resolution practitioner authorised under subsection 38BD(2) of this Act or engaged under subsection 18ZI(2) of the *Federal Court of Australia Act 1976*; and
  - (ii) the procedures to be followed by persons attending family dispute resolution with such a practitioner; and
  - (iii) the procedures to be followed when family dispute resolution with such a practitioner ends; and
- (sdc) providing for and in relation to:
  - (i) the procedures to be followed by an arbitrator in relation to a dispute, proceeding or matter under this Act; and
  - (ii) the attendance by persons at conferences conducted by arbitrators for the purpose of arbitrating a dispute, proceeding or matter under this Act; and
  - (iii) the procedure to be followed when arbitration ends, both where it has resulted in an agreement or award and where it has not; and
- (se) prescribing matters relating to the costs of arbitration by arbitrators, and the assessment or taxation of those costs; and
- (sea) prescribing matters relating to the costs of family counselling by family counsellors authorised under subsection 38BD(1) of this Act or engaged under subsection 18ZI(2) of the *Federal Court of Australia Act 1976*; and
- (seb) prescribing matters relating to the costs of family dispute resolution by family dispute resolution practitioners

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authorised under subsection 38BD(2) of this Act or engaged under subsection 18ZI(2) of the *Federal Court of Australia Act 1976*; and

- (sf) providing for and in relation to:
    - (i) the registration of awards under section 13H; and
    - (ii) the time and manner of making applications for review of registered awards under section 13J or for orders setting aside registered awards under section 13K; and
  - (sg) providing for and in relation to conciliation conferences; and
  - (t) prescribing matters incidental to the matters specified in the preceding paragraphs; and
  - (u) prescribing penalties not exceeding 50 penalty units for offences against the standard Rules of Court.
- (1A) A reference in subsection (1) to a ***court exercising jurisdiction under this Act*** does not include a reference to the Federal Circuit Court of Australia.
- (2) The *Legislation Act 2003* (other than sections 8, 9, 10 and 16 and Part 4 of Chapter 3 of that Act) applies in relation to rules of court made by Judges under this section or any other Act:
- (a) as if a reference to a legislative instrument (other than in subparagraph 14(1)(a)(ii) and subsection 14(3) of that Act) were a reference to a rule of court; and
  - (b) as if a reference to a rule-maker were a reference to the Chief Justice acting on behalf of the Judges; and
  - (c) subject to such further modifications or adaptations as are provided for in regulations made under paragraph 125(1)(baa) of this Act.
- (2A) Despite the fact that section 16 of the *Legislation Act 2003* does not apply in relation to rules of court made by Judges under this or any other Act, the Office of Parliamentary Counsel (established by subsection 2(1) of the *Parliamentary Counsel Act 1970*) may provide assistance in the drafting of any of those Rules if the Chief Justice so desires.
- (3) In this section, ***Judge*** means:
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- (a) a Judge of the Family Court of Australia; or
- (b) where the Governor-General has made an arrangement with the Governor of a State under section 112 in relation to the performance, by a Judge of the Family Court of that State, of functions under this section—that Judge.

Note: The power to make Rules of Court conferred by this section is extended by section 109A and subsection 111C(7A). Powers to make Rules of Court are also contained in sections 26B and 37A.

### **124 Rules Advisory Committee**

- (1) There shall be a Rules Advisory Committee consisting of such Judges of the Family Court of Australia, such Judges of Family Courts of States and such other persons as are appointed in accordance with this section.
- (2) The function of the Rules Advisory Committee is to provide to the Judges referred to in section 123 such advice in relation to the making of standard Rules of Court as is requested from time to time by those Judges.
- (3) Members of the Rules Advisory Committee shall be appointed by the Governor-General on the nomination of the Attorney-General made by the Attorney-General after consultation with the Chief Justice of the Family Court of Australia.
- (4) A Judge of a Family Court of a State shall not be appointed as a member of the Rules Advisory Committee unless the Governor-General has made an arrangement with the Governor of the State under section 112 in relation to the performance, by that Judge, of functions as a member of the Rules Advisory Committee.
- (5) The members of the Rules Advisory Committee shall be paid such allowances in respect of expenses in connection with their duties as are prescribed.
- (6) A member of the Rules Advisory Committee may resign by writing signed and delivered to the Governor-General.

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**124A Regulations in relation to overseas-related maintenance obligations etc.**

- (1) The regulations may make provision for, and in relation to, the following matters:
  - (a) giving effect to an international agreement that relates to maintenance obligations arising from family relationship, parentage or marriage;
  - (b) maintenance obligations arising from family relationship, parentage or marriage, where:
    - (i) the maintenance is claimed by or on behalf of a person who is in a reciprocating jurisdiction; or
    - (ii) the person from whom the maintenance is claimed is in a reciprocating jurisdiction.
- (2) Regulations made for the purposes of this section may:
  - (a) confer jurisdiction on a federal court (other than the High Court) or a court of a Territory; or
  - (b) invest a court of a State with federal jurisdiction.

- (4) In this section:

***international agreement*** means an agreement whose parties are:

- (a) Australia and a foreign country; or
- (b) Australia and 2 or more foreign countries.

***reciprocating jurisdiction*** means:

- (a) a foreign country; or
- (b) a part of a foreign country;

that is prescribed by the regulations to be a reciprocating jurisdiction for the purposes of this section.

**125 Regulations**

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be

prescribed for carrying out or giving effect to this Act and, in particular:

- (a) providing for and in relation to the service overseas, pursuant to any convention between Australia and another country, of any documents in proceedings under this Act; and
- (b) providing for and in relation to the transcription of proceedings under this Act and the making available of copies of transcripts of those proceedings; and
- (ba) providing for and in relation to the authorisation of:
  - (i) officers or staff members of the Family Court as family counsellors under subsection 38BD(1); and
  - (ii) officers or staff members of the Family Court as family dispute resolution practitioners under subsection 38BD(2); and
- (baa) modifying or adapting the provisions of the *Legislation Act 2003* (other than the provisions of Part 2 of Chapter 3 of that Act or any other provisions whose modification or adaptation would affect the operation of that Part) in their application to the Family Court and any other court exercising jurisdiction under this Act; and
- (bb) prescribing requirements for arbitrators; and
- (bba) the registration of awards made in section 13E arbitration and relevant property or financial arbitration; and
- (bc) prescribing, or providing for or in relation to, anything that may be dealt with in Rules of Court made under paragraph 123(1)(sa), (sb), (sc), (sca), (sd), (sda), (sdb), (sdc), (se), (sea) or (seb); and
- (c) prescribing court fees to be payable in respect of proceedings under this Act; and
- (ca) prescribing fees payable for services provided by the Family Court in circumstances other than where a court orders or directs the provision of the services; and
- (d) exempting persons included in particular classes of persons from liability to pay court fees prescribed under paragraph (c) and fees prescribed under paragraph (ca); and

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- (e) providing for the refund of court fees prescribed under paragraph (c) and fees prescribed under paragraph (ca) that have been paid in particular circumstances; and
  - (f) providing for an officer of a court exercising jurisdiction under this Act, a prescribed authority of the Commonwealth, of a State or of a Territory or the person for the time being holding a prescribed office under a law of the Commonwealth, of a State or of a Territory, in his, her or its discretion, to institute and prosecute proceedings, on behalf of the person entitled to moneys payable under a child maintenance order under Part VII or a maintenance order under Part VIII, for the purpose of enforcing payment of those moneys; and
  - (g) providing for and in relation to priority as between the execution of orders made under the regulations, or under the repealed Act, for the attachment of moneys payable by the Commonwealth, a State, a Territory or the Administration of a Territory, or by an authority of the Commonwealth, of a State or of a Territory (other than moneys as to which it is provided by any law of the Commonwealth, of a State or of a Territory that they are not liable to attachment) and the execution of orders made in accordance with the *Maintenance Orders (Commonwealth Officers) Act 1966*.
- (2) Court fees payable in pursuance of regulations made under this section in respect of proceedings in a Family Court of a State are payable to the State.
- (3) To the extent of any inconsistency between regulations and Rules of Court, the regulations prevail.

## **Schedule 1—Child Protection Convention**

Note: This is the copy of the Child Protection Convention referred to in the definition of *Child Protection Convention* in subsection 111CA(1).

The undersigned, Delegates of the Governments of Argentina, Australia, Austria, Belgium, Canada, China, Croatia, the Czech Republic, Egypt, Finland, The former Yugoslav Republic of Macedonia, France, Germany, Greece, Ireland, Israel, Italy, Japan, Luxembourg, Malta, Mexico, Monaco, Morocco, the Netherlands, Norway, Poland, Portugal, Romania, the Slovak Republic, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela, Member States, as well as the Representatives of the Governments of Burkina Faso, Colombia, Costa Rica, Ecuador, Georgia, the Holy See, the Republic of Korea, Mauritius, New Zealand, Paraguay, Peru, the Philippines, the Russian Federation, South Africa and Sri Lanka, participating as Observers, convened at The Hague on 30 September 1996, at the invitation of the Government of the Netherlands, in the Eighteenth Session of the Hague Conference on Private International Law.

Following the deliberations laid down in the records of the meetings, have decided to submit to their Governments—

### **CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN**

The States signatory to the present Convention,

Considering the need to improve the protection of children in international situations,

Wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of children,

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*Family Law Act 1975*

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Compilation No. 85

Compilation date: 1/9/18

Registered: 12/9/18

## Schedule 1 Child Protection Convention

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Recalling the importance of international co-operation for the protection of children,

Confirming that the best interests of the child are to be a primary consideration,

Noting that the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors* is in need of revision,

Desiring to establish common provisions to this effect, taking into account the *United Nations Convention on the Rights of the Child* of 20 November 1989,

Have agreed on the following provisions—

### CHAPTER I—SCOPE OF THE CONVENTION

#### *Article 1*

1 The objects of the present Convention are—

*a* to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;

*b* to determine which law is to be applied by such authorities in exercising their jurisdiction;

*c* to determine the law applicable to parental responsibility;

*d* to provide for the recognition and enforcement of such measures of protection in all Contracting States;

*e* to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

2 For the purposes of this Convention, the term ‘parental responsibility’ includes parental authority, or any analogous relationship of authority

determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child.

*Article 2*

The Convention applies to children from the moment of their birth until they reach the age of 18 years.

*Article 3*

The measures referred to in Article 1 may deal in particular with—

- a* the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;
- b* rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence;
- c* guardianship, curatorship and analogous institutions;
- d* the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;
- e* the placement of the child in a foster family or in institutional care, or the provision of care by *kafala* or an analogous institution;
- f* the supervision by a public authority of the care of a child by any person having charge of the child;
- g* the administration, conservation or disposal of the child's property.

*Article 4*

The Convention does not apply to—

- a* the establishment or contesting of a parent-child relationship;
- b* decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;
- c* the name and forenames of the child;
- d* emancipation;
- e* maintenance obligations;
- f* trusts or succession;
- g* social security;
- h* public measures of a general nature in matters of education or health;
- i* measures taken as a result of penal offences committed by children;
- j* decisions on the right of asylum and on immigration.

CHAPTER II—JURISDICTION

*Article 5*

1 The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

2 Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

*Article 6*

1 For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5.

2 The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.

*Article 7*

1 In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and

*a* each person, institution or other body having rights of custody has acquiesced in the removal or retention; or

*b* the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.

2 The removal or the retention of a child is to be considered wrongful where—

*a* it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

*b* at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

3 So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child.

*Article 8*

1 By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

— request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or

— suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.

2 The Contracting States whose authorities may be addressed as provided in the preceding paragraph are

*a* a State of which the child is a national,

*b* a State in which property of the child is located,

*c* a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,

*d* a State with which the child has a substantial connection.

3 The authorities concerned may proceed to an exchange of views.

4 The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.

#### *Article 9*

1 If the authorities of a Contracting State referred to in Article 8, paragraph 2, consider that they are better placed in the particular case to assess the child's best interests, they may either

— request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary, or

— invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child.

2 The authorities concerned may proceed to an exchange of views.

3 The authority initiating the request may exercise jurisdiction in place of the authority of the Contracting State of the habitual residence of the child only if the latter authority has accepted the request.

#### *Article 10*

1 Without prejudice to Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal

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separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child if

*a* at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and

*b* the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child.

2 The jurisdiction provided for by paragraph 1 to take measures for the protection of the child ceases as soon as the decision allowing or refusing the application for divorce, legal separation or annulment of the marriage has become final, or the proceedings have come to an end for another reason.

#### *Article 11*

1 In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.

2 The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.

3 The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

*Article 12*

1 Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5 to 10.

2 The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken a decision in respect of the measures of protection which may be required by the situation.

3 The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in the Contracting State where the measures were taken as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

*Article 13*

1 The authorities of a Contracting State which have jurisdiction under Articles 5 to 10 to take measures for the protection of the person or property of the child must abstain from exercising this jurisdiction if, at the time of the commencement of the proceedings, corresponding measures have been requested from the authorities of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration.

2 The provisions of the preceding paragraph shall not apply if the authorities before whom the request for measures was initially introduced have declined jurisdiction.

*Article 14*

The measures taken in application of Articles 5 to 10 remain in force according to their terms, even if a change of circumstances has eliminated the basis upon which jurisdiction was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures.

CHAPTER III—APPLICABLE LAW

*Article 15*

1 In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law.

2 However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection.

3 If the child's habitual residence changes to another Contracting State, the law of that other State governs, from the time of the change, the conditions of application of the measures taken in the State of the former habitual residence.

*Article 16*

1 The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.

2 The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.

3 Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.

4 If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence.

*Article 17*

The exercise of parental responsibility is governed by the law of the State of the child's habitual residence. If the child's habitual residence changes, it is governed by the law of the State of the new habitual residence.

*Article 18*

The parental responsibility referred to in Article 16 may be terminated, or the conditions of its exercise modified, by measures taken under this Convention.

*Article 19*

1 The validity of a transaction entered into between a third party and another person who would be entitled to act as the child's legal representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the child's legal representative under the law designated by the provisions of this Chapter, unless the third party knew or should have known that the parental responsibility was governed by the latter law.

2 The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State.

*Article 20*

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

*Article 21*

1 In this Chapter the term “law” means the law in force in a State other than its choice of law rules.

2 However, if the law applicable according to Article 16 is that of a non-Contracting State and if the choice of law rules of that State designate the law of another non-Contracting State which would apply its own law, the law of the latter State applies. If that other non-Contracting State would not apply its own law, the applicable law is that designated by Article 16.

*Article 22*

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

CHAPTER IV—RECOGNITION AND ENFORCEMENT

*Article 23*

1 The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.

2 Recognition may however be refused—

*a* if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;

*b* if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;

*c* on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;

*d* if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;

*e* if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;

*f* if the procedure provided in Article 33 has not been complied with.

#### *Article 24*

Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.

#### *Article 25*

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

*Article 26*

1 If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.

2 Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.

3 The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.

*Article 27*

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

*Article 28*

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

CHAPTER V—CO-OPERATION

*Article 29*

1 A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on such authorities.

2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

*Article 30*

1 Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

2 They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of children.

*Article 31*

The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to—

*a* facilitate the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter;

*b* facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;

*c* provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State.

*Article 32*

On a request made with supporting reasons by the Central Authority or other competent authority of any Contracting State with which the child has a substantial connection, the Central Authority of the Contracting State in which the child is habitually resident and present may, directly or through public authorities or other bodies,

*a* provide a report on the situation of the child;

*b* request the competent authority of its State to consider the need to take measures for the protection of the person or property of the child.

*Article 33*

1 If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by *kafala* or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.

2 The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.

*Article 34*

1 Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so requires, may request any authority of another Contracting State which has information relevant to the protection of the child to communicate such information.

2 A Contracting State may declare that requests under paragraph 1 shall be communicated to its authorities only through its Central Authority.

*Article 35*

1 The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.

2 The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised. An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision.

3 An authority having jurisdiction under Articles 5 to 10 to decide on access may adjourn a proceeding pending the outcome of a request made under paragraph 2, in particular, when it is considering an application to restrict or terminate access rights granted in the State of the child's former habitual residence.

4 Nothing in this Article shall prevent an authority having jurisdiction under Articles 5 to 10 from taking provisional measures pending the outcome of the request made under paragraph 2.

*Article 36*

In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child's residence has changed to, or that the child is present in another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.

*Article 37*

An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family.

*Article 38*

1 Without prejudice to the possibility of imposing reasonable charges for the provision of services, Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter.

2 Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges.

*Article 39*

Any Contracting State may enter into agreements with one or more other Contracting States with a view to improving the application of this Chapter in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

CHAPTER VI—GENERAL PROVISIONS

*Article 40*

1 The authorities of the Contracting State of the child's habitual residence, or of the Contracting State where a measure of protection has been taken, may deliver to the person having parental responsibility or to the person entrusted with protection of the child's person or property, at his or her request, a certificate indicating the capacity in which that person is entitled to act and the powers conferred upon him or her.

2 The capacity and powers indicated in the certificate are presumed to be vested in that person, in the absence of proof to the contrary.

3 Each Contracting State shall designate the authorities competent to draw up the certificate.

*Article 41*

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

*Article 42*

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State.

*Article 43*

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality.

*Article 44*

Each Contracting State may designate the authorities to which requests under Articles 8, 9 and 33 are to be addressed.

*Article 45*

1 The designations referred to in Articles 29 and 44 shall be communicated to the Permanent Bureau of the Hague Conference on Private International Law.

2 The declaration referred to in Article 34, paragraph 2, shall be made to the depositary of the Convention.

*Article 46*

A Contracting State in which different systems of law or sets of rules of law apply to the protection of the child and his or her property shall not be bound to apply the rules of the Convention to conflicts solely between such different systems or sets of rules of law.

*Article 47*

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units—

- 1 any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;
- 2 any reference to the presence of the child in that State shall be construed as referring to presence in a territorial unit;
- 3 any reference to the location of property of the child in that State shall be construed as referring to location of property of the child in a territorial unit;
- 4 any reference to the State of which the child is a national shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the child has the closest connection;
- 5 any reference to the State whose authorities are seized of an application for divorce or legal separation of the child's parents, or for annulment of their marriage, shall be construed as referring to the territorial unit whose authorities are seized of such application;
- 6 any reference to the State with which the child has a substantial connection shall be construed as referring to the territorial unit with which the child has such connection;
- 7 any reference to the State to which the child has been removed or in which he or she has been retained shall be construed as referring to the relevant territorial unit to which the child has been removed or in which he or she has been retained;
- 8 any reference to bodies or authorities of that State, other than Central Authorities, shall be construed as referring to those authorised to act in the relevant territorial unit;

9 any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed as referring to the law or procedure or authority of the territorial unit in which such measure was taken;

10 any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought.

*Article 48*

For the purpose of identifying the applicable law under Chapter III, in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply—

*a* if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;

*b* in the absence of such rules, the law of the relevant territorial unit as defined in Article 47 applies.

*Article 49*

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Convention, the following rules apply—

*a* if there are rules in force in such a State identifying which among such laws applies, that law applies;

*b* in the absence of such rules, the law of the system or the set of rules of law with which the child has the closest connection applies.

*Article 50*

This Convention shall not affect the application of the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, as between Parties to both Conventions. Nothing, however, precludes provisions of this Convention from being invoked for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

*Article 51*

In relations between the Contracting States this Convention replaces the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, and the Convention governing the guardianship of minors*, signed at The Hague 12 June 1902, without prejudice to the recognition of measures taken under the Convention of 5 October 1961 mentioned above.

*Article 52*

1 This Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

2 This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of children habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.

3 Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.

4 The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

*Article 53*

1 The Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State.

2 The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State.

*Article 54*

1 Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English.

2 However, a Contracting State may, by making a reservation in accordance with Article 60, object to the use of either French or English, but not both.

*Article 55*

1 A Contracting State may, in accordance with Article 60,

*a* reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory;

*b* reserve the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property.

- 2 The reservation may be restricted to certain categories of property.

*Article 56*

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convoke a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII—FINAL CLAUSES

*Article 57*

1 The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Eighteenth Session.

2 It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

*Article 58*

1 Any other State may accede to the Convention after it has entered into force in accordance with Article 61, paragraph 1.

2 The instrument of accession shall be deposited with the depositary.

3 Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b* of Article 63. Such an objection may also be

raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

*Article 59*

1 If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2 Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3 If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

*Article 60*

1 Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 59, make one or both of the reservations provided for in Articles 54, paragraph 2, and 55. No other reservation shall be permitted.

2 Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.

3 The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

*Article 61*

1 The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 57.

2 Thereafter the Convention shall enter into force—

*a* for each State ratifying, accepting or approving it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

*b* for each State acceding, on the first day of the month following the expiration of three months after the expiration of the period of six months provided in Article 58, paragraph 3;

*c* for a territorial unit to which the Convention has been extended in conformity with Article 59, on the first day of the month following the expiration of three months after the notification referred to in that Article.

*Article 62*

1 A State Party to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units to which the Convention applies.

2 The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period.

*Article 63*

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 58 of the following—

- a* the signatures, ratifications, acceptances and approvals referred to in Article 57;
- b* the accessions and objections raised to accessions referred to in Article 58;
- c* the date on which the Convention enters into force in accordance with Article 61;
- d* the declarations referred to in Articles 34, paragraph 2, and 59;
- e* the agreements referred to in Article 39;
- f* the reservations referred to in Articles 54, paragraph 2, and 55 and the withdrawals referred to in Article 60, paragraph 2;
- g* the denunciations referred to in Article 62.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

[Signatures omitted]

Done at The Hague, on the 19th day of October 1996, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Eighteenth Session.

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

## Endnotes

### Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Family Law Act 1975	53, 1975	12 June 1975	5 Jan 1976 (s 2 and gaz 1975, No G35, p 2)	
Family Law Amendment Act 1976	63, 1976	8 June 1976	s 1, 2, 17, 18, 39 and Sch: 8 June 1976 (s 2(1)) s 29 and 30: 5 Jan 1976 (s 2(2)) Remainder: 1 July 1976 (s 2(3))	s 19(2)
Family Law Amendment Act (No. 2) 1976	95, 1976	28 Sept 1976	28 Sept 1976 (s 2)	—
Marriage Amendment Act 1976	209, 1976	20 Dec 1976	s 29: (s 2(3) and gaz 1977, No S93)	—
Family Law Amendment Act 1977	102, 1977	11 Oct 1977	11 Oct 1977 (s 2)	—
Family Law Amendment Act 1979	23, 1979	5 Apr 1979	s 4, 10, 11, 12(a), 17 and 23: 1 Aug 1979 (s 2(2) and gaz 1979, No S154) Remainder: 5 Apr 1979 (s 2(1))	s 18(2), 19(2) and 22(2)
Domicile (Consequential Amendments) Act 1982	2, 1982	4 Mar 1982	s 4: 1 July 1982 (s 2)	—
Family Law Amendment (Legal Aid Costs) Act 1983	67, 1983	20 Oct 1983	20 Oct 1983 (s 2)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Family Law Amendment Act 1983	72, 1983	28 Oct 1983	s 1 and 2: 28 Oct 1983 (s 2(1)) s 3–72: 25 Nov 1983 (s 2(2)) Remainder: 2 Jan 1985 (s 2(3) and gaz 1984, No S532)	s 3(2), 18(2), (3), 19(2), 44(2), (3), 51(2) and 68(2)
Public Service Reform Act 1984	63, 1984	25 June 1984	Sch 5: 20 July 1984 (s 2(4) and gaz 1984, No S276)	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1984	72, 1984	25 June 1984	s 2(24): 25 June 1984 (s 2(2)) s 5(1) and Sch (amdt to s 44 and 87): 25 Nov 1983 (s 2(12)(b), (24)) s 5(1), Sch (remaining amdts to the Family Law Act 1975) and Note 1 of Notes about section headings: 2 Jan 1985 (s 2(12)(a), (c), (24) and gaz 1984, No S532)	s 2(24) and 5(1)
Statute Law (Miscellaneous Provisions) Act (No. 2) 1984	165, 1984	25 Oct 1984	s 6(1) and Sch 1: 2 Jan 1985 (s 2(10), (32))	s 6(1)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	Sch 1: 3 July 1985 (s 2(1))	—
Public Service and Statutory Authorities Amendment Act 1985	166, 1985	11 Dec 1985	s 45(2) and Sch: 8 Jan 1986 (s 2(7))	s 45(2)

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Statute Law (Miscellaneous Provisions) Act (No. 2) 1985	193, 1985	16 Dec 1985	s 10, 16 and Sch 1: 16 Dec 1985 (s 2(1))	s 10 and 16
Statute Law (Miscellaneous Provisions) Act (No. 1) 1986	76, 1986	24 June 1986	s 9 and Sch 1: 24 June 1986 (s 2(1))	s 9
Statute Law (Miscellaneous Provisions) Act (No. 2) 1986	168, 1986	18 Dec 1986	s 5(1) and Sch 1: 18 Dec 1986 (s 2(1))	s 5(1)
Statute Law (Miscellaneous Provisions) Act 1987	141, 1987	18 Dec 1987	s 5(1) and Sch 1: 18 Dec 1987 (s 2(1))	s 5(1)
Family Law Amendment Act 1987	181, 1987	26 Dec 1987	1 Apr 1988 (s 2 and gaz 1988, No S83)	s 64–68
<b>as amended by</b>				
Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988	8, 1988	5 Apr 1988	s 44 and 45: 1 July 1988 (s 2(3) and gaz 1988, No S191)	—
Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988	8, 1988	5 Apr 1988	s 6–11, 12(b), (c), (e), (f), 13–21, 27, 29, 30): 5 Apr 1988 (s 2(1)) s 12(a) and (d): 1 Jan 1990 (s 2(2)) s 22–26 and 28: 1 July 1988 (s 2(3) and gaz 1988, No S191)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
<b>as amended by</b>				
Law and Justice Legislation Amendment Act 1988	120, 1988	14 Dec 1988	s 35: 5 Apr 1988 (s 2(6))	—
Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988	99, 1988	2 Dec 1988	Sch: 2 Dec 1988 (s 2)	—
Law and Justice Legislation Amendment Act 1988	120, 1988	14 Dec 1988	s 36–39: 14 Dec 1988 (s 2(1))	s 37(2), 38(2) and 39(2)
Child Support (Assessment) Act 1989	124, 1989	21 Sept 1989	s 190–195: 1 Oct 1989 (s 2(1) and gaz 1989, No S314)	—
Courts and Tribunals Administration Amendment Act 1989	157, 1989	5 Dec 1989	s 11–13, 23: 1 Jan 1990 (s 2(2) and gaz 1989, No S398)	s 23
Family Law Amendment Act 1989	182, 1989	28 Dec 1989	25 Jan 1990	s 21(2) and 23(2)
Law and Justice Legislation Amendment Act 1990	115, 1990	21 Dec 1990	Sch: 21 Dec 1990 (s 2(1))	—
Child Support Legislation Amendment Act 1990	138, 1990	28 Dec 1990	s 14, 15: 28 Dec 1990 (s 2)	—
Family Law Amendment Act 1991	37, 1991	27 Mar 1991	24 Apr 1991	—
Courts (Mediation and Arbitration) Act 1991	113, 1991	27 June 1991	s 4–9: 27 Dec 1991 (s 2(3))	—

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	s 31(2) and Sch: 10 Dec 1991 (s 3 and gaz 1991, No S332)	s 31(2)
Law and Justice Legislation Amendment Act 1991	136, 1991	12 Sept 1991	Sch: 10 Oct 1991 (s 2(1))	—
Family Law Amendment Act (No. 2) 1991	159, 1991	25 Oct 1991	25 Oct 1991 (s 2)	—
Prime Minister and Cabinet Legislation Amendment Act 1991	199, 1991	18 Dec 1991	Sch 3: 18 Dec 1991 (s 2)	—
Law and Justice Legislation Amendment Act 1992	22, 1992	13 Apr 1992	Sch: 13 Apr 1992 (s 2(1))	—
Law and Justice Legislation Amendment Act (No. 2) 1992	23, 1992	6 May 1992	Sch: 6 May 1992 (s 2)	—
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992	94, 1992	30 June 1992	Sch: 1 July 1990 (s 2(2))	—
Territories Law Reform Act 1992	104, 1992	30 June 1992	Sch 4: 1 July 1992 (s 2(3))	—
Law and Justice Legislation Amendment Act (No. 4) 1992	143, 1992	7 Dec 1992	Sch: 1 Nov 1991 (s 2(3)) Sch (new s 37C added): 7 Dec 1992 (s 2(1))	—
Social Security Legislation Amendment Act (No. 2) 1992	229, 1992	24 Dec 1992	Sch 4 (items 1–3): 24 Dec 1992 (s 2(1)(g))	—

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Law and Justice Legislation Amendment Act 1994	84, 1994	23 June 1994	s 35: 1 Nov 1991 (s 2(5))	—
Family Law Reform Act 1995	167, 1995	16 Dec 1995	s 1, 2 and 54: 16 Dec 1995 (s 2(1)) s. 52: 25 Jan 1996 (s 2(2) and gaz 1996, No S27) Remainder: 11 June 1996 (s 2(2) and gaz 1996, No GN5)	s 52(2) and 59
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 4 (items 72–74): 25 Oct 1996 (s 2(1))	—
Family Law Amendment Act 1997	25, 1997	10 Apr 1997	10 Apr 1997 (s 2)	—
Law and Justice Legislation Amendment Act 1997	34, 1997	17 Apr 1997	Sch 7: 17 Apr 1997 (s 2(1))	—
Child Support Legislation Amendment Act (No. 1) 1997	84, 1997	23 June 1997	Sch 1 (items 40, 41): 21 July 1997 (s 2(1))	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Sch 2 (items 751–759): 1 Jan 1998 (s 2(2))	—
Family Law Amendment Act (No. 1) 1998	89, 1998	14 July 1998	Sch 2 (item 34): 14 July 1998 (s 2)	—
Statute Stocktake Act 1999	118, 1999	22 Sept 1999	22 Sept 1999 (s 2(1))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 439–454): 5 Dec 1999 (s 2(1), (2))	—

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Corporate Law Economic Reform Program Act 1999	156, 1999	24 Nov 1999	Sch 10 (item 83): 13 Mar 2000 (s 2(2)(c) and gaz 2000, No S114)	—
Federal Magistrates (Consequential Amendments) Act 1999	194, 1999	23 Dec 1999	Sch 11: 23 Dec 1999 (s 2(1))	—
Child Support Legislation Amendment Act 2000	49, 2000	3 May 2000	Sch 1 (item 5): 3 May 2000 (s 2)	—
Family Law Amendment Act 2000	143, 2000	29 Nov 2000	Sch 1, Sch 2 and Sch 3 (items 6–31, 32–40A, 42–116): 27 Dec 2000 (s 2(1)) Sch 3 (item 31A): 29 Nov 2000 (s 2(1A)) Sch 3 (item 41): 1 July 1988 (s 2(2))	Sch 1 (item 31) and Sch 3 (items 20, 24, 40, 56, 56B, 75, 83)
Jurisdiction of Courts (Miscellaneous Amendments) Act 2000	161, 2000	21 Dec 2000	Sch 1 (item 3): 21 Dec 2000 (s 2)	Sch 1 (item 16)
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s 4(1), (2) and Sch 27: 24 May 2001 (s 2(1)(a))	s 4(1) and (2)
Family Law Legislation Amendment (Superannuation) Act 2001	61, 2001	28 June 2001	s 4, 5 and Sch 1 (items 3, 4): 28 Dec 2002 (s 2(2))	s 4 and 5

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
<b>as amended by</b>				
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002	86, 2002	11 Oct 2002	Sch 5 (item 10): 1 Jan 2003 (s 2(1) item 4)	—
Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001	114, 2001	18 Sept 2001	Sch 1 (items 1–2A): 28 Dec 2002 (s 2)	—
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	Sch 1 (items 52–56): 29 Oct 2001 (s 2(1))	Sch 1 (item 97)
Family Law Amendment (Child Protection Convention) Act 2002	69, 2002	3 Sept 2002	Sch 1: 1 Aug 2003 (s 2(1) item 2)	—
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002	86, 2002	11 Oct 2002	Sch 5 (items 1–9): 1 Jan 2003 (s 2(1) item 3)	—
Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2002	121, 2002	2 Dec 2002	Sch 1: 28 Dec 2002 (s 2(1) item 2)	—

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Family Law Amendment Act 2003	138, 2003	17 Dec 2003	Sch 1–3, Sch 4 (items 1, 3, 6–8, 14–19, 23, 24), Sch 5 (items 2, 3) and Sch 7 (items 1–19, 21–24, 27–29A, 32–35): 14 Jan 2004 (s 2(1) items 2–5, 7, 9, 11, 13, 16, 19, 21, 23, 25) Sch 4 (items 2, 4, 5, 9–13, 20–22, 25–27), Sch 5 (items 1A, 1, 4) and Sch 7 (items 20, 25, 26, 30, 31): 27 Dec 2000 (s 2(1) items 6, 8, 10, 12, 14, 15, 17, 20, 22, 24) Sch 6: 17 Dec 2004 (s 2(1) item 18) Remainder: 17 Dec 2003 (s 2(1) items 1, 14A)	Sch 2 (item 9), Sch 3 (item 29), Sch 4A (item 6), Sch 6 (item 2) and Sch 7 (item 35)
Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003	140, 2003	17 Dec 2003	Sch 1 (items 19–22): 1 Jan 2005 (s 2(1) item 3)	—
Family Law Amendment (Annuities) Act 2004	153, 2004	15 Dec 2004	s 4: 15 Dec 2004 (s 2(1) item 1) Sch 1: 17 Dec 2004 (s 2(1) item 2) Sch 2: 15 June 2005 (s 2(1) item 3)	s 4
Bankruptcy and Family Law Legislation Amendment Act 2005	20, 2005	18 Mar 2005	Sch 1 (items 9–60): 18 Sept 2005 (s 2(1) item 2) Sch 5: 15 Apr 2005 (s 2(1) item 4)	Sch 1 (item 60)

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Family Law Amendment Act 2005	98, 2005	6 July 2005	Sch 1 (items 1–137): 3 Aug 2005 (s 2(1) item 2) Sch 1 (item 139): 18 Sept 2005 (s 2(1) item 4)	Sch 1 (items 4, 7, 14, 22, 35, 129, 131, 133, 135)
Jurisdiction of Courts (Family Law) Act 2006	22, 2006	6 Apr 2006	Sch 1 (items 10–27): 1 July 2006 (s 2(1) item 2) Sch 1 (items 28–30): 3 Aug 2005 (s 2(1) items 3–5)	Sch 1 (item 27)
Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2006	23, 2006	6 Apr 2006	Sch 2 (items 1, 2): 4 May 2006 (s 2(1) item 2)	—
Family Law Amendment (Shared Parental Responsibility) Act 2006	46, 2006	22 May 2006	Sch 1, 2, Sch 3 (item 2–8), Sch 4 (items 9–86, 118–138, 139), Sch 5–7, Sch 8 (items 40–101, 103, 104) and Sch 9 (items 6–16, 18–41, 43–66): 1 July 2006 (s 2(1) items 2, 3, 5, 6, 9, 10) Sch 4 (items 1–8) and Sch 10: 22 May 2006 (s 2(1) items 4, 10)	Sch 1 (items 42–44), Sch 2 (items 8–10), Sch 3 (item 8), Sch 4 (items 118–138, 139), Sch 5 (items 14–16), Sch 6 (items 2–4), Sch 7 (item 2), Sch 8 (items 103, 104) and Sch 9 (items 65, 66)
Families, Community Services and Indigenous Affairs and Other Legislation (2006 Budget and Other Measures) Act 2006	82, 2006	30 June 2006	Sch 8: 1 July 2006 (s 2(1) item 8)	Sch 8 (items 12–29)

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### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Act 2006	146, 2006	6 Dec 2006	Sch 2 (items 111–115): 1 July 2008 (s 2(1) item 3) Sch 3 (item 75): 1 Jan 2007 (s 2(1) item 5)	Sch 2 (item 115)
<b>as amended by</b>				
Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007	82, 2007	21 June 2007	Sch 1 (item 99): 1 Jan 2008 (s 2(1) item 5)	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 2 (items 2, 3): 1 July 2008 (s 2(1) item 6)	—
Judiciary Legislation Amendment Act 2006	151, 2006	7 Dec 2006	Sch 1 (item 6): 7 Dec 2006 (s 2)	—
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Sch 1 (items 9, 10): 15 Mar 2007 (s 2(1) item 8)	—
Superannuation Legislation Amendment (Simplification) Act 2007	15, 2007	15 Mar 2007	Sch 1 (items 10–16, 406(1)–(3)): 15 Mar 2007 (s 2(1) item 2)	Sch 1 (item 406(1)–(3))

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007	82, 2007	21 June 2007	Sch 1 (item 99): 1 Jan 2008 (s 2(1) item 5) Sch 2 (items 101–113): 19 July 2007 (s 2(1) item 10)	—
Evidence Amendment (Journalists' Privilege) Act 2007	116, 2007	28 June 2007	Sch 1 (items 3, 4): 26 July 2007 (s 2(1) item 2)	—
Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008	26, 2008	23 June 2008	Sch 1 (items 61–64): 23 June 2008 (s 2(1) item 4)	—
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 4 (items 289–293): 4 July 2008 (s 2(1) item 64)	—
Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008	115, 2008	21 Nov 2008	Sch 1 (items 1–4, 6–20, 22–93) and Sch 4 (item 1): 1 Mar 2009 (s 2(1) items 2, 2B, 2D, 7) Sch 1 (items 5, 21), Sch 3, Sch 3A and Sch 4 (items 1A, 1B): 21 Nov 2008 (s 2(1) items 1, 2A, 2C, 6, 6A)	Sch 1 (items 85–93) and Sch 3A (item 9)
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Sch 2 (items 52A–52C): 10 Dec 2008 (s 2(1) item 11)	Sch 2 (item 52C)

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Access to Justice (Civil Litigation Reforms) Amendment Act 2009	117, 2009	4 Dec 2009	Sch 3 (items 1–6, 14): 1 Jan 2010 (s 2(1) item 3)	Sch 3 (item 14)
Federal Justice System Amendment (Efficiency Measures) Act (No. 1) 2009	122, 2009	7 Dec 2009	Sch 3 (items 2, 5): 7 Dec 2009 (s 2(1) item 2) Sch 5: 4 Jan 2010 (s 2(1) item 3)	Sch 3 (item 5) and Sch 5 (items 8, 8A, 17)
Crimes Legislation Amendment (Serious and Organised Crime) Act 2010	3, 2010	19 Feb 2010	Sch 2 (item 10): 20 Feb 2010 (s 2(1) item 3)	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 1 (item 28): 1 Mar 2010 (s 2(1) item 4) Sch 2 (items 2, 3): 1 July 2008 (s 2(1) item 6)	—
Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010	36, 2010	13 Apr 2010	Sch 2 (items 13–16): 11 Oct 2013 (s 2(1) item 3)	—
Family Law Amendment (Validation of Certain Parenting Orders and Other Measures) Act 2010	147, 2010	16 Dec 2010	17 Dec 2010 (s 2)	Sch 2 (item 3)
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 7 (item 58): 19 Apr 2011 (s 2(1) item 18)	—
Evidence Amendment (Journalists' Privilege) Act 2011	21, 2011	12 Apr 2011	Sch 1 (items 4, 5): 13 Apr 2011 (s 2)	—

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 584–592) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12)	Sch 3 (items 10, 11)
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011	58, 2011	28 June 2011	Sch 1 (items 83, 84): 1 July 2011 (s 2(1) item 2)	—
Crimes Legislation Amendment Act (No. 2) 2011	174, 2011	5 Dec 2011	Sch 2 (items 155–194): 5 June 2012 (s 2(1) item 4)	Sch 2 (item 194)
Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011	189, 2011	7 Dec 2011	Sch 1: 7 June 2012 (s 2(1) item 2) Sch 2 (items 3–29, 31–38): 7 Dec 2011 (s 2(1) items 4, 6) Sch 2 (item 30): 4 Jan 2012 (s 2(1) item 5)	Sch 1 (items 44–48) and Sch 2 (items 31–38)
Family Law Amendment (Validation of Certain Orders and Other Measures) Act 2012	32, 2012	10 Apr 2012	Sch 2: 21 Apr 2012 (s 2(1) item 3)	Sch 2 (item 4)
Parliamentary Counsel and Other Legislation Amendment Act 2012	107, 2012	22 July 2012	Sch 2 (item 8): 1 Oct 2012 (s 2(1) item 2)	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (items 53, 54): 22 Sept 2012 (s 2(1) item 2)	—

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Access to Justice (Federal Jurisdiction) Amendment Act 2012	186, 2012	11 Dec 2012	Sch 2 (items 1, 11) and Sch 4: 12 Dec 2012 (s 2(1) items 2, 4) Sch 3 (items 1–4, 11, 12): 11 June 2013 (s 2(1) item 3)	Sch 2 (item 11), Sch 3 (items 11, 12) and Sch 4 (item 12)
Courts Legislation Amendment (Judicial Complaints) Act 2012	187, 2012	11 Dec 2012	Sch 1 (items 1–13): 12 Apr 2013 (s 2(1) item 2)	Sch 1 (item 13)
Public Service Amendment Act 2013	2, 2013	14 Feb 2013	Sch 3 (item 4): 1 July 2013 (s 2(1) item 2)	—
Courts and Tribunals Legislation Amendment (Administration) Act 2013	7, 2013	12 Mar 2013	Sch 2 (items 1–16, 25–28): 1 July 2013 (s 2(1) item 3)	Sch 2 (item 25–28)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 264–307) and Sch 2 (item 2): 12 Apr 2013 (s 2(1) items 2, 3) Sch 3 (item 47): 11 June 2013 (s 2(1) item 8)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 6 (items 41, 42), Sch 9 (items 12–20) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
<b>as amended by</b> Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
<b>as amended by</b>				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 1 (items 128–135, 166–179): 5 Mar 2016 (s 2(1) item 2)	Sch 1 (items 166–179)
<b>as amended by</b>				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 3 (item 1): 5 Mar 2016 (s 2(1) item 8)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (items 152–155): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
<b>as amended by</b>				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Civil Law and Justice Legislation Amendment Act 2015	113, 2015	17 Aug 2015	Sch 3 and Sch 4 (items 12–15): 18 Aug 2015 (s 2(1) item 2)	Sch 3 (item 6) and Sch 4 (item 15)

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Passports Legislation Amendment (Integrity) Act 2015	122, 2015	10 Sept 2015	Sch 1 (item 100): 8 Oct 2015 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 224): 5 Mar 2016 (s 2(1) item 2) Sch 2 (items 1, 2, 7): 10 Mar 2016 (s 2(1) items 4, 7)	Sch 2 (item 7)
Civil Law and Justice (Omnibus Amendments) Act 2015	132, 2015	13 Oct 2015	Sch 1 (item 34): 14 Oct 2015 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 166): 10 Mar 2016 (s 2(1) item 6)	—
Courts Administration Legislation Amendment Act 2016	24, 2016	18 Mar 2016	Sch 2 (items 1–88): 1 July 2016 (s 2(1) item 4) Sch 2 (items 89–103): 1 Jan 2018 (s 2(1) item 5) Sch 6: 18 Mar 2016 (s 2(1) item 9)	Sch 6
Trade Legislation Amendment Act (No. 1) 2016	31, 2016	23 Mar 2016	Sch 2 (item 17): 1 May 2016 (s 2(1) item 3)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 3 (item 20): 21 Oct 2016 (s 2(1) item 1)	—
Statute Law Revision (Spring 2016) Act 2016	67, 2016	20 Oct 2016	Sch 1 (item 28): 17 Nov 2016	—
Marriage Amendment (Definition and Religious Freedoms) Act 2017	129, 2017	8 Dec 2017	Sch 3 (items 9–21) and Sch 4: 9 Dec 2017 (s 2(1) item 7)	Sch 3 (item 21) and Sch 4

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Legislation Amendment (Sunsetting Review and Other Measures) Act 2018	78, 2018	24 Aug 2018	Sch 1 (items 6–12): 25 Aug 2018 (s 2(1) item 2)	Sch 1 (item 12)
Family Law Amendment (Family Violence and Other Measures) Act 2018	97, 2018	31 Aug 2018	Sch 1 (items 1–24, 30): 1 Sept 2018 (s 2(1) items 2, 3, 5)	Sch 1 (items 5, 7, 12, 15, 20, 24)

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
Title .....	am No 181, 1987; No 167, 1995; No 115, 2008
<b>Part I</b>	
s 3 .....	am No 23, 1979; No 118, 1999 ed C84
s 4 .....	am No 63, 1976; No 23, 1979; No 2, 1982; No 72, 1983; No 63, 1984; No 72, 1984; No 181, 1987; No 157, 1989; No 182, 1989; No 113, 1991; No 104, 1992; No 167, 1995; No 146, 1999; No 194, 1999; No 143, 2000; No 86, 2002; No 138, 2003; No 20, 2005; No 98, 2005; No 22, 2006; No 46, 2006; No 115, 2008; No 144, 2008; No 122, 2009; No 3, 2010; No 58, 2011; No 174, 2011; No 189, 2011; No 187, 2012; No 7, 2013; No 13, 2013; No 24, 2016; No 129, 2017; No 97, 2018
s. 4AA .....	ad. No. 115, 2008
s. 4AB .....	ad. No. 189, 2011
s. 4A .....	ad. No. 138, 2003 am. No. 115, 2008
s. 4B .....	ad. No. 115, 2008
s. 4C .....	ad. No. 174, 2011
s. 5 .....	rs. No. 63, 1976; No. 72, 1983 rep. No. 181, 1987 ad. No. 20, 2005
s. 5A .....	ad. No. 72, 1983 rep. No. 181, 1987
s. 7 .....	rs. No. 104, 1992
s. 7A .....	ad. No. 24, 2001
s. 9 .....	am. No. 63, 1976; No. 23, 1979; No. 181, 1987 ed C82
<b>Part IA</b>	
Part IA .....	ad. No. 46, 2006
s. 9A .....	ad. No. 46, 2006

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 10 .....	am. Nos. 63 and 95, 1976; No. 72, 1983 rep. No. 181, 1987
<b>Part II</b>	
Part II .....	rs. No. 167, 1995; No. 46, 2006
<b>Division 1</b>	
s. 10A .....	ad. No. 46, 2006
<b>Division 2</b>	
s. 10B .....	ad. No. 46, 2006
s. 10C .....	ad. No. 46, 2006 am No 13, 2013; No 113, 2015; No 24, 2016
s. 10D .....	ad. No. 46, 2006
s. 10E .....	ad. No. 46, 2006
<b>Division 3</b>	
s. 10F .....	ad. No. 46, 2006
s. 10G .....	ad. No. 46, 2006 am. No. 8, 2007; No 13, 2013; No 113, 2015; No 24, 2016
s. 10H .....	ad. No. 46, 2006
s. 10J .....	ad. No. 46, 2006
s. 10K .....	ad. No. 46, 2006
<b>Division 4</b>	
s. 10L .....	ad. No. 46, 2006 am. No. 115, 2008
s. 10M .....	ad. No. 46, 2006
s. 10N .....	ad. No. 46, 2006
s. 10P .....	ad. No. 46, 2006
<b>Part III</b>	
Part III heading .....	rs. No. 167, 1995; No. 46, 2006
Part III .....	rs. No. 46, 2006
<b>Division 1</b>	
Division 1 heading .....	ad. No. 167, 1995 rs. No. 46, 2006

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 11 .....	am. No. 181, 1987; No. 37, 1991 rs. No. 167, 1995 rep. No. 46, 2006
s. 11A .....	ad. No. 46, 2006
s. 11B .....	ad. No. 46, 2006 am. No 7, 2013; No. 13, 2013; No 24, 2016
s. 11C .....	ad. No. 46, 2006
s. 11D .....	ad. No. 46, 2006
<b>Division 2</b>	
Division 2 .....	ad. No. 167, 1995 rs. No. 46, 2006
s. 11E .....	ad. No. 46, 2006 am. No 7, 2013; No 13, 2013; No 24, 2016
s. 11F .....	ad. No. 46, 2006 am. No. 189, 2011
s. 11G .....	ad. No. 46, 2006 am. No. 189, 2011
Division 3 .....	ad. No. 167, 1995 rep. No. 46, 2006
Division 4 heading .....	ad. No. 167, 1995 rep. No. 46, 2006
Division 5 heading .....	ad. No. 167, 1995 rep. No. 46, 2006
Subdivision A heading .....	ad. No. 167, 1995 rep. No. 46, 2006
Subdivision B heading .....	ad. No. 167, 1995 rep. No. 46, 2006
Subdivision C heading .....	ad. No. 167, 1995 rep. No. 46, 2006
Division 6 .....	ad. No. 167, 1995 rep. No. 46, 2006

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Part IIIA</b>	
Part IIIA heading .....	rep. No. 167, 1995 ad. No. 46, 2006
Part IIIA .....	ad. No. 113, 1991 rep. No. 167, 1995 ad. No. 46, 2006
<b>Division 1</b>	
Division 1 heading.....	rep. No. 167, 1995 ad. No. 46, 2006
s. 12 .....	am. No. 181, 1987; No. 37, 1991 rs. No. 167, 1995 rep. No. 46, 2006
s. 12A .....	ad. No. 46, 2006 am. No. 8, 2007
<b>Division 2</b>	
Division 2 heading.....	rep. No. 167, 1995 ad. No. 46, 2006
s. 12B .....	ad. No. 46, 2006
s. 12C .....	ad. No. 46, 2006
s. 12D .....	ad. No. 46, 2006
<b>Division 3</b>	
Division 3 heading.....	rep. No. 167, 1995 ad. No. 46, 2006
s. 12E.....	ad. No. 46, 2006 am. No. 189, 2011
s. 12F .....	ad. No. 46, 2006
s. 12G .....	ad. No. 46, 2006 am. No. 8, 2010; No. 189, 2011
<b>Part IIIB</b>	
Part IIIB.....	ad. No. 46, 2006

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Division 1</b>	
s. 13 .....	am. No. 181, 1987; No. 37, 1991 rs. No. 167, 1995 rep. No. 46, 2006
s. 13A .....	ad. No. 167, 1995 am. No. 46, 2006 rs. No. 46, 2006
<b>Division 2</b>	
s. 13B .....	ad. No. 167, 1995 am. No. 46, 2006 rs. No. 46, 2006
<b>Division 3</b>	
s. 13C .....	ad. No. 167, 1995 rs. No. 46, 2006 am. No. 189, 2011
s. 13D .....	ad. No. 167, 1995 am. No. 194, 1999 rs. No. 46, 2006
<b>Division 4</b>	
s. 13E.....	ad. No. 167, 1995 rs. No. 46, 2006 am. No. 115, 2008
s. 13F.....	ad. No. 167, 1995 rs. No. 46, 2006
s. 13G.....	ad. No. 167, 1995 rs. No. 46, 2006 am. No. 13, 2013
s. 13H.....	ad. No. 167, 1995 rs. No. 46, 2006
s. 13J.....	ad. No. 46, 2006 am. No. 13, 2013

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 13K .....	ad. No. 46, 2006 am. No. 13, 2013
s. 14 .....	am. No. 63, 1976; No. 72, 1983; No. 181, 1987; No. 182, 1989 rs. No. 167, 1995 rep. No. 46, 2006
s. 14A .....	ad. No. 167, 1995 rep. No. 46, 2006
s. 14B .....	ad. No. 167, 1995 am. No. 194, 1999; No. 98, 2005 rep. No. 46, 2006
s. 14C .....	ad. No. 167, 1995 am. No. 138, 2003 rep. No. 46, 2006
s. 14D .....	ad. No. 167, 1995 rep. No. 46, 2006
s. 14E .....	ad. No. 167, 1995 am. No. 143, 2000 rep. No. 46, 2006
s. 14F .....	ad. No. 167, 1995 rep. No. 46, 2006
s. 14G .....	ad. No. 167, 1995 rep. No. 46, 2006
s. 14H .....	ad. No. 167, 1995 rep. No. 46, 2006
s. 15 .....	am. No. 63, 1976; No. 72, 1983; No. 181, 1987; No. 167, 1995; No. 138, 2003 rep. No. 46, 2006
s. 15A .....	ad. No. 194, 1999 rep. No. 46, 2006
s. 16 .....	rs. No. 63, 1976 am. No. 72, 1983; No. 181, 1987; No. 138, 2003

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	rep. No. 46, 2006
s. 16A .....	ad. No. 72, 1983
	am. No. 181, 1987
	rs. No. 167, 1995
	rep. No. 46, 2006
s. 16B .....	ad. No. 167, 1995
	rep. No. 46, 2006
s. 16C .....	ad. No. 167, 1995
	rep. No. 46, 2006
s. 17 .....	am. No. 72, 1983; No. 181, 1987; No. 167, 1995; No. 194, 1999; No. 138, 2003
	rep. No. 46, 2006
s. 18 .....	am. No. 63, 1976; No. 72, 1983
	rep. No. 167, 1995
s. 19 .....	am. No. 63, 1976; No. 181, 1987; No. 167, 1995
	rep. No. 46, 2006
s. 19A .....	ad. No. 113, 1991
	am. No. 167, 1995; No. 194, 1999; No. 138, 2003; No. 46, 2006
	rep. No. 46, 2006
s. 19AAA .....	ad. No. 194, 1999
	rep. No. 46, 2006
s. 19AA .....	ad. No. 167, 1995
	rep. No. 46, 2006
s. 19B .....	ad. No. 113, 1991
	am. No. 167, 1995; No. 194, 1999; No. 138, 2003; No. 46, 2006
	rep. No. 46, 2006
s. 19BAA .....	ad. No. 194, 1999
	rep. No. 46, 2006
s. 19BA .....	ad. No. 167, 1995
	rep. No. 46, 2006
s. 19C .....	ad. No. 113, 1991

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	rep. No. 167, 1995
s. 19D .....	ad. No. 113, 1991
	am. No. 194, 1999; No. 143, 2000
	rep. No. 46, 2006
s. 19E.....	ad. No. 113, 1991
	am. No. 194, 1999; No. 143, 2000; No. 98, 2005
	rep. No. 46, 2006
s. 19EA.....	ad. No. 143, 2000
	rep. No. 46, 2006
s. 19EB .....	ad. No. 143, 2000
	rep. No. 46, 2006
s. 19F.....	ad. No. 113, 1991
	am. No. 143, 2000; No. 46, 2006
	rep. No. 46, 2006
s. 19FA .....	ad. No. 143, 2000
	rep. No. 46, 2006
s. 19G .....	ad. No. 113, 1991
	rs. No. 143, 2000
	rep. No. 46, 2006
s. 19GA .....	ad. No. 143, 2000
	rep. No. 46, 2006
s. 19H.....	ad. No. 113, 1991
	rep. No. 167, 1995
	ad. No. 143, 2000
	rep. No. 46, 2006
s. 19J.....	ad. No. 113, 1991
	am. No. 167, 1995; No. 194, 1999; No. 138, 2003
	rep. No. 46, 2006
s. 19K.....	ad. No. 113, 1991
	am. No. 167, 1995
	rep. No. 46, 2006

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 19L.....	ad. No. 113, 1991 am. No. 143, 2000 rep. No. 46, 2006
s. 19M.....	ad. No. 113, 1991 am. No. 167, 1995; No. 143, 2000 rep. No. 46, 2006
s. 19N .....	ad. No. 167, 1995 am. No. 138, 2003 rep. No. 46, 2006
s. 19P .....	ad. No. 167, 1995 am. No. 143, 2000 rep. No. 46, 2006
s. 19Q .....	ad. No. 167, 1995 am. No. 143, 2000 rep. No. 46, 2006
<b>Part IV</b>	
<b>Division 1</b>	
Division 1 heading.....	ad. No. 8, 1988
s. 20 .....	am. No. 72, 1983; No. 8, 1988; No. 138, 2003; No 24, 2016
<b>Division 2</b>	
Division 2 heading.....	ad. No. 8, 1988
s. 21 .....	am. No. 8, 1988; No 24, 2016
s. 21A .....	ad. No. 72, 1983
s. 21B .....	ad. No. 72, 1983 am. No. 8, 1988; No. 117, 2009; No. 187, 2012; No 24, 2016
<b>Division 3</b>	
Division 3 heading.....	ad. No. 8, 1988
s. 22 .....	am. No. 63, 1976; No. 102, 1977; No. 72, 1983; No. 181, 1987; No. 8, 1988; No. 143, 1992; No. 84, 1994; No. 143, 2000; No. 73, 2008; No. 117, 2009; No 24, 2016
s. 23 .....	am. No. 8, 1988; No. 143, 1992; No 24, 2016

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 23A .....	ad. No. 102, 1977 rep. No. 159, 1991
s. 24 .....	am. No. 8, 1988; No. 189, 2011; No 24, 2016
s. 25 .....	rs. No. 63, 1976 am. No. 8, 1988; No 24, 2016
s. 26 .....	am. No. 181, 1987; No. 8, 1988; No 24, 2016
<b>Division 4</b>	
Division 4 .....	ad. No. 8, 1988
s. 26A .....	ad. No. 8, 1988
s. 26B .....	ad. No. 8, 1988 am. No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 98, 2005; No. 46, 2006
s. 26C .....	ad. No. 8, 1988
s. 26D .....	ad. No. 8, 1988
s. 26E .....	ad. No. 8, 1988 am. No. 99, 1988 rs. No. 140, 2003 am. No. 10, 2015; No. 24, 2016; No. 78, 2018
s. 26F .....	ad. No. 8, 1988
s. 26G .....	ad. No. 8, 1988
s. 26H .....	ad. No. 8, 1988 am. No. 159, 2001
s. 26I .....	ad. No. 8, 1988 am. No. 159, 2001
s. 26J .....	ad. No. 8, 1988 am. No. 43, 1996
s. 26JA .....	ad. No. 122, 1991 am. No. 146, 1999; No. 24, 2016
s. 26K .....	ad. No. 8, 1988 rs. No. 143, 1992
s. 26L .....	ad. No. 8, 1988

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 26M.....	ad. No. 8, 1988 am No 24, 2016
s. 26N.....	ad. No. 8, 1988
<b>Division 5</b>	
Division 5 heading.....	ad. No. 8, 1988
s. 27.....	rs. No. 138, 2003 am No 24, 2016
s. 27A.....	ad. No. 98, 2005
s. 28.....	am No 63, 1976; No 102, 1977; No 72, 1983; No 181, 1987; No 97, 2018
s. 29.....	am. No. 63, 1976 rep. No. 72, 1983
s. 30.....	am. No. 63, 1976; No. 73, 2008; No 24, 2016
s. 31.....	am. No. 72, 1983; No. 181, 1987; No. 120, 1988; No. 194, 1999; No 69, 2002; No. 82, 2007; No 73, 2008; No 115, 2008
s. 32.....	rep. No. 209, 1976
s. 33A.....	ad. No. 194, 1999 am. No. 143, 2000; No. 98, 2005; No. 13, 2013
s. 33B.....	ad. No. 194, 1999 am. No. 23, 2006; No. 13, 2013
s. 33C.....	ad. No. 194, 1999 am. No. 23, 2006; No. 13, 2013; No 10, 2015; No 126, 2015; No 10, 2015
s. 34.....	am. No. 72, 1983; No. 181, 1987; No. 194, 1999; No. 138, 2003
<b>Division 6</b>	
Division 6 heading.....	ad. No. 8, 1988
s. 36.....	am. No. 181, 1987
s. 37.....	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 181, 1987 rs. No. 157, 1989 am. No. 194, 1999; No. 46, 2006; No 24, 2016
s. 37A.....	ad No 72, 1983

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	am No 72, 1984
	rs No 193, 1985
	am No 181, 1987; No 8, 1988; No 99, 1988; No 167, 1995; No 146, 1999; No 194, 1999; No 143, 2000; No 138, 2003; No 140, 2003; No 98, 2005; No 46, 2006; No 115, 2008; No 189, 2011; No 10, 2015; No 24, 2016; No 78, 2018
s. 37AA .....	ad. No. 189, 2011
s. 37B .....	ad. No. 72, 1983
	am No 193, 1985; No 181, 1987; No 146, 1999; No 194, 1999; No 2, 2013; No 24, 2016
	ed C82
	am No 24, 2016
s. 37C .....	ad. No. 143, 1992
	am No 24, 2016
<b>Division 7</b>	
Division 7 heading.....	ad. No. 8, 1988
s. 38 .....	am. No. 72, 1983; No. 8, 1988; No. 194, 1999
	ed C82
<b>Part IVA</b>	
Part IVA .....	ad. No. 157, 1989
<b>Division 1</b>	
Division 1 heading.....	rs No 24, 2016
s. 38A .....	ad. No. 157, 1989
	am. No. 122, 2009; No 24, 2016
s. 38B .....	ad. No. 157, 1989
	am. No. 7, 2013; No 24, 2016
s 38BAA.....	ad No 24, 2016
s 38BAB.....	ad No 24, 2016
Division 1AA .....	ad No 62, 2014
	rep No 24, 2016
s. 38BAA.....	ad No 62, 2014
	rep No 24, 2016

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Division 1A</b>	
Division 1A .....	ad. No. 46, 2006
s. 38BA .....	ad. No. 46, 2006
s. 38BB .....	ad. No. 46, 2006
s. 38BC .....	ad. No. 46, 2006
s. 38BD .....	ad. No. 46, 2006
<b>Division 2</b>	
Division 2 heading .....	rs. No. 7, 2013
s. 38C .....	ad. No. 157, 1989
	rs. No. 7, 2013
	am No 24, 2016
	rs No 24, 2016
s. 38D .....	ad. No. 157, 1989
	am No 7, 2013; No 24, 2016
s. 38E .....	ad. No. 157, 1989
s. 38F .....	ad. No. 157, 1989
	am No 159, 2001; No 7, 2013; No 24, 2016
s. 38G .....	ad. No. 157, 1989
	rs. No. 122, 1991
	am. No. 146, 1999; No. 7, 2013; No 24, 2016
s. 38H .....	ad. No. 157, 1989
s. 38J .....	ad. No. 157, 1989
	am. No. 7, 2013; No 24, 2016
s. 38K .....	ad. No. 157, 1989
	am. No. 122, 1991; No. 94, 1992; No. 26, 2008; No. 58, 2011; No 24, 2016
s. 38L .....	ad. No. 157, 1989
	am. No. 7, 2013; No 62, 2014; No 24, 2016
s. 38M .....	ad. No. 157, 1989
	am. No. 46, 2011; No. 7, 2013; No 24, 2016

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Division 3</b>	
s. 38N .....	ad. No. 157, 1989 am. No. 113, 1991; Nos. 146 and 194, 1999; No. 143, 2000; No. 138, 2003; No. 46, 2006; No 24, 2016
s. 38P .....	ad. No. 157, 1989
s. 38Q .....	ad. No. 157, 1989 rs. No. 146, 1999 am No 7, 2013 rep No 24, 2016
s. 38R .....	ad. No. 157, 1989 am. No. 46, 2006 rep No 24, 2016
<b>Division 4</b>	
s. 38S .....	ad. No. 157, 1989 rs. No. 152, 1997 am. No. 7, 2013; No 62, 2014; No 24, 2016
s. 38T .....	ad. No. 157, 1989 rep. No. 152, 1997
s. 38U .....	ad. No. 157, 1989 rep. No. 152, 1997
s. 38V .....	ad. No. 157, 1989 rep. No. 136, 1991
s. 38W .....	ad. No. 157, 1989 am No 24, 2016
s. 38X .....	ad. No. 157, 1989
s. 38Y .....	ad. No. 187, 2012 am No 24, 2016
<b>Part V</b>	
Part V heading .....	rs. No. 115, 2008
<b>Division 1</b>	
Division 1 heading .....	ad. No. 115, 2008

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 39 .....	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 181, 1987; No. 8, 1988; No. 34, 1997; No. 89, 1998; No. 194, 1999; No. 161, 2000; No. 69, 2002; No. 98, 2005; No. 22, 2006; No. 46, 2006; No. 82, 2007; No. 13, 2013
<b>Division 2</b>	
Division 2 .....	ad. No. 115, 2008
s. 39A .....	ad. No. 115, 2008 am. No. 13, 2013
s. 39B .....	ad. No. 115, 2008 am. No. 13, 2013
s. 39C .....	ad. No. 115, 2008
s. 39D .....	ad. No. 115, 2008
s. 39E .....	ad. No. 115, 2008
s. 39F .....	ad. No. 115, 2008
s. 39G .....	ad. No. 115, 2008
<b>Division 3</b>	
Division 3 heading .....	ad. No. 115, 2008
s. 40 .....	am. No. 72, 1983; No. 181, 1987; No. 89, 1998; No. 194, 1999; No. 32, 2012; No 10, 2015
s. 40A .....	ad. No. 194, 1999 am. No. 13, 2013
s. 41 .....	am. No. 63, 1976; No. 181, 1987; No. 159, 1991; No. 194, 1999; No. 46, 2006
s. 42 .....	am. No. 72, 1983; No. 194, 1999; No. 69, 2002
s. 43 .....	am. No. 181, 1987; No. 167, 1995; No. 115, 2008; No. 189, 2011; No 129, 2017
s. 44 .....	am. No. 63, 1976; No. 72, 1983; No. 72, 1984; No. 181, 1987; No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 138, 2003; Nos. 20 and 98, 2005; No. 46, 2006; No. 115, 2008; No. 13, 2013
s. 44A .....	ad. No. 8, 1988; No. 98, 2005 am. No. 98, 2005
s. 45 .....	am. No. 63, 1976

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	rs. No. 23, 1979
	am. No. 72, 1983; No. 181, 1987; No. 8, 1988; No. 194, 1999; No. 143, 2000; No. 20, 2005; No. 115, 2008; No. 13, 2013
s 45A .....	ad No 194, 1999 am No 143, 2000 rep No 46, 2006 ad No 97, 2018
s 46 .....	am No 72, 1983; No 181, 1987 (as am by No 8, 1988); No 8, 1988; No 194, 1999; No 143, 2000; No 98, 2005; No 22, 2006; No 186, 2012; No 13, 2013; No 97, 2018
s 46A .....	ad No 97, 2018
<b>Part VI</b>	
Part VI heading.....	rs. No. 98, 2005
s. 48 .....	am. No. 72, 1983; No. 98, 2005
s. 50 .....	am. No. 98, 2005
s. 51 .....	rs. No. 209, 1976
s. 52 .....	am. No. 98, 2005
s. 54 .....	rep. No. 98, 2005
s. 55 .....	am. No. 181, 1987; No. 98, 2005; No. 189, 2011; No. 13, 2013
s. 55A .....	ad. No. 181, 1987 am. No. 167, 1995; No. 98, 2005; No. 46, 2006; No 129, 2017
s. 56 .....	am. No. 138, 2003; No. 98, 2005; No 61, 2016
s. 57 .....	rs. No. 98, 2005
s. 58 .....	rs. No. 98, 2005
s. 59 .....	rs. No. 98, 2005
<b>Part VII</b>	
Part VII heading .....	rs. No. 181, 1987; No. 167, 1995
Part VII.....	rs. No. 167, 1995
<b>Division 1</b>	
Division 1 .....	ad. No. 181, 1987 rs. No. 167, 1995

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision A</b>	
s. 60 .....	am. No. 72, 1983; No. 72, 1984 rs. No. 181, 1987 am. No. 182, 1989; Nos. 37 and 113, 1991; No. 22, 1992 rep. No. 167, 1995
s. 60A .....	ad. No. 72, 1983 rs. No. 181, 1987 am. No. 37, 1991 rs. No. 167, 1995 am. No. 189, 2011
s. 60AA .....	ad. No. 37, 1991 rep. No. 167, 1995
<b>Subdivision B</b>	
s. 60B .....	ad. No. 181, 1987 rs. No. 167, 1995; No. 46, 2006 am. No. 189, 2011
s. 60C .....	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 143, 2000; No. 138, 2003; No. 46, 2006; No. 189, 2011
<b>Subdivision BA</b>	
Subdivision BA heading.....	rs. No. 189, 2011
Subdivision BA .....	ad. No. 46, 2006
s. 60CA.....	ad. No. 46, 2006
s. 60CB.....	ad. No. 46, 2006
s. 60CC.....	ad. No. 46, 2006 am. No. 189, 2011; No. 97, 2018
s. 60CD.....	ad. No. 46, 2006
s. 60CE.....	ad. No. 46, 2006
s. 60CF.....	ad. No. 46, 2006
s. 60CG.....	ad. No. 46, 2006
s. 60CH.....	ad. No. 189, 2011

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 60CI.....	ad. No. 189, 2011
<b>Subdivision BB</b>	
Subdivision BB.....	ad. No. 189, 2011
s. 60D.....	ad. No. 181, 1987 rep. No. 37, 1991 ad. No. 167, 1995 am. No. 194, 1999; No. 143, 2000 rep. No. 46, 2006 ad. No. 189, 2011
<b>Subdivision C</b>	
s. 60E.....	ad. No. 181, 1987 am. No. 22, 1992 rs. No. 167, 1995 am No 129, 2017
<b>Subdivision D</b>	
s. 60EA.....	ad. No. 115, 2008 am. No. 46, 2011
s. 60F.....	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 194, 1999; No. 98, 2005; No. 115, 2008; No. 13, 2013; No 129, 2017
s. 60G.....	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 46, 2006; No. 115, 2008
s. 60H.....	ad. No. 181, 1987 am. No. 22, 1992 rs. No. 167, 1995 am. No. 194, 1999; No. 115, 2008; No. 13, 2013
s. 60HA.....	ad. No. 115, 2008 am. No. 13, 2013
s. 60HB.....	ad. No. 115, 2008

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	am. No. 13, 2013
<b>Subdivision E</b>	
Subdivision E .....	ad. No. 46, 2006
s. 60I .....	ad. No. 46, 2006
	am. No. 115, 2008
s. 60J .....	ad. No. 46, 2006
s. 60K .....	ad. No. 46, 2006
	rep. No. 189, 2011
<b>Division 2</b>	
Division 2 .....	ad. No. 181, 1987
	rs. No. 167, 1995
s. 61 .....	am. No. 63, 1976; No. 23, 1979
	rs. No. 181, 1987
	rep. No. 167, 1995
s. 61A .....	ad. No. 181, 1987
	rs. No. 167, 1995
s. 61B .....	ad. No. 181, 1987
	rs. No. 167, 1995
s. 61C .....	ad. No. 181, 1987
	rs. No. 167, 1995
	am. No. 69, 2002; No. 46, 2006
s. 61D .....	ad. No. 167, 1995
s. 61DA .....	ad. No. 46, 2006
s. 61DB .....	ad. No. 46, 2006
s. 61E .....	ad. No. 167, 1995
s. 61F .....	ad. No. 46, 2006
<b>Division 3</b>	
Division 3 heading .....	ad. No. 181, 1987
	rs. No. 167, 1995; No. 46, 2006
Division 3 .....	rs. No. 167, 1995
s. 62 .....	am. No. 63, 1976; No. 23, 1979; No. 72, 1983

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	rep. No. 167, 1995
s. 62A .....	ad. No. 72, 1983
	rs. No. 167, 1995; No. 46, 2006
s. 62B .....	ad. No. 167, 1995
	rs. No. 46, 2006
s. 62C .....	ad. No. 167, 1995
	am. No. 194, 1999; No. 138, 2003
	rep. No. 46, 2006
s. 62CA.....	ad. No. 194, 1999
	rep. No. 46, 2006
s. 62D .....	ad. No. 167, 1995
	rep. No. 46, 2006
s. 62E.....	ad. No. 167, 1995
	am. No. 138, 2003
	rep. No. 46, 2006
s. 62F .....	ad. No. 167, 1995
	am. No. 138, 2003
	rep. No. 46, 2006
s. 62G .....	ad. No. 167, 1995
	am. No. 46, 2006; No. 189, 2011
s. 62H.....	ad. No. 167, 1995
	am. No. 194, 1999; No. 138, 2003
	rep. No. 46, 2006
<b>Division 4</b>	
Division 4.....	ad. No. 181, 1987
	rs. No. 167, 1995
s. 63 .....	am. No. 23, 1979
	rs. No. 181, 1987
	am. No. 37, 1991
	rep. No. 167, 1995
s. 63A .....	ad. No. 181, 1987

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	am. No. 124, 1989
	rs. No. 167, 1995
	am. No. 138, 2003
s. 63B .....	ad. No. 181, 1987
	rs. No. 167, 1995; No. 138, 2003
s. 63C .....	ad. No. 181, 1987
	rs. No. 167, 1995
	am. No. 34, 1997; No. 138, 2003; No. 46, 2006
s. 63CAA.....	ad. No. 34, 1997
s. 63D .....	ad. No. 181, 1987
	rs. No. 167, 1995
	am. No. 194, 1999
	rs. No. 138, 2003
s. 63DA .....	ad. No. 143, 2000
	rs. No. 138, 2003; No. 46, 2006
	am. No. 189, 2011
s. 63DB.....	ad. No. 138, 2003
s. 63E.....	ad. No. 181, 1987
	rs. No. 167, 1995
	am. No. 194, 1999; No. 143, 2000; No. 69, 2002
	rs. No. 138, 2003
	am. No. 138, 2003; No. 46, 2006
s. 63F .....	ad. No. 181, 1987
	am. No. 37, 1991
	rs. No. 167, 1995
	am. No. 143, 2000; No. 69, 2002; No. 138, 2003; No. 46, 2006
s. 63G .....	ad. No. 167, 1995
	am. No. 34, 1997; No. 138, 2003; No. 146, 2006
s. 63H .....	ad. No. 167, 1995
	am. No. 138, 2003; No. 46, 2006

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Division 5</b>	
Division 5 heading.....	ad. No. 181, 1983 rs. No. 167, 1995
s. 64.....	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 72, 1984; No. 181, 1987; No. 8, 1988; No. 182, 1989; No. 37, 1991 rep. No. 167, 1995
s. 64A.....	ad. No. 182, 1989 am. No. 37, 1991 rs. No. 167, 1995
s. 64B.....	ad. No. 167, 1995 am. No. 194, 1999; No. 46, 2006; No. 189, 2011; No. 13, 2013
s. 64C.....	ad. No. 167, 1995
s. 64D.....	ad. No. 46, 2006
s. 65.....	am. No. 72, 1983; No. 181, 1987 rep. No. 167, 1995
<b>Division 6</b>	
Division 6.....	ad. No. 181, 1983 rs. No. 167, 1995
<b>Subdivision A</b>	
s. 65A.....	ad. No. 120, 1988 rs. No. 167, 1995 am. No. 46, 2006
s. 65AA.....	ad. No. 143, 2000 rs. No. 46, 2006
s. 65B.....	ad. No. 167, 1995
<b>Subdivision B</b>	
s. 65C.....	ad. No. 167, 1995 am. No. 143, 2000
s. 65D.....	ad. No. 167, 1995 am. No. 143, 2000; No. 69, 2002; No. 46, 2006; No. 13, 2013
s. 65DAA.....	ad. No. 46, 2006

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	am No 147, 2010; No 189, 2011; No 136, 2012
s. 65DAB.....	ad. No. 46, 2006
s. 65DAC.....	ad. No. 46, 2006
s. 65DAE.....	ad. No. 46, 2006
s. 65DA.....	ad. No. 143, 2000
	am. No. 46, 2006
s. 65E.....	ad. No. 167, 1995
	rep. No. 46, 2006
s. 65F.....	ad. No. 167, 1995
	am. No. 98, 2005; No. 46, 2006; No 113, 2015
s. 65G.....	ad. No. 167, 1995
	am. No. 46, 2006
s. 65H.....	ad. No. 167, 1995
s. 65J.....	ad. No. 167, 1995
s. 65K.....	ad. No. 167, 1995
	am. No. 46, 2006
s. 65L.....	ad. No. 167, 1995
	am. No. 46, 2006
s. 65LA.....	ad. No. 138, 2003
	am. No. 98, 2005; No. 46, 2006
s. 65LB.....	ad. No. 46, 2006
<b>Subdivision C</b>	
Subdivision C heading.....	rs. No. 46, 2006
s. 65M.....	ad. No. 167, 1995
	am. No. 46, 2006
s. 65N.....	ad. No. 167, 1995
	rs. No. 46, 2006
s. 65NA.....	ad. No. 46, 2006
s. 65P.....	ad. No. 167, 1995
	rs. No. 46, 2006
s. 65Q.....	ad. No. 167, 1995

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	am. No. 143, 2000; No. 46, 2006
<b>Subdivision D</b>	
s. 65R .....	ad. No. 167, 1995 am. No. 46, 2006
s. 65S .....	ad. No. 167, 1995
s. 65T .....	ad. No. 167, 1995 am. No. 138, 2003
s. 65U .....	ad. No. 167, 1995 am. No. 143, 2000 ed. C84
s. 65V .....	ad. No. 167, 1995 am. No. 143, 2000
s. 65W .....	ad. No. 167, 1995 ed. C84
<b>Subdivision E</b>	
s. 65X .....	ad. No. 167, 1995 am. No. 46, 2006
s. 65Y .....	ad. No. 167, 1995 am. No. 24, 2001; No. 46, 2006
s. 65Z .....	ad. No. 167, 1995 am. No. 24, 2001; No. 46, 2006
s. 65ZA .....	ad. No. 167, 1995 am. No. 24, 2001; No. 46, 2006
s. 65ZB .....	ad. No. 167, 1995 am. No. 24, 2001; No. 46, 2006; No. 113, 2015
s. 65ZC .....	ad. No. 167, 1995
s. 65ZD .....	ad. No. 167, 1995
s. 66 .....	rep. No. 167, 1995
<b>Division 7</b>	
Division 7 .....	ad. No. 181, 1987 rs. No. 167, 1995

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision A</b>	
s. 66A .....	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 143, 2000; No. 189, 2011
<b>Subdivision B</b>	
s. 66B .....	ad. No. 181, 1987 rs. No. 167, 1995
s. 66BA .....	ad. No. 124, 1989 rs. No. 138, 1990 rep. No. 167, 1995
s. 66C .....	ad. No. 181, 1987 rs. No. 167, 1995
s. 66D .....	ad. No. 181, 1987 am. No. 37, 1991 rs. No. 167, 1995
<b>Subdivision C</b>	
s. 66E .....	ad. No. 181, 1987 am. No. 37, 1991 rs. No. 167, 1995 am. No. 143, 2000; No. 146, 2006
<b>Subdivision D</b>	
s. 66F .....	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 143, 2000
s. 66FA .....	ad. No. 22, 1992 rep. No. 167, 1995
s. 66G .....	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 82, 2007
s. 66H .....	ad. No. 181, 1987 rs. No. 167, 1995

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 66J.....	ad. No. 181, 1987 rs. No. 167, 1995
s. 66K.....	ad. No. 181, 1987 rs. No. 167, 1995
s. 66L.....	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 143, 2000
s. 66M.....	ad. No. 181, 1987 am. No. 138, 1990 rs. No. 167, 1995 am. No. 34, 1997; No. 144, 2008
s. 66N.....	ad. No. 181, 1987 am. No. 37, 1991 rs. No. 167, 1995
<b>Subdivision E</b>	
s. 66P.....	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 194, 1999
s. 66Q.....	ad. No. 181, 1987 rs. No. 167, 1995
s. 66R.....	ad. No. 181, 1987 rs. No. 167, 1995
s. 66S.....	ad. No. 181, 1987 rs. No. 167, 1995 am. No. 194, 1999; No. 143, 2000; No. 138, 2003; No. 82, 2007
<b>Subdivision EA</b>	
Subdivision EA.....	ad. No. 143, 2000
s. 66SA.....	ad. No. 143, 2000 am. No. 146, 2006
<b>Subdivision F</b>	
s. 66T.....	ad. No. 181, 1987

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	rs. No. 167, 1995
s. 66U .....	ad. No. 181, 1987
	rs. No. 167, 1995
s. 66V .....	ad. No. 181, 1987
	rs. No. 167, 1995
s. 66VA .....	ad. No. 143, 2000
s. 66W .....	ad. No. 181, 1987
	rs. No. 167, 1995; No. 143, 2000
<b>Subdivision G</b>	
Subdivision G .....	ad. No. 98, 2005
s. 66X .....	ad. No. 181, 1987
	rep. No. 167, 1995
	ad. No. 98, 2005
s. 66Y .....	ad. No. 181, 1987
	rep. No. 167, 1995
s. 66Z .....	ad. No. 181, 1987
	rep. No. 167, 1995
s. 66ZA .....	ad. No. 181, 1987
	rep. No. 167, 1995
s. 66ZB .....	ad. No. 181, 1987
	rep. No. 167, 1995
s. 66ZC .....	ad. No. 181, 1987
	rep. No. 167, 1995
s. 66ZD .....	ad. No. 181, 1987
	am. No. 182, 1989; No. 37, 1991
	rep. No. 167, 1995
s. 66ZDA .....	ad. No. 182, 1989
	am. No. 37, 1991
	rep. No. 167, 1995
s. 66ZE .....	ad. No. 181, 1987
	am. No. 37, 1991

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<b>Provision affected</b>	<b>How affected</b>
	rep. No. 167, 1995
s. 67 .....	am. No. 63, 1976; No. 72, 1983; No. 181, 1987
	rep. No. 167, 1995
<b>Division 8</b>	
Division 8 .....	ad. No. 181, 1987
	rs. No. 167, 1995
<b>Subdivision A</b>	
s. 67A .....	ad. No. 167, 1995
	am. No. 189, 2011
<b>Subdivision B</b>	
s. 67B .....	ad. No. 167, 1995
s. 67C .....	ad. No. 167, 1995
s. 67D .....	ad. No. 167, 1995
	am. No. 194, 1999
s. 67E .....	ad. No. 167, 1995
s. 67F .....	ad. No. 167, 1995
s. 67G .....	ad. No. 167, 1995
<b>Subdivision C</b>	
s. 67H .....	ad. No. 167, 1995
	am. No. 146, 1999; No. 138, 2003
	rep. No. 46, 2006
s. 67J .....	ad. No. 167, 1995
	am. No. 138, 2003
s. 67K .....	ad. No. 167, 1995
	am. No. 143, 2000; No. 69, 2002; No. 46, 2006
s. 67L .....	ad. No. 167, 1995
	am. No. 46, 2006
s. 67M .....	ad. No. 167, 1995
	am. No. 143, 2000; No. 69, 2002
s. 67N .....	ad. No. 167, 1995
	am. No. 194, 1999; No. 143, 2000; No. 69, 2002

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 67P .....	ad. No. 167, 1995 am. No. 24, 2001; No. 69, 2002; No. 138, 2003
s. 67Q .....	ad. No. 167, 1995 am. No. 143, 2000; No. 46, 2006
s. 67R .....	ad. No. 167, 1995
s. 67S .....	ad. No. 167, 1995
s. 67T .....	ad. No. 167, 1995 am. No. 143, 2000; No. 46, 2006
s. 67U .....	ad. No. 167, 1995
s. 67V .....	ad. No. 167, 1995 am. No. 46, 2006
s. 67W .....	ad. No. 167, 1995 am. No. 194, 1999; No. 143, 2000; No. 138, 2003
s. 67X .....	ad. No. 167, 1995 am. No. 143, 2000 ed. C84
s. 67Y .....	ad. No. 167, 1995 am. No. 138, 2003
<b>Subdivision D</b>	
Subdivision D heading.....	rs. No. 189, 2011
s. 67Z .....	ad. No. 167, 1995 am. No. 194, 1999; No. 138, 2003; No. 189, 2011
s. 67ZA .....	ad. No. 167, 1995 am. No. 143, 2000; No. 46, 2006; No. 189, 2011; No. 13, 2013
s. 67ZB .....	ad. No. 167, 1995
s. 67ZBA .....	ad. No. 189, 2011
s. 67ZBB .....	ad. No. 189, 2011
<b>Subdivision E</b>	
s. 67ZC .....	ad. No. 167, 1995 am. No. 69, 2002; No. 46, 2006
s. 67ZD .....	ad. No. 167, 1995; No. 122, 2015

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 68 .....	am. No. 72, 1983; No. 181, 1987 rep. No. 167, 1995
<b>Division 9</b>	
Division 9 .....	ad. No. 181, 1987 rs. No. 167, 1995
s. 68A .....	ad. No. 167, 1995
s. 68B .....	ad. No. 167, 1995 am. No. 46, 2006
s. 68C .....	ad. No. 167, 1995 am. No. 143, 2000
<b>Division 10</b>	
Division 10 .....	ad. No. 181, 1987 rs. No. 167, 1995; No. 46, 2006
s. 68D .....	ad. No. 167, 1995 rep. No. 46, 2006
s. 68E .....	ad. No. 167, 1995 rep. No. 46, 2006
s. 68F .....	ad. No. 167, 1995 rep. No. 46, 2006
s. 68G .....	ad. No. 167, 1995 am. No. 194, 1999 rep. No. 46, 2006
s. 68H .....	ad. No. 167, 1995 rep. No. 46, 2006
s. 68J .....	ad. No. 167, 1995 am. No. 194, 1999; No. 138, 2003 rep. No. 46, 2006
s. 68K .....	ad. No. 167, 1995 rep. No. 46, 2006
s. 68L .....	ad. No. 167, 1995 am. No. 143, 2000

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	rs. No. 46, 2006
s. 68LA.....	ad. No. 46, 2006
	am. No. 189, 2011
s. 68M.....	ad. No. 167, 1995
	rs. No. 46, 2006
<b>Division 11</b>	
Division 11 heading.....	ad. No. 181, 1987
	rs. No. 167, 1995; No. 46, 2006
Division 11 .....	rs. No. 46, 2006
s. 68N.....	ad. No. 167, 1995
	rs. No. 46, 2006
	am No 189, 2011
s 68P.....	ad No 167, 1995
	am No 138, 2003
	rs No 46, 2006
	am No 97, 2018
s. 68Q.....	ad. No. 167, 1995
	rs. No. 46, 2006
s. 68R .....	ad. No. 167, 1995
	am. No. 138, 2003
	rs. No. 46, 2006
	am No 113, 2015
s. 68S.....	ad. No. 167, 1995
	rs. No. 46, 2006
s 68T.....	ad No 167, 1995
	am No 194, 1999
	rs No 46, 2006
	am No 97, 2018
s. 69.....	am. No. 72, 1984
	rep. No. 167, 1995

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Division 12</b>	
Division 12 heading.....	ad. No. 181, 1987 rs. No. 182, 1989; No. 167, 1995
Division 12 .....	rs. No. 167, 1995
<b>Subdivision A</b>	
s. 69A .....	ad. No. 167, 1995
<b>Subdivision B</b>	
s. 69B .....	ad. No. 167, 1995 am. No. 146, 2006
s. 69C .....	ad. No. 167, 1995 am. No. 136, 2012
s. 69D .....	ad. No. 167, 1995
s. 69E.....	ad No 167, 1995 am No 69, 2002
s. 69F .....	ad. No. 167, 1995
<b>Subdivision C</b>	
s. 69G .....	ad. No. 167, 1995
s. 69GA .....	ad No 97, 2018
s. 69H .....	ad. No. 167, 1995 am. No. 194, 1999; No. 13, 2013
s. 69J.....	ad No 167, 1995 am No 22, 2006; No 46, 2006; No 97, 2018
s. 69K .....	ad. No. 167, 1995
s. 69L.....	ad. No. 167, 1995
s. 69M.....	ad. No. 167, 1995
s. 69MA.....	ad. No. 194, 1999 rep. No. 143, 2000
s. 69N .....	ad No 167, 1995 am No 34, 1997; No 98, 2005; No 22, 2006; No 189, 2011; No 186, 2012; No 13, 2013; No 97, 2018

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<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision D</b>	
s. 69P .....	ad. No. 167, 1995 am. No. 98, 2005
s. 69Q .....	ad. No. 167, 1995
s. 69R .....	ad. No. 167, 1995
s. 69S .....	ad. No. 167, 1995 am. No. 82, 2007
s. 69T .....	ad. No. 167, 1995
s. 69U .....	ad. No. 167, 1995
<b>Subdivision E</b>	
s. 69V .....	ad. No. 167, 1995
s. 69VA .....	ad. No. 143, 2000
s. 69W .....	ad. No. 167, 1995 am. No. 46, 2006
s. 69X .....	ad. No. 167, 1995
s. 69XA .....	ad. No. 82, 2007
s. 69Y .....	ad. No. 167, 1995
s. 69Z .....	ad. No. 167, 1995 am. No. 46, 2006
s. 69ZA .....	ad. No. 167, 1995 am. No. 46, 2006
s. 69ZB .....	ad. No. 167, 1995
s. 69ZC .....	ad. No. 167, 1995 am. No. 46, 2006
s. 69ZD .....	ad. No. 167, 1995 am. No. 82, 2007; No. 5, 2011
<b>Subdivision F</b>	
s. 69ZE .....	ad. No. 167, 1995
s. 69ZF .....	ad. No. 167, 1995
s. 69ZG .....	ad. No. 167, 1995
s. 69ZH .....	ad. No. 167, 1995

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	am. No. 98, 2005; No. 46, 2006; No. 189, 2011
s. 69ZJ .....	ad. No. 167, 1995
s. 69ZK .....	ad. No. 167, 1995
<b>Subdivision G</b>	
Subdivision G .....	ad No 97, 2018
s 69ZL .....	ad No 97, 2018
<b>Division 12A</b>	
Division 12A .....	ad. No. 37, 1991
	rep. No. 167, 1995
	ad. No. 46, 2006
<b>Subdivision A</b>	
s. 69ZM .....	ad. No. 46, 2006
	am. No. 115, 2008
<b>Subdivision B</b>	
s. 69ZN .....	ad. No. 46, 2006
	am. No. 189, 2011
s. 69ZO .....	ad. No. 46, 2006
	am. No. 13, 2013
s. 69ZP .....	ad. No. 46, 2006
<b>Subdivision C</b>	
s. 69ZQ .....	ad. No. 46, 2006
	am. No. 189, 2011
s. 69ZR .....	ad. No. 46, 2006
	am. No. 13, 2013
s. 69ZS .....	ad. No. 46, 2006
	am. No. 189, 2011
<b>Subdivision D</b>	
s. 69ZT .....	ad. No. 46, 2006
s. 69ZU .....	ad. No. 46, 2006
	rep. No. 189, 2011
s. 69ZV .....	ad. No. 46, 2006

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<b>Provision affected</b>	<b>How affected</b>
s. 69ZW .....	ad. No. 46, 2006
s. 69ZX .....	ad. No. 46, 2006
	am. No. 116, 2007; No. 21, 2011; No 132, 2015
s. 70 .....	am. No. 72, 1983; No. 181, 1987; No. 182, 1989
	rep. No. 167, 1995
s. 70AA .....	ad. No. 182, 1989
	am. No. 37, 1991
	rep. No. 167, 1995
<b>Division 13</b>	
Division 13 .....	ad. No. 181, 1987
	rs. No. 167, 1995
<b>Subdivision A</b>	
s. 70A .....	ad. No. 72, 1983
	am. No. 181, 1987; No. 37, 1991
	rs. No. 167, 1995
<b>Subdivision B</b>	
s. 70B .....	ad. No. 72, 1983
	am. No. 181, 1987; No. 37, 1991
	rs. No. 167, 1995
	rep. No. 46, 2006
s. 70BA .....	ad. No. 37, 1991
	rep. No. 167, 1995
s. 70BB .....	ad. No. 37, 1991
	rep. No. 167, 1995
s. 70BC .....	ad. No. 37, 1991
	rep. No. 167, 1995
s. 70C .....	ad. No. 181, 1987
	am. No. 182, 1989
	rs. No. 167, 1995
	am. No. 194, 1999
s. 70D .....	ad. No. 181, 1987

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	rs. No. 182, 1989; No. 167, 1995
	am. No. 194, 1999
s. 70E.....	ad. No. 181, 1987
	rs. No. 167, 1995
<b>Subdivision C</b>	
s. 70F.....	ad. No. 37, 1991
	rs. No. 167, 1995
	am. No. 143, 2000
	rep. No. 46, 2006
s. 70G.....	ad. No. 167, 1995
s. 70H.....	ad. No. 167, 1995
	am. No. 69, 2002
s. 70J.....	ad. No. 167, 1995
	am. No. 46, 2006
s. 70K.....	ad. No. 167, 1995
	am. No. 46, 2006
s. 70L.....	ad. No. 167, 1995
	am. No. 46, 2006
<b>Subdivision D</b>	
s. 70M.....	ad. No. 167, 1995
	am. No. 143, 2000; No. 138, 2003; No. 46, 2006
s. 70N.....	ad. No. 167, 1995
	am. No. 143, 2000; No. 46, 2006
<b>Division 13A</b>	
Division 13A.....	ad. No. 143, 2000
	rs. No. 46, 2006
<b>Subdivision A</b>	
s. 70NAA.....	ad. No. 46, 2006
s. 70NAB.....	ad. No. 46, 2006
s. 70NAC.....	ad. No. 46, 2006
s. 70NAD.....	ad. No. 46, 2006

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 70NAE .....	ad. No. 46, 2006
s. 70NAF .....	ad. No. 46, 2006
	am. No. 189, 2011
Subdivision AA .....	ad. No. 98, 2005
	rep. No. 46, 2006
<b>Subdivision B</b>	
s. 70NB .....	ad. No. 143, 2000
	am. No. 138, 2003
	rep. No. 46, 2006
s. 70NBA .....	ad. No. 143, 2000
	rs. No. 46, 2006
s. 70NBB .....	ad. No. 46, 2006
<b>Subdivision C</b>	
s. 70NC .....	ad. No. 143, 2000
	rep. No. 46, 2006
s. 70NCA .....	ad. No. 46, 2006
s. 70NCB .....	ad. No. 46, 2006
<b>Subdivision D</b>	
s. 70ND .....	ad. No. 143, 2000
	rep. No. 46, 2006
s. 70NDA .....	ad. No. 46, 2006
s. 70NDB .....	ad. No. 46, 2006
s. 70NDC .....	ad. No. 46, 2006
<b>Subdivision E</b>	
s. 70NE .....	ad. No. 143, 2000
	rep. No. 46, 2006
s. 70NEA .....	ad. No. 143, 2000
	rs. No. 46, 2006
s. 70NEB .....	ad. No. 98, 2005
	rs. No. 46, 2006
	am. No. 189, 2011

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 70NEC .....	ad. No. 46, 2006
s. 70NECA .....	ad. No. 189, 2011 am. No. 13, 2013
s. 70NED .....	ad. No. 46, 2006
s. 70NEF .....	ad. No. 46, 2006
s. 70NEG .....	ad. No. 46, 2006
<b>Subdivision F</b>	
s. 70NF .....	ad. No. 143, 2000 am. No. 138, 2003 rep. No. 46, 2006
s. 70NFA .....	ad. No. 46, 2006
s. 70NFB .....	ad. No. 46, 2006
s. 70NFC .....	ad. No. 46, 2006
s. 70NFD .....	ad. No. 46, 2006 am. No. 13, 2013
s. 70NFE .....	ad. No. 46, 2006
s. 70NFF .....	ad. No. 46, 2006 am. No. 189, 2011; No. 13, 2013
s. 70NFG .....	ad. No. 46, 2006
s. 70NFH .....	ad. No. 46, 2006
s. 70NFI .....	ad. No. 46, 2006
s. 70NFJ .....	ad. No. 46, 2006
s. 70NG .....	ad. No. 143, 2000 am. No. 138, 2003 rep. No. 46, 2006
s. 70NH .....	ad. No. 143, 2000 rep. No. 46, 2006
s. 70NI .....	ad. No. 143, 2000 am. No. 138, 2003 rep. No. 46, 2006
s. 70NIA .....	ad. No. 143, 2000

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	rs. No. 138, 2003
	rep. No. 46, 2006
s. 70NIB .....	ad. No. 143, 2000
	am. No. 138, 2003
	rep. No. 46, 2006
s. 70NJ .....	ad. No. 143, 2000
	am. No. 138, 2003
	rep. No. 46, 2006
s. 70NK .....	ad. No. 143, 2000
	am. No. 138, 2003
	rep. No. 46, 2006
s. 70NL .....	ad. No. 143, 2000
	rep. No. 46, 2006
s. 70NM .....	ad. No. 143, 2000
	rep. No. 46, 2006
s. 70NN .....	ad. No. 143, 2000
	am. No. 98, 2005
	rep. No. 46, 2006
s. 70NO .....	ad. No. 143, 2000
	am. No. 138, 2003; No. 98, 2005
	rep. No. 46, 2006
s. 70NP .....	ad. No. 143, 2000
	rep. No. 46, 2006
s. 70NQ .....	ad. No. 143, 2000
	rs. No. 138, 2003
	rep. No. 46, 2006
s. 70NR .....	ad. No. 143, 2000
	rep. No. 46, 2006
<b>Division 14</b>	
Division 14 .....	ad. No. 181, 1987
	rs. No. 167, 1995

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 70P .....	ad. No. 167, 1995
s. 70Q .....	ad. No. 167, 1995 am. No. 138, 2003
<b>Part VIII</b>	
Part VIII heading .....	rs. No. 181, 1987
s. 71A .....	ad. No. 143, 2000 am. No. 20, 2005
s. 72 .....	rs. No. 72, 1983 am. No. 20, 2005
s. 73 .....	rep. No. 181, 1987
s. 74 .....	am. No. 181, 1987; No. 20, 2005
s. 75 .....	am. No. 63, 1976; No. 72, 1983; No. 181, 1987; No. 124, 1989; No. 84, 1997; No. 143, 2000; Nos. 20 and 98, 2005; No. 22, 2006; No. 115, 2008
s. 76 .....	rep. No. 181, 1987
s. 77 .....	am. No. 181, 1987
s. 77A .....	ad. No. 181, 1987
s. 78 .....	am. No. 120, 1988
s. 79 .....	am No 63, 1976; No 72, 1983; No 181, 1987; No 124, 1989; No 84, 1997; No 194, 1999; No 20, 2005; No 98, 2005; No 115, 2008 ed C84
s. 79A .....	ad. No. 63, 1976 am. No. 23, 1979; No. 72, 1983; No. 181, 1987; No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 86, 2002; No. 20, 2005; No. 46, 2006 ed C82
s. 79B .....	ad. No. 86, 2002 am. No. 174, 2011
s. 79C .....	ad. No. 86, 2002 am. No. 174, 2011
s. 79D .....	ad. No. 86, 2002 am. No. 174, 2011

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 79E.....	ad. No. 86, 2002 am. No. 174, 2011
s. 79F.....	ad. No. 20, 2005 am. No. 115, 2008
s. 79G.....	ad. No. 20, 2005
s. 79H.....	ad. No. 20, 2005 am. No. 13, 2013
s. 79J.....	ad. No. 20, 2005
s. 80.....	am. No. 181, 1987; No. 194, 1999; No. 20, 2005
s. 82.....	am. No. 72, 1983; No. 181, 1987
s. 83.....	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 181, 1987; No. 194, 1999; No. 20, 2005; No. 82, 2007; No. 115, 2008
s. 84.....	am. No. 72, 1983; No. 181, 1987 rep. No. 143, 2000
s. 85.....	am. No. 72, 1983 rep. No. 143, 2000
s. 85A.....	ad. No. 72, 1983 am. No. 143, 2000
s. 86A.....	ad. No. 143, 2000
s. 86.....	am. No. 72, 1983; No. 181, 1987; No. 124, 1989; No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 146, 2006
s. 87.....	am. No. 23, 1979 rs. No. 72, 1983 am. No. 72, 1983; No. 72, 1984; No. 181, 1987; No. 124, 1989; No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 146, 2006 (as am. by No. 8, 2010)
s. 87A.....	ad. No. 181, 1987
s. 88.....	am. No. 72, 1983
s. 89.....	am. No. 72, 1984
s. 89A.....	ad. No. 63, 1976 am. No. 181, 1987 ed C82

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 90 .....	am. No. 63, 1976 rs. No. 72, 1983 am. No. 181, 1987; No. 37, 1991; No. 98, 2005
<b>Part VIII AA</b>	
Part VIII AA .....	ad. No. 138, 2003
<b>Division 1</b>	
<b>Subdivision A</b>	
s. 90AA .....	ad. No. 138, 2003
s. 90AB .....	ad. No. 138, 2003
s. 90AC .....	ad. No. 138, 2003
s. 90ACA .....	ad. No. 153, 2004 rs. No. 15, 2007
s. 90AD .....	ad. No. 138, 2003
s. 90ADA .....	ad. No. 138, 2003
<b>Division 2</b>	
s. 90AE .....	ad. No. 138, 2003
<b>Division 3</b>	
s. 90AF .....	ad. No. 138, 2003
<b>Division 4</b>	
s. 90AG .....	ad. No. 138, 2003
s. 90AH .....	ad. No. 138, 2003
s. 90AI .....	ad. No. 138, 2003
s. 90AJ .....	ad. No. 138, 2003
s. 90AK .....	ad. No. 138, 2003
<b>Part VIII A</b>	
Part VIII A .....	ad. No. 143, 2000
s. 90A .....	ad. No. 143, 2000
s. 90B .....	ad. No. 143, 2000 am. No. 98, 2005; No. 115, 2008
s. 90C .....	ad. No. 143, 2000 am. No. 138, 2003; No. 98, 2005; No. 115, 2008

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 90D .....	ad. No. 143, 2000 am. No. 98, 2005; No. 115, 2008
s. 90DA .....	ad. No. 20, 2005 am. No. 115, 2008
s. 90DB.....	ad. No. 115, 2008
s. 90E.....	ad. No. 143, 2000 am. No. 115, 2008
s. 90F.....	ad. No. 143, 2000 am. No. 138, 2003; No. 115, 2008
s. 90G.....	ad. No. 143, 2000 am. No. 138, 2003; No. 115, 2008; No. 122, 2009
s. 90H.....	ad. No. 143, 2000
s. 90J.....	ad. No. 143, 2000 am. No. 138, 2003; No. 115, 2008; No. 122, 2009
s. 90K.....	ad. No. 143, 2000 am. No. 61, 2001; No. 138, 2003; No. 46, 2006; No. 115, 2008
s. 90KA .....	ad. No. 143, 2000
s. 90L.....	ad. No. 143, 2000 rs. No. 138, 2003
s. 90M.....	ad. No. 86, 2002 am. No. 174, 2011, No 67, 2016
s. 90N .....	ad. No. 86, 2002 am. No. 174, 2011
s. 90P.....	ad. No. 86, 2002 am. No. 174, 2011
s. 90Q.....	ad. No. 86, 2002 am. No. 174, 2011
<b>Part VIIIAB</b>	
Part VIIIAB.....	ad. No. 115, 2008

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Division 1</b>	
<b>Subdivision A</b>	
s. 90RA.....	ad. No. 115, 2008
s. 90RB.....	ad. No. 115, 2008
<b>Subdivision B</b>	
s. 90RC.....	ad. No. 115, 2008
<b>Subdivision C</b>	
s. 90RD .....	ad. No. 115, 2008
s. 90RE .....	ad. No. 115, 2008
s. 90RF .....	ad. No. 115, 2008
s. 90RG.....	ad. No. 115, 2008
s. 90RH.....	ad. No. 115, 2008
<b>Division 2</b>	
<b>Subdivision A</b>	
s. 90SA .....	ad. No. 115, 2008
s. 90SB .....	ad. No. 115, 2008
s. 90SC .....	ad. No. 115, 2008
<b>Subdivision B</b>	
s. 90SD .....	ad. No. 115, 2008
s. 90SE .....	ad. No. 115, 2008
s. 90SF.....	ad. No. 115, 2008
s. 90SG .....	ad. No. 115, 2008
s. 90SH .....	ad. No. 115, 2008
s. 90SI.....	ad. No. 115, 2008
s. 90SJ .....	ad. No. 115, 2008
<b>Subdivision C</b>	
s. 90SK .....	ad. No. 115, 2008
s. 90SL .....	ad. No. 115, 2008
s. 90SM .....	ad. No. 115, 2008
s. 90SN .....	ad. No. 115, 2008

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision D</b>	
s. 90SO .....	ad. No. 115, 2008
s. 90SP .....	ad. No. 115, 2008
s. 90SQ .....	ad. No. 115, 2008
	am. No. 13, 2013
s. 90SR .....	ad. No. 115, 2008
<b>Subdivision E</b>	
s. 90SS .....	ad. No. 115, 2008
s. 90ST .....	ad. No. 115, 2008
<b>Division 3</b>	
s. 90TA .....	ad. No. 115, 2008
<b>Division 4</b>	
s. 90UA .....	ad. No. 115, 2008
s. 90UB .....	ad. No. 115, 2008
s. 90UC .....	ad. No. 115, 2008
s. 90UD .....	ad. No. 115, 2008
s. 90UE .....	ad. No. 115, 2008
s. 90UF .....	ad. No. 115, 2008
s. 90UG .....	ad. No. 115, 2008
s. 90UH .....	ad. No. 115, 2008
s. 90UI .....	ad. No. 115, 2008
s. 90UJ .....	ad. No. 115, 2008
	am. No. 122, 2009
s. 90UK .....	ad. No. 115, 2008
s. 90UL .....	ad. No. 115, 2008
	am. No. 122, 2009
s. 90UM .....	ad. No. 115, 2008
	am. No. 122, 2009
s. 90UN .....	ad. No. 115, 2008
<b>Division 5</b>	
s. 90VA .....	ad. No. 115, 2008

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	am. No. 174, 2011
s. 90VB.....	ad. No. 115, 2008
	am. No. 174, 2011
s. 90VC.....	ad. No. 115, 2008
	am. No. 174, 2011
s. 90VD.....	ad. No. 115, 2008
	am. No. 174, 2011
<b>Division 6</b>	
s. 90WA.....	ad. No. 115, 2008
<b>Part VIII B</b>	
Part VIII B.....	ad. No. 61, 2001
<b>Division 1</b>	
<b>Subdivision A</b>	
s. 90MA.....	ad. No. 61, 2001
	am. No. 115, 2008
s. 90MB.....	ad. No. 61, 2001
	am. No. 114, 2001
s. 90MC.....	ad. No. 61, 2001
	am. No. 115, 2008
<b>Subdivision B</b>	
s. 90MD.....	ad. No. 61, 2001
	am. No. 121, 2002; No. 153, 2004; No. 15, 2007; No. 115, 2008; No. 46, 2011
s. 90MDA.....	ad. No. 61, 2001
s. 90ME.....	ad. No. 61, 2001
	am. No. 114, 2001
s. 90MF.....	ad. No. 61, 2001
s. 90MG.....	ad. No. 61, 2001
	am. No. 115, 2008

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Division 2</b>	
<b>Subdivision A</b>	
s. 90MH.....	ad. No. 61, 2001 am. No. 115, 2008
s. 90MHA.....	ad. No. 115, 2008
<b>Subdivision B</b>	
s. 90MI.....	ad. No. 61, 2001 am. No. 98, 2005; No. 115, 2008
s. 90MJ.....	ad. No. 61, 2001 am. No. 115, 2008
<b>Subdivision C</b>	
s. 90MK.....	ad. No. 61, 2001 am. No. 98, 2005; No. 115, 2008
s. 90ML.....	ad. No. 61, 2001 am. No. 121, 2002
s. 90MLA.....	ad. No. 121, 2002
s. 90MM.....	ad. No. 61, 2001 am. No. 115, 2008
s. 90MN.....	ad. No. 61, 2001 am. No. 115, 2008
<b>Subdivision D</b>	
s. 90MO.....	ad. No. 61, 2001 am. No. 115, 2008
s. 90MP.....	ad. No. 61, 2001 am. No. 115, 2008
s. 90MQ.....	ad. No. 61, 2001 am. No. 15, 2007; No. 115, 2008
s. 90MR.....	ad. No. 61, 2001
<b>Division 3</b>	
s. 90MS.....	ad. No. 61, 2001 am. No. 115, 2008

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 90MT .....	ad. No. 61, 2001 am. No. 121, 2002
s. 90MU .....	ad. No. 61, 2001 am. No. 115, 2008
s. 90MUA .....	ad. No. 121, 2002
<b>Division 4</b>	
s. 90MV .....	ad. No. 61, 2001 am. No. 115, 2008
s. 90MW .....	ad. No. 61, 2001
s. 90MX .....	ad. No. 61, 2001 am. No. 121, 2002; No. 115, 2008
s. 90MY .....	ad. No. 61, 2001
s. 90MZ .....	ad. No. 61, 2001 am. No. 121, 2002; No. 15, 2007
s. 90MZA .....	ad. No. 61, 2001
s. 90MZB .....	ad. No. 61, 2001 am. No. 115, 2008
s. 90MZC .....	ad. No. 61, 2001 am. No. 121, 2002
<b>Division 5</b>	
s. 90MZD .....	ad. No. 61, 2001 am. No. 121, 2002
s. 90MZE .....	ad. No. 61, 2001
s. 90MZF .....	ad. No. 61, 2001
s. 90MZG .....	ad. No. 61, 2001 am. No. 115, 2008; No 4, 2016
s. 90MZH .....	ad. No. 61, 2001
<b>Part IX</b>	
s. 91 .....	am. No. 95, 1976; No. 181, 1987; No. 167, 1995; No. 98, 2005; No. 46, 2006
s. 91A .....	ad. No. 95, 1976

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	am. No. 181, 1987
s. 91B .....	ad. No. 72, 1983
	am No. 189, 2011
s. 92 .....	am. No. 72, 1983; No. 181, 1987; No. 167, 1995; No. 98, 2005; No. 46, 2006
s. 92A .....	ad. No. 37, 1991
	am. No. 167, 1995; No. 46, 2006
<b>Part X</b>	
s. 93 .....	am. No. 98, 2005
s. 93A .....	ad. No. 72, 1983
	am. No. 194, 1999; No. 138, 2003; No. 22, 2006
s. 94 .....	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; Nos. 141 and 181, 1987; No. 8, 1988; No. 115, 1990; No. 194, 1999; No. 143, 2000; No 138, 2003; No. 98, 2005; No. 22, 2006; No. 13, 2013; No. 113, 2015
	rs No. 13, 2013
s. 94AAA .....	ad. No. 194, 1999
	am. No. 138, 2003; No. 98, 2005; No. 22, 2006; No. 13, 2013; No 113, 2015; No. 24, 2016
s. 94AAB .....	ad. No. 98, 2005
s. 94AA .....	ad. No. 115, 1990
	am. No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 98, 2005; No. 22, 2006; No. 13, 2013
s. 94AB .....	ad. No. 113, 2015
s. 94A .....	ad. No. 63, 1976
	am. No. 23, 1979; No. 141, 1987; No. 194, 1999; No. 22, 2006; No. 13, 2013
s. 95 .....	am. No. 63, 1976
	rs. No. 98, 2005
s. 96 .....	am No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 181, 1987; No. 8, 1988; No. 194, 1999; No. 22, 2006
	ed C82
	am No. 97, 2018

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<b>Provision affected</b>	<b>How affected</b>
s. 96AA .....	ad. No. 98, 2005 rs. No. 189, 2011
s. 96A .....	ad. No. 89, 1998
<b>Part XI</b>	
Part XI heading.....	rs. No. 46, 2006
Note to Part XI heading.....	ad. No. 46, 2006
<b>Division 1</b>	
Division 1 heading.....	ad. No. 138, 2003
s. 97 .....	am. No. 72, 1983; No. 8, 1988; No. 194, 1999; No. 138, 2003; No. 186, 2012; No. 13, 2013
s. 98 .....	am. No. 72, 1983; No. 194, 1999; No. 98, 2005; No. 13, 2013
s. 98AA .....	ad. No. 189, 2011
s. 98AB.....	ad. No. 189, 2011 am. No. 13, 2013; No 31, 2016
s. 98A .....	ad. No. 72, 1983 am. No. 72, 1983; No. 181, 1987; No. 194, 1999; No. 143, 2000; No. 98, 2005; No 129, 2017
s. 99 .....	rep. No. 181, 1987
s. 99A .....	ad. No. 72, 1983 rep. No. 181, 1987
s. 100 .....	am No 129, 2017
s. 100A .....	ad. No. 37, 1991 rep. No. 46, 2006
s. 100B .....	ad. No. 143, 2000
s. 100C .....	ad. No. 116, 2007 rep. No. 21, 2011
s. 101 .....	am. No. 37, 1991
s. 102 .....	rs. No. 181, 1987
s. 102A .....	ad. No. 37, 1991 am. No. 167, 1995; No. 46, 2006
s. 102B .....	ad. No. 167, 1995

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<b>Provision affected</b>	<b>How affected</b>
	am. No. 194, 1999
<b>Division 2</b>	
Division 2 .....	ad. No. 138, 2003
s. 102C .....	ad. No. 138, 2003
	am No 36, 2010
s. 102D .....	ad. No. 138, 2003
	am No 36, 2010
s. 102E.....	ad. No. 138, 2003
	am No 36, 2010
s. 102F.....	ad. No. 138, 2003
s. 102G .....	ad. No. 138, 2003
s. 102H .....	ad. No. 138, 2003
s. 102J.....	ad. No. 138, 2003
s. 102K .....	ad. No. 138, 2003
s. 102L.....	ad. No. 138, 2003
	am No 36, 2010
<b>Division 3</b>	
Division 3 .....	ad. No. 138, 2003
s. 102M.....	ad. No. 138, 2003
s. 102N .....	ad. No. 138, 2003
<b>Part XIA</b>	
Part XIA .....	ad. No. 186, 2012
<b>Division 1</b>	
s. 102P.....	ad. No. 186, 2012
s. 102PA .....	ad. No. 186, 2012
s. 102PB .....	ad. No. 186, 2012
s. 102PC .....	ad. No. 186, 2012
<b>Division 2</b>	
s. 102PD.....	ad. No. 186, 2012
s. 102PE.....	ad. No. 186, 2012
s. 102PF.....	ad. No. 186, 2012

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<b>Provision affected</b>	<b>How affected</b>
s. 102PG.....	ad. No. 186, 2012
s. 102PH.....	ad. No. 186, 2012
s. 102PI.....	ad. No. 186, 2012
s. 102PJ.....	ad. No. 186, 2012
s. 102PK.....	ad. No. 186, 2012
<b>Part XIB</b>	
Part XIB.....	ad. No. 186, 2012
<b>Division 1</b>	
s. 102Q.....	ad. No. 186, 2012 am. No. 13, 2013; No 24, 2016
s. 102QA.....	ad No 186, 2012 am No 97, 2018
<b>Division 2</b>	
s. 102QB.....	ad. No. 186, 2012
s. 102QC.....	ad. No. 186, 2012
<b>Division 3</b>	
s. 102QD.....	ad. No. 186, 2012
s. 102QE.....	ad. No. 186, 2012
s. 102QF.....	ad. No. 186, 2012
s. 102QG.....	ad. No. 186, 2012
<b>Part XII</b>	
s. 103.....	am. No. 63, 1976
s. 104.....	am No 72, 1983; No 72, 1984; No 181, 1987; No 98, 2005 ed C84
s. 104A.....	ad. No. 76, 1986 am. No. 98, 2005; No. 22, 2006
<b>Part XIII</b>	
s. 105.....	am. No. 95, 1976; No. 72, 1983; No. 181, 1987; No. 194, 1999; No. 143, 2000; No, 115, 2008 am. No. 13, 2013
s. 106.....	am. No. 63, 1976; No. 23, 1979

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<b>Provision affected</b>	<b>How affected</b>
	rep. No. 72, 1983
	ad. No. 143, 2000
s. 106A .....	ad. No. 143, 2000
s. 106B .....	ad. No. 143, 2000
	am. No. 138, 2003; Nos. 20 and 98, 2005; No. 115, 2008
s. 107 .....	am. No. 72, 1983; No. 181, 1987; No. 182, 1989
	rs. No. 143, 2000
	am. No. 138, 2003; No. 115, 2008
s. 108 .....	am. No. 63, 1976; No. 23, 1979; No. 72, 1983; No. 181, 1987
	rep. No. 182, 1989
s. 109 .....	am. No. 181, 1987; No. 167, 1995
s. 109A .....	ad. No. 143, 2000
	am. No. 46, 2006
s. 109B .....	ad. No. 194, 1999
	am. No. 13, 2013
<b>Part XIII AA</b>	
Part XIII AA heading .....	ad. No. 143, 2000
<b>Division 1</b>	
Division 1 heading .....	ad. No. 69, 2002
s. 110 .....	am. No. 63, 1976; No. 72, 1983; No. 72, 1984; No. 168, 1986; No. 181, 1987; No. 182, 1989; No. 34, 1997; No. 73, 2008
s. 110A .....	ad. No. 143, 2000
s. 110B .....	ad. No. 143, 2000
s. 111 .....	am. No. 72, 1983; No. 143, 2000
s. 111A .....	ad. No. 72, 1983
	am. No. 143, 2000
s. 111AA .....	ad. No. 82, 2007
s. 111AB .....	ad. No. 82, 2007
<b>Division 2</b>	
Division 2 heading .....	ad. No. 69, 2002
s. 111B .....	ad. No. 72, 1983

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	am. No. 167, 1995; No. 143, 2000; No. 46, 2006
<b>Division 3</b>	
Division 3 heading.....	ad. No. 69, 2002
s. 111C .....	ad. No. 167, 1995
	am. No. 89, 1998; No. 143, 2000
<b>Division 4</b>	
Division 4.....	ad. No. 69, 2002
<b>Subdivision A</b>	
s. 111CA.....	ad. No. 69, 2002
s. 111CB.....	ad. No. 69, 2002
<b>Subdivision B</b>	
s. 111CC.....	ad. No. 69, 2002
s. 111CD.....	ad. No. 69, 2002
s. 111CE.....	ad. No. 69, 2002
s. 111CF .....	ad. No. 69, 2002
s. 111CG.....	ad. No. 69, 2002
s. 111CH.....	ad. No. 69, 2002
s. 111CI.....	ad. No. 69, 2002
<b>Subdivision C</b>	
s. 111CJ.....	ad. No. 69, 2002
s. 111CK.....	ad. No. 69, 2002
s. 111CL.....	ad. No. 69, 2002
s. 111CM.....	ad. No. 69, 2002
s. 111CN.....	ad. No. 69, 2002
s. 111CO.....	ad. No. 69, 2002
s. 111CP .....	ad. No. 69, 2002
<b>Subdivision D</b>	
s. 111CQ.....	ad. No. 69, 2002
s. 111CR.....	ad. No. 69, 2002
s. 111CS .....	ad. No. 69, 2002

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision E</b>	
s. 111CT.....	ad. No. 69, 2002
<b>Subdivision F</b>	
s. 111CU.....	ad. No. 69, 2002
s. 111CV.....	ad. No. 69, 2002
	am. No. 46, 2006; No. 13, 2013
s. 111CW.....	ad. No. 69, 2002
	rs. No. 46, 2006
s. 111CX.....	ad. No. 69, 2002
s. 111CY.....	ad. No. 69, 2002
<b>Subdivision G</b>	
s. 111CZ.....	ad. No. 69, 2002
<b>Division 5</b>	
Division 5 heading.....	ad. No. 69, 2002
s. 111D.....	ad. No. 143, 2000
s. 112.....	am. No. 63, 1976
	rs. No. 72, 1983
	am. No. 72, 1983; No. 181, 1987
	rep. No. 143, 2000
<b>Part XIII A</b>	
Part XIII A heading.....	rs. No. 143, 2000
Part XIII A.....	ad. No. 182, 1989
<b>Division 1</b>	
s. 112AA.....	ad. No. 182, 1989
	am. No. 23, 1992; No. 167, 1995; No. 143, 2000; No. 115, 2008; No. 13, 2013
s. 112AB.....	ad. No. 182, 1989
	am. No. 167, 1995; No. 143, 2000
s. 112AC.....	ad. No. 182, 1989
	am. No. 167, 1995; No. 143, 2000

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Division 2</b>	
s. 112AD .....	ad. No. 182, 1989 am. No. 37, 1991; No. 167, 1995; No. 34, 1997; No. 143, 2000; No. 138, 2003
s. 112AE .....	ad. No. 182, 1989 am. No. 143, 2000; No. 98, 2005
s. 112AF .....	ad. No. 182, 1989 am. No. 167, 1995 rs. No. 143, 2000
s. 112AG .....	ad. No. 182, 1989 am. No. 143, 2000; No. 138, 2003
s. 112AH .....	ad. No. 182, 1989 am. No. 143, 2000; No. 98, 2005; No. 189, 2011; No. 13, 2013
s. 112AJ .....	ad. No. 182, 1989 rep. No. 167, 1995
s. 112AK .....	ad. No. 182, 1989
s. 112AL .....	ad. No. 182, 1989 am. No. 37, 1991 rep. No. 167, 1995
s. 112AM .....	ad. No. 182, 1989 am. No. 143, 2000
s. 112AN .....	ad. No. 182, 1989 am No 59, 2015
s. 112AO .....	ad. No. 182, 1989
Division 3 heading .....	rep. No. 143, 2000
<b>Part XIII B</b>	
Part XIII B heading .....	ad. No. 143, 2000
s. 112AP .....	ad. No. 182, 1989 am. No. 194, 1999; No. 143, 2000; No. 46, 2006
<b>Part XIV</b>	
s. 112A .....	ad. No. 72, 1983

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 114.....	am No 72, 1983; No 72, 1984; No 181, 1987; No 182, 1989; No 20, 2005; No 115, 2008; No 97, 2018
s. 114AA .....	ad. No. 72, 1983 am. No. 181, 1987; No. 182, 1989; No. 143, 2000 ed C82
s. 114AB.....	ad. No. 72, 1983 am. No. 181, 1987; No. 37, 1991; No. 167, 1995
<b>Part XIVA</b>	
Part XIVA heading.....	am. No. 76, 1986
Part XIVA .....	ad. No. 23, 1979
s. 114A .....	ad. No. 23, 1979 am. No. 76, 1986; No. 82, 2006
s. 114B .....	ad. No. 23, 1979 am. No. 72, 1983; No. 76, 1986; No. 182, 1989; No. 152, 1997; No. 82, 2006; No 62, 2014
s 114BA.....	ad No 76, 1986 am No 152, 1997 rep No 82, 2006
s. 114BB.....	ad. No. 76, 1986 rep. No. 82, 2006
s. 114C .....	ad. No. 23, 1979 rs. No. 82, 2006
s. 114D .....	ad. No. 23, 1979 rs. No. 82, 2006 am. No. 46, 2011
s. 114E.....	ad. No. 23, 1979 am. No. 181, 1987; No. 159, 2001 rs. No. 82, 2006
s. 114F.....	ad. No. 23, 1979 am. No. 181, 1987; No. 43, 1996 rs. No. 82, 2006

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	am. No. 46, 2011
s. 114G .....	ad. No. 23, 1979
	am. No. 182, 1989
	rs. No. 229, 1992
	am. No. 146, 1999
	rs. No. 82, 2006
s. 114H .....	ad. No. 23, 1979
	am. No. 181, 1987
	rs. No. 82, 2006
s. 114J.....	ad. No. 23, 1979
	am. No. 229, 1992; No. 152, 1997; No. 156, 1999
	rs. No. 82, 2006
s. 114K .....	ad. No. 23, 1979
	am. No. 181, 1987; No. 182, 1989
	rs. No. 82, 2006
	rep No 62, 2014
s. 114L.....	ad. No. 23, 1979
	rs. No. 82, 2006
s. 114LA.....	ad. No. 82, 2006
s. 114LB .....	ad. No. 82, 2006
	am No 62, 2014
s. 114LC .....	ad. No. 82, 2006
	rep No 62, 2014
s. 114LD.....	ad. No. 82, 2006
	am No 62, 2014
s. 114M.....	ad. No. 23, 1979
	am. Nos. 65 and 166, 1985; No. 182, 1989; No. 199, 1991
	rs. No. 167, 1995
	am. No. 146, 1999; No. 82, 2006
s. 114MA.....	ad. No. 76, 1986
	rep. No. 82, 2006

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 114MB.....	ad. No. 76, 1986 am. No. 182, 1989 rep. No. 152, 1997
s. 114MC.....	ad. No. 76, 1986 am. No. 182, 1989 rep. No. 82, 2006
s. 114MD.....	ad. No. 76, 1986 am. No. 152, 1997 rep. No. 82, 2006
s. 114ME.....	ad. No. 76, 1986 rep. No. 152, 1997
s. 114MF.....	ad. No. 76, 1986 rep. No. 82, 2006
Part XIVB.....	ad. No. 46, 2006 rep. No. 151, 2006
s. 114MG.....	ad. No. 46, 2006 rep. No. 151, 2006
s. 114MH.....	ad. No. 46, 2006 rep. No. 151, 2006
s. 114MI.....	ad. No. 46, 2006 rep. No. 151, 2006
s. 114MJ.....	ad. No. 46, 2006 rep. No. 151, 2006
s. 114MK.....	ad. No. 46, 2006 rep. No. 151, 2006
s. 114ML.....	ad. No. 46, 2006 rep. No. 151, 2006
s. 114MM.....	ad. No. 46, 2006 rep. No. 151, 2006
s. 114MN.....	ad. No. 46, 2006 rep. No. 151, 2006

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 114MO.....	ad. No. 46, 2006 rep. No. 151, 2006
s. 114MP.....	ad. No. 46, 2006 rep. No. 151, 2006
s. 114N.....	ad. No. 72, 1983 rs. No. 76, 1986 rep. No. 152, 1997
Part XV	
s. 115.....	am. No. 63, 1976; No. 72, 1983; No. 181, 1987; No. 182, 1989; No. 167, 1995; No. 43, 1996; Nos. 146 and 194, 1999; No. 46, 2006; No. 13, 2013
s. 116.....	am. No. 63, 1976 rep. No. 23, 1979
s. 116A.....	ad. No. 67, 1973 rep. No. 23, 1992
s. 116B.....	ad. No. 67, 1973 rep. No. 23, 1992
s. 116C.....	ad. No. 67, 1983 am. No. 165, 1984; No. 181, 1987; No. 194, 1999; No 59, 2015
s. 117.....	am. No. 72, 1983; No. 181, 1987; No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 138, 2003; No. 98, 2005; No. 46, 2006; No. 82, 2007; No. 189, 2011; No. 97, 2018
s. 117AA.....	ad. No. 143, 2000
s. 117AB.....	ad. No. 46, 2006 rep. No. 189, 2011
s. 117AC.....	ad. No. 82, 2007
s. 117A.....	ad. No. 72, 1983 am. No. 182, 1989; No. 167, 1995; No. 138, 2003; No. 46, 2006
s. 117B.....	ad. No. 72, 1983 am. No. 72, 1983; No. 194, 1999
s. 117C.....	ad. No. 72, 1983

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	am. No. 72, 1983; No. 181, 1987; No. 22, 1992; No. 167, 1995; No. 194, 1999; No. 143, 2000; No. 138, 2003
	rs. No. 98, 2005
s 118 .....	rs No 72, 1983
	am No 181, 1987
	rs No 186, 2012
	rep No 97, 2018
s. 121 .....	rs. No. 72, 1983
	am. No. 72, 1983; No. 37, 1991; No. 194, 1999; No. 143, 2000; No. 138, 2003; No 113, 2015; No 4, 2016
	ed C82
s. 122 .....	am. No. 181, 1987
s. 122AA .....	ad. No. 143, 2000
s. 122A .....	ad. No. 37, 1991
s. 122B .....	ad. No. 143, 2000
s 123 .....	am No 63, 1976; No 95, 1976; No 23, 1979
	rs No 72, 1983
	am No 193, 1985; No 99, 1988; No 182, 1989; No 113, 1991; No 23, 1992; No 167, 1995; No 34, 1997; No 194, 1999; No 143, 2000; No 138, 2003; No 140, 2003; No 98, 2005; No 46, 2006; No 189, 2011; No 107, 2012; No 186, 2012; No 13, 2013; No 10, 2015; No 126, 2015; No 24, 2016
	ed C82
	am No 78, 2018
	ed C84
	am No 97, 2018
s. 124 .....	ad. No. 72, 1983
	am. No. 181, 1987; No. 194, 1999; No 24, 2016
s. 124A .....	ad. No. 49, 2000
	am. No. 82, 2007
s. 125 .....	ad. No. 72, 1983

Endnote 4—Amendment history

Provision affected	How affected
<b>Schedule 1</b>	am. No. 181, 1987; No. 113, 1991; No. 167, 1995; No. 25, 1997; No. 143, 2000; No. 140, 2003; No. 46, 2006; No 10, 2015
Schedule 1 .....	ad. No. 69, 2002

## Endnotes

### Endnote 5—Miscellaneous

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#### **Endnote 5—Miscellaneous**

See Schedule 1 of the *Family Law Amendment (Validation of Certain Parenting Orders and Other Measures) Act 2010* (No. 147, 2010) for validation of certain parenting orders.

See Schedule 1 of the *Family Law Amendment (Validation of Certain Orders and Other Measures) Act 2012* (No. 32, 2012) for validation of certain parenting orders.