

Family Law Amendment Act 1979

No. 23 of 1979

An Act to amend the *Family Law Act* 1975.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

1. (1) This Act may be cited as the *Family Law Amendment Act* 1979.¹ Short title,
&c.

(2) The *Family Law Act* 1975² is in this Act referred to as the Principal Act.

2. (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.¹ Commence-
ment

(2) Sections 4, 10 and 11, paragraph 12 (a) and sections 17 and 23 shall come into operation on a date to be fixed by Proclamation.

3. Section 3 of the Principal Act is amended by omitting from paragraph (a) of sub-section (2) “1949” and substituting “1944”. Repeal and
saving

4. Section 4 of the Principal Act is amended—

(a) by inserting in sub-section (1), after the definition of “court”, the following definition: Interpret-
ation

“ ‘court counsellor’ means—

(a) the Principal Director of Court Counselling, a Director of Court Counselling or another court counsellor appointed under section 37; or

(b) a person appointed under a law of a State as a counsellor in relation to a Family Court of that State;” and

(b) by omitting paragraphs (a) and (aa) of the definition of “welfare officer” in sub-section (1) and substituting the following paragraph:

“(a) a person appointed under a law of a State as a welfare officer in relation to a Family Court of that State;”.

5. Section 9 of the Principal Act is amended—

Transitional

(a) by omitting from sub-section (1) “sub-section (2)” and substituting “sub-sections (2) and (2A)”;

(b) by inserting after sub-section (2) the following sub-section:

“(2A) Where sub-section (2) does not apply but the parties have lived separately and apart for a continuous period of not

less than 12 months immediately preceding the date of making of the request under this sub-section, pending proceedings for a decree of dissolution of marriage shall, if either party so requests, be dealt with as if they were proceedings instituted under this Act on the ground referred to in section 48, and, in relation to proceedings in which such a request is made, sub-section 48 (2) has effect as if the proceedings for dissolution of marriage had been instituted by an application filed on the date of making of the request.”.

Officers of
Court

6. Section 37 of the Principal Act is amended by omitting paragraph (a) of sub-section (9) and substituting the following paragraph:

“(a) he is a person appointed or employed under the *Public Service Act* 1922 or is otherwise in the service of the Commonwealth; or”.

Jurisdiction
in matri-
monial
causes

7. (1) Section 39 of the Principal Act is amended by omitting paragraphs (a), (b) and (c) of sub-section (4) and substituting the following paragraphs:

- “(a) either party to the marriage is an Australian citizen at the date on which the application instituting the proceedings is filed in a court;
- (b) either party to the marriage is present in Australia at that date; or
- (c) the proceedings relate to a child of the marriage and the child is present in Australia at that date.”.

(2) Section 39 of the Principal Act is amended by inserting after sub-section (7) the following sub-section:

“(7A) The Governor-General may, by Proclamation, declare that a Proclamation made under sub-section (7) is revoked on and from a specified date and, on and after the specified date, this Act (including sub-section (7)) has effect as if the revoked Proclamation had not been made, but without prejudice to the effect of the revoked Proclamation in respect of the jurisdiction of courts before the specified date.”.

8. Section 45 of the Principal Act is repealed and the following section substituted:

Staying and
transfer of
proceedings

“45. (1) Where there are pending in a court proceedings that have been instituted under this Act or the regulations or are being continued in accordance with any of the provisions of section 9 and it appears to that court that other proceedings that have been so instituted or are being so continued in relation to the same marriage or void marriage or the same matter are pending in another court, the first-mentioned court may stay the first-mentioned proceedings for such time as it thinks fit or may dismiss the proceedings.

“(2) Where there are pending in a court proceedings that have been instituted under this Act or the regulations or are being continued in accordance with any of the provisions of section 9 and it appears to that court that it is in the interests of justice that the proceedings be dealt with in another court having jurisdiction under this Act, the court may transfer the proceedings to the other court.”.

9. Section 61 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section: Rights of guardianship and custody of children

“(4) On the death of a party to a marriage in whose favour a custody order has been made in respect of a child of the marriage—

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

10. Section 62 of the Principal Act is amended—

- (a) by omitting from sub-section (1) all the words to the end of paragraph (b) and substituting “Where, in any proceedings under this Act, the welfare of a child who has not attained the age of 18 years is relevant,”; Conferences with, and reports by, court counsellors or welfare officers
- (b) by inserting in sub-sections (1), (2) and (3) “court counsellor or” before “welfare officer”; and
- (c) by omitting sub-section (4) and substituting the following sub-section:

“(4) In proceedings of a kind referred to in sub-section (1), the court may obtain from a court counsellor or welfare officer a report on such matters relevant to the proceedings as the court thinks desirable, and may receive the report in evidence, and the court may, if it thinks necessary, adjourn the proceedings for the purpose of obtaining such a report.”.

11. Section 63 of the Principal Act is amended by inserting in sub-section (2) “court counsellor or” before “welfare officer”. Decree absolute where children

12. Section 64 of the Principal Act is amended—

- (a) by inserting in sub-section (5) “court counsellor or” before “welfare officer”; and Powers of court in custodial proceedings
- (b) by inserting after sub-section (10B) the following sub-section:

“(10C) Without limiting the power of the court issuing a warrant under sub-section (9) or (10) to name or describe

specifically any vehicle, vessel, aircraft, premises or place in respect of which the warrant is to apply, the court may express the warrant to apply in respect of any vehicle, vessel, aircraft, premises or place in which there is at any time reasonable cause to believe that the child concerned may be found.”.

Setting aside
of orders
altering
property
interests

13. Section 79A of the Principal Act is amended by omitting from sub-section (1) “the order was obtained by fraud, by duress, by the giving of false evidence or by the suppression of evidence” and substituting “there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence, the giving of false evidence or any other circumstance”.

Modification
of main-
tenance
orders

14. Section 83 of the Principal Act is amended by omitting sub-section (6) and substituting the following sub-section:

“(6) An order decreasing the amount of a periodic sum payable under an order or discharging an order may be expressed to be retrospective to such date as the court thinks fit.”.

Approval of
maintenance
agreements
entered into
in
substitution
for rights
under Act

15. Section 87 of the Principal Act is amended—

- (a) by inserting in sub-section (4) “, by order,” after “shall” (wherever occurring); and
- (b) by omitting from sub-section (6) “A court may revoke its approval of a maintenance agreement if, and only if, it is satisfied that the approval of the court” and substituting “A court may, by order, revoke the approval of a maintenance agreement under this section if, and only if, the agreement is registered or deemed to be registered in that court and that court is satisfied that the approval”.

Appeals to
Family
Court

16. Section 94 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-sections:

“(1) An appeal lies to a Full Court of the Family Court from a decree of—

- (a) the Family Court, constituted otherwise than as a Full Court;
- (b) a Family Court of a State; or
- (c) the Supreme Court of a State or Territory constituted by a single Judge,

exercising original or appellate jurisdiction under this Act or in a proceeding continued in accordance with any of the provisions of section 9.

“(1A) An appeal under sub-section (1) shall be instituted within the time prescribed by the regulations or within such further time as is allowed in accordance with the regulations.”.

Case stated

17. Section 94A of the Principal Act is amended by omitting from sub-section (1) “proceedings in the Family Court, constituted otherwise than as a Full Court” and substituting “proceedings in a court, being

proceedings in which a decree to which sub-section 94 (1) applies could be made”.

18. (1) Section 96 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-sections:

Appeals
from courts
of summary
jurisdiction

“(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 sub-section (1) shall be instituted within the time prescribed by the regulations or within such further time as is allowed in accordance with the regulations.”; and

- (b) by omitting sub-sections (4) and (5) and substituting the following sub-section:

“(4) The court hearing an appeal under this section—

- (a) shall 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 thinks fit, including a decree affirming, reversing or varying the decree the subject of the appeal.”.

(2) The amendment made by paragraph (1) (b) does not apply in relation to an appeal the hearing of which commenced before the date of commencement of this section.

19. (1) Section 106 of the Principal Act is amended by adding at the end thereof the following sub-section:

Methods of
enforcement

“(2) Without limiting the generality of sub-section (1), regulations made by virtue of that sub-section may provide for—

- (a) 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
- (b) matters of priority as between the execution of orders made under the regulations, or under the repealed Act, for the attachment of such moneys and the execution of orders made in accordance with the *Maintenance Orders (Commonwealth Officers) Act 1966*.”.

(2) Regulations purporting to be in force under the Principal Act immediately before the commencement of this section are, and shall be deemed to have been, at all times since the making of the regulations, as

valid and effectual as if the amendment made by this section had come into operation before the making of the regulations.

Contempt **20.** Section 108 of the Principal Act is amended by adding at the end of sub-section (1) “or of any undertaking given to the court in proceedings under this Act”.

21. After Part XIV of the Principal Act the following Part is inserted:

“PART XIVA—THE INSTITUTE OF FAMILY STUDIES

Interpretation

“114A. In this Part, unless the contrary intention appears—

‘Board’ means the Board of Management of the Institute;

‘Director’ means the Director of the Institute;

‘Institute’ means the Institute of Family Studies established by this Part;

‘member’ means a member of the Board, and includes the Director.

Establishment of Institute

“114B. (1) There is established by this Part an Institute by the name of the Institute of Family Studies.

“(2) The functions of the Institute are—

(a) to promote, by the 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 Attorney-General in relation to the making of 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.

Director and Board of Management

“114C. (1) There shall be a Director of the Institute and a Board of Management of the Institute.

“(2) The Board shall consist of the Director and 4 or more other members.

“(3) The members shall be appointed by the Governor-General.

“(4) The Director shall be appointed as a full-time member and the other members shall be appointed as part-time members.

“(5) A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

“(6) The performance of the functions or the exercise of the powers of the Board is not affected by reason of there being a vacancy or vacancies in the membership of the Board.

“114D. (1) The Board is charged with the general direction of the Institute. Management of Institute

“(2) Subject to the general direction of the Board, the Director shall manage the affairs of the Institute.

“114E. (1) Subject to this Part, a member holds office for such period, not exceeding 7 years, as is specified in the instrument of his appointment, but is eligible for re-appointment. Term of office of members

“(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Director and a person shall not be appointed or re-appointed as the Director for a period that extends beyond the date on which he will attain the age of 65 years.

“114F. (1) A member 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, he shall be paid such remuneration as is prescribed. Remuneration and allowances

“(2) A member shall be paid such allowances as are prescribed.

“(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

“114G. The Attorney-General may grant leave of absence to a member on such terms and conditions as to remuneration or otherwise as the Attorney-General determines. Leave of absence

“114H. A member may resign his office by writing under his hand delivered to the Governor-General. Resignation of members

“114J. (1) The Governor-General may terminate the appointment of a member by reason of the misbehaviour, or physical or mental incapacity, of the member. Termination of appointments

“(2) If a member—

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

(b) being the Director—

(i) engages in paid employment outside the duties of his office without the approval of the Attorney-General; or

(ii) is absent from duty, except on leave of absence granted by the Attorney-General, for 14 consecutive days or for 28 days in any 12 months; or

(c) being a member other than the Director—is absent, except on leave of absence granted by the Attorney-General, from 3 consecutive meetings of the Board,

the Governor-General shall remove him from office.

Acting
Director

“114K. (1) The Attorney-General may appoint a person (whether a member or not) to act as Director—

- (a) during a vacancy in the office of Director (whether or not the office has previously been filled); 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 functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(2) The Attorney-General may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Director; and
- (b) at any time terminate such an appointment.

“(3) Where a person is acting as Director in accordance with paragraph (1) (b) and the office of Director becomes vacant while that person is so acting, that person may continue so to act until the Attorney-General otherwise directs, the vacancy is filled, or a period of 12 months from the day on which the vacancy occurred expires, whichever first happens.

“(4) The appointment of a person to act as Director ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Attorney-General.

“(5) While a person is acting as Director, he has, and may exercise, all the powers and shall perform all the functions of the Director.

Meetings,
&c.

“114L. The regulations may prescribe matters that are necessary or convenient to be prescribed in connection with the conduct of the affairs of the Institute, including matters relating to the conduct of, and the quorum and voting at, meetings of the Board.

Staff

“114M. (1) The Director may, on behalf of the Commonwealth and with the approval of the Attorney-General, employ persons as members of the staff of the Institute and engage persons to assist the Institute as consultants or otherwise.

“(2) The terms and conditions of employment or engagement of persons under this section are such as are from time to time determined by the Director with the approval of the Public Service Board.

“(3) Where a member of the staff of the Institute was, immediately before his appointment, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928* applied—

- (a) he retains his existing and accruing rights;

- (b) for the purpose of determining those rights, his service as a member of the staff of the Institute shall be taken into account as if it were service in the Australian Public Service; and
- (c) the *Officers' Rights Declaration Act* 1928 applies as if this Act and this section had been specified in the Schedule to that Act.

“(4) This section has effect notwithstanding the *Public Service Act* 1922 but subject to any other Act relating to persons employed by the Commonwealth.”.

22. (1) Section 116 of the Principal Act is repealed.

Repeal of
section 116

(2) A determination of the Remuneration Tribunal in force at the commencement of this section in respect of the Director of the Institute of Family Studies as established by the section repealed by this section continues in force, until superseded, in relation to the Director of the Institute of Family Studies as established by Part XIVA of the Principal Act as amended by this Act.

23. Section 123 of the Principal Act is amended by inserting in paragraph (j) of sub-section (3) “court counsellor or” before “welfare officer”.

Regulations

NOTES

1. Act No. 23, 1979; assented to 5 April 1979.
2. Act No. 53, 1975, as amended. For previous amendments *see* Acts Nos. 63, 95 and 209, 1976; and No. 102, 1977.