



# **Family Law Amendment Act 2000**

**No. 143, 2000**



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**An Act to amend the *Family Law Act 1975* and  
other Acts, and for related purposes**

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# **An Act to amend the *Family Law Act 1975* and other Acts, and for related purposes**

[Assented to 29 November 2000]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Family Law Amendment Act 2000*.

## **2 Commencement**

- (1) Subject to subsections (1A) and (2), this Act commences 28 days after the day on which it receives the Royal Assent.
- (1A) Items 31A and 117 of Schedule 3 commence on the day on which this Act receives the Royal Assent.
- (2) Item 41 of Schedule 3 is taken to have commenced immediately after the commencement of section 26 of the *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988*.

## **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Consequences of failure to comply with orders and other obligations**

### *Family Law Act 1975*

#### **1 Paragraph 37A(1)(k)**

Repeal the paragraph.

#### **2 Section 60C (table item 6)**

Repeal the item, substitute:

6

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

- applying for and making parenting orders, other than child maintenance orders
- general obligations created by residence orders, contact orders and specific issues orders
- measures to promote the exercise of parental responsibility—stage 1 of parenting compliance regime
- dealing with people who have been arrested
- obligations under parenting orders, other than child maintenance orders, relating to taking or sending children from Australia

#### **3 Section 60C (after table item 13)**

Insert:

13A

#### **Division 13A—Enforcement of orders affecting children**

- court may do any or all of the following:
  - (a) require a person who contravenes an order affecting

children to participate in an appropriate post-separation parenting program designed to help in the resolution of conflicts about parenting;

(b) make a further parenting order that compensates for contact forgone as a result of the contravention;

(c) adjourn the proceedings to enable an application to be made for a further parenting order;

—stage 2 of parenting compliance regime

- court must take other action in respect of a person who contravenes an order affecting children if the court is satisfied:

(a) where the contravention is an initial contravention—that the person has behaved in a way that showed a serious disregard for his or her parenting obligations; or

(b) where the contravention is a second or subsequent contravention—that it is not appropriate for the person to be dealt with by requiring his or her attendance at a post-separation parenting program;

—stage 3 of parenting compliance regime

#### **4 After section 63D**

Insert:

**63DA Explanation by person advising or assisting in the making of a parenting plan**

- (1) If a person who is a family and child counsellor, a family and child mediator or a legal practitioner gives advice or assistance to people in connection with the making by them of a parenting plan, the person must explain to them, in language likely to be readily understood by them:
  - (a) the obligations that the plan creates; and
  - (b) the consequences that may follow if either of them fails to comply with any of those obligations; and
  - (c) the availability of programs to help people who experience difficulties in complying with a parenting plan.
- (2) A court may cause to be prepared, and given to persons who are making a parenting plan, a document setting out particulars of the availability of programs to help people who experience difficulties in complying with a parenting plan.

**4A Subsection 63F(3) (paragraph (b) of the note)**

Omit “Parts XIII and XIII A”, substitute “Division 13A of this Part and Part XIII”.

**5 After section 65A**

Insert:

**65AA Measures to promote the exercise of parental responsibility**

Measures designed, as stage 1 of a parenting compliance regime, to improve communication between separated parents and to educate parents about their respective responsibilities in relation to their children are contained in this Division (see section 65DA).

Remedial measures designed, as stage 2 of a parenting compliance regime, to enable parents to resolve issues of conflict about parenting and to help in the negotiation of improved parenting are contained in Subdivision B of Division 13A.

Further measures designed, as stage 3 of a parenting compliance regime, to ensure that, as a last resort, a parent is dealt with for

deliberate disregard of an order made by a court are contained in Subdivision C of Division 13A.

**5A At the end of section 65D**

Add:

- (3) If the application for the parenting order was made as a result of the adjournment under paragraph 70NG(1)(c) of proceedings under Subdivision B of Division 13A of Part VII:
  - (a) the court must hear and determine the application as soon as practicable; and
  - (b) if the court makes a parenting order on the application, the court may, if it thinks it is appropriate to do so, dismiss the proceedings under that Subdivision.

Note: The applicant may apply to the Family Court or to the Federal Magistrates Court for the application for the parenting order or for the proceedings under Subdivision B of Division 13A of Part VII, or both, to be transferred to the Federal Magistrates Court or to the Family Court, as the case requires (see section 33B of this Act and section 39 of the *Federal Magistrates Act 1999*).

**6 After section 65D**

Insert:

**65DA Parenting orders: stage 1 of parenting compliance regime**

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

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

**6A Paragraphs 65Q(1)(c) and (d)**

Omit “section 112AD”, substitute “Division 13A”.

**6B Paragraphs 65U(1)(b) and (c)**

Omit “section 112AD”, substitute “Division 13A”.

**6C Paragraphs 65V(1)(b) and (c)**

Omit “section 112AD”, substitute “Division 13A”.

**7 After Division 13 of Part VII**

Insert:

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

**Subdivision A—Preliminary**

**70NB Definitions**

In this Division:

*applied provisions*, in relation to a community service order made under paragraph 70NJ(3)(a), means the provisions of the laws of a State or Territory (as modified by regulations made under subsection 70NK(3)), that, because of regulations made under that subsection, apply in relation to the order.

*appropriate post-separation parenting program* or *appropriate program*, in relation to a person, means a post-separation parenting program that is available within a reasonable distance from the person's place of residence or place of work.

*community service order* has the meaning given by subsection 70NK(2A).

*contravened* an order has the meaning given by section 70NC.

*order under this Act affecting children*, in relation to a court, means:

- (a) a parenting order; or
- (b) an injunction granted by the court:
  - (i) under section 68B; or
  - (ii) under section 114 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 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 that relate wholly or partly to a parenting order, being a subpoena issued to a party to the proceedings; or
- (e) a parenting plan registered in a court under section 63E; or
- (f) a bond entered into:

- (i) under a parenting order; or
  - (ii) under paragraph 70NJ(3)(b); or
  - (iii) for the purposes of subsection 70NO(5);
- and includes an order, injunction, plan or bond that:
- (g) is an order under this Act affecting children made by another court because of paragraph (a), (b), (e) or (f); and
  - (h) has been registered in the first-mentioned court.

***post-separation parenting program*** or ***program*** means a program that:

- (a) is designed (including by providing counselling services or by teaching techniques to resolve disputes) to help people to resolve problems that adversely affect the carrying out of their parenting responsibilities; and
- (b) is included in a list of programs compiled by the Attorney-General; and
- (c) consists of lectures, discussions (including group discussions) or other activities.

***primary order*** has the meaning given by section 70NF or 70NJ.

***reasonable excuse for contravening*** an order includes the meanings given by section 70NE.

#### **70NBA Application of Division**

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

#### **70NC Meaning of *contravened* an order**

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

- (a) where the person is bound by the order—he or she has:
  - (i) intentionally failed to comply with the order; or

- (ii) made no reasonable attempt to comply with the order;  
or
- (b) otherwise—he or she has:
  - (i) intentionally prevented compliance with the order by a person who is bound by it; or
  - (ii) aided or abetted a contravention of the order by a person who is bound by it.

**70ND Requirements taken to be included in certain orders**

For the purposes of this Division:

- (a) a residence order is taken to include a requirement that people act in accordance with section 65M in relation to the order; and
- (b) a contact order is taken to include a requirement that people act in accordance with section 65N in relation to the order; and
- (c) a specific issues order to which section 65P applies is taken to include a requirement that people act in accordance with that section in relation to the order.

**70NE 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 Division, a ***reasonable excuse for contravening*** an order under this Act affecting children include, but are not limited to, the circumstances set out in subsections (1A), (2), (3) and (4).
- (1A) A person (the ***respondent***) is taken to have had a ***reasonable excuse for contravening*** an order under this Act affecting children if:
  - (a) the respondent contravened the order because, or substantially because, he or she did not, at the time of the contravention, understand the obligations imposed by the order on the person who was bound by it; and
  - (b) the court is satisfied that the respondent ought to be excused in respect of the contravention.

- (1B) If a court decides that a person had a reasonable excuse for contravening an order under this Act for the reason referred to in paragraph (1A)(a), it is the duty of the court to explain to the person, in language likely to be readily understood by the person, the obligations imposed on him or her by the order and the consequences that may follow if he or she again contravenes the order.
- (2) A person (the *respondent*) is taken to have had a reasonable excuse for contravening a residence order in a way that resulted in a child not living with a person in whose favour the order was made if:
- (a) the respondent believed on reasonable grounds that the actions constituting the contravention were necessary to protect the health or safety of a person (including the respondent or the child); and
  - (b) the period during which, because of the contravention, the child did not live with the person in whose favour the order was made was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).
- (3) A person (the *respondent*) is taken to have had a reasonable excuse for contravening a contact order in a way that resulted in a person and a child being deprived of contact they were supposed to have had under the order if:
- (a) the respondent believed on reasonable grounds that the deprivation of contact was necessary to protect the health or safety of a person (including the respondent or the child); and
  - (b) the deprivation of contact was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).
- (4) A person (the *respondent*) is taken to have had a reasonable excuse for contravening a specific issues order by acting contrary to section 65P if:
- (a) the respondent believed on reasonable grounds that the action constituting the contravention was necessary to protect the health or safety of a person (including the respondent or the child); and
  - (b) the period during which, because of that action, a person in whose favour the order was made was hindered in or prevented from discharging responsibilities under the order
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was not for longer than was necessary to protect the health or safety of the person referred to in paragraph (a).

**70NEA Standard of proof of reasonable excuse**

The standard of proof to be applied in determining, in proceedings under this Division, whether a person who contravened an order under this Act affecting children had a reasonable excuse for the contravention is proof on the balance of probabilities.

**Subdivision B—Powers of court where a person contravenes an order under this Act affecting children: stage 2 of parenting compliance regime**

**70NF Application of Subdivision**

- (1) Subject to subsection (2), this Subdivision applies if:
- (a) an order under this Act affecting children (the *primary order*) has been made, whether before or after the commencement of this Division; and
  - (b) a court having jurisdiction under this Act is satisfied that a person has, whether before or after that commencement, committed a contravention (the *current contravention*) of the primary order; and
  - (ba) the person does not prove that he or she had a reasonable excuse for the current contravention; and
  - (c) either of the following applies:
    - (i) no court having jurisdiction under this Act has previously determined that the person has, without reasonable excuse, contravened the primary order;
    - (ii) a court having jurisdiction under this Act has previously determined that the person has, without reasonable excuse, contravened the primary order but the court dealing with the current contravention is satisfied that it is more appropriate for that contravention to be dealt with under this Subdivision;
- and, if the primary order is an order for the maintenance of a child, this Subdivision applies irrespective of the period since the current contravention occurred.

- (2) This Subdivision does not apply if, in circumstances mentioned in subparagraph (1)(c)(i), the court dealing with the current contravention is satisfied that the person who contravened the primary order has behaved in a way that showed a serious disregard for his or her obligations under the primary order.

**70NG Powers of court**

- (1) If this Subdivision applies, the court may do any or all of the following:
- (a) make an order in respect of the person who committed the current contravention, or (subject to subsection (2)) in respect of both that person and another specified person, as follows:
    - (i) directing the person or each person to attend before the provider of a specified appropriate post-separation parenting program so that the provider can make an initial assessment as to the suitability of the person concerned to attend such a program;
    - (ii) if a person so attending before a provider is assessed by the provider to be suitable to attend such a program or a part of such a program and the provider nominates a particular appropriate program for the person to attend—directing the person to attend that program or that part of that program;
  - (b) make a further parenting order that compensates for contact forgone as a result of the current contravention;
  - (c) adjourn the proceedings to allow either or both of the parties to the primary order to apply for a further parenting order under Division 6 of Part VII that discharges, varies or suspends the primary order or revives some or all of an earlier parenting order.
- (1A) In deciding whether to adjourn the proceedings as mentioned in paragraph (1)(c), the court must have regard to the following:
- (a) whether the primary order was made by consent;
  - (b) whether either or both of the parties to the proceedings in which the primary order was made were represented in those proceedings by a legal practitioner;
  - (c) the length of the period between the making of the primary order and the occurrence of the current contravention;
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- (d) any other matters that the court thinks relevant.
- (2) The court must not make an order under paragraph (1)(a) directed to a person other than the person who committed the current contravention unless:
  - (a) the person brought the proceedings before the court in relation to the current contravention or is otherwise a party to those proceedings; and
  - (b) the court is satisfied that it is appropriate to direct the order to the person because of the connection between the current contravention and the carrying out by the person of his or her parental responsibilities in relation to the child or children to whom the primary order relates.
- (3) If the court makes an order under paragraph (1)(a) that a person is to attend before the provider of a program for assessment, or is to attend a program, the court must cause the provider of the program to be notified, in accordance with the applicable Rules of Court, of the making of the order.

**70NH Duties of provider of program**

- (1) The provider of a program before whom a person attends under an order made under subparagraph 70NG(1)(a)(i) must inform the court, in accordance with the applicable Rules of Court, if the person is unsuitable to attend any program.
- (2) If a person is ordered to attend a program or a part of a program, the provider of the program must inform the court, in accordance with the applicable Rules of Court, if:
  - (a) the person fails to attend the program or the part of the program; or
  - (b) the provider considers that the person is unsuitable to take any further part in the program or part of the program.

**70NI Evidence**

Evidence of anything said, or of any admission made, by a person attending before the provider of a program for assessment, or attending a program, is not admissible:

- (a) in any court (whether exercising federal jurisdiction or not);  
or
- (b) in any proceedings before a person authorised by a law of the Commonwealth, of a State or of a Territory, or by the consent of the parties, to hear evidence.

**70NIA Court may make further orders in relation to attendance at program**

If it appears to the court that a person has not attended a program or a part of a program that the person was ordered to attend, the court may, by order, give further directions to the person with respect to the person's attending the program.

**70NIB List of programs**

The Attorney-General:

- (a) is to compile, for each calendar year, a list of post-separation parenting programs; and
- (b) is to publish the list in such manner as he or she determines; and
- (c) if he or she amends the list during the calendar year for which it is compiled—is to publish a revised list in such manner as he or she determines.

**Subdivision C—Court to take action in respect of person who contravenes an order: stage 3 of parenting compliance regime**

**70NJ Powers of court**

- (1) Subject to subsection (2), this Subdivision applies if:
  - (a) an order under this Act affecting children (the *primary order*) has been made, whether before or after the commencement of this Division; and
  - (b) a court having jurisdiction under this Act is satisfied that a person has, whether before or after that commencement, committed a contravention (the *current contravention*) of the primary order; and

- (ba) the person does not prove that he or she had a reasonable excuse for the current contravention; and
- (c) either of the following applies:
  - (i) no court having jurisdiction under this Act has previously determined that the person has, without reasonable excuse, contravened the primary order but the court dealing with the current contravention is satisfied that the person has behaved in a way that showed a serious disregard of his or her obligations under the primary order;
  - (ii) a court having jurisdiction under this Act has previously determined that the person has, without reasonable excuse, contravened the primary order.

Note: For the standard of proof to be applied in determining whether a contravention of the primary order has been committed, see section 140 of the *Evidence Act 1995*.

- (2) This Subdivision does not apply if the court dealing with the current contravention is satisfied that it is more appropriate for that contravention to be dealt with under Subdivision B.
- (2A) If this Subdivision applies, the court must make, in respect of the person who committed the current contravention, the order or orders available to be made under subsection (3) that it considers to be the most appropriate in the circumstances.
- (2B) This section applies whether the primary order was made, and whether the current contravention occurred, before or after the commencement of this Division.
- (3) The orders that are available to be made by the court are:
  - (a) if the court is empowered under section 70NK to make a community service order—to make such an order; or
  - (b) to make an order requiring the person to enter into a bond in accordance with section 70NM; or
  - (c) if the person has contravened a parenting order—subject to subsection (5), to make an order varying the order so contravened; or
  - (d) to fine the person not more than 60 penalty units; or

- (e) subject to subsection (6), to impose a sentence of imprisonment on the person in accordance with section 70NO.
- (4) If a court varies or discharges under section 70NM a community service order made under paragraph (3)(a), the court may give any directions as to the effect of the variation or discharge that the court considers appropriate.
- (5) When making an order under paragraph (3)(c) varying a parenting order, the court, in addition to regarding, under section 65E, the best interests of the child as the paramount consideration, must, if any of the following considerations is relevant, take that consideration into account:
  - (a) the person who contravened the parenting order did so after having attended, after having refused or failed to attend, or after having been found to be unsuitable to take any further part in, a post-separation parenting program or a part of such a program;
  - (b) there was no appropriate post-separation parenting program that the person who contravened the parenting order could attend;
  - (c) because of the behaviour of the person who contravened the parenting order, it was not appropriate, in the court's opinion, for the person to attend a post-separation parenting program, or a part of such a program;
  - (d) the parenting order was a compensatory parenting order made under paragraph 70NG(1)(b) after the person had contravened a previous order under this Act affecting children.
- (6) The court must not make an order imposing a sentence of imprisonment on a person under this section in respect of a contravention of a child maintenance order made under this Act unless the court is satisfied that the contravention was intentional or fraudulent.
- (6A) The court must not make an order imposing a sentence of imprisonment on a person under this section in respect of:

- (a) a contravention of an administrative assessment of child support made under the *Child Support (Assessment) Act 1989*; or
  - (b) a breach of a child support agreement made under that Act; or
  - (c) a contravention of an order made by a court under Division 4 of Part 7 of that Act for a departure from such an assessment (including such an order that contains matters mentioned in section 141 of that Act).
- (7) An order under this section may be expressed to take effect immediately, at the end of a specified period or on the occurrence of a specified event.
- (8) When a court makes an order under this section, the court may make any other orders that the court considers necessary to ensure compliance with the order that was contravened.

**70NK When court is empowered to make a community service order**

- (1) Subject to this section, if:
- (a) under the law of a participating State or a participating Territory, a court is empowered (whether generally or in particular cases) to make a community service order in respect of a person convicted of an offence against the law of the State or Territory; and
  - (b) an arrangement under section 70NQ in respect of the State or Territory makes provision for and in relation to the carrying out of a community service order;
- a court exercising jurisdiction in the State or Territory may, under paragraph 70NJ(3)(a) make a community service order.
- (2) A community service order made under paragraph 70NJ(3)(a):
- (a) is to be such that the total number of hours during which the order regulates the conduct of the person in respect of whom it is made does not exceed the maximum period in relation to the State or Territory in which 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.

- (2A) A community service order may be an order of any of the following kinds:
- (a) an order known as:
    - (i) a community service order; or
    - (ii) a work order; or
    - (iii) an attendance centre order; or
    - (iv) an attendance order; or
    - (v) a community based order;
  - (b) an order that is similar to an order referred to in paragraph (a);
  - (c) an order prescribed for the purposes of this paragraph.
- (3) If a court exercising jurisdiction under section 70NJ in a particular State or Territory makes a community service order under paragraph 70NJ(3)(a), the provisions of the laws of the State or Territory with respect to a community service order that is made under those laws are, to the extent provided by the regulations and subject to such modifications as are specified in the regulations, to apply in relation to the order.
- (4) If a court proposes to make a community service order under paragraph 70NJ(3)(a), it must, before doing so, explain to the person in respect of whom it is made, in language likely to be readily understood by the person:
- (a) the purpose and effect of the proposed order; and
  - (b) the consequences that may follow if the person fails to comply with the proposed order or with any requirements made in relation to the order by or under the applied provisions; and
  - (c) if the proposed order may be revoked or varied under the applied provisions—that the proposed order may be so revoked or varied.

Note: For *applied provisions*, see section 70NB.

- (5) 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.

*participating State* means a State in relation to which an agreement under section 70NQ is in force.

*participating Territory* means a Territory in relation to which an agreement under section 70NQ is in force.

### **70NL Variation and discharge of community service orders**

A community service order made under paragraph 70NJ(3)(a) may be varied or discharged:

- (a) if the court that made the order is the Family Court or the Federal Magistrates Court—by either of those Courts; or
- (b) otherwise—by the court that made the order or the Family Court.

### **70NM Bonds**

- (1) This section provides for bonds that a court may require a person to enter into under paragraph 70NJ(3)(b).
- (2) A bond is to be for a specified period of up to 2 years.
- (3) A bond may be:
  - (a) with or without surety; and
  - (b) with or without security.
- (4) The conditions that may be imposed on a person by a bond include, but are not limited to, conditions of the following kinds:
  - (a) a condition requiring the person to attend upon a family and child counsellor, or a welfare officer, for counselling;
  - (b) 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
  - (b) the consequences that may follow if the person:
    - (i) fails to enter into the bond; or
    - (ii) having entered into the bond—fails to act in accordance with the bond.

**70NN Procedure for enforcing community service orders or bonds**

- (1) If a court makes a community service order under paragraph 70NJ(3)(a) in respect of a person, or an order under paragraph 70NJ(3)(b) requiring a person to enter into a bond in accordance with section 70NM, the following provisions have effect.
  - (2) If an information is laid before a magistrate, whether before or after the end of the period for which the community service order or the bond is to operate, or operated, alleging that the person has, without reasonable excuse, contravened the order or bond, the magistrate may:
    - (a) issue a summons directing the person to appear, on a date, at a time and at a place fixed in the summons, before the court; or
    - (b) if the information is laid on oath or affirmation and the magistrate thinks that proceedings against the person by summons might not be effective—issue a warrant for the arrest of the person.
  - (3) If:
    - (a) the person is served with a summons issued under subsection (2); and
    - (b) the person fails to attend before the court as required by the summons;the court may, on proof of the service of the summons, issue a warrant for the arrest of the person.
  - (4) If:
    - (a) the person is arrested under a warrant issued under subsection (2), (3) or (6); and
    - (b) the court is not sitting at the time of the arrest;the person is to be brought before a magistrate.
  - (5) The magistrate may:
    - (a) order that the person be released from custody on his or her entering into a bond (with or without surety or security) that he or she will attend before the court on a date, at a time and at a place specified by the magistrate; or
    - (b) direct that the person be kept in custody in accordance with the warrant.
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(6) If:

- (a) on entering into a bond under subsection (5), the person is released under an order made by a magistrate under paragraph (5)(a); and
- (b) the person fails to attend before the court as required by the bond;

the court may, on proof of the entering into of the bond, issue a warrant for the arrest of the person.

(7) If:

- (a) in accordance with this section, the person is brought before the court; and
- (b) the court (whether or not constituted by the judge or magistrate who made the community service order or required the bond to be entered into in accordance with section 70NM) is satisfied that the person has, without reasonable excuse, failed to comply with the order or bond;

the court may take action under subsection (8).

(8) The court may:

- (a) without prejudice to the continuance of the community service order or the bond entered into in accordance with section 70NM, impose a fine not exceeding 10 penalty units on the person; or
- (b) revoke the community service order or the bond entered into in accordance with section 70NM and, subject to subsection (9), deal with the person, for the contravention in respect of which the community service order was made or the bond was entered into, in any manner in which the person could have been dealt with for the contravention if:
  - (i) the community service order had not been made or the bond had not been entered into; and
  - (ii) the person was before the court under section 70NJ in respect of the contravention.

(9) In dealing with the person as mentioned in paragraph (8)(b), the court must, in addition to any other matters that it considers should be taken into account, take into account:

- (a) the fact that the community service order was made or the bond was entered into; and
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- (b) anything done under the community service order or pursuant to the bond; and
  - (c) any fine imposed, and any other order made, for or in respect of the contravention.
- (10) A warrant issued under subsection (2), (3) or (6) in relation to the person authorises:
- (a) the arrest of the person; and
  - (b) the bringing of the person before the court as soon as practicable after his or her arrest; and
  - (c) the detention of the person in custody until he or she is released by order of the court, or in accordance with subsection (5).

### **70NO Sentences of imprisonment**

- (1) A sentence of imprisonment imposed on a person under paragraph 70NJ(3)(e) is to be expressed to be:
- (a) for a specified period of 12 months or less; or
  - (b) for a period ending when the person:
    - (i) complies with the order concerned; or
    - (ii) has been imprisoned under the sentence for 12 months or such lesser period as is specified by the court;whichever happens first.
- (2) A court must not sentence a person to imprisonment under paragraph 70NJ(3)(e) unless the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention under any of the other paragraphs of subsection 70NJ(3).
- (3) If a court sentences a person to imprisonment under paragraph 70NJ(3)(e), the court must:
- (a) state the reasons why it is satisfied as mentioned in subsection (2); and
  - (b) cause those reasons to be entered in the records of the court.
- (4) The failure of a court to comply with subsection (3) does not invalidate a sentence.

- (5) A court, when sentencing a person to imprisonment under paragraph 70NJ(3)(e), may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a bond described in subsection (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) 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 70NJ(3)(e) for failure to make a payment under a child maintenance order does not affect the person's liability to make the payment.
- (9) An arrangement made under section 112AN for or in relation to the carrying out of sentences imposed, or orders made, under Division 2 of Part XIII A is taken to extend to the carrying out of sentences imposed, or orders made, under this Division.

**70NP Relationship between Subdivision 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 affecting children; and
  - (b) is also an offence against any law.
- (2) If the person is prosecuted in respect of the offence, a court in which proceedings have been brought under section 70NJ in respect of the contravention of the order must:
  - (a) adjourn those proceedings until the prosecution has been completed; or
  - (b) dismiss those proceedings.
- (3) The person may be prosecuted for, and convicted of, the offence.

- (4) Nothing in this section renders the person liable to be punished twice in respect of the same act or omission.

**70NQ 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 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 orders made, and sentences imposed, under this Subdivision.

- (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; and
- (b) in relation to the Australian Capital Territory—the Chief Minister for the Australian Capital Territory; and
- (c) in relation to the Northern Territory—the Administrator of the Northern Territory; and
- (d) in relation to Norfolk Island—the Administrator of Norfolk Island.

**70NR Subdivision does not limit operation of section 105**

Nothing in this Subdivision is intended to limit the operation of section 105.

**8 Section 107**

Repeal the section, substitute:

**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.

- (2) This section does not affect the operation of Division 13A of Part VII or the operation of Part XIII A.

## 9 After section 109

Insert:

### 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 (within the meaning of Division 13A of Part VII); 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:
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- (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 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.

**10 Heading to Part XIII A**

Repeal the heading, substitute:

**Part XIII A—Sanctions for failure to comply with orders, and other obligations, that do not affect children**

**11 Section 112AA**

Insert:

*applicable Rules of Court* means:

- (a) in the case of the Federal Magistrates Court—Rules of Court made under the *Federal Magistrates 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.

**12 Section 112AA (definition of *applied provisions*)**

Omit “112AD(2)(d)”, substitute “112AD(2)(b)”.

**13 Section 112AA (definition of *contact order*)**

Repeal the definition.

**14 Section 112AA (paragraph (a) of the definition of *court enforceable agreement*)**

Repeal the paragraph.

**15 Section 112AA**

Insert:

*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.

**16 Section 112AA (definition of *order under this Act*)**

Repeal the definition, substitute:

*order under this Act*, in relation to a court, means:

- (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 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.

**17 Subsection 112AB(2)**

Repeal the subsection.

**18 Subsection 112AC(1)**

Omit “subsections (2), (3), (4) and (5)”, substitute “subsection (2)”.

**19 Subsections 112AC(3), (4) and (5)**

Repeal the subsections.

**20 Subsections 112AD(1), (1A), (2) and (2A)**

Repeal the subsections, substitute:

- (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.
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- (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 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.

**21 Subsections 112AD(3) and (4)**

Omit “or (1A)”.

**22 Subsection 112AD(5)**

Repeal the subsection.

**23 Subsections 112AE(1), (2) and (3)**

Omit “112AD(2)(a)”, substitute “112AD(2)(d)”.

**24 Subsections 112AE(5) and (6)**

Repeal the subsections, substitute:

- (5) A court, when sentencing a person to imprisonment under paragraph 112AD(2)(d) may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a bond described in subsection (6) after 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.

## **25 At the end of section 112AE**

Add:

- (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.

## **26 Section 112AF**

Repeal the section, substitute:

### **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
  - (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.

## **27 Subsections 112AG(1), (2), (4) and (5)**

Omit "112AD(2)(d)", substitute "112AD(2)(b)".

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**28 Subsection 112AH(1)**

Omit “112AD(2)(d)”, substitute “112AD(2)(b)”.

Note: The heading to section 112AH is altered by omitting “112AD(2)(d)” and substituting “112AD(2)(b)”.

**29 Subsections 112AH(5) and (6)**

Omit “recognizance” (wherever occurring), substitute “bond”.

**30 Subsection 112AM(5)**

Repeal the subsection.

**31 Saving**

The amendments made by the previous items in this Schedule do not affect any act or thing done by a court under Division 2 of Part XIII A of the *Family Law Act 1975* before the commencement of this Schedule, and any such act or thing continues to have effect according to its terms after that commencement as if those amendments had not been made.

**32 Heading to Division 3 of Part XIII A**

Repeal the heading, substitute:

**Part XIII B—Contempt of court**

**33 Subsection 112AP(1)**

Omit “This section”, substitute “Subject to subsection (1A), this section”.

**34 After subsection 112AP(1)**

Insert:

(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.

**35 At the end of section 112AP**

Add:

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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 within the meaning of Division 13A of Part VII or an order under this Act within the meaning of Part XIII A.

**36 Paragraph 123(1)(p)**

Repeal the paragraph.

**37 Paragraph 123(1)(u)**

Omit "\$5,000", substitute "50 penalty units".

## Schedule 2—Financial agreements

### *Family Law Act 1975*

#### **1 Subsection 4(1)**

Insert:

*financial agreement* means an agreement that is a financial agreement under section 90B, 90C or 90D, but does not include an ante-nuptial or post-nuptial settlement to which section 85A applies.

#### **2 Subsection 4(1) (after paragraph (ea) of the definition of *matrimonial cause*)**

Insert:

(eaa) without limiting any of the preceding paragraphs, proceedings between the parties to a marriage with respect to a financial agreement made by them; or

#### **3 Subsection 4(1) (at the end of paragraphs (a), (b), (c), (ca), (d), (e) and (ea) of the definition of *matrimonial cause*)**

Add “or”.

#### **4 After section 71**

Insert in Part VIII:

#### **71A This Part does not apply to certain matters covered by binding financial agreements**

This Part does not apply to:

- (a) financial matters to which a financial agreement that is binding on the parties to the agreement applies; or
- (b) financial resources to which a financial agreement that is binding on the parties to the agreement applies.

#### **5 At the end of subsection 75(2)**

Add:

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; and (p) the terms of any financial agreement that is binding on the parties.

### **6 Paragraph 79A(1)(a)**

After “suppression of evidence”, insert “(including failure to disclose relevant information)”.

### **6A At the end of section 85A**

Add:

- (3) A court cannot make an order under this section in respect of matters that are included in a financial agreement.

### **7 Before section 86**

Insert:

### **86A Certain maintenance agreements ineffective**

A maintenance agreement made after the commencement of this section that is not a financial agreement does not have any effect and is not enforceable in any way.

### **8 After subsection 86(1)**

Insert:

- (1A) A maintenance agreement made after the commencement of this subsection cannot be registered.

### **9 After subsection 87(1)**

Insert:

- (1A) Subsection (1) does not apply to a maintenance agreement made after the commencement of this subsection.

### **10 After Part VIII**

Insert:

## 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, no other agreement (whether made under this section or section 90C or 90D) is in force between the parties 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*.
- (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 them at the time when the agreement is made, or at a later time and before the dissolution of the marriage, is to be dealt with;
  - (b) the maintenance of either of them:
    - (i) during the marriage; or
    - (ii) after the dissolution of the marriage; or
    - (iii) both during, and after the dissolution of, the marriage.
- (3) A financial agreement made as mentioned in subsection (1) may contain matters incidental or ancillary to those mentioned in subsection (2).

- (4) A financial agreement made as mentioned in subsection (1) may terminate a previous financial agreement made as mentioned in that subsection between the same parties.

**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, no other agreement (whether made under this section or section 90B or 90D) is in force between the parties 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*.
- (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 them 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 them:
    - (i) during the marriage; or
    - (ii) after the dissolution of the marriage; or
    - (iii) both during, and after the dissolution of, the marriage.
- (3) A financial agreement made as mentioned in subsection (1) may contain matters incidental or ancillary to those mentioned in subsection (2).
- (4) A financial agreement made as mentioned in subsection (1) may terminate a previous financial agreement made as mentioned in that subsection, or a financial agreement made as mentioned in subsection 90B(1), between the same parties.

**90D Financial agreements after dissolution of marriage**

- (1) If:
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- (a) after a decree nisi dissolving a marriage is made, 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, no other agreement (whether made under this section or section 90B or 90C) is in force between the parties 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*.
- (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 them had or acquired during the former marriage is to be dealt with;
  - (b) the maintenance of either of them.
- (3) A financial agreement made as mentioned in subsection (1) may contain matters incidental or ancillary to those mentioned in subsection (2).
- (4) A financial agreement made as mentioned in subsection (1) may terminate a previous financial agreement made as mentioned in that subsection, or a financial agreement made as mentioned in subsection 90B(1) or 90C(1), between the same parties.

**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 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.

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**90F Certain provisions in agreements**

- (1) No provision of a financial agreement (other than a financial agreement made under section 90B or a financial agreement made under section 90C in the event of the breakdown of a marriage) excludes or limits the power of a court having jurisdiction under this Act to make an order in relation to the maintenance of a party to a marriage if the court is satisfied that, when the agreement was made, the circumstances of the party were such that, taking into account the terms and effect of the agreement, the party would have been 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 90C(1) or 90D(1) that provides for property or financial resources owned by a party to the agreement to continue in the ownership of that party is taken, for the purposes of that section, to be a provision with respect to how the property or financial resources are to be dealt with.

**90G When financial agreements are binding**

- (1) A financial agreement is binding on the parties to the agreement if, and only if:
    - (a) the agreement is signed by both parties; and
    - (b) the agreement contains, in relation to each party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, as certified in an annexure to the agreement, with independent legal advice from a legal practitioner as to the following matters:
      - (i) the effect of the agreement on the rights of that party;
      - (ii) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement;
      - (iii) whether or not, at that time, it was prudent for that party to make the agreement;
      - (iv) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable; and
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- (c) the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and
- (d) the agreement has not been terminated and has not been set aside by a court; and
- (e) after the agreement is signed, the original agreement is given to one of the parties and a copy is given to the other.

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

- (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) A termination agreement is binding on the parties if, and only if:
  - (a) the agreement is signed by both parties to the agreement; and
  - (b) the agreement contains, in relation to each party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, as certified in an annexure to the agreement, with independent legal advice from a legal practitioner as to the following matters:
    - (i) the effect of the agreement on the rights of that party;

- (ii) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement;
  - (iii) whether or not, at that time, it was prudent for that party to make the agreement;
  - (iv) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable; and
  - (c) the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and
  - (d) the agreement has not been set aside by a court; and
  - (e) after the agreement is signed, the original agreement is given to one of the parties and a copy is given to the other.
- (3) A court may, on an application by a person who was a party to the financial agreement 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
  - (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)
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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.

(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) the person has a residence order in relation to the child; or

(c) the person has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development.

### **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.

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

A financial agreement, a termination agreement, or a deed or other instrument executed by a person for the purposes of, or in accordance with, an order made under this Part, is not 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.

**11 After subsection 105(2)**

Insert:

- (2A) Subsection (2) does not prevent a court from making an order under paragraph 90KA(c).

## Schedule 3—Other amendments

### *A New Tax System (Family Assistance) Act 1999*

#### **1A Subparagraph 20A(10)(b)(ii) of Schedule 1**

Repeal the subparagraph, substitute:

- (ii) a maintenance agreement (within the meaning of the *Family Law Act 1975*) that has been registered in, or approved by, a court in Australia or an external Territory; or
- (iii) a financial agreement within the meaning of that Act; or
- (iv) any other agreement with respect to the maintenance of a person that has been registered in, or approved by, a court in Australia or an external Territory.

#### **1B Paragraph 20A(11)(b) of Schedule 1**

Omit “maintenance” (last occurring).

#### **1C Subparagraph 24(3)(a)(ii) of Schedule 1**

Repeal the subparagraph, substitute:

- (ii) a maintenance agreement (within the meaning of the *Family Law Act 1975*) that has been registered in, or approved by, a court in Australia or an external Territory; or
- (iii) a financial agreement within the meaning of that Act; or
- (iv) any other agreement with respect to the maintenance of a person that has been registered in, or approved by, a court in Australia or an external Territory; and

Note: The heading to subsection 24(3) is altered by adding at the end “*or financial agreement*”.

#### **1D Subparagraph 24(6)(a)(i) of Schedule 1**

Omit “a maintenance agreement”, substitute “an agreement referred to in subparagraph (3)(a)(ii), (iii) or (iv)”.

### *Bankruptcy Act 1966*

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**1E Section 5 (definition of *maintenance agreement*)**

Repeal the definition, substitute:

*maintenance agreement* means:

- (a) a maintenance agreement (within the meaning of the *Family Law Act 1975*) that has been registered in, or approved by, a court in Australia or an external Territory; or
- (b) a financial agreement within the meaning of that Act; or
- (c) any other agreement with respect to the maintenance of a person that has been registered in, or approved by, a court in Australia or an external Territory.

***Child Support (Assessment) Act 1989***

**1 Paragraph 84(7)(b)**

After “agreement”, insert “or financial agreement”.

**2 Paragraph 95(3)(b)**

Omit “Part XIII (Enforcement of decrees), and Part XIII A (Sanctions for failure to comply with orders and contempt of court)”, substitute “Division 13A of Part VII (Consequences of failure to comply with orders, and other obligations, that affect children), Part XIII (Enforcement of decrees), and Part XIII B (Contempt of court)”.

**3 Subsection 100(2)**

Omit “Part XIII (Enforcement of decrees), and Part XIII A (Sanctions for failure to comply with orders and contempt of court)”, substitute “Division 13A of Part VII (Consequences of failure to comply with orders, and other obligations, that affect children), Part XIII (Enforcement of decrees), and Part XIII B (Contempt of court)”.

**4 At the end of section 102**

Add:

- (5) If, in dismissing an appeal under subsection (1) or (2), the Full Court is of the opinion that the appeal does not raise any question of general principle, it may, in accordance with the standard Rules of Court, give reasons for its decision in short form.

- (6) 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 (2); or
  - (b) make an order by consent disposing of an appeal under subsection (1) or (2) (including an order for costs); or
  - (c) give directions about the conduct of an appeal under subsection (1) or (2), including directions about the use of written submissions and limiting the time for oral argument.
- (7) The standard Rules of Court may make provision enabling matters of the kind mentioned in subsection (6) to be dealt with, subject to conditions prescribed by the standard Rules of Court, without an oral hearing.
- (8) Applications:
  - (a) for an extension of time within which to institute an appeal under subsection (1) or (2); or
  - (b) for leave to amend the grounds of an appeal under subsection (1) or (2); or
  - (c) to reinstate an appeal under subsection (1) or (2) 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 (2);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.
- (9) The standard Rules of Court may make provision enabling applications of a kind mentioned in subsection (8) to be dealt with, subject to conditions prescribed by the standard Rules of Court, without an oral hearing.
- (10) No appeal lies under this section from an order or decision made under subsection (6) or (8).

#### **4A Paragraph 152(b)**

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After “maintenance agreement”, insert “, or a financial agreement within the meaning of the *Family Law Act 1975*”.

**4B Section 152**

Omit “or maintenance agreement”, substitute “, maintenance agreement or financial agreement”.

***Child Support (Registration and Collection) Act 1988***

**4C Subsection 4(1) (at the end of the definition of *maintenance agreement*)**

Add “, and also includes a financial agreement within the meaning of the *Family Law Act 1975*”.

**5 At the end of section 107**

Add:

- (4) If, in dismissing an appeal under subsection (1) or (1A), the Full Court is of the opinion that the appeal does not raise any question of general principle, it may, in accordance with the standard Rules of Court, give reasons for its decision in short form.
- (5) 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 (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 the use of written submissions and limiting the time for oral argument.
- (6) The standard Rules of Court may make provision enabling matters of the kind mentioned in subsection (5) to be dealt with, subject to conditions prescribed by the standard Rules of Court, without an oral hearing.
- (7) 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
  - (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 a Full Court of the Family Court made in connection with an appeal under subsection (1) or (1A);
- 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.
- (8) The standard Rules of Court may make provision enabling applications of a kind mentioned in subsection (7) to be dealt with, subject to conditions prescribed by the standard Rules of Court, without an oral hearing.
  - (9) No appeal lies under this section from an order or decision made under subsection (5) or (7).

### ***Family Law Act 1975***

#### **6 Subsection 4(1) (definition of *approved arbitrator*)**

Repeal the definition.

#### **7 Subsection 4(1)**

Insert:

*arbitrator* means a person who meets the prescribed requirements for an arbitrator.

#### **8 Subsection 4(1) (definition of *family and child mediation*)**

After “mediation”, insert “, conducted in accordance with the regulations,”.

#### **9 Subsection 4(1) (paragraph (a) of the definition of *family and child mediator*)**

Repeal the paragraph, substitute:

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- (a) a person employed or engaged by the Family Court or a Family Court of a State to provide family and child mediation services; or

**10 Subsection 4(1) (definition of *private arbitration*)**

Omit “by an arbitrator specified by the regulations for the purposes of this definition,”.

**11 Paragraph 14E(c)**

Omit “approved”.

**12 Subsection 19D(1)**

Omit “approved”.

**13 Subsection 19D(2)**

Repeal the subsection, substitute:

- (2) However, a court may only make an order under subsection (1) with the consent of all the parties to the proceedings.

**14 Subsection 19D(4)**

Omit “approved”.

**14A Subsection 19D(5)**

Omit “applicable Rules of Court”, substitute “regulations”.

**14B Subsection 19E(2)**

Omit “applicable Rules of Court”, substitute “regulations”.

**15 After section 19E**

Insert:

**19EA Referral by arbitrator of questions of law to a Family Court**

- (1) At any time before making an award in section 19D arbitration or private arbitration, the arbitrator may refer for determination by a single Judge of the Family Court, or of a Family Court of a State, a question of law arising in relation to the arbitration.
  - (2) The arbitrator may do so:
-

- (a) on his or her own initiative; or
  - (b) at the request of one or more of the parties to the arbitration if the arbitrator considers it appropriate to do so.
- (3) The arbitrator must not make an award in the arbitration before the Judge has either:
- (a) determined the question of law; or
  - (b) remitted the matter to the arbitrator having found that no question of law arises.

**19EB Referral by arbitrator of questions of law to the Federal Magistrates Court**

- (1) At any time before making an award in section 19D arbitration or private arbitration, the arbitrator may refer for determination by the Federal Magistrates Court a question of law arising in relation to the arbitration.
- (2) The arbitrator may do so:
- (a) on his or her own initiative; or
  - (b) at the request of one or more of the parties to the arbitration if the arbitrator considers it appropriate to do so.
- (3) The arbitrator must not make an award in the arbitration before the Federal Magistrates Court has either:
- (a) determined the question of law; or
  - (b) remitted the matter to the arbitrator having found that no question of law arises.

**16 Subsection 19F(1)**

Omit all the words after “in”, substitute “section 19D arbitration or private arbitration may apply to a single Judge of the Family Court, or of a Family Court of a State, for review of the award on questions of law”.

Note: The heading to section 19F is altered by omitting “**made in private arbitration**” and substituting “**by a Family Court**”.

**17 At the end of subsection 19F(1)**

Add:

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Note: There may be Rules of Court providing for when, and how, an application for review of the award can be made (see paragraph 123(1)(sf)).

**18 Subsection 19F(2)**

Omit “court”, substitute “Judge”.

**19 Paragraph 19F(2)(b)**

Omit “it”, substitute “he or she”.

**20 Application of amendments**

The amendments of section 19F of the *Family Law Act 1975* made by this Schedule apply in relation to applications for review that are made after the commencement of this item (even if the award concerned was registered before that time).

**21 After section 19F**

Insert:

**19FA Review of awards by the Federal Magistrates Court**

- (1) A party to a registered award made in section 19D arbitration or private arbitration may apply to the Federal Magistrates Court for review of the award on questions of law.
- (2) On a review of an award under this section, the Federal Magistrates Court may:
  - (a) determine all questions of law arising in relation to the arbitration; and
  - (b) make such decrees as it thinks appropriate, including a decree affirming, reversing or varying the award.

**22 Section 19G**

Repeal the section, substitute:

**19G Setting aside awards—Family Courts**

If an award made in section 19D arbitration or private arbitration, or an agreement made as a result of such arbitration, is registered in the Family Court or a Family Court of a State, the court may

make a decree affirming, reversing or varying the award or agreement if the court is satisfied that:

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

### **19GA Setting aside awards—Federal Magistrates Court**

If an award made in section 19D arbitration or private arbitration, or an agreement made as a result of such arbitration, is registered in the Federal Magistrates Court, the Federal Magistrates Court may make a decree affirming, reversing or varying the award or agreement if it is satisfied that:

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

### **23 At the end of Subdivision B of Division 5 of Part III**

Add:

#### **19H Fees for arbitration**

- (1) An arbitrator conducting section 19D arbitration or private arbitration may charge the parties to the arbitration fees for conducting it.

- (2) The arbitrator must give written information about those fees to the parties before the arbitration starts.

Note: There may be Rules of Court or regulations relating to the costs of arbitration and how they are assessed or taxed (see paragraphs 123(1)(se) and 125(1)(bc)).

## **24 Application of amendment**

The amendment made by item 23 applies to arbitration that begins after the commencement of that item.

## **25 Section 19L**

Omit “approved”.

Note: The heading to section 19L is altered by omitting “**approved**”.

## **26 Section 19M**

Omit “, an approved arbitrator, or an arbitrator who carries out a private arbitration,”, substitute “or an arbitrator”.

## **27 Subsection 19P(1)**

Omit “community mediators and private”, substitute “family and child”.

Note: The heading to section 19P is altered by omitting “**community mediators and private**” and substituting “**family and child**”.

## **28 Subsection 19Q(3)**

Omit “approved”.

## **29 Subsection 22(2AC)**

Omit “6”, substitute “the prescribed number”.

## **30 At the end of subsection 26B(1)**

Add “and the power to make an order setting aside a registered award under section 19G”.

## **30A Subsection 26B(1A)**

Omit all the words after “other than”, substitute:

- : (e) a parenting order made under paragraph 70NG(1)(b) or an order made under paragraph 70NJ(3)(c) that has the same effect as such a parenting order; or
  - (f) an order until further order; or
-

- (g) an order made in undefended proceedings; or
- (h) an order made with the consent of all the parties to the proceedings.

**31 At the end of section 26B**

Add:

Note: Powers to make Rules of Court are also contained in sections 37A, 109A and 123.

**31A Subsection 33A(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply to:
  - (a) proceedings for a decree of dissolution of marriage; or
  - (b) proceedings instituted in the Family Court under Division 13A of Part VII or under Part XIII or XIII A.

**32 At the end of paragraphs 37A(2)(a) and (b)**

Add “or”.

**33 At the end of subsection 37A(2)**

Add:

; or (e) an order setting aside a registered award under section 19G.

**34 At the end of section 37A**

Add:

Note: Powers to make Rules of Court are also contained in sections 26B, 109A and 123.

**35 After paragraph 38N(1)(da)**

Insert:

- (db) such Directors of Mediation and other mediators as are necessary;

**36 Subsection 44(3)**

After “instituted” (last occurring), insert “or with the consent of both of the parties to the marriage”.

**37 At the end of subsection 44(3)**

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Add:

The court may grant such leave at any time, even if the proceedings have already been instituted.

**38 After subsection 44(3)**

Insert:

- (3AA) However, if such proceedings are instituted with the consent of both of the parties to the marriage, the court may dismiss the proceedings if it is satisfied that, because the consent was obtained by fraud, duress or unconscionable conduct, allowing the proceedings to continue would amount to a miscarriage of justice.

**38A After subsection 44(3A)**

Insert:

- (3B) Despite subsection (3), if, whether before or after the commencement of Schedule 2 to the *Family Law Amendment Act 2000*:
- (a) a decree nisi of dissolution of marriage has become absolute or a decree of nullity of marriage has been made; and
  - (b) a financial agreement between the parties to the marriage has been set aside under section 90K or found to be invalid under section 90KA;
- proceedings of a kind referred to in paragraph (c) or (ca) of the definition of *matrimonial cause* in subsection 4(1) (not being proceedings under section 78 or 79A or proceedings seeking the discharge, suspension, revival or variation of an order previously made in proceedings with respect to the maintenance of a party) may be instituted:
- (c) within the period of 12 months after the later of:
    - (i) the date on which the decree nisi became absolute or the date of the making of the decree of nullity, as the case may be; or
    - (ii) the date on which the financial agreement was set aside, or found to be invalid, as the case may be; or
  - (d) with the leave of the court in which the proceedings are to be instituted;
- and not otherwise.

**39 At the end of section 45**

Add:

- (3) A transfer under subsection (2) may be made on the application of any party to the proceedings.
- (4) A transfer under subsection (2) may be made on the transferring court's own initiative if the transfer is:
  - (a) from a Family Court of a State to a court of summary jurisdiction prescribed in regulations made for the purposes of section 44A; or
  - (b) from a court of summary jurisdiction prescribed in those regulations to a Family Court of a State.

**40 Validation of past transfers**

To avoid doubt, a purported transfer of proceedings under subsection 45(2) of the *Family Law Act 1975* before the commencement of item 39 is taken not to have been invalid or ineffective merely because it was done on the court's own initiative.

**40A Subsection 45A(8)**

Omit "Part XIII A", substitute "Part XIII or XIII A".

**41 Paragraph 46(1)(b)**

Repeal the paragraph, substitute:

- (b) unless the parties consent to the court hearing and determining the proceedings—the court must transfer the proceedings to the Family Court or to the Supreme Court of a State or Territory.

**42 Subsection 60D(1) (paragraph (c) of the definition of member of the Court personnel)**

Repeal the paragraph.

**43 At the end of paragraph 63E(2)(b)**

Add:

- ; or (iii) a statement to the effect that the plan was developed after family and child mediation and that is signed by the family and child mediator involved.

**44 After subsection 63E(2)**

Insert:

- (2A) However, a reference in subparagraph (2)(b)(i), (ii) or (iii) to the plan does not include a reference to any child maintenance provisions (as defined in subsection 63C(5)) of the plan.

**45 After paragraph 65C(b)**

Insert:

- (ba) a grandparent of the child; or

**46 After paragraph 66A(d)**

Insert:

- (da) deals with varying the maintenance of certain children (Subdivision EA); and

**47 At the end of section 66E**

Add:

- (3) This section does not apply to proceedings under regulations made for the purposes of section 110 or 111A.

**48 After paragraph 66F(1)(b)**

Insert:

- (ba) a grandparent of the child; or

**49 At the end of subsection 66L(1)**

Add:

The court may make such a child maintenance order, in relation to a child who is 17, to take effect when or after the child turns 18.

**50 Paragraph 66S(1)(b)**

Omit “applies”, substitute “or persons (each of whom could do that) apply”.

**51 After subsection 66S(1)**

Insert:

- (1A) With the consent of all the parties to the first order, the court may make an order:
- (a) discharging the first order; or
  - (b) suspending its operation wholly or in part and either until further order or until a fixed time or the happening of a future event; or
  - (c) if the operation of the order has been suspended under paragraph (b) or (2)(b)—reviving its operation wholly or in part; or
  - (d) varying the order:
    - (i) so as to increase or decrease any amount ordered to be paid by the order; or
    - (ii) in any other way.

- (1B) However, the court must not make an order under subsection (1A) that allows any entitlement of a child or another person to an income tested pension, allowance or benefit, to affect the duty of that child's parents to maintain the child.

Note: For the duty of a parent to maintain a child, see section 66C.

**52 Subsection 66S(2)**

Omit "The" (first occurring), substitute "In any other case, the".

**53 Paragraph 66S(2)(c)**

After "(b)", insert "or (1A)(b)".

**54 After Subdivision E of Division 7 of Part VII**

Insert:

**Subdivision EA—Varying the maintenance of certain children**

**66SA Varying the maintenance of certain children**

- (1) This section applies to persons who:
- (a) are parties to an agreement (the *original agreement*) dealing with the maintenance of a child; or
  - (b) are entitled to receive, or required to pay, maintenance in respect of a child under a court order;

and cannot properly make an application under the *Child Support (Assessment) Act 1989* for administrative assessment of child support (within the meaning of that Act) for the child seeking payment of child support by the other person.

- (2) The persons may, by registering a written agreement in a court having jurisdiction under this Part, vary or revoke the original agreement or order to the extent that it deals with maintenance of the child.
- (3) However, the registered agreement is of no effect to the extent that it allows any entitlement of a child or another person to an income tested pension, allowance or benefit to affect the duty of that child's parents to maintain the child.

Note: For the duty of a parent to maintain a child, see section 66C.

- (4) If the original agreement or order is varied under subsection (2), it:
  - (a) continues to operate despite the death of a party to the agreement or of a person entitled to receive, or required to pay, maintenance under the order; and
  - (b) operates in favour of, and is binding on, the legal representative of that party or person;unless the agreement or order provides otherwise.
- (5) However, despite anything in the agreement or order, it does not continue to operate, to the extent that it requires the periodic payment of maintenance, after the death of the person entitled to receive those payments.
- (6) This section applies despite anything in Division 4.

## **55 After section 66V**

Insert:

### **66VA Children who are 18 or over: change of circumstances**

- (1) A child maintenance order made under section 66L:
  - (a) to enable the child to complete his or her education; or
  - (b) because of a mental or physical disability of the child;stops being in force if the child ceases that education or ceases to have that disability.

- (2) The person to whom the maintenance is payable must, as soon as practicable, inform the person required to pay it of that change in circumstances.
- (3) Any amounts of maintenance paid under the child maintenance order after it stops being in force may be recovered in a court having jurisdiction under this Part.

## **56 Application of amendment**

The amendment made by item 55 applies to child maintenance orders made after the commencement of that item.

### **56A Section 66W**

Repeal the section, substitute:

### **66W Recovery of arrears**

- (1) Nothing in subsection 66L(3), or in this Subdivision (apart from subsection (2) of this section), affects the recovery of arrears due under a child maintenance order in relation to a child when the order ceases to be in force.
- (2) If arrears are due under such an order when the order ceases to be in force, the court may, by order, retrospectively:
  - (a) discharge the order if there is just cause for doing so; or
  - (b) vary the order so as to increase or decrease the arrears to be paid under the order if the court is satisfied that:
    - (i) the circumstances of the person liable to pay the arrears are such as to justify the variation; or
    - (ii) the circumstances of the person entitled to receive the arrears are such as to justify the variation; or
    - (iii) in the case of an order that operated in favour of, or that was binding on, a legal personal representative—the circumstances of the estate are such as to justify the variation.

### **56B Application of amendment**

Section 66W of the *Family Law Act 1975*, as amended by item 56A, applies to arrears that are outstanding on or after the commencement of that item.

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**57 After paragraph 67K(c)**

Insert:

(ca) a grandparent of the child; or

**58 Subsection 67M(2)**

After “Part”, insert “, or exercising jurisdiction in proceedings arising under regulations made for the purposes of Part XIII AA,”.

**59 Subsection 67N(2)**

After “Part”, insert “, or exercising jurisdiction in proceedings arising under regulations made for the purposes of Part XIII AA,”.

**60 Paragraph 67Q(g)**

Omit “the”, substitute “or directing a person to”.

**61 Paragraph 67Q(g)**

Omit “of” (first occurring).

**62 Section 67Q (note)**

Repeal the note, substitute:

Note 1: Section 122AA authorises the use of reasonable force in making an arrest, and Subdivision D of Division 6 deals with what is to happen to a person arrested without warrant under a recovery order.

Note 2: If a recovery order authorises a person to recover a child, the person is authorised to recover the child on each occasion that it is necessary to do so while the order remains in force: see subsection 67W(3).

**63 After paragraph 67T(c)**

Insert:

(ca) a grandparent of the child; or

**64 At the end of section 67W**

Add:

(3) To avoid doubt, unless a recovery order specifically provides to the contrary, each term of the order continues to have effect until the end of the period for which it remains in force regardless of whether anything has previously been done in accordance with the order.

**64A Paragraph 67X(3)(a)**

Omit “\$1,000”, substitute “10 penalty units”.

**64B At the end of subsection 67X(3)**

Add:

Note: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

**65 At the end of subsection 67ZA(1)**

Add:

; or (d) an arbitrator.

Note: The heading to section 67ZA is altered by omitting “or mediator” and substituting “, mediator or arbitrator”.

**66 Paragraph 68C(1)(b)**

Omit all the words after “by” (first occurring), substitute:

- : (i) causing, or threatening to cause, bodily harm to the protected person; or
- (ii) harassing, molesting or stalking that person;

**67 At the end of subsection 68C(1)**

Add:

Note: Section 122AA authorises the use of reasonable force in making an arrest.

**68 After subsection 68L(2)**

Insert:

- (2A) However, if the proceedings arise under regulations made for the purposes of section 111B, the court may order that the child be separately represented only if the court considers there are exceptional circumstances that justify doing so, and must specify those circumstances in making the order.

Note: Section 111B is about the Convention on the Civil Aspects of International Child Abduction.

**68A Section 69MA**

Repeal the section.

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**69 After section 69V**

Insert:

**69VA Declarations of parentage**

As well as deciding, after receiving evidence, the issue of the parentage of a child for the purposes of proceedings, the court may also issue a declaration of parentage that is conclusive evidence of parentage for the purposes of all laws of the Commonwealth.

**70 Section 70F (definition of *overseas child order*)**

Repeal the definition, substitute:

*overseas child order* means:

- (a) an order made by a court of a prescribed overseas jurisdiction that:
  - (i) however it is expressed, has the effect of determining the person or persons with whom a child who is under 18 is to live, or that provides for a person or persons to have custody of a child who is under 18; or
  - (ii) however it is expressed, has the effect of providing for contact between a child who is under 18 and another person or persons, or that provides for a person or persons to have access to a child who is under 18; or
  - (iii) varies or discharges an order of the kind referred to in subparagraph (i) or (ii), including an order of that kind made under this Act; or
- (b) an order made for the purposes of the Convention referred to in section 111B by a judicial or administrative authority of a convention country (within the meaning of the regulations made for the purposes of that section).

**71 After subsection 70M(1)**

Insert:

- (1A) This section also applies if:
  - (a) a court in Australia makes, in relation to a child who is under 18, an order under regulations made for the purposes of section 111B; and

- (b) the order is enforceable in a convention country (within the meaning of those regulations) under provisions corresponding to Subdivision C.

**72 Subsection 70M(2)**

After “jurisdiction” (wherever occurring), insert “or convention country”.

**73 At the end of section 70N**

Add:

- (2) The regulations may make provision for and in relation to the sending to a convention country (within the meaning of the regulations made for the purposes of section 111B) of copies of, and documents relating to, an order under regulations made for the purposes of that section, that relates to a child to whom an overseas child order relates.

**74 Sections 84 and 85**

Repeal the sections.

Note: Those sections are effectively being moved to Part XIII (Enforcement of Decrees): see also item 77.

**75 Transitional**

After the commencement of this item:

- (a) anything done before that commencement under section 84 or 85 of the *Family Law Act 1975* is taken to have been done under section 106A or 106B respectively of that Act; and
- (b) a reference in an order made under that Act to section 84 or 85 of that Act is taken to be a reference to section 106A or 106B respectively of that Act.

**76 After subsection 94(2)**

Insert:

- (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, in accordance with the standard Rules of Court, give reasons for its decision in short form.

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Note: Powers to make Rules of Court are also contained in sections 26B, 37A, 109A, 121 and 123.

- (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:
- (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);
- 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.
- (2F) No appeal lies under this section from an order or decision made under subsection (2B) or (2D).

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## **76A Subsection 94AA(2A)**

Omit “decision”, substitute “decree”.

**77 Subsection 94AA(4)**

Repeal the subsection.

**78 Subsection 98A(2)**

Omit “, there are no children of the marriage who have not attained the age of 18 years and”.

**79 After subsection 98A(2)**

Insert:

- (2A) The court must not determine proceedings for the dissolution of 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.

**79A After section 100A**

Insert:

**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.

## **80 After section 105**

Insert:

### **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.

### **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.
- (2) The court may order that any money or real or personal property dealt with by any such instrument or disposition may be taken in execution or charged with the payment of such sums for costs or maintenance as the court directs, or that the proceeds of a sale 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.
- (5) In this section:  

*disposition* includes a sale and a gift.

### **81 After section 109B**

Insert:

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

### **82 After section 110**

Insert:

#### **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.

### **83 Saving**

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Any regulations made for the purposes of paragraph 89(b) of the *Family Law Act 1975* and in force immediately before the commencement of item 82 have effect as if they were made for the purposes of section 110B inserted in that Act by that item.

**84 Section 111**

After “necessary”, insert “or convenient”.

**85 Section 111A**

After “necessary”, insert “or convenient”.

**86 Subsection 111B(1)**

After “necessary”, insert “or convenient”.

**87 After subsection 111B(1)**

Insert:

- (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 contact order in relation to a child 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 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.

**88 Subsection 111B(4)**

Repeal the subsection, substitute:

- (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 who has a parenting order in relation to a child that is to any extent:
    - (i) a residence order; or
    - (ii) a specific issues order, under which the person 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
  - (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 who has a contact order in relation to a child should be regarded as having a right of access to the child.

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

**89 After subsection 111B(5)**

Insert:

- (5A) Subsections (1A) and (2) to (5) do not, by implication, limit subsection (1).

**90 Subsections 111C(1) and (3)**

After “necessary”, insert “or convenient”.

**91 After subsection 111C(7)**

Insert:

- (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.

**92 After section 111C**

Insert:

**111D Regulations may provide for rules of evidence**

- (1) Regulations made for the purposes of Part XIII AA 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.

**93 Section 112**

Repeal the section.

**93A Paragraph 112AH(8)(a)**

Omit “\$1,000”, substitute “10 penalty units”.

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**93B At the end of subsection 112AH(8)**

Add:

Note: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

**94 Paragraph 114AA(1)(b)**

Omit all the words after “by”, substitute:

- : (i) causing, or threatening to cause, bodily harm to the person referred to in paragraph (a); or
- (ii) harassing, molesting or stalking that person;

**95 At the end of subsection 114AA(1)**

Add:

Note: Section 122AA authorises the use of reasonable force in making an arrest.

**96 Subsection 114AA(7) (definition of *relevant period*)**

Repeal the definition, substitute:

*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.

**97 Subsection 117(1)**

Omit “section 118”, substitute “sections 117AA and 118”.

**98 After section 117**

Insert:

**117AA Costs in proceedings relating to overseas enforcement and international Conventions**

- (1) In proceedings under regulations made for the purposes of Part XIII<sup>1</sup>A, 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 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.

## **99 After subsection 117C(2)**

Insert:

- (2A) If a party files a copy of an offer and, before any notice of withdrawal is filed, the party to whom the offer is made files a notice that the offer has been accepted, the proceedings end (so far as they concern the party who accepted the offer) when the court makes an order giving effect to the terms of that offer.

## **100 Subsections 121(1) and (2)**

Omit "or by radio broadcast or television", substitute ", by radio broadcast or television or by other electronic means".

## **101 Paragraphs 121(3)(b) and (c)**

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After “televised account”, insert “or an account by other electronic means”.

**102 Subsection 121(8)**

Omit “Attorney-General”, substitute “Director of Public Prosecutions”.

**103 At the end of paragraphs 121(9)(a) to (d)**

Add “or”.

**104 After paragraph 121(9)(d)**

Insert:

- (da) the display of a notice in the premises of a court that lists proceedings under this Act, identified by reference to the names of the parties, that are to be dealt with by the court; or

**105 After subparagraph 121(9)(f)(i)**

Insert:

- (ia) to an individual who is a party to any proceedings under this Act, in connection with the conduct of those proceedings; or

**106 At the end of subsection 121(10)**

Add:

Note: Powers to make Rules of Court are also contained in sections 26B, 37A, 109A and 123.

**107 Subsection 121(11)**

Repeal the subsection, substitute:

(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
- (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.

### **108 After section 122**

Insert:

#### **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.

### **109 After section 122A**

Insert:

#### **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.

### **110 Paragraphs 123(1)(sa), (sd) and (se)**

Omit “approved” (wherever occurring).

### **111 Subparagraph 123(1)(sf)(ii)**

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Omit “19G”, substitute “for orders setting aside registered awards under section 19G”.

**112 At the end of section 123**

Add:

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.

**113 Paragraph 125(1)(ba)**

Omit “and approved arbitrators”.

**114 After paragraph 125(1)(ba)**

Insert:

- (bb) prescribing requirements for arbitrators; 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), (sd) or (se); and

**115 Paragraph 125(1)(c)**

Repeal the paragraph, substitute:

- (c) prescribing court fees to be payable in respect of proceedings under this Act; and

**116 At the end of section 125**

Add:

- (3) To the extent of any inconsistency between regulations and Rules of Court, the regulations prevail.

***Federal Magistrates Act 1999***

**117 Subsection 19(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply to:
  - (a) proceedings for a decree of dissolution of marriage; or
  - (b) proceedings instituted in the Federal Magistrates Court under:

- (i) Division 13A of Part VII of the *Family Law Act 1975*;  
or
- (ii) Part XIII or XIII A of that Act.

**118 Subsection 65(3) (note)**

Omit “Part XIII A”, substitute “Parts XIII and XIII A”.

**119 Subsection 78(1) (note)**

Omit “Part XIII”, substitute “Parts XIII and XIII A”.

***Veterans’ Entitlements Act 1986***

**120 After subparagraph 51(3)(a)(i)**

Insert:

- (ia) a financial agreement under the *Family Law Act 1975*;  
or

[*Minister’s second reading speech made in—  
House of Representatives on 22 September 1999  
Senate on 3 October 2000*]

(180/99)

