



Family Law Amendment Act 1983

No. 72 of 1983

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AMENDMENTS RELATING TO RULES OF COURT AND REGULATIONS



Family Law Amendment Act 1983

No. 72 of 1983

An Act to amend the *Family Law Act 1975*

[Assented to 28 October 1983]

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

PART I—PRELIMINARY

Short title, &c.

1. (1) This Act may be cited as the *Family Law Amendment Act 1983*.
- (2) The *Family Law Act 1975*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Part I shall come into operation on the day on which this Act receives the Royal Assent.
- (2) Part II shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (3) Part III shall come into operation on a date to be fixed by Proclamation.

PART II—MISCELLANEOUS AMENDMENTS

Interpretation

3. (1) Section 4 of the Principal Act is amended—

(a) by inserting after the definition of “appeal” in sub-section (1) the following definition:

“‘Appeal Division’ means the Appeal Division of the Family Court;”;

(b) by inserting after the definition of “Australia” in sub-section (1) the following definition:

“‘Commonwealth instrumentality’ means a body or authority established for a public purpose by or under a law of the Commonwealth or of the Australian Capital Territory;”;

(c) by omitting “(e)” from the definition of “financial or custodial proceedings” in sub-section (1) and substituting “(eb)”;

(d) by inserting after the definition of “financial or custodial proceedings” in sub-section (1) the following definitions:

“‘Full Court’ means—

(a) 3 or more Judges of the Family Court sitting together, where a majority of those Judges are members of the Appeal Division;
or

(b) in relation to particular proceedings—

(i) 3 or more Judges of the Family Court sitting together, where, at the commencement of the hearing of the proceedings, a majority of those Judges were members of the Appeal Division; or

(ii) 2 Judges of the Family Court sitting together, where those Judges are permitted, by sub-section 28 (4), to complete the hearing and determination, or the determination, of those proceedings;

‘General Division’ means the General Division of the Family Court;

‘guardian’, in relation to a child, includes a person who has been granted (whether alone or jointly with another person or other persons) guardianship of the child under this Act or under the repealed Act;”;

(e) by inserting “and whether within or outside Australia” after “Act” in the definition of “maintenance agreement” in sub-section (1);

(f) by inserting after the definition of “maintenance agreement” in sub-section (1) the following definition:

“‘marriage counselling’ includes the counselling of a person in relation to—

(a) entering into marriage;

(b) reconciliation of the parties to a marriage;

(c) separation of the parties to a marriage;

- (d) the dissolution or annulment of a marriage; or
- (e) adjusting to the dissolution or annulment of a marriage, whether that counselling is provided in relation to the proposed marriage, marriage or former marriage of that person or in relation to the proposed marriage, marriage or former marriage of another person or other persons, and whether that counselling is provided to that person individually or as a member of a group of persons;”;
- (g) by inserting “, or by the parties to a marriage,” after “marriage” (first occurring) in paragraph (a) of the definition of “matrimonial cause” in sub-section (1);
- (h) by omitting paragraphs (c), (ca) and (cb) of the definition of “matrimonial cause” in sub-section (1) and substituting the following paragraphs:
 - “(c) proceedings between the parties to a marriage with respect to the maintenance of one of the parties to the marriage;
 - (ca) proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either of them, being proceedings—
 - (i) arising out of the marital relationship;
 - (ii) in relation to concurrent, pending or completed proceedings between those parties for principal relief; or
 - (iii) in relation to the dissolution or annulment of that marriage or the legal separation of the parties to that marriage, being a dissolution, annulment or legal separation effected in accordance with the law of an overseas country, where that dissolution, annulment or legal separation is recognized as valid in Australia under section 104;
 - (cb) proceedings between the parties to a marriage with respect to the custody, guardianship or maintenance of, or access to, a child of the marriage;
 - (cc) proceedings by or on behalf of a child of a marriage against one or both of the parties to the marriage with respect to the custody, guardianship or maintenance of, or access to, the child;
 - (cd) proceedings instituted after the death of a party to a marriage in whose favour a custody order had been made in respect of a child of that marriage, being proceedings with respect to the custody of that child, other than proceedings for the making of an order, or the taking of any other action, of the kind referred to in sub-section 10 (2);
 - (ce) proceedings with respect to the custody, guardianship or maintenance of, or access to, a child of a marriage, being

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proceedings to which one party to the marriage is a party (whether or not the other party to the marriage is also a party to the proceedings), other than proceedings for the making of an order, or the taking of any other action, of the kind referred to in sub-section 10 (2);

- (cf) proceedings between the parties to a marriage with respect to the welfare of a child of the marriage;
- (cg) proceedings by or on behalf of a child of a marriage against one or both of the parties to the marriage with respect to the welfare of the child;
- (ch) proceedings with respect to the welfare of a child of a marriage, being proceedings to which one party to the marriage is a party (whether or not the other party to the marriage is also a party to the proceedings), other than proceedings for the making of an order, or the taking of any other action, of a kind referred to in sub-section 10 (2);”;
- (j) by inserting “(other than proceedings under a law of a State or Territory prescribed for the purposes of section 114AB)” after “relationship” in paragraph (e) of the definition of “matrimonial cause” in sub-section (1);
- (k) by omitting “or” (last occurring) from paragraph (e) of the definition of “matrimonial cause” in sub-section (1);
- (m) by inserting after paragraph (e) of the definition of “matrimonial cause” in sub-section (1) the following paragraphs:
 - “(ea) proceedings between—
 - (i) the parties to a marriage; or
 - (ii) if one of the parties to a marriage has died—the other party to the marriage and the legal personal representative of the deceased party to the marriage,being proceedings—
 - (iii) for the enforcement of, or otherwise in relation to, a maintenance agreement that has been approved under section 87 and the approval of which has not been revoked;
 - (iv) in relation to a maintenance agreement the approval of which under section 87 has been revoked; or
 - (v) with respect to the enforcement under this Act of a maintenance agreement that is registered in a court under section 86 or an overseas maintenance agreement that is registered in a court under regulations made pursuant to section 89;
 - (eb) proceedings with respect to the enforcement of a decree made under the law of an overseas country in proceedings of a kind referred to in paragraph (c), (cb), (cc), (cd) or (ce); or”;

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- (n) by omitting “(e)” from paragraph (f) of the definition of “matrimonial cause” in sub-section (1) and substituting “(eb)”;
- (o) by inserting after the definition of “ordinarily resident” in sub-section (1) the following definition:
 - “ ‘overseas country’ means a country, or part of a country, outside Australia;”; and
- (p) by omitting sub-section (2) and substituting the following sub-sections:

“(2) A reference in this Act to a party to a marriage includes a reference to a person who was a party to a marriage that has been dissolved or annulled, in Australia or elsewhere, or that has been terminated by the death of one party to the marriage.

“(3) A reference in this Act to a child of a marriage includes a reference to a person who is a child of a marriage that has been dissolved or annulled, in Australia or elsewhere, or that has been terminated by the death of one party to the marriage.

“(4) Unless the contrary intention appears, a reference in this Act to proceedings under this Act, or proceedings instituted under this Act, includes a reference to proceedings under the regulations, or proceedings instituted under the regulations, as the case may be.”.

(2) Where a Full Court of the Family Court of Australia constituted in accordance with the provisions of the Principal Act for the purpose of hearing and determining proceedings had not, at the commencement of this section, determined the proceedings, the proceedings may be continued, and shall be determined, as if paragraph (1) (d) of this section and sections 12, 13 and 14 had not been enacted.

4. Section 5 of the Principal Act is repealed and the following sections are substituted:

Certain children deemed to be children of a marriage

“5. (1) For the purposes of each application of this Act in relation to a marriage—

- (a) a child adopted since the marriage by the husband and wife or by either of them with the consent of the other;
- (b) a child of the husband and wife born before the marriage;
- (c) a child born to the wife, being a child who, under section 5A, is deemed to be the child of the husband;
- (d) a child born to a former wife of the husband, being a child who, under section 5A, is deemed to be the child of the husband, if, at the relevant time, the child was ordinarily a member of the household of the husband and wife;
- (e) a child of either the husband or the wife, including—
 - (i) an ex-nuptial child of either of them; and

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- (ii) a child adopted by either of them (whether alone or together with another person or other persons),

if, at the relevant time, the child was ordinarily a member of the household of the husband and wife; and

- (f) a child (other than a child mentioned in any of the preceding paragraphs) who has been, and was at the relevant time, treated by the husband and wife as a child of their family, if, at the relevant time, the child was ordinarily a member of the household of the husband and wife,

shall be deemed to be a child of the marriage and a child of the husband and wife (including a child born before the marriage) who has been adopted by another person or other persons shall be deemed not to be a child of the marriage.

“(2) For the purposes of sub-section (1), the relevant time, in relation to any proceedings, is—

- (a) if the husband and wife were not living together at the time when the proceedings were instituted—the time immediately preceding the time when the husband and wife separated, or, if they have separated on more than one occasion, the time immediately preceding the time when they last separated before the institution of the proceedings; or
- (b) if the husband and wife were living together at the time when the proceedings were instituted—the time immediately preceding the institution of the proceedings.

“(3) The provisions of this section apply in relation to a purported marriage that is void as if the purported marriage were a marriage and as if the parties to the purported marriage were husband and wife.

Certain children deemed to be children of mother’s husband

“5A. (1) A child born to a woman as a result of the carrying out, during the period in which the woman was married to a man, of a medical procedure in relation to that woman, being a child who is not biologically the child of that man, shall, for the purposes of section 5, be deemed to be a child of that man if—

- (a) the medical procedure was carried out with the consent of that man; or
- (b) under an Act or under a law of a State or Territory the child is deemed to be the child of that man.

“(2) The provisions of this section apply in relation to a purported marriage that is void as if the purported marriage were a marriage and as if the parties to the purported marriage were husband and wife.

“(3) In this section, ‘medical procedure’ means artificial insemination or the implantation of an embryo in the body of a woman.”.

Child welfare law not affected

5. Section 10 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “Subject to sub-section (3), nothing” and substituting “Nothing”; and
- (b) by omitting from sub-section (3) “and an order made in accordance with this sub-section has effect notwithstanding any order or action of the kind referred to in paragraph (2) (b) or (d) made or taken before the making of the order made in accordance with this sub-section”.

Conciliation

6. Section 14 of the Principal Act is amended by omitting sub-section (6).

Notice seeking counselling

7. Section 15 of the Principal Act is amended by omitting from sub-section (2) “may” (second occurring) and substituting “shall”.

Advice as to counselling

8. Section 16 of the Principal Act is amended by omitting from sub-section (2) “A party to a marriage may” and substituting “A party to, or a child of, a marriage, or any party to proceedings under this Act, may”.

9. After section 16 of the Principal Act the following section is inserted:

Conciliation counselling

“16A. The Family Court and any other court exercising jurisdiction under this Act, and any legal practitioner acting in proceedings under this Act or consulted by a person who is considering instituting proceedings under this Act, shall have regard to the need to direct the attention of parties to such proceedings and persons considering such proceedings to—

- (a) the facilities provided by courts exercising jurisdiction under this Act for counselling to assist parties to marriages and children of marriages to adjust to the consequences of marital breakdown; and
- (b) the procedures available for the resolution by conciliation of matters arising in the proceedings.”.

Admissions made to marriage counsellors, &c.

10. Section 18 of the Principal Act is amended by omitting from paragraph (1) (b) “in accordance with sub-section 14 (2A) or paragraph 14 (6) (a)” and substituting “for the purposes of sub-section 14 (2A) or sub-paragraph 44 (1B) (a) (ii)”.

Interpretation

11. Section 20 of the Principal Act is amended by omitting the definition of “Full Court”.

12. After section 21 of the Principal Act the following sections are inserted:

Divisions of Court

“21A. For the purposes of the organization and conduct of the business of the Court, the Court comprises 2 Divisions, namely, the Appeal Division and the General Division.

Arrangement of business of Court

“21B. The Chief Judge is responsible for ensuring the orderly and expeditious discharge of the business of the Court and accordingly may, subject to this Act and to such consultation with the Judges as is appropriate and practicable, make arrangements as to the Judge or Judges who is or are to constitute the Court, or the Full Court, in particular matters or classes of matters.”.

Appointment, removal and resignation of Judges

13. Section 22 of the Principal Act is amended by inserting after sub-section (2) the following sub-sections:

“(2AA) Subject to sub-section (2AE), the members of the Appeal Division of the Court are the Chief Judge and such other Judges as are assigned to the Appeal Division under this section.

“(2AB) The Governor-General may, in the commission of appointment of a Judge or, with the consent of the Judge but not otherwise, at a later time assign a Judge to the Appeal Division.

“(2AC) The Governor-General shall not assign a Judge to the Appeal Division under sub-section (2AB) if, as a result of that assignment, the number of members of the Appeal Division assigned under that sub-section would exceed 5.

“(2AD) The Governor-General may, in the commission of appointment of a Judge or, with the consent of the Judge but not otherwise, at a later time assign a Judge (other than a Judge who has been assigned to the Appeal Division under sub-section (2AB)) to the Appeal Division for a period of 2 years.

“(2AE) A Judge who has been assigned to the Appeal Division under sub-section (2AD) ceases to be a member of the Appeal Division at the expiration of the period of 2 years commencing on the date of the assignment.

“(2AF) A Judge (other than the Chief Judge) who is not assigned to the Appeal Division shall be deemed to be assigned to the General Division.

“(2AG) Notwithstanding anything contained in any other Act, a person may hold office at the one time as a Judge of the Court and as a Judge of a prescribed court or of 2 or more prescribed courts.

“(2AH) In sub-section (2AG), ‘prescribed court’ means—

- (a) a court (other than the Court) created by the Parliament; or
- (b) the Supreme Court of the Northern Territory.”.

Exercise of jurisdiction

14. Section 28 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “one or more Judges” and substituting “one Judge or by a Full Court”;
- (b) by inserting after sub-section (2) the following sub-section:

“(2A) Nothing in this Act prevents a Judge who is a member of the Appeal Division from exercising the jurisdiction of the Court that, under sub-section (1) or (2), may be exercised by one or more Judges.”; and

- (c) by omitting sub-sections (4) and (4A) and substituting the following sub-section:

“(4) Where, after a Full Court (including a Full Court constituted in accordance with this sub-section) has commenced the hearing, or further hearing, of proceedings and before the proceedings have been determined, one of the Judges constituting the Full Court dies, resigns his office, ceases to be a member of the Court by reason that the term of his appointment expires or otherwise becomes unable to continue as a member of the Full Court for the purposes of the proceedings, then the hearing and determination, or the determination, of the proceedings may be completed—

- (a) if only 2 Judges remain and one of those Judges is assigned to the Appeal Division, or if more than 2 Judges remain and a majority of those Judges are assigned to the Appeal Division—by the Court constituted by the remaining Judges; or
- (b) with the consent of the parties—by the Court constituted by the remaining Judge or Judges and an additional Judge or Judges, where a majority of the Judges constituting the Court are assigned to the Appeal Division.”.

Repeal of section 29

15. Section 29 of the Principal Act is repealed.

Original jurisdiction of Family Court

16. Section 31 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) Jurisdiction is conferred on the Family Court with respect to—

- (a) matters arising under this Act or under the repealed Act in respect of which matrimonial causes are instituted or continued under this Act;
- (b) matters arising under the *Marriage Act 1961* in respect of which proceedings (other than proceedings under Part VII of that Act) are instituted or continued under that Act;
- (c) matters arising under a law of a Territory concerning—
 - (i) the adoption of children;
 - (ii) the guardianship, custody or maintenance of children;
 - (iii) payments of a kind referred to in section 109;

- (iv) the property of the parties to a marriage or either of them, being matters arising between those parties other than matters referred to in the definition of 'matrimonial cause' in sub-section 4 (1); or
- (v) the rights and status of a person who is an ex-nuptial child, and the relationship of such a person to his parents; and
- (d) matters (other than matters referred to in any of the preceding paragraphs) with respect to which proceedings may be instituted in the Family Court under this Act or any other Act."

Officers of Court

17. Section 37 of the Principal Act is amended—

- (a) by inserting after sub-section (3) the following sub-section:
 - “(3A) The Principal Registrar of the Court may, subject to this Act, the regulations and any directions of the Chief Judge, give directions to the officers of the Court in relation to—
 - (a) the manner in which the functions and duties of those officers are to be performed and the powers of those officers are to be exercised; and
 - (b) the operation of any Registry of the Court.”;
- (b) by omitting from paragraph (5) (a) “and” (last occurring);
- (c) by inserting after paragraph (5) (a) the following paragraphs:
 - “(aa) is responsible for dealing, on behalf of the Court, with the Australian Federal Police and the police forces of the States and Territories in relation to the service and execution of writs, orders, decrees, warrants, precepts, process and commands of the Court that are directed to members of any of those police forces;
 - (ab) is responsible for the security of the Court and for the personal security of the Judges and the officers of the Court; and”;
- (d) by adding at the end of paragraph (9) (b) “or of a Territory”.

Jurisdiction in matrimonial causes

18. (1) Section 39 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “a person may institute a matrimonial cause under this Act” and substituting “a matrimonial cause may be instituted under this Act”;
- (b) by omitting from sub-section (2) “a person may institute a matrimonial cause under this Act, not being proceedings for principal relief,” and substituting “a matrimonial cause, not being proceedings for principal relief, may be instituted under this Act”;
- (c) by omitting from sub-section (3) “by a party to the marriage”;
- (d) by omitting sub-section (4) and substituting the following sub-sections:

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“(4) Proceedings of a kind referred to in the definition of ‘matrimonial cause’ in sub-section 4 (1), other than proceedings for a decree of dissolution of marriage or proceedings referred to in paragraph (f) of that definition, may be instituted under this Act if—

- (a) in the case of proceedings of a kind referred to in paragraph (b) of that definition in relation to a marriage—either party to the marriage is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, at the relevant date;
- (b) in the case of proceedings between the parties to a marriage—
 - (i) either party to the marriage is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, at the relevant date; or
 - (ii) where the proceedings relate to a child of the marriage—the child is present in Australia at the relevant date; and
- (c) in any other case—
 - (i) any party to the proceedings is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, at the relevant date; or
 - (ii) where the proceedings relate to a child of a marriage—the child is present in Australia at the relevant date.

“(4A) In sub-section (4), ‘relevant date’, in relation to proceedings, means—

- (a) if the application instituting the proceedings is filed in a court—the date on which the application is so filed; or
 - (b) in any other case—the date on which the application instituting the proceedings is made.”;
- (e) by omitting sub-sections (5), (6) and (7) and substituting the following sub-sections:

“(5) Subject to this Part, the Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred on the Family Court and on the Supreme Court of each Territory, with respect to matters arising under this Act in respect of which—

- (a) matrimonial causes are instituted under this Act;
- (b) matrimonial causes are continued in accordance with section 9;
- (c) proceedings are instituted under this Act with respect to the enforcement of an order that is registered in the court concerned as provided by regulations made for the purposes of section 67;
- (d) proceedings are instituted under regulations made for the purposes of section 106, 109, 110, 111, 111A or 111B; or
- (e) proceedings are instituted under section 117A.

“(6) Subject to this Part, each court of summary jurisdiction of each State is invested with federal jurisdiction, and jurisdiction is

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conferred on each court of summary jurisdiction of each Territory, with respect to matters arising under this Act in respect of which—

- (a) matrimonial causes, not being proceedings for principal relief, are instituted under this Act;
- (b) matrimonial causes, not being proceedings for principal relief, are continued in accordance with section 9;
- (c) proceedings are instituted under this Act with respect to the enforcement of an order that is registered in the court of summary jurisdiction concerned as provided by regulations made for the purposes of section 67;
- (d) proceedings are instituted under regulations made for the purposes of section 106, 109, 110, 111, 111A or 111B; or
- (e) proceedings are instituted under section 117A.

“(7) The Governor-General may, by Proclamation, fix a date as the date on and after which matrimonial causes, and other proceedings, referred to in sub-section (6) may not be instituted in or transferred to a court of summary jurisdiction in a State or Territory specified in the Proclamation, and such a Proclamation may be expressed to apply only to proceedings of a specified class or specified classes and may be expressed to apply only to the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction in a part of a State or Territory specified in the Proclamation.

“(7AA) A court of summary jurisdiction in a State or Territory shall not hear or determine proceedings under this Act instituted in or transferred to that court otherwise than in accordance with any Proclamation in force under sub-section (7).”;

- (f) by omitting from sub-section (8) “Jurisdiction under this Act in a matrimonial cause” and substituting “Jurisdiction with respect to a matter arising under this Act in respect of which a matrimonial cause is”; and
- (g) by omitting from sub-section (9) “to hear and determine proceedings” and substituting “with respect to matters arising under any law of the Commonwealth in respect of which proceedings are”.

(2) Where, before the commencement of this section, a Proclamation had been made under sub-section 40 (3) of the *Family Law Act 1975* in respect of the Supreme Court of a State or Territory, nothing in the amendments made by sub-section (1) of this section operates to permit the institution in, or the transfer to, that Supreme Court of proceedings in relation to which that Proclamation is expressed to have effect.

(3) Where, before the commencement of this section, a Proclamation had been made under sub-section 39 (7) of the *Family Law Act 1975* in respect of a court of summary jurisdiction and, at the commencement of this section, that Proclamation had not been revoked under sub-section 39 (7A) of that Act, nothing in the amendments made by sub-section (1) of this section—

- (a) affects the operation of that Proclamation; or

- (b) operates to permit the institution in, or the transfer to, that court of proceedings in relation to which that Proclamation is expressed to have effect.

Jurisdiction of Family Court

19. (1) Section 40 of the Principal Act is amended—

- (a) by omitting from sub-section (3) “proceedings under this Act” and substituting “matrimonial causes, and other proceedings, referred to in sub-section 39 (5)”;
- (b) by inserting in sub-section (3) “a specified class or” before “specified classes”; and
- (c) by inserting after sub-section (4) the following sub-section:

“(4A) The Governor-General may, by Proclamation, declare that a Proclamation made under sub-section (3) is revoked on and from a specified date and, on and after the specified date, this Act (including sub-section (3)) has effect as if the revoked Proclamation had not been made, but without prejudice to the effect of the revoked Proclamation in respect of the jurisdiction of courts before the specified date.”.

(2) Nothing in the amendments made by sub-section (1) affects the operation of a Proclamation made, before the commencement of this section, under sub-section 40 (3) of the *Family Law Act 1975*.

Law to be applied

20. Section 42 of the Principal Act is amended by inserting in sub-section (2) “, subject to the provisions of the *Marriage Act 1961*,” after “shall”.

Institution of proceedings

21. Section 44 of the Principal Act is amended—

- (a) by inserting after sub-section (1) the following sub-sections:

“(1A) Proceedings under this Act for a decree of dissolution of marriage or nullity of marriage may be instituted by either party to the marriage or jointly by both parties to the marriage.

“(1B) An application for dissolution of a marriage shall not, without the leave of the court granted under sub-section (1C), be filed within the period of 2 years after the date of the marriage unless there is filed with the application a certificate in the prescribed form—

- (a) stating that the parties to the marriage have considered a reconciliation, with the assistance of a specified person or organization, being—
 - (i) a marriage counsellor or an approved marriage counselling organization;
 - (ii) another suitable person or organization nominated by the Principal Director of Court Counselling of the Family Court; or
 - (iii) an appropriate officer of a Family Court of a State; and

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- (b) signed by that person or on behalf of that organization, as the case may be.

“(1C) Notwithstanding sub-section (1B), if the court is satisfied that there are special circumstances by reason of which the hearing of an application for dissolution of a marriage should proceed notwithstanding that the parties have not considered a reconciliation with assistance of the kind referred to in sub-section (1B), the court may—

- (a) if the application has not been filed—give leave for the application to be filed; or
- (b) if the application has been filed—at any time before or during the hearing of the application, declare that it is so satisfied,

and, where the court makes a declaration under paragraph (b), the application shall be deemed to have been duly filed and everything done pursuant to that application shall be as valid and effectual as if the court had, before the application was filed, given leave under paragraph (a) for the application to be filed.”;

- (b) by omitting from sub-section (2) “A respondent” and substituting “Notwithstanding sub-sections (3) and (3A), a respondent”;
- (c) by omitting sub-section (3) and substituting the following sub-sections:

“(3) Where, whether before or after the commencement of section 21 of the *Family Law Amendment Act 1983*—

- (a) a decree *nisi* of dissolution of marriage has become absolute; or
- (b) a decree of nullity of marriage has been made,

proceedings of a kind referred to in paragraph (c) or (ca) of the definition of ‘matrimonial cause’ in sub-section 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) shall not be instituted, except by leave of the court in which the proceedings are to be instituted, after the expiration of 12 months after—

- (c) in a case referred to in paragraph (a)—the date on which the decree *nisi* became absolute; or
- (d) in a case referred to in paragraph (b)—the date of the making of the decree.

“(3A) Notwithstanding sub-section (3), where, whether before or after the commencement of section 21 of the *Family Law Amendment Act 1983*—

- (a) a decree *nisi* of dissolution of marriage has become absolute or a decree of nullity of marriage has been made; and
- (b) the approval under section 87 of a maintenance agreement between the parties to the marriage has been revoked,

proceedings of a kind referred to in paragraph (c) or (ca) of the definition of ‘matrimonial cause’ in sub-section 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—
 - (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 approval of the maintenance agreement was revoked,whichever is the later; or
- (d) with the leave of the court in which the proceedings are to be instituted,
and not otherwise.”; and
- (d) by inserting in sub-section (4) “or (3A)” after “(3)”.

Stay and transfer of proceedings

22. Section 45 of the Principal Act is amended by omitting “or the regulations” (wherever occurring).

Transfer of proceedings from court of summary jurisdiction in certain cases

23. Section 46 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-sections:

“(1) Where proceedings are instituted in a court of summary jurisdiction with respect to—

- (a) the custody or guardianship of, or access to, a child of a marriage; or
- (b) property of a value exceeding \$1,000,

and the respondent, in an answer to the application by which the proceedings were instituted, seeks an order different from that sought in the application—

- (c) the court shall, before proceeding to hear and determine the proceedings, inform the parties that, unless each of them consents to the court hearing and determining the proceedings, the court is required to transfer the proceedings to the Family Court or to the Supreme Court of a State or Territory; and
- (d) unless the parties thereupon consent to the court hearing and determining the proceedings—the court shall transfer the proceedings to the Family Court or to the Supreme Court of a State or Territory.

“(1A) A reference in sub-section (1) to proceedings with respect to property does not include a reference to proceedings with respect to arrears of maintenance.

“(1B) Where proceedings referred to in sub-section (1) are instituted in a court of summary jurisdiction and the parties consent, as mentioned in paragraph (1) (d), to the proceedings being heard and determined by that court, a party is not entitled, without the leave of the court, subsequently to object to the proceedings being so heard and determined, but, where the court

subsequently gives leave to a party to object to the proceedings being so heard and determined, the court shall transfer the proceedings to the Family Court or to the Supreme Court of a State or Territory.”.

Dissolution of marriage

24. Section 48 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “by a party to a marriage”; and
- (b) by omitting from sub-section (1) “the marriage” (first occurring) and substituting “a marriage”.

Interpretation

25. Section 60 of the Principal Act is amended by omitting paragraph (a) of the definition of “overseas custody order” and substituting the following paragraph:

- “(a) an order the effect of which is to grant to a person—
- (i) the right to custody of a child who has not attained the age of 18 years; or
 - (ii) a right of access to a child who has not attained the age of 18 years,
- whether or not the order also has the effect of granting to the person, or to another person, other rights or responsibilities; or”.

26. After section 60 of the Principal Act the following section is inserted:

Guardianship and custody

“60A. (1) A person who is the guardian of a child under this Act has responsibility for the long-term welfare of the child and has, in relation to that child, all the powers, rights and duties that are, apart from this Act, vested by law or custom in the guardian of a child, other than—

- (a) the right to have the daily care and control of the child; and
- (b) the right and responsibility to make decisions concerning the daily care and control of the child.

“(2) A person who has or is granted custody of a child under this Act has—

- (a) the right to have the daily care and control of the child; and
- (b) the right and responsibility to make decisions concerning the daily care and control of the child.

“(3) The operation of sub-section (1) or (2) in relation to a child may be varied by any order made in relation to the child by a court exercising jurisdiction under this Act.

“(4) An order made under this Act or the repealed Act, being an order in force immediately before the commencement of section 26 of the *Family Law Amendment Act 1983* that granted to a person the care and control of a child shall, after the commencement of that section, have effect for the purposes of this Act as if it were an order granting to the person the custody of the child.

“(5) An order made under this Act or the repealed Act, being an order in force immediately before the commencement of section 26 of the *Family Law Amendment Act 1983* that granted to a person the custody of a child, shall, after the commencement of that section, have effect for the purposes of this Act—

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

Conferences with court counsellors or welfare officers

27. Section 62 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “or upon the request of a party to the proceedings” and substituting “, upon the request of a party to the proceedings or upon the request of a person who is representing the child pursuant to an order under section 65”;
- (b) by omitting sub-section (4) and substituting the following sub-section:

“(4) Where, under sub-section (3), a court counsellor or welfare officer reports to the court that a party to proceedings has failed to attend a conference, the court may, of its own motion, upon the request of a party to the proceedings or upon the request of a person who is representing the child pursuant to an order under section 65, give such further directions in relation to the conference as the court considers appropriate.”; and
- (c) by omitting from sub-section (5) “Subject to sub-section (4), evidence” and substituting “Evidence”.

28. After section 62 of the Principal Act the following section is inserted:

Reports by court counsellors and welfare officers

“62A. (1) Where, in any proceedings under this Act, the welfare of a child who has not attained the age of 18 years is relevant, the court may direct a court counsellor or welfare officer to furnish to the court a report on such matters relevant to the proceedings as the court thinks desirable and may, if it thinks necessary, adjourn the proceedings until the report has been furnished to the court.

“(2) A court counsellor or welfare officer may include in a report prepared pursuant to a direction under sub-section (1), in addition to the matters required to be included in the report, any other matters that relate to the welfare of the child.

“(3) For the purpose of the preparation of a report by a court counsellor or welfare officer pursuant to a direction under sub-section (1), the court may

make such orders, or give such further directions, as it considers appropriate in relation to the preparation of the report including, if the court considers it appropriate, orders or directions in relation to the attendance upon the court counsellor or welfare officer of a party to the proceedings or of the child.

“(4) If a person fails to comply with any order or direction under sub-section (3), it is the duty of the court counsellor or welfare officer to report the failure to the court.

“(5) Where, under sub-section (4), a court counsellor or welfare officer reports to the court a failure of the kind referred to in that sub-section, the court may give such further directions in relation to the preparation of the report as the court considers appropriate.

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

Powers of court in custodial proceedings

29. Section 64 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “or guardianship” and substituting “, guardianship or welfare”;
- (b) by omitting paragraph (1) (b) and substituting the following paragraphs:

“(b) the court shall consider any wishes expressed by the child in relation to the custody or guardianship of, or access to, the child, or in relation to any other matter relevant to the proceedings, and shall give those wishes such weight as the court considers appropriate in the circumstances of the case;

(ba) subject to paragraphs (a) and (b), the court shall, unless in the opinion of the court it is not practicable, make the order that, in the opinion of the court, is least likely to lead to the institution of further proceedings with respect to the custody or guardianship of the child;

(bb) the court shall take the following matters into account:

- (i) the nature of the relationship of the child with each of the parents of the child and with other persons;
- (ii) the effect on the child of any separation from—
 - (A) either parent of the child; or
 - (B) any child, or other person, with whom the child has been living;
- (iii) the desirability of, and the effect of, any change in the existing arrangements for the care of the child;
- (iv) the attitude to the child, and to the responsibilities and duties of parenthood, demonstrated by each parent of the child;

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- (v) the capacity of each parent, or of any other person, to provide adequately for the needs of the child, including the emotional and intellectual needs of the child;
 - (vi) any other fact or circumstance (including the education and upbringing of the child) that, in the opinion of the court, the welfare of the child requires to be taken into account; and”;
- (c) by omitting from paragraph (1) (c) “and (b)” and substituting “, (b), (ba) and (bb)”;
- (d) by inserting after sub-section (1) the following sub-sections:

“(1A) For the purpose of complying with the requirements of paragraph (1) (b) the court may—

- (a) have regard to anything contained in a report furnished to the court in accordance with a direction under sub-section 62A (1); and
- (b) subject to the regulations, inform itself as to the wishes of the child by such other means as it considers appropriate,

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

“(1B) A court shall not make an order (other than an order until further order or an order made with the consent of all the parties to the proceedings) in proceedings with respect to the custody, guardianship or welfare of, or access to, a child of a marriage unless—

- (a) the parties to the proceedings have attended a conference in relation to the matter to which the proceedings relate with a court counsellor or welfare officer;
 - (b) the court is satisfied that, having regard to the need to make an order urgently, or to any other special circumstance, it is appropriate to make the order notwithstanding that the parties to the proceedings have not attended a conference as mentioned in paragraph (a); or
 - (c) the court is satisfied that, having regard to the counselling and welfare facilities of the court, it is not practicable to require the parties to the proceedings to attend a conference as mentioned in paragraph (a).”;
- (e) by omitting sub-sections (2), (3) and (4) and substituting the following sub-section:

“(2) Without limiting the generality of sub-section (1), in proceedings with respect to the custody, guardianship or welfare of, or

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access to, a child of a marriage, the court may, if it is satisfied that it is desirable to do so, make one or more of the following orders:

- (a) an order placing the child in the custody of any person or of any 2 or more persons jointly (whether or not that person or any of those persons is a party to the marriage);
 - (b) an order placing the child in the guardianship of any person or of any 2 or more persons jointly (whether or not that person or any of those persons is a party to the marriage);
 - (c) an order granting to any person (whether or not that person is a party to the marriage) rights of access to the child”;
- (f) by omitting sub-section (5) and substituting the following sub-section:
“(5) Where a court makes an order under this Part with respect to a child, the court may also, if it thinks the welfare of the child so requires, make one or both of the following orders:
- (a) an order that compliance with the first-mentioned order shall, as far as practicable, be supervised by a court counsellor or welfare officer;
 - (b) an order that a court counsellor or welfare officer give to any party to the first-mentioned order such assistance as is reasonably requested by that party in relation to compliance with, and the carrying out of, the first-mentioned order.”;
- (g) by omitting sub-section (8); and
- (h) by inserting after sub-section (11) the following sub-sections:
“(11A) Where—
- (a) a warrant has been issued under sub-section (9) or (10) in relation to a child; and
 - (b) the court that issued the warrant, or another court exercising jurisdiction under this Act, is satisfied that a person (in this sub-section referred to as the ‘relevant person’) is likely to have information in relation to the child or in relation to a person who the court has reasonable cause to believe has possession of the child,

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

“(11B) Where—

- (a) a warrant has been issued under sub-section (9) or (10) in relation to a child; and
- (b) the court that issued the warrant, or another court exercising jurisdiction under this Act, is satisfied that the records of a Department of State of the Commonwealth or a Commonwealth instrumentality are likely to contain information in relation to the child or in relation to a person

who the court has reasonable cause to believe has possession of the child,

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

Separate representation of child

30. Section 65 of the Principal Act is amended by omitting “in proceedings with respect to the custody, guardianship or maintenance of, or access to, a child of a marriage,” and substituting “in any proceedings under this Act in which the welfare of a child of a marriage is relevant.”.

Overseas custody orders

31. Section 68 of the Principal Act is amended—

- (a) by omitting from sub-section (4) “the person who instituted the proceedings satisfies the court” and substituting “the court is satisfied”;
- (b) by inserting in paragraph (4) (b) “since the making of the overseas custody order” after “child”; and
- (c) by adding at the end thereof the following sub-sections:

“(5) Where the court, being aware that an overseas custody order is registered under this section, makes an order with respect to the custody of, or access to, the child who is the subject of the overseas custody order, the court shall cancel the registration, under this section, of that overseas custody order.

“(6) Where—

- (a) an order for custody of, or access to, a child (in this section referred to as the ‘Australian order’) has been made in Australia, whether under this Act or under any other law, and is in force under this Act; and
- (b) an overseas custody order relating to the child (being an overseas custody order the effect of which is different from the effect of the Australian order) has been registered under this section, whether before or after the date of the making of the Australian order, and its registration under this section has not been cancelled,

then—

- (c) a person having rights of custody or access in relation to the child under the overseas custody order may apply to a court having jurisdiction under this Act for the discharge of the Australian order; or
 - (d) a person having rights of custody or access in relation to the child under the Australian order may apply to a court having jurisdiction under this Act for the cancellation of the registration, under this section, of the overseas custody order,
- and, where an application is made under paragraph (c) or (d), the court shall cancel the registration, under this section, of the overseas custody order if—

- (e) every person having rights of custody or access in relation to the child under the overseas custody order consents to the cancellation of the registration, under this section, of the overseas custody order;
- (f) the court is satisfied that there are substantial grounds for believing that the welfare of the child will be adversely affected if the overseas custody order continues to operate in relation to the child; or
- (g) the court is satisfied that there has been such a change in the circumstances of the child since the making of the overseas custody order that the overseas custody order should not continue to operate in relation to the child,

but otherwise the court shall discharge the Australian order.

“(7) This section does not apply in relation to—

- (a) an overseas custody order that is an interim order; or
- (b) an overseas custody order conferring rights of custody or access on a person where—
 - (i) the order was made on the application of that person;
 - (ii) notice of the making of the application was not served on any other person; and
 - (iii) no other person appeared at the hearing of the application.”.

Interfering with child subject to custody order

32. Section 70 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “care and control” and substituting “possession”; and
- (b) by omitting sub-section (7) and substituting the following sub-section:

“(7) Where an act or omission by a person that constitutes a contravention or failure to comply with a provision of this section is an offence against any law, the person may be prosecuted and convicted under that law, but nothing in this sub-section renders any person liable to be punished twice in respect of the same act or omission.”.

33. After section 70 of the Principal Act the following sections are inserted in Part VII:

Certain children not to be taken out of Australia

“70A. (1) Where there is in force an order (including an interim order) made by a court in Australia with respect to the custody or guardianship of, or access to, a child (including an ex-nuptial child), a person who was a party to the proceedings in which the order was made, or a person who is acting on behalf of, or at the request of, such a person, shall not take or send, or attempt to take or send, the child from Australia to a place outside Australia except—

- (a) with the consent in writing (authenticated as prescribed) of each person who, under the order, is entitled (whether alone or together with another person or other persons) to the custody or guardianship of, or access to, the child; or
- (b) in accordance with an order of a court made under this Act or under a law of a State or Territory at the time of, or after, the making of the first-mentioned order.

Penalty: \$10,000 or imprisonment for 3 years, or both.

“(2) Where proceedings have been instituted in a court in Australia for an order with respect to the custody or guardianship of, or access to, a child (including an ex-nuptial child), and those proceedings are pending, a person who is a party to the proceedings, or a person who is acting on behalf of, or at the request of, such a person, shall not take or send, or attempt to take or send, the child from Australia to a place outside Australia except—

- (a) with the consent in writing (authenticated as prescribed) of each other party to the proceedings; or
- (b) in accordance with an order of a court made under this Act or under a law of a State or Territory after the institution of the proceedings.

Penalty: \$10,000 or imprisonment for 3 years, or both.

“(3) An offence against this section is an indictable offence.

“(4) Notwithstanding that an offence referred to in sub-section (3) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is appropriate to do so and the defendant and the prosecutor consent.

“(5) Where, in accordance with sub-section (4), a court of summary jurisdiction convicts a person of an offence against this Act, the penalty that the court may impose is a fine not exceeding \$5,000 or imprisonment for a period not exceeding one year, or both.

“(6) Where an act or omission by a person that constitutes an offence against sub-section (1) or (2) is also an offence against any other law, the person may be prosecuted and convicted under that other law, but nothing in this sub-section renders any person liable to be punished twice in respect of the same act or omission.

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“(7) Nothing in this section shall be read as intended to prevent or restrict the operation of any law of a State or Territory under which—

- (a) action may be taken to prevent a child from leaving Australia or being taken or sent outside Australia; or
- (b) a person may be punished in respect of the taking or sending of a child outside Australia.

“(8) In this section, ‘child’ means a person who has not attained the age of 18 years.

“(9) Where an appeal against a decision of a court in particular proceedings has been instituted and is pending, those proceedings shall, for the purposes of sub-section (2), be taken to be pending.

Obligation of owners, &c., of vessels

“70B. (1) Where—

- (a) a person (in this sub-section referred to as the ‘relevant person’) is entitled (whether alone or together with another person or other persons) to the custody or guardianship of, or access to, a child (including an ex-nuptial child) under an order referred to in sub-section 70A (1); and
- (b) the relevant person has served on the master, owner or charterer of a vessel or on the agent of the owner of a vessel a statutory declaration made by the relevant person in relation to the order not earlier than 7 days before the date of service, being a statutory declaration that complies with the requirements of sub-section (3),

the person on whom the statutory declaration is served shall not, without reasonable excuse, while the order continues in force, permit the child referred to in the declaration to leave a port or place in Australia in the vessel for a destination outside Australia except—

- (c) in the company, or with the consent in writing (authenticated as prescribed), of the relevant person; or
- (d) in accordance with an order of a court made, under this Act or under a law of a State or Territory, at the time of, or after, the making of the first-mentioned order.

Penalty: \$5,000.

“(2) Where—

- (a) a person (in this sub-section referred to as the ‘relevant person’) is a party to proceedings referred to in sub-section 70A (2) for an order with respect to the custody or guardianship of, or access to, a child (including an ex-nuptial child); and
- (b) the relevant person has served on the master, owner or charterer of a vessel or on the agent of the owner of a vessel a statutory declaration in relation to the proceedings made by the relevant person not earlier than 7 days before the date of service, being a statutory declaration that complies with the requirements of sub-section (4),

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the person on whom the statutory declaration is served shall not, without reasonable excuse, while the proceedings are pending, permit the child referred to in the declaration to leave a port or place in Australia in the vessel for a destination outside Australia except—

- (c) in the company, or with the consent in writing (authenticated as prescribed), of the relevant person; or
- (d) in accordance with an order of a court made, under this Act or under a law of a State or Territory, after the institution of the proceedings.

Penalty: \$5,000.

“(3) A statutory declaration for the purposes of sub-section (1) shall contain full particulars of the order to which it relates, including—

- (a) the full name and the date of birth of the child in respect of whom the order applies;
- (b) the full names of the parties to the proceedings in which the order was made; and
- (c) the terms of the order,

and shall contain such other matters (if any) as are prescribed.

“(4) A statutory declaration for the purposes of sub-section (2) shall contain—

- (a) full particulars of the proceedings to which it relates, including—
 - (i) the full name and the date of birth of the child to whom the proceedings relate;
 - (ii) the full names of the parties to the proceedings; and
 - (iii) the name of the court, the nature of the proceedings, the date of institution of the proceedings and, where an appeal has been instituted in the proceedings, the name of the court in which the appeal was instituted and the date on which the appeal was instituted;
- (b) a statement that the proceedings are pending at the date of the declaration; and
- (c) such other matters (if any) as are prescribed.

“(5) A declaration under this section may be served on the owner or charterer of a vessel or on the agent of the owner of a vessel by leaving the declaration, or by sending it by registered post addressed to the owner, charterer or agent, at the principal place of business in Australia of the owner, charterer or agent, as the case may be.

“(6) The master, owner or charterer of a vessel or the agent of the owner of a vessel is not liable in any civil or criminal proceedings in respect of anything done by him in good faith for the purpose of complying with his obligations under this section.

“(7) Where an act or omission by a person that constitutes an offence against sub-section (1) or (2) is also an offence against any other law, the person may be prosecuted and convicted under that other law, but nothing in

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this sub-section renders any person liable to be punished twice in respect of the same act or omission.

“(8) Nothing in this section shall be read as intended to prevent or restrict the operation of any law of a State or Territory under which—

- (a) action may be taken to prevent a child from leaving Australia or being taken or sent outside Australia; or
- (b) a person may be punished in respect of the taking or sending of a child outside Australia.

“(9) In this section—

‘child’ means a person who has not attained the age of 18 years;

‘master’, in relation to a vessel, means the person in charge or command of the vessel;

‘vessel’ includes an aircraft.

“(10) Where an appeal against a decision of a court in particular proceedings has been instituted and is pending, those proceedings shall, for the purposes of sub-section (2), be taken to be pending.”.

34. Section 72 of the Principal Act is repealed and the following section is substituted:

Right of spouse to maintenance

“72. A party to a marriage is liable to maintain the other party, to the extent that the first-mentioned party is reasonably able to do so, if, and only if, that other party is unable to support herself or himself adequately whether—

- (a) by reason of having the care and control of a child of the marriage who has not attained the age of 18 years;
- (b) by reason of age or physical or mental incapacity for appropriate gainful employment; or
- (c) for any other adequate reason,

having regard to any relevant matter referred to in sub-section 75 (2).”.

Matters to be taken into consideration with respect to maintenance

35. Section 75 of the Principal Act is amended—

- (a) by omitting paragraph (2) (f) and substituting the following paragraph:

“(f) the eligibility of either party for a pension, allowance or benefit under—

- (i) any law of the Commonwealth, of a State or Territory or of another country; or
- (ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia,

and the rate of any such pension, allowance or benefit being paid to either party;”;

- (b) by omitting paragraph (2) (l) and substituting the following paragraph:
 - “(l) the need to protect a party who wishes to continue that party’s role as a parent;”;
- (c) by omitting paragraph (2) (m) and substituting the following paragraph:
 - “(m) if either party is cohabiting with another person—the financial circumstances relating to the cohabitation;”.

Alteration of property interests

36. Section 79 of the Principal Act is amended—

- (a) by inserting after sub-section (1) the following sub-sections:
 - “(1A) An order made under sub-section (1) in proceedings with respect to the property of the parties to a marriage or either of them may, after the death of a party to the proceedings, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
 - “(1B) The court may adjourn proceedings with respect to the property of the parties to a marriage or either of them, except where the parties to the proceedings are—
 - (a) parties to concurrent, pending or completed proceedings for principal relief;
 - (b) parties to a marriage that has been dissolved or annulled under the law of an overseas country, where that dissolution or annulment is recognized as valid in Australia under section 104; or
 - (c) parties to a marriage who have been granted a legal separation under the law of an overseas country, where that legal separation is recognized as valid in Australia under section 104,on such terms and conditions as it thinks fit, for such period as it thinks necessary to enable the parties to the proceedings to consider the likely effects (if any) of an order under this section on the marriage or the children of the marriage, but nothing in this sub-section shall be taken to limit any other power of the court to adjourn such proceedings.
 - “(1C) Where the period for which a court has adjourned proceedings with respect to the property of the parties to a marriage or either of them as provided by sub-section (1B) has not expired and—
 - (a) proceedings for principal relief are instituted by one or both of those parties;
 - (b) the marriage is dissolved or annulled under the law of an overseas country and the dissolution or annulment is recognized as valid in Australia under section 104; or
 - (c) the parties are granted a legal separation under the law of an overseas country and the legal separation is recognized as valid in Australia under section 104,

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either party to the first-mentioned proceedings may apply to the court for the hearing of those proceedings to be continued.”; and

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

“(4) In considering what order (if any) should be made under this section in proceedings with respect to any property of the parties to a marriage or either of them, the court shall take into account—

- (a) the financial contribution made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them;
- (b) the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them;
- (c) the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of homemaker or parent;
- (d) the effect of any proposed order upon the earning capacity of either party to the marriage;
- (e) the matters referred to in sub-section 75 (2) so far as they are relevant; and
- (f) any other order made under this Act affecting a party to the marriage or a child of the marriage.

“(5) Without limiting the power of any court to grant an adjournment in proceedings under this Act, where, in proceedings with respect to the property of the parties to a marriage or either of them, a court is of the opinion—

- (a) that there is likely to be a significant change in the financial circumstances of the parties to the marriage or either of them and that, having regard to the time when that change is likely to take place, it is reasonable to adjourn the proceedings; and
- (b) that an order that the court could make with respect to the property of the parties to the marriage or either of them if that significant change in financial circumstances occurs is more likely to do justice as between the parties to the marriage than

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an order that the court could make immediately with respect to the property of the parties to the marriage or either of them,

the court may, if so requested by either party to the marriage, adjourn the proceedings until such time, before the expiration of a period specified by the court, as that party to the marriage applies for the proceedings to be determined, but nothing in this sub-section requires the court to adjourn any proceedings in any particular circumstances.

“(6) Where a court proposes to adjourn proceedings as provided by sub-section (5), the court may, before so adjourning the proceedings, make such interim order or orders or such other order or orders (if any) as it considers appropriate with respect to any of the property of the parties to the marriage or of either of them.

“(7) The court may, in forming an opinion for the purposes of sub-section (5) as to whether there is likely to be a significant change in the financial circumstances of either or both of the parties to the marriage, have regard to any change in the financial circumstances of a party to the marriage that may occur by reason that the party to the marriage—

- (a) is a contributor to a superannuation fund or scheme, or participates in any scheme or arrangement that is in the nature of a superannuation scheme; or
- (b) may become entitled to property as the result of the exercise in his favour, by the trustee of a discretionary trust, of a power to distribute trust property,

but nothing in this sub-section shall be taken to limit the circumstances in which the court may form the opinion that there is likely to be a significant change in the financial circumstances of a party to the marriage.

“(8) Where, before proceedings with respect to the property of the parties to a marriage or either of them are completed, either party to the proceedings dies—

- (a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the regulations may make provision in relation to the substitution of the legal personal representative as a party to the proceedings;
- (b) if the court is of the opinion—
 - (i) that it would have made an order with respect to property if the deceased party had not died; and
 - (ii) that it is still appropriate to make an order with respect to property,

the court may make such order as it considers appropriate with respect to any of the property of the parties to the marriage or either of them; and

- (c) an order made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

“(9) The Family Court, or a Family Court of a State, shall not make an order under this section in proceedings with respect to the property of the parties to a marriage or either of them (other than an order until further order or an order made with the consent of all the parties to the proceedings) unless—

- (a) the parties to the proceedings have attended a conference in relation to the matter to which the proceedings relate with a Registrar or Deputy Registrar of the Family Court, or a Registrar or Deputy Registrar of the Family Court of that State, as the case may be;
- (b) the court is satisfied that, having regard to the need to make an order urgently, or to any other special circumstance, it is appropriate to make the order notwithstanding that the parties to the proceedings have not attended a conference as mentioned in paragraph (a); or
- (c) the court is satisfied that it is not practicable to require the parties to the proceedings to attend a conference as mentioned in paragraph (a).”.

Setting aside of orders altering property interests

37. Section 79A of the Principal Act is amended—

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

“(1) Where, on application by a person affected by an order made by a court under section 79 in proceedings with respect to the property of the parties to a marriage or either of them, the court is satisfied that—

- (a) there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence, the giving of false evidence or any other circumstance;
- (b) in the circumstances that have arisen since the order was made it is impracticable for the order to be carried out or impracticable for a part of the order to be carried out;
- (c) a person has defaulted in carrying out an obligation imposed on him by the order and, in the circumstances that have arisen as a result of that default, it is just and equitable to vary the order or to set the order aside and make another order in substitution for the order; or
- (d) in the circumstances that have arisen since the making of the order, being circumstances of an exceptional nature relating to the welfare of a child of the marriage, the child or, where the applicant has the custody of the child, the applicant, will suffer hardship if the court does not vary the order or set the order aside and make another order in substitution for the order,

the court may, in its discretion, vary the order or set the order aside and, if it thinks fit, make another order under section 79 in substitution for the order so set aside.

“(1A) A court may, on application by a person affected by an order made by a court under section 79 in proceedings with respect to the property of the parties to a marriage or either of them, and with the consent of all the parties to the proceedings in which the order was made, vary the order or set the order aside and, if it thinks fit, make another order under section 79 in substitution for the order so set aside.

“(1B) An order varied or made under sub-section (1) or (1A) may, after the death of a party to the proceedings in which the order was so varied or made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

“(1C) Where, before proceedings under this section in relation to an order made under section 79 are completed, either party to the proceedings dies—

- (a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the regulations may make provision in relation to the substitution of the legal personal representative as a party to the proceedings;
 - (b) if the court is of the opinion—
 - (i) that it would have exercised its powers under sub-section (1) or (1A) in relation to the order if the deceased party had not died; and
 - (ii) that it is still appropriate to exercise its powers under sub-section (1) or (1A) in relation to the order,the court may vary the order, set the order aside, or set the order aside and make another order under section 79 in substitution for the order so set aside; and
 - (c) an order varied or made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.”;
- (b) by inserting in sub-section (2) “, (1A) or (1C)” after “(1)”; and
- (c) by adding at the end thereof the following sub-section:

“(3) In this section, a reference to an order made by a court under section 79 includes a reference to an order made by a court under section 86 of the repealed Act.”.

Cessation of orders

38. Section 82 of the Principal Act is amended by inserting in sub-section (3) “made before the date of commencement of section 38 of the *Family Law Amendment Act 1983*” after “order” (first occurring).

Modification of maintenance orders

39. Section 83 of the Principal Act is amended—

(a) by omitting sub-paragraph (2) (a) (iii) and substituting the following sub-paragraph:

“(iii) in the case of an order that operates in favour of, or is binding on, a legal personal representative—the circumstances of the estate are such,”; and

(b) by inserting after sub-section (6) the following sub-sections:

“(6A) Where, as provided by sub-section (6), an order decreasing the amount of a periodic sum payable under an order is expressed to be retrospective to a specified date, any moneys paid under the second-mentioned order since the specified date, being moneys that would not have been required to be paid under the second-mentioned order as varied by the first-mentioned order, may be recovered in a court having jurisdiction under this Act.

“(6B) Where, as provided by sub-section (6), an order discharging an order is expressed to be retrospective to a specified date, any moneys paid under the second-mentioned order since the specified date may be recovered in a court having jurisdiction under this Act.”.

Execution of instruments by order of court

40. Section 84 of the Principal Act is amended—

(a) by omitting from paragraph (1) (a) “this Part” and substituting “this Act or under the regulations”;

(b) by inserting after sub-section (1) the following sub-section:

“(1A) Where—

(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 thinks it necessary to exercise the powers of the court under this sub-section,

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.”; and

(c) by omitting sub-section (2) and substituting the following sub-section:

“(2) 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 (1A) (a), to execute it.”.

Transactions to defeat claims

41. Section 85 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “this Part” and substituting “this Act”; and
- (b) by omitting from sub-section (1) “for costs, maintenance or the declaration or alteration of any interests in property”.

42. After section 85 of the Principal Act the following section is inserted:

Ante-nuptial and post-nuptial settlements

“85A. (1) The court may, in proceedings under this Act, make such order as the court considers just and equitable with respect to the application, for the benefit of all or any of the parties to, and the children of, the marriage, of the whole or part of property dealt with by ante-nuptial or post-nuptial settlements made in relation to the marriage.

“(2) In considering what order (if any) should be made under sub-section (1), the court shall take into account the matters referred to in sub-section 79 (4) so far as they are relevant.”.

Registration of maintenance agreements

43. Section 86 of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

“(3A) Where a maintenance agreement has been registered under sub-section (1), then—

- (a) unless the agreement otherwise provides, the agreement (other than a provision in the agreement providing for the payment by way of maintenance of a periodic sum) continues to operate notwithstanding the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party; and
- (b) if the agreement so provides, a provision in the agreement providing for the payment to a person by way of maintenance of a periodic sum continues to operate notwithstanding the death of any party to the agreement who is liable to make payments pursuant to that provision and is binding on the legal personal representative of that party but, notwithstanding any provision in the agreement, does not continue to operate after the death of the person who is entitled to receive those payments.”.

44. (1) Section 87 of the Principal Act is repealed and the following section is substituted:

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

“87. (1) Subject to this section, a maintenance agreement may make provision to the effect that the agreement shall operate, in relation to the financial matters dealt within the agreement, in substitution for any rights of the parties to the agreement under this Part.

“(2) Where a maintenance agreement makes provision as mentioned in sub-section (1), the maintenance agreement has no effect, and is not enforceable in any way, unless it has been approved by the court.

“(3) In proceedings for the approval of a maintenance agreement, if the court is satisfied that the provisions of the agreement with respect to financial matters are proper, the court shall, by order, approve the agreement, but if the court is not so satisfied, it shall, by order, refuse to approve the agreement.

“(4) Where a maintenance agreement that makes provision as mentioned in sub-section (1) is approved by the court—

- (a) any order having effect under this Part or any order made under Part VIII of the repealed Act and continued in effect by virtue of paragraph 3 (2) (c) ceases to have effect in so far as it relates to the financial matters dealt with in the agreement and, whether or not the approval of the agreement is revoked, has no further effect; and
- (b) subject to sub-sections (13) and (14), no court having jurisdiction under this Act may make an order (other than an order under this section or an order in connection with the enforcement of the agreement) with respect to those financial matters unless the approval of the agreement is revoked.

“(5) Notwithstanding any rule of law or equity, an approved maintenance agreement shall not be taken to be void, voidable or unenforceable by reason that it makes provision as mentioned in sub-section (1).

“(6) Where a court has approved a maintenance agreement, the agreement shall be deemed to be registered in that court.

“(7) An agreement that is by virtue of sub-section (6) deemed to be registered in a court may be registered, as prescribed, in another court having jurisdiction under this Act.

“(8) A court may, by order, revoke the approval of a maintenance agreement under this section if, and only if, the agreement is registered or deemed to be registered in that court and the court is satisfied that—

- (a) the approval was obtained by fraud;
- (b) the parties to the agreement desire the revocation of the approval;
- (c) the agreement is void, voidable or unenforceable; or

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- (d) in the circumstances that have arisen since the agreement was approved it is impracticable for the agreement to be carried out or impracticable for a part of the agreement to be carried out.

“(9) Where the approval of a maintenance agreement under this section is revoked by a court—

- (a) the agreement ceases, for all purposes, to be in force; and
- (b) the court may, in proceedings for the revocation of the approval or on application by a party to the agreement or any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of the parties to the agreement and any other interested persons,

and, in exercising its powers under paragraph (b), the court shall have regard to the ground on which it revoked the approval of the agreement.

“(10) Where a maintenance agreement has been approved by a court as provided by this section, then—

- (a) unless the agreement otherwise provides, the agreement (other than a provision in the agreement providing for the payment by way of maintenance of a periodic sum) continues to operate notwithstanding the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party; and
- (b) if the agreement so provides, a provision in the agreement providing for the payment to a person by way of maintenance of a periodic sum continues to operate notwithstanding the death of any part to the agreement who is liable to make payments pursuant to that provision and is binding on the legal personal representative of that party but, notwithstanding any provision in the agreement, does not continue to operate after the death of the person who is entitled to receive those payments.

“(11) Apart from the provision made by sub-sections (2), (5), (9) and (10), the validity, enforceability and effect of an approved maintenance agreement shall 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 of the kind referred to in sub-paragraph (ea) (iii) of the definition of ‘matrimonial cause’ in sub-section 4 (1), being proceedings instituted in a court in which the approved maintenance agreement is registered or deemed to be registered, the court—

- (a) subject to paragraph (b), has the same powers, may grant the same remedies and shall 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;
- (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 pursuant to the agreement, from the time when the amount

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became or becomes due and payable, at a rate not exceeding the rate prescribed by the regulations; and

- (c) in addition to, or instead of, making an order or orders pursuant to 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.

“(12) Where the approval of a maintenance agreement under this section has been revoked, a court shall, in considering whether, and if so, how, to exercise any powers under this Part, have regard to—

- (a) anything done or omitted to be done by a party to the agreement pursuant to the agreement;
- (b) any change in the circumstances of a party to the agreement arising out of the doing of any act by a person, or the failure of a person to do an act, pursuant to the agreement;
- (c) any order made by that court or another court exercising jurisdiction under this Act in connection with the agreement while the agreement was in force; and
- (d) any order made under paragraph (9) (b) in connection with the revocation of the approval of the agreement.

“(13) Where the court is satisfied that the arrangements relating to a child of the marriage who has not attained the age of 18 years made in an approved maintenance agreement are no longer proper, it may make an order under this Part.

“(14) Where the court is satisfied—

- (a) that the provision of maintenance for a child of a marriage who has attained the age of 18 years is necessary—
 - (i) to enable the child to complete his education (including vocational training or apprenticeship); or
 - (ii) because the child is mentally or physically handicapped; and
- (b) that the arrangements relating to the child made in an approved maintenance agreement are not proper, or are no longer proper, having regard to the matters referred to in paragraph (a),

the court may make an order under this Part.

“(15) In this section, ‘approved maintenance agreement’ means a maintenance agreement that has been approved under this section and the approval of which has not been revoked.

“(16) Nothing in this Act affects the operation of an agreement sanctioned under paragraph 87 (1) (k) of the repealed Act or the rights and obligations of a person under such an agreement.

“(17) Subject to section 89, this section does not apply to overseas maintenance agreements.”

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(2) Where—

- (a) a maintenance agreement had, before the commencement of this section, been approved under section 87 of the *Family Law Act 1975* as in force, or as amended and in force, at any time before that commencement; and
- (b) the approval of the maintenance agreement had not been revoked before that commencement,

section 87 of the *Family Law Act 1975* as amended and in force after that commencement applies to and in relation to that maintenance agreement as if it had been approved under that section as so in force.

(3) Where—

- (a) a maintenance agreement had, before the commencement of this section, been approved under section 87 of the *Family Law Act 1975* as in force, or as amended and in force, at any time before that commencement; and
- (b) the approval of the maintenance agreement had been revoked before that commencement,

section 87 of the Principal Act continues to apply to and in relation to that maintenance agreement as if sub-section (1) of this section had not been enacted.

Enforcement of maintenance agreements

45. Section 88 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) Sub-section (1) does not apply in relation to maintenance agreements that have been approved under section 87.”

46. Section 90 of the Principal Act is repealed and the following section is substituted:

Certain instruments not liable to duty

“90. (1) The following agreements, deeds and other instruments are not subject to any duty or charge under any law of a State or Territory or any law of the Commonwealth that applies only to or in relation to a Territory:

- (a) a deed or other instrument executed by a person for the purposes of, or in accordance with, an order made under this Part;
- (b) a relevant maintenance agreement that confers a benefit upon a party to, or a child of, the marriage to which the maintenance agreement relates, to the extent that the maintenance agreement confers that benefit;
- (c) a deed or other instrument executed by a person for the purposes of, or in accordance with, a relevant maintenance agreement, being a deed or other instrument that confers a benefit upon a party to, or a child of, the marriage to which the maintenance agreement relates, to the extent that the deed or other instrument confers that benefit.

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“(2) The following maintenance agreements are relevant maintenance agreements for the purposes of this section:

- (a) a registered maintenance agreement made in connection with the dissolution or annulment of the marriage to which the maintenance agreement relates;
- (b) a registered maintenance agreement (other than a maintenance agreement referred to in paragraph (a)) made in contemplation of the dissolution or annulment of the marriage to which the maintenance agreement relates;
- (c) a registered maintenance agreement (other than a maintenance agreement referred to in paragraph (a) or (b)) made in connection with the breakdown of the marriage to which the maintenance agreement relates;
- (d) an approved maintenance agreement made in connection with the dissolution or annulment of the marriage to which the maintenance agreement relates;
- (e) an approved maintenance agreement (other than a maintenance agreement referred to in paragraph (d)) made in contemplation of the dissolution or annulment of the marriage to which the maintenance agreement relates;
- (f) an approved maintenance agreement (other than a maintenance agreement referred to in paragraph (d) or (e)) made in connection with the breakdown of the marriage to which the maintenance agreement relates.

“(3) For the purposes of this section, a maintenance agreement, deed or other instrument that confers an entitlement to property on a person may be taken to confer a benefit upon the person notwithstanding that the maintenance agreement, deed or other instrument also deprives the person of an entitlement to other property of an equal or greater value.

“(4) In this section—

- (a) ‘approved maintenance agreement’ means a maintenance agreement approved by a court by order under section 87;
- (b) ‘registered maintenance agreement’ means a maintenance agreement registered in a court under section 86 or a maintenance agreement that is registered in a court under regulations made pursuant to section 89; and
- (c) a reference to the marriage to which a maintenance agreement relates is a reference to the marriage the parties to which are parties to the maintenance agreement.”.

47. After section 91A of the Principal Act the following section is inserted:

Intervention by child welfare officer

“91B. (1) In any proceedings under this Act that affect, or may affect, the welfare of a child, the court may request the intervention in the proceedings of

an officer of a State, of a Territory or of the Commonwealth, being the officer who is responsible for the administration of the laws of the State or Territory in which the proceedings are being heard that relate to child welfare.

“(2) Where the court has, under sub-section (1), requested an officer to intervene in proceedings—

- (a) the officer may intervene in those proceedings; and
- (b) where the officer so intervenes, the officer shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.”.

Intervention by other persons

48. Section 92 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) In proceedings for principal relief, a person who has been directed by the court under section 99A to submit to a prescribed medical procedure for the purpose of enabling the preparation of a report concerning the paternity of a child may apply for leave to intervene in the proceedings, and the court may make an order entitling that person to intervene in the proceedings.”.

49. After section 93 of the Principal Act the following section is inserted:

Appellate jurisdiction of Family Court

“93A. (1) The Family Court has jurisdiction with respect to matters arising under this Act or under any other law made by the Parliament in respect of which—

- (a) appeals referred to in section 94 are instituted; or
- (b) appeals referred to in section 96 are instituted.

“(2) Subject to section 96, in an appeal the Family Court shall have regard to the evidence given in the proceedings out of which the appeal arose and has power to draw inferences of fact and, in its discretion, to receive further evidence upon questions of fact, which evidence may be given by affidavit, by oral examination before the Family Court or a Judge or in such other manner as the Family Court may direct.”.

Appeals to Family Court

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

- “(1) An appeal lies to a Full Court of the Family Court from—
- (a) a decree of the Family Court, constituted otherwise than as a Full Court, exercising original or appellate jurisdiction—
 - (i) under this Act; or
 - (ii) under any other law; or
 - (b) a decree of—
 - (i) a Family Court of a State; or

- (ii) a Supreme Court of a State or Territory constituted by a single Judge,

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

Appeals from courts of summary jurisdiction

51. (1) Section 96 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) The Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred on the Supreme Court of each Territory, with respect to matters arising under this Act in respect of which appeals are instituted under this section.”.

(2) Notwithstanding the amendment made by paragraph 18 (1) (a) of the *Family Law Amendment Act 1979*, an appeal does not lie from a court of summary jurisdiction of a State or Territory exercising jurisdiction under the *Family Law Act 1975* to a Supreme Court of a State or Territory in respect of which a Proclamation under sub-section 96 (3) of the *Family Law Act 1975* had been made before the day on which the *Family Law Amendment Act 1979* received the Royal Assent.

Procedure

52. Section 97 of the Principal Act is amended by omitting sub-sections (1) and (2) and substituting the following sub-sections:

“(1) Subject to sub-section (2) and to the regulations, all proceedings in the Family Court, or in a court of a Territory (other than the Northern Territory) when exercising jurisdiction under this Act, shall be heard in open court.

“(2) In any proceedings in the Family Court, or in another court when exercising jurisdiction under this Act, the court may, of its own motion or on the application of a party to the proceedings, make one or more of the following orders:

- (a) an order that a specified person is not, or specified persons are not, to be present in court during the proceedings or during a specified part of the proceedings;
- (b) an order that persons included in a specified class of persons are not to be present in court during the proceedings or during a specified part of the proceedings;
- (c) an order that only the parties to the proceedings, their legal representatives and such other persons (if any) as are specified by the court may be present in court during the proceedings or during a specified part of the proceedings.”.

53. After section 98 of the Principal Act the following section is inserted:

Proceedings in absence of parties

“98A. (1) The regulations may provide that where, at the date fixed for the hearing of proceedings for dissolution of marriage instituted by one party to the marriage—

- (a) the proceedings are undefended;
- (b) there are no children of the marriage who have not attained the age of 18 years;
- (c) the applicant has requested the court to determine the proceedings in the absence of the parties; and
- (d) the respondent has not requested the court not to determine the proceedings in the absence of the parties,

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

“(2) The regulations may provide that where, at the date fixed for the hearing of proceedings for dissolution of marriage instituted jointly by the parties to the marriage, there are no children of the marriage who have not attained the age of 18 years and—

- (a) one of the parties to the marriage has requested the court to determine the proceedings in the absence of the parties and the other party to the marriage has not requested the court not to determine the proceedings in the absence of the parties; or
- (b) both parties to the marriage have requested the court to determine the proceedings in the absence of the parties,

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

54. After section 99 of the Principal Act the following section is inserted:

Paternity tests

“99A. (1) Without limiting the generality of section 99, where the paternity of a child is a question in issue in proceedings under this Act, the court may, of its own motion, upon the request of a party to the proceedings or upon the request of a person who is representing the child pursuant to an order under section 65—

- (a) subject to such conditions as are specified in the direction, direct any of the persons referred to in sub-section (2) to submit to a prescribed medical procedure for the purpose of enabling the preparation of a report concerning the paternity of the child; and
- (b) give such other directions as are necessary to give effect to a direction made under paragraph (a).

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

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

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

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

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

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

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

“(8) Where, in proceedings under this Act, a report is received in evidence as provided in sub-section (7)—

- (a) the court may; or
- (b) a party to the proceedings may, with the leave of the court but not otherwise,

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

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

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

Overseas decrees

55. Section 104 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “applicant” and substituting the following definition:

“‘applicant’, in relation to the dissolution or annulment of a marriage or the legal separation of the parties to a marriage, means—

(a) the party at whose instance the dissolution, annulment or legal separation was effected; or

(b) where the dissolution, annulment or legal separation was effected at the instance of both the parties—each of the parties;”;

(b) by omitting from sub-section (1) the definitions of “overseas country”, “relevant date” and “respondent” and substituting the following definitions:

“‘relevant date’, in relation to the dissolution or annulment of a marriage or the legal separation of the parties to a marriage, means the date of the institution of the proceedings that resulted in the dissolution, annulment or legal separation;

‘respondent’, in relation to the dissolution or annulment of a marriage or the legal separation of the parties to a marriage, means a party to the marriage, not being a party at whose instance the dissolution, annulment or legal separation was effected.”;

(c) by omitting sub-section (3) and substituting the following sub-section:

“(3) A dissolution or annulment of a marriage, or the legal separation of the parties to a marriage, effected in accordance with the law of an overseas country shall be recognized as valid in Australia where—

(a) the respondent was ordinarily resident in the overseas country at the relevant date;

(b) the applicant or, in a case referred to in paragraph (b) of the definition of ‘applicant’ in sub-section (1), one of the applicants, was ordinarily resident in the overseas country at the relevant date and either—

(i) the ordinary residence of the applicant or of that applicant, as the case may be, had continued for not less than 1 year immediately before the relevant date; or

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- (ii) the last place of cohabitation of the parties to the marriage was in that country;
- (c) the applicant or the respondent or, in a case referred to in paragraph (b) of the definition of 'applicant' in sub-section (1), one of the applicants, was domiciled in the overseas country at the relevant date;
- (d) the respondent was a national of the overseas country at the relevant date;
- (e) the applicant or, in a case referred to in paragraph (b) of the definition of 'applicant' in sub-section (1), one of the applicants, was a national of the overseas country at the relevant date and either—
 - (i) the applicant or that applicant, as the case may be, was ordinarily resident in that country at that date; or
 - (ii) the applicant or that applicant, as the case may be, had been ordinarily resident in that country for a continuous period of 1 year falling, at least in part, within the period of 2 years immediately before the relevant date; or
- (f) the applicant or, in a case referred to in paragraph (b) of the definition of 'applicant' in sub-section (1), one of the applicants, was a national of, and present in, the overseas country at the relevant date and the last place of cohabitation of the parties to the marriage was an overseas country the law of which, at the relevant date, did not provide for dissolution of marriage, annulment of marriage or the legal separation of the parties to a marriage, as the case may be.”;
- (d) by inserting in sub-section (4) “, or the legal separation of the parties to a marriage,” after “marriage” (first occurring);
- (e) by omitting from paragraph (4) (a) “or that the dissolution or annulment was obtained by fraud”;
- (f) by inserting in sub-section (5) “, or any legal separation of the parties to a marriage,” after “marriage”;
- (g) by omitting sub-section (7) and substituting the following sub-section:
 - “(7) For the purposes of this section, a court in Australia, in considering the validity of a dissolution or annulment of a marriage, or a legal separation of the parties to a marriage, effected under a law of an overseas country—
 - (a) where the respondent appeared in the proceedings for the dissolution, annulment or separation—
 - (i) is bound by the findings of fact on the basis of which a court of the overseas country assumed jurisdiction to grant the dissolution, annulment or separation; and
 - (ii) may treat as proved any other facts found by a court of the overseas country or otherwise established for the purposes of the law of the overseas country; or

- (b) where the respondent did not appear in the proceedings for the dissolution, annulment or separation—may treat as proved any facts found by a court of the overseas country or otherwise established for the purposes of the law of the overseas country.”;
- (h) by inserting in sub-section (8) “, or the legal separation of the parties to a marriage,” after “marriage”; and
- (j) by omitting from sub-section (10) “and annulments” and substituting “, annulments and legal separations”.

Enforcement generally

56. Section 105 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:

“(3) Where a person bound by a decree made under this Act has died, the decree may, by leave of—

- (a) the court by which it was made; or
- (b) any court in which the decree has been registered in accordance with the regulations (whether the decree was registered before or after the death of the person),

and on such terms and conditions as the court thinks fit, be enforced, in respect of liabilities that arose under the decree before the death of that person, against the estate of that person.”.

Persons not to be imprisoned for failure to comply with certain orders

57. Section 107 of the Principal Act is amended by inserting in sub-section (3) “, section 108” after “sub-section 70 (6)”.

Contempt

58. Section 108 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) Notwithstanding any other law, a court having jurisdiction under this Act may punish persons for contempt of that court.”.

Overseas enforcement of maintenance orders and enforcement of overseas maintenance orders

59. Section 110 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “maintenance order” and substituting the following definition:

“ ‘maintenance order’ means—

- (a) an order with respect to the maintenance of a party to a marriage;
- (b) an order with respect to the maintenance of a child of a marriage who has not attained the age of 18 years, other than an order of the kind referred to in paragraph (c);

- (c) an order with respect to the maintenance of a child of a marriage who has not attained the age of 18 years, being an order that is expressed to continue in force until a day that is later than, or for a period that extends beyond, the day on which the child will attain that age, where the provision of maintenance for the child is necessary to enable the child to complete a course of study, vocational training or an apprenticeship or to continue his education in any other way, or because the child is mentally or physically handicapped;
 - (d) an order with respect to the maintenance of a child of the marriage who has attained the age of 18 years, being an order that is expressed to continue in force until a day, or for a period, specified in the order, where the provision of maintenance for the child is necessary to enable the child to complete a course of study, vocational training or an apprenticeship or to continue his education in any other way, or because the child is mentally or physically handicapped; and
 - (e) to the extent provided by the regulations, an order of the kind referred to in section 109;” and
- (b) by inserting after paragraph (2) (a) the following paragraph:
- “(aa) the institution and prosecution, by an officer of a court having jurisdiction under this Act, a prescribed authority of the Commonwealth, of a State or of a Territory or a person for the time being holding a prescribed office under a law of the Commonwealth, of a State or of a Territory, in his or its discretion, of proceedings—
 - (i) on behalf of the person entitled to moneys payable under a maintenance order made by a court of a reciprocating country or of a country with restricted reciprocity, for the enforcement by a court having jurisdiction under this Act of that maintenance order; or
 - (ii) for the making of orders for the confirmation of provisional orders made by courts of reciprocating countries or of countries with restricted reciprocity, being provisional orders referred to in paragraph (d);”.

Convention on Recovery Abroad of Maintenance

60. Section 111 of the Principal Act is amended by inserting “, or to obtain for Australia any advantage or benefit,” after “Australia” (first occurring).

61. After section 111 of the Principal Act the following sections are inserted:

Convention on Recognition and Enforcement of Decisions Relating to Maintenance Obligations

“111A. The regulations may make such provision as is necessary to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations signed at The Hague on 2 October 1973 but any such regulations shall not come into operation until the day on which that Convention enters into force for Australia.

Convention on the Civil Aspects of International Child Abduction

“111B. The regulations may make such provision as is necessary to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980 but any such regulations shall not come into operation until the day on which that Convention enters into force for Australia.”

62. Section 112 of the Principal Act is repealed and the following section is substituted:

Arrangements with States and Northern Territory

“112. (1) The Governor-General may make an arrangement with the Governor of a State or the Administrator of the Northern Territory for the performance by an officer of that State or Territory of a function under this Act or under the regulations.

“(2) In this section, ‘officer’ includes the holder of a judicial office.”

63. After section 112 of the Principal Act the following section is inserted in Part XIV:

Interpretation

“112A. In this Part, ‘marriage’ includes a void marriage.”

Injunctions

64. Section 114 of the Principal Act is amended—

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

“(1) In proceedings of the kind referred to in paragraph (e) of the definition of ‘matrimonial cause’ in sub-section 4 (1), the court may make such order or grant such injunction as it thinks proper with respect to the matter to which the proceedings relate, including—

- (a) an injunction for the personal protection of a party to the marriage or of a child of the marriage;
- (b) an injunction restraining a party to the marriage from entering or remaining in the matrimonial home or the premises in which the other party to the marriage resides, or restraining a party to the marriage from entering or remaining in a specified area,

being an area in which the matrimonial home is, or the premises in which the other party to the marriage resides are, situated;

- (c) an injunction restraining a party to the marriage from entering the place of work of the other party to the marriage or restraining a party to the marriage from entering the place of work or the place of education of a child of the marriage;
- (d) an injunction for the protection of the marital relationship;
- (e) an injunction in relation to the property of a party to the marriage; or
- (f) an injunction relating to the use or occupancy of the matrimonial home.”; and

(b) by omitting sub-section (6) and substituting the following sub-section:

“(6) Where an act or omission by a person that constitutes a contravention or failure to comply with a provision of this section is an offence against any law, the person may be prosecuted and convicted under that law, but nothing in this sub-section renders any person liable to be punished twice in respect of the same act or omission.”.

65. After section 114 of the Principal Act the following sections are inserted in Part XIV:

Powers of arrest

“114AA. (1) Where, on the application of a party to a marriage (in this sub-section referred to as the ‘applicant’), a court grants an injunction of the kind referred to in paragraph 114 (1) (a), (b) or (c), the applicant may—

- (a) in the course of the proceedings in which the injunction is granted or subsequently, apply to that court for an order under this sub-section; or
- (b) at any time after the injunction has been granted, apply to another court having jurisdiction under this Act for an order under this sub-section,

and, where such an application is made to a court, the court may—

- (c) if it is satisfied—
 - (i) that the person against whom the injunction is directed (in this paragraph referred to as the ‘respondent’) has caused bodily harm to the applicant or to a child of the marriage;
 - (ii) that the respondent is likely to cause bodily harm to the applicant or to a child of the marriage; and
 - (iii) that notice of the intention of the applicant to apply for an order under this sub-section has been served on the respondent or that, in the circumstances of the case, it is appropriate to make an order under this sub-section notwithstanding that such notice has not been served on the respondent; or

- (d) if it is satisfied—
 - (i) that the person against whom the injunction is directed (in this paragraph referred to as the ‘respondent’) has threatened to cause bodily harm to the applicant or to a child of the marriage;

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- (ii) that the respondent is likely to cause bodily harm to the applicant or to a child of the marriage; and
- (iii) that notice of the intention of the applicant to apply for an order under this sub-section has been served on the respondent,

by order, authorize the arrest of the respondent without warrant as provided by the succeeding provisions of this section.

“(2) Where a court has, by order under sub-section (1), authorized the arrest without warrant of a person against whom an injunction is directed, a police officer may arrest the person without warrant if he believes, on reasonable grounds, that the person has, since the order was made, breached the injunction—

- (a) in the case of an injunction of the kind referred to in paragraph 114 (1) (a)—by causing bodily harm to a person for whose personal protection the injunction was granted; or
- (b) in the case of an injunction of the kind referred to in paragraph 114 (1) (b) or (c)—by entering or remaining in any premises, area or place.

“(3) Where a police officer arrests a person pursuant to sub-section (2)—

- (a) he shall—
 - (i) ensure that the person is brought before the court that authorized the arrest, or another court having jurisdiction under this Act, before the expiration of the relevant period; and
 - (ii) take all reasonable steps to ensure that, before the person is so brought before a court, the person on whose application the order under sub-section (1) was made is aware that the first-mentioned person has been arrested and of the court before which he is to be brought; and
- (b) the person shall not be released before the expiration of the relevant period except pursuant to an order of the court that authorized the arrest or another court having jurisdiction under this Act,

but nothing in this sub-section authorizes the keeping of the person in custody after the expiration of the relevant period.

“(4) Where a person is brought before a court in accordance with sub-section (3), the court shall—

- (a) if there is an application before the court for the person to be dealt with for breach of the injunction in connection with which that court or another court authorized the arrest of the person without warrant—forthwith proceed to hear and determine that application; or
- (b) if there is no application before the court as mentioned in paragraph (a)—order that the person be released forthwith.

“(5) Where—

- (a) a person is brought before a court in accordance with sub-section (3);

- (b) the court proceeds to hear and determine an application for the person to be dealt with for breach of an injunction as mentioned in paragraph (4) (a); and
- (c) at the expiration of the relevant period the proceedings have not been determined,

the person may be kept in custody after the expiration of the relevant period until—

- (d) the court gives its decision on the proceedings;
- (e) the court orders that the person be released; or
- (f) the court adjourns the hearing for a period of more than 24 hours,

whichever happens first.

“(6) An order made by a court under sub-section (1) ceases to have effect—

- (a) if a date, being a date not later than 6 months after the date of the making of the order, is specified in the order—on that date; or
- (b) if no date is specified in the order as mentioned in paragraph (a)—at the expiration of the period of 6 months after the date of the making of the order.

“(7) In this section—

‘police officer’ means a member of the Australian Federal Police or a member of the police force of a State or of the Northern Territory;

‘relevant period’, in relation to the arrest of a person, means—

- (a) in a case to which paragraph (b) does not apply—the period commencing at the time when the person is arrested and ending 24 hours later; or
- (b) where a Sunday or public holiday commences within the period of 24 hours after the time when the person is arrested—the period commencing at the time when the person is arrested and ending 48 hours later.

Operation of State and Territory laws

“114AB. (1) Sections 114 and 114AA are not intended to exclude or limit the operation of a prescribed law of a State or Territory that is capable of operating concurrently with those sections.

“(2) Where a person has instituted a proceeding or taken any other action under a prescribed law of a State or Territory in respect of a matter in respect of which he would, but for this sub-section, have been entitled to institute a proceeding under section 114 or 114AA, the person is not entitled to institute a proceeding under the section concerned in respect of that matter.

“(3) Any proceedings instituted by a person that are pending under section 114 at the commencement of this section in respect of a matter in respect of which the person has, before that commencement, instituted a proceeding or taken any other action under a law prescribed for the purposes of sub-section (2) are, by force of this sub-section, terminated.”.

Establishment of Institute

66. Section 114B of the Principal Act is amended by inserting in paragraph (2) (a) “conduct,” before “encouragement”.

67. After section 114M of the Principal Act the following section is inserted in Part XIVA:

Annual report

“114N. (1) The Board shall, as soon as practicable after 30 June in each year, prepare and furnish to the Attorney-General a report of the operations of the Institute during the year that ended on that 30 June.

“(2) The Attorney-General shall cause a copy of a report furnished to him under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.”.

Family Law Council

68. (1) Section 115 of the Principal Act is amended—

(a) by omitting from paragraph (3) (b) “in proceedings in” and substituting “in relation to”;

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

“(5) A member of the Council shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

“(5A) A member of the Council shall be paid such allowances as are prescribed.

“(5B) Sub-sections (5) and (5A) have effect subject to the *Remuneration Tribunals Act 1973*.

“(5C) Subject to this section, a member of the Council holds office for such period, not exceeding 3 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.”;

(c) by inserting after sub-section (6) the following sub-sections:

“(6A) The Attorney-General may terminate the appointment of a member by reason of the misbehaviour, or physical or mental incapacity, of the member.

“(6B) If a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit, the Attorney-General shall terminate the appointment of that member.”; and

(d) by omitting sub-section (9) and substituting the following sub-sections:

“(9) The Council shall, as soon as practicable after 30 June in each year, prepare and furnish to the Attorney-General a report of the operations of the Council during the year that ended on that 30 June.

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“(10) The Attorney-General shall cause a copy of a report furnished to him under sub-section (9) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.”.

(2) The appointments as members of the Family Law Council of persons who held office as such members immediately before the date of commencement of this section shall terminate one year after that date, but such members are eligible for re-appointment.

Costs

69. Section 117 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-sections:

“(2) If, in proceedings under this Act, the court is of opinion that there are circumstances that justify it in doing so, the court may, subject to sub-section (2A), make such order as to costs and security for costs, whether by way of interlocutory order or otherwise, as the court thinks just.

“(2A) In considering what order (if any) should be made under sub-section (2), the court shall have regard to—

- (a) the financial circumstances of each of the parties to the proceedings;
- (b) whether any party to the proceedings is in receipt of assistance by way of legal aid and, if so, the terms of the grant of that assistance to that party;
- (c) the conduct of the parties to the proceedings in relation to the proceedings including, without limiting the generality of the foregoing, the conduct of the parties in relation to pleadings, particulars, discovery, inspection, directions to answer questions, admissions of facts, production of documents and similar matters;
- (d) whether the proceedings were necessitated by the failure of a party to the proceedings to comply with previous orders of the court;
- (e) whether any party to the proceedings has been wholly unsuccessful in the proceedings;
- (f) whether either party to the proceedings has, in accordance with section 117C or otherwise, made an offer in writing to the other party to the proceedings to settle the proceedings and the terms of any such offer; and
- (g) such other matters as the court thinks relevant.”.

70. After section 117 of the Principal Act the following sections are inserted:

Reparation for certain losses and expenses relating to children

“117A. (1) Where—

- (a) a court has found for the purposes of sub-section 70 (6) that a person has knowingly and without reasonable cause contravened or failed to comply with a provision of section 70 by removing a child from the

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possession of another person or by refusing or failing to deliver a child to another person;

- (b) a person has been convicted of an offence against section 70A in respect of a child;
- (c) a court has found for the purposes of sub-section 114 (4) that a person has knowingly and without reasonable cause contravened or failed to comply with an injunction granted or an order made under section 114 by removing a child from the possession of another person or by refusing or failing to deliver a child to another person; or
- (d) a person has been found to be in contempt of a court exercising jurisdiction under this Act by reason of having removed a child from the possession of another person or having refused or failed to deliver a child to another person,

a court having jurisdiction under this Act may, subject to sub-section (2)—

- (e) on the application of the Commonwealth—order the person to make reparation to the Commonwealth or to a Commonwealth instrumentality, by way of money payment or otherwise, in respect of any loss suffered, or any expense incurred, by the Commonwealth or the Commonwealth instrumentality, as the case may be, in restoring the child to the possession of the person entitled to that possession; or
- (f) on the application of any other person—order the first-mentioned person to make reparation to that other person, by way of money payment or otherwise, in respect of any loss suffered, or expense incurred, by that other person in restoring the child to the possession of the person entitled to that possession.

“(2) Nothing in sub-section (1) empowers a court to order a person to make reparation to the Commonwealth, to a Commonwealth instrumentality or to another person in respect of any loss suffered, or any expense incurred, where a court has, under section 21B of the *Crimes Act 1914*, ordered the first-mentioned person to make reparation to the Commonwealth, to the Commonwealth instrumentality or to that other person, as the case may be, in respect of the same loss suffered or expense incurred.

Interest on moneys ordered to be paid

“117B. (1) Subject to any order made by the court under sub-section (2), where, in proceedings under this Act, a court makes an order for the payment of money (other than an order for the payment by way of maintenance of a periodic sum), interest is payable, at the rate prescribed by the regulations, from—

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

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

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“(2) A court that makes an order for the payment of money as mentioned in sub-section (1) may order that interest is not payable on the money payable under the first-mentioned order or may order—

- (a) that interest is payable at a rate specified in the order, being a rate other than the rate prescribed by the regulations; or
- (b) that interest is payable from a date specified in the order, being a date other than the date from which the interest would be payable under sub-section (1).

Offers of settlement

“117C. (1) Where a party to proceedings under this Act (other than proceedings under Part VI or VII or proceedings to enforce a decree made under Part VII) has made an offer in writing to the other party to the proceedings to settle the proceedings on terms specified in the offer, the first-mentioned party may file, in the court in which the proceedings are being heard, a copy of the offer.

“(2) If a party to proceedings withdraws an offer a copy of which has been filed as mentioned in sub-section (1), that party shall file, in the court referred to in sub-section (1), notice that the offer has been withdrawn.

“(3) The fact that an offer has been made as mentioned in sub-section (1), or the terms of such an offer, shall not be disclosed to the court except for the purposes of the consideration by the court of whether it should make an order as to costs under sub-section 117 (2) and the terms of any such order.”.

71. Section 118 of the Principal Act is repealed and the following section is substituted:

Frivolous or vexatious proceedings

“118. (1) The court may, at any stage of proceedings under this Act, if it is satisfied that the proceedings are frivolous or vexatious—

- (a) dismiss the proceedings;
- (b) make such order as to costs as the court thinks just; and
- (c) if the court thinks fit, on the application of a party to the proceedings—order that the person who instituted the proceedings shall not, without leave of a court having jurisdiction under this Act, institute proceedings under this Act of the kind or kinds specified in the order,

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

“(2) A court may discharge or vary an order made by that court under paragraph (1) (c).”.

72. Section 121 of the Principal Act is repealed and the following section is substituted:

Restriction on publication of court proceedings

“121. (1) A person who publishes in a newspaper or periodical publication or by radio broadcast or television, or otherwise disseminates to the public or to a section of the public by any means, any account of any proceedings, or of any part of any proceedings, under this Act that identifies—

- (a) a party to the proceedings;
- (b) a person who is related to, or associated with, a party to the proceedings or is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate; or
- (c) a witness in the proceedings,

is guilty of an offence punishable, upon conviction—

- (d) in the case of a person not being a body corporate—by a fine not exceeding \$5,000 or imprisonment for a period not exceeding one year, or both; or
- (e) in the case of a person being a body corporate—by a fine not exceeding \$10,000.

“(2) A person who, except as permitted by the Rules of Court, publishes in a newspaper or periodical publication or by radio broadcast or television, or otherwise disseminates to the public or to a section of the public by any means (otherwise than by the display of a notice in the premises of the court), a list of proceedings under this Act, identified by reference to the names of the parties to the proceedings, that are to be dealt with by a court is guilty of an offence punishable, upon conviction—

- (a) in the case of a person not being a body corporate—by a fine not exceeding \$5,000 or imprisonment for a period not exceeding one year, or both; or
- (b) in the case of a person being a body corporate—by a fine not exceeding \$10,000.

“(3) Without limiting the generality of sub-section (1), an account of proceedings, or of any part of proceedings, referred to in that sub-section shall be taken to identify a person if—

- (a) it contains any particulars of—
 - (i) the name, title, pseudonym or alias of the person;
 - (ii) the address of any premises at which the person resides or works, or the locality in which any such premises are situated;
 - (iii) the physical description or the style of dress of the person;
 - (iv) any employment or occupation engaged in, profession practised or calling pursued, by the person or any official or honorary position held by the person;
 - (v) the relationship of the person to identified relatives of the person or the association of the person with identified friends or

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identified business, official or professional acquaintances of the person;

- (vi) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person; or
- (vii) any real or personal property in which the person has an interest or with which the person is otherwise associated,

being particulars that are sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires;

- (b) in the case of a written or televised account—it is accompanied by a picture of the person; or
- (c) in the case of a broadcast or televised account—it is spoken in whole or in part by the person and the person's voice is sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires.

“(4) A reference in sub-section (1) or (2) to proceedings shall be construed as including a reference to proceedings commenced before the commencement of section 72 of the *Family Law Amendment Act 1983*.

“(5) An offence against this section is an indictable offence.

“(6) Notwithstanding that an offence referred to in sub-section (5) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is appropriate to do so and the defendant and the prosecutor consent.

“(7) Where, in accordance with sub-section (6), a court of summary jurisdiction convicts a person of an offence against this Act, the penalty that the court may impose is—

- (a) in the case of a person not being a body corporate—a fine not exceeding \$2,500 or imprisonment for a period not exceeding 6 months; or
- (b) in the case of a person being a body corporate—a fine not exceeding \$5,000.

“(8) Proceedings for an offence against this section shall not be commenced except by, or with the written consent of, the Attorney-General.

“(9) The preceding provisions of this section do not apply to or in relation to—

- (a) the communication, to persons concerned in proceedings in any court, of any pleading, transcript of evidence or other document for use in connection with those proceedings;
- (b) the communication of any pleading, transcript of evidence or other document to—
 - (i) a body that is responsible for disciplining members of the legal profession in a State or Territory; or

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- (ii) persons concerned in disciplinary proceedings against a member of the legal profession of a State or Territory, being proceedings before a body that is responsible for disciplining members of the legal profession in that State or Territory;
- (c) the communication, to a body that grants assistance by way of legal aid, of any pleading, transcript of evidence or other document for the purpose of facilitating the making of a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case;
- (d) the publishing of a notice or report in pursuance of the direction of a court;
- (e) the publishing of any publication *bona fide* intended primarily for use by the members of any profession, being—
 - (i) a separate volume or part of a series of law reports; or
 - (ii) any other publication of a technical character; or
- (f) the publication or other dissemination of an account of proceedings or of any part of proceedings—
 - (i) to a person who is a member of a profession, in connection with the practice by that person of that profession or in the course of any form of professional training in which that person is involved; or
 - (ii) to a person who is a student, in connection with the studies of that person.

“(10) Rules of Court made for the purposes of sub-section (2) may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.

“(11) In this section, ‘court’ includes—

- (a) an officer of a court investigating or dealing with a matter in accordance with this Act or the regulations; and
- (b) a tribunal established by or under a law of the Commonwealth, of a State or of a Territory.”.

PART III—AMENDMENTS RELATING TO RULES OF COURT AND REGULATIONS

73. After section 37 of the Principal Act the following sections are inserted:

Powers of Registrars

“37A. (1) Subject to sub-sections (2) and (3), the following powers of the Court may be exercised by a Registrar:

- (a) the power to dispense with the service of any process under this Act;
- (b) the power to make orders in relation to substituted service;

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- (c) the power, in proceedings under this Act, to make orders in relation to discovery, inspection and production of documents in the possession, power or custody of a party to the proceedings or of any other person;
- (d) the power, in proceedings under this Act, to direct a party to the proceedings to answer particular questions;
- (e) the power to direct the parties to proceedings under this Act to attend conferences conducted by court counsellors or welfare officers;
- (f) the power, in proceedings under this Act, to make—
 - (i) an order under section 77; or
 - (ii) an order for the payment of maintenance pending the disposal of the proceedings;
- (g) the power to make any order in proceedings under this Act (other than—
 - (i) a decree of dissolution of marriage or nullity of marriage;
 - (ii) a declaration as to the validity of a marriage or of the dissolution or annulment of a marriage; or
 - (iii) an order approving a maintenance agreement under section 87),
with the consent of all the parties to proceedings;
 - (h) the power, in proceedings under this Act, to make an order adjourning the hearing of the proceedings;
 - (j) the power under section 117 to make an order as to costs;
 - (k) the power to make orders (including an order for garnishment, seizure of property or sequestration) for the enforcement of maintenance orders;
 - (m) the power to make an order exempting a party to proceedings under this Act from compliance with a provision of the regulations or Rules of Court;
 - (n) a power of the Court prescribed by Rules of Court made for the purposes of this section.

“(2) A Registrar shall not exercise the powers referred to in paragraph (1) (f) on application by a party to proceedings under this Act unless—

- (a) the other party to the proceedings appears at the hearing of the application; or
- (b) the Registrar is satisfied that notice of the intention of the first-mentioned party to make the application has been served on the other party.

“(3) A Registrar shall not exercise the powers referred to in paragraph (1) (j) except in relation to costs of or in connection with an application heard by the Registrar.

“(4) The provisions of this Act, the regulations and the Rules of Court that relate to the exercise by the Court of a power that is, by virtue of sub-section (1), exercisable by a Registrar apply in relation to an exercise of the power by a

Registrar under this section as if references in those provisions to the Court or to a court exercising jurisdiction under this Act were references to the Registrar.

“(5) Notwithstanding any other provision of this Act and any provision of the *Public Service Act 1922* or of any other law, a Registrar is not subject to the direction or control of any person or body in relation to the manner in which he exercises powers pursuant to sub-section (1).

“(6) A party to proceedings in which a Registrar has exercised any of the powers of the Court under sub-section (1) may, within the time prescribed by the Rules of Court or within such further time as is allowed in accordance with the Rules of Court, apply to the Court to review that exercise of power.

“(7) The Court may, on application under sub-section (6) or of its own motion, review an exercise of power by a Registrar pursuant to this section and may make such order or orders as it thinks fit with respect to the matter with respect to which the power was exercised.

“(8) Where an application for the exercise of a power referred to in sub-section (1) is being heard by a Registrar and—

- (a) the Registrar considers that it is not appropriate for the application to be determined by a Registrar acting under this section; or
- (b) an application is made to the Registrar to arrange for the first-mentioned application to be determined by the Court,

the Registrar shall not hear, or continue to hear, the application and shall make appropriate arrangements for the application to be heard by the Court.

“(9) In this section, ‘Registrar’ means the Principal Registrar, a Registrar or a Deputy Registrar of the Court.

Independence of Registrars

“37B. (1) Notwithstanding any provision of this Act other than sub-section (3), and any provision of the *Public Service Act 1922* or any other law, in the performance of a function or the exercise of a power under this Act (other than a power referred to in sub-section 37A (1)), under the regulations or under the Rules of Court—

- (a) the Principal Registrar is subject to the direction and control of the Chief Judge and is not subject to the direction or control of any other person or body;
- (b) a Registrar is subject to the direction and control of—
 - (i) the Chief Judge;
 - (ii) any other Judge authorized by the Chief Judge to direct and control that Registrar; and
 - (iii) the Principal Registrar,

and is not subject to the direction or control of any other person or body; and

- (c) a Deputy Registrar is subject to the direction and control of—
- (i) the Chief Judge;
 - (ii) any other Judge authorized by the Chief Judge to direct and control that Deputy Registrar;
 - (iii) the Principal Registrar; and
 - (iv) the Registrars,
- and is not subject to the direction or control of any other person or body.

“(2) Without limiting the generality of sub-section (1), the Principal Registrar may, subject to this Act and to any directions of the Chief Judge, make arrangements as to the Registrars or Deputy Registrars who are to perform any functions or exercise any power under this Act (including any power referred to in sub-section 37A (1)), under the regulations or under the Rules of Court in particular matters or classes of matters.

“(3) The powers of the Principal Registrar in relation to the Registrars and the Deputy Registrars, and the powers of the Registrars in relation to the Deputy Registrars, shall be exercised subject to the directions of the Chief Judge.

“(4) Where the Principal Registrar, a Registrar or a Deputy Registrar (in this sub-section referred to as the ‘Registrar’) has failed to fulfil his duty as an officer within the meaning of the *Public Service Act 1922* in relation to the performance of a function or the exercise of a power under this Act (other than a power under sub-section 37A (1)), under the regulations or under the Rules of Court, he may be dealt with under Division 6 of Part III of the *Public Service Act 1922* if and only if the Chief Judge requests the person who is the Chief Officer in relation to the Registrar within the meaning of that Act so to deal with the Registrar.

“(5) In this section, ‘Registrar’ means a Registrar of the Court.”.

Repeal of section 106

74. Section 106 of the Principal Act is repealed.

75. Section 123 of the Principal Act is repealed and the following sections are substituted:

Rules of Court

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

- (a) providing for and in relation to the attendance of witnesses;

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- (b) providing for and in relation to the manner of service of process of the Family Court or another court exercising jurisdiction under this Act, and for and in relation to dispensing with such service;
- (c) providing for and in relation to the time and manner of institution of appeals in and to the Family Court;
- (d) prescribing the duties of officers of the Family Court;
- (e) making provision in relation to the exercise by officers of the Family Court of the powers conferred upon them by sub-section 37A (1) (other than in relation to the manner in which those powers are exercised by such officers) and in relation to the review by the Court pursuant to sub-section 37A (7) of exercises of those powers by such officers;
- (f) prescribing the seals and stamps to be used in the Family Court and in any other court exercising jurisdiction under this Act;
- (g) prescribing matters relating to the costs of proceedings (including solicitor and client costs and party and party costs) and the assessment or taxation of those costs;
- (h) authorizing a court to refer to an officer of the court for investigation, report and recommendation claims or applications for or relating to any matters before the court;
- (j) authorizing an officer making an investigation referred to in paragraph (h) to take evidence on oath or affirmation and to obtain and receive in evidence a report from a court counsellor or welfare officer, and enabling the summoning of witnesses before an officer making such an investigation for the purpose of giving evidence or producing books and documents;
- (k) regulating the procedure of a court upon receiving a report of an officer who has made an investigation referred to in paragraph (h);
- (m) providing for and in relation to the procedure of a court exercising its powers under section 108 to deal with a person for contempt of the court;
- (n) providing for and in relation to the making of applications for dissolution of marriage jointly by both parties to the marriage;
- (o) providing for and in relation to the appointment, by the Attorney-General, of a guardian *ad litem* for a party to proceedings under this Act;
- (p) providing for and in relation to the enforcement and execution of the decrees of the Family Court and other courts exercising jurisdiction under this Act;
- (q) providing for and in relation to—
 - (i) the forfeiture of recognizances entered into in pursuance of requirements made under this Act; and
 - (ii) the recovery of any money that may be due to the Commonwealth under such recognizances or from any person who has become a surety under this Act;

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

“(2) Sections 48, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to Rules of Court made under this section as if references in those sections of that Act to regulations were references to Rules of Court.

“(3) In this section, ‘Judge’ means—

- (a) a Judge of the Family Court of Australia; or
- (b) where the Governor-General has made an arrangement with the Governor of a State under section 112 in relation to the performance, by a Judge of the Family Court of that State, of functions under this section—that Judge.

Rules Advisory Committee

“124. (1) There shall be a Rules Advisory Committee consisting of such Judges of the Family Court of Australia, such Judges of Family Courts of States and such other persons as are appointed in accordance with this section.

“(2) The function of the Rules Advisory Committee is to provide to the Judges referred to in section 123 such advice in relation to the making of Rules of Court as is requested from time to time by those Judges.

“(3) Members of the Rules Advisory Committee shall be appointed by the Governor-General on the nomination of the Attorney-General made by him after consultation with the Chief Judge of the Family Court of Australia.

“(4) A Judge of a Family Court of a State shall not be appointed as a member of the Rules Advisory Committee unless the Governor-General has made an arrangement with the Governor of the State under section 112 in

relation to the performance, by that Judge, of functions as a member of the Rules Advisory Committee.

“(5) The members of the Rules Advisory Committee shall be paid such allowances in respect of expenses in connection with their duties as are prescribed.

“(6) A member of the Rules Advisory Committee may resign his office by writing signed by him and delivered to the Governor-General.

Regulations

“125. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular—

- (a) providing for and in relation to the service overseas, pursuant to any convention between Australia and another country, of any documents in proceedings under this Act;
- (b) providing for and in relation to the transcription of proceedings under this Act and the making available of copies of transcripts of those proceedings;
- (c) prescribing court fees to be payable in respect of proceedings under this Act;
- (d) exempting persons included in particular classes of persons from liability to pay court fees prescribed under paragraph (c);
- (e) providing for the refund of court fees prescribed under paragraph (c) that have been paid in particular circumstances;
- (f) providing for an officer of a court exercising jurisdiction under this Act, a prescribed authority of the Commonwealth, of a State or of a Territory or the person for the time being holding a prescribed office under a law of the Commonwealth, of a State or of a Territory, in his or its discretion, to institute and prosecute proceedings, on behalf of the person entitled to moneys payable under a maintenance order under Part VIII, for the purpose of enforcing payment of those moneys; and
- (g) providing for and in relation to priority as between the execution of orders made under the regulations, or under the repealed Act, for the attachment of moneys payable by the Commonwealth, a State, a Territory or the Administration of a Territory, or by an authority of the Commonwealth, of a State or of a Territory (other than moneys as to which it is provided by any law of the Commonwealth, of a State or of a Territory that they are not liable to attachment) and the execution of orders made in accordance with the *Maintenance Orders (Commonwealth Officers) Act 1966*.

“(2) Court fees payable in pursuance of regulations made under this section in respect of proceedings in a Family Court of a State are payable to the State.”.

Further amendments

76. The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 76

AMENDMENTS RELATING TO RULES OF COURT AND REGULATIONS

Provision amended	Amendment
Sub-section 4 (4)	Insert "or under the Rules of Court" after "regulations" (wherever occurring).
Section 17	Omit "The regulations", substitute "The Rules of Court".
Sub-section 31 (2)	Insert "or the Rules of Court" after "regulations".
Sub-section 34 (2)	Add at the end "by the Rules of Court".
Sub-section 37 (2)	Omit "and the regulations", substitute ", the regulations and the Rules of Court".
Sub-section 37 (3A)	Insert ", the Rules of Court" after "regulations".
Sub-section 38 (1)	Add at the end "and the Rules of Court".
Sub-section 38 (3)	Insert "or Rules of Court" after "regulations".
Paragraph 39 (5) (d)	Insert "or of paragraph 125 (1) (f) or (g) or under Rules of Court made for the purposes of paragraph 123 (1) (r)" after "111B".
Paragraph 39 (6) (d)	Insert "or of paragraph 125 (1) (f) or (g) or under Rules of Court made for the purposes of paragraph 123 (1) (r)" after "111B".
Sub-section 40 (7)	Omit "The regulations", substitute "The Rules of Court".
Sub-section 44 (1)	Insert "by the regulations or by the Rules of Court" after "prescribed".
Sub-section 44 (1B)	Omit "prescribed form", substitute "form prescribed by the Rules of Court".
Paragraph 64 (1A) (b)	Omit "the regulations", substitute "the Rules of Court".
Sub-section 67 (2)	Omit "The regulations", substitute "The Rules of Court".
Paragraph 79 (8) (a)	Omit "the regulations", substitute "the Rules of Court".
Paragraph 79A (1C) (a)	Omit "the regulations", substitute "the Rules of Court".
Paragraph 83 (1) (b)	Omit "the regulations", substitute "the Rules of Court".
Paragraph 84 (1) (a)	Omit "or under the regulations", substitute ", under the regulations or under the Rules of Court".
Sub-section 86 (1)	Insert "by the Rules of Court" after "prescribed".
Sub-section 87 (7)	Insert "by the Rules of Court" after "prescribed".
Paragraph 87 (11) (b)	Omit "the regulations", substitute "the Rules of Court".
Sub-section 94 (1A)	Omit "the regulations" (wherever occurring), substitute "the Rules of Court".
Sub-section 96 (1A)	Omit "the regulations" (wherever occurring), substitute "the Rules of Court".
Sub-section 97 (1)	Omit "and to the regulations", substitute "to the regulations and to the Rules of Court".
Section 98	Omit "The regulations", substitute "The Rules of Court".
Section 98A	Omit "The regulations" (wherever occurring), substitute "The Rules of Court".
Sub-section 105 (1)	Omit "and to the regulations", substitute ", to the regulations and to the Rules of Court".
Sub-section 108 (2)	Omit "The regulations", substitute "The Rules of Court".
Section 112	Omit "or under the regulations", substitute ", under the regulations or under the Rules of Court".

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SCHEDULE—continued

Provision amended	Amendment
Sub-section 117 (2) . . .	Insert “and the Rules of Court” after “sub-section (2A)”.
Sub-section 117B (1) . . .	Omit “the regulations”, substitute “the Rules of Court”.
Paragraph 117B (2) (a) . . .	Omit “the regulations”, substitute “the Rules of Court”.
Sub-section 117C (1) . . .	Omit “in writing”, substitute “in the form prescribed by the Rules of Court”.
Paragraph 121 (1) (a) . . .	Omit “or the regulations”, substitute “, the regulations or the Rules of Court”.

NOTE

1. No. 53, 1975, as amended. For previous amendments, see Nos. 63, 95 and 209, 1976; No. 102, 1977; No. 23, 1979; No. 2, 1982; and No. 67, 1983.