



# **Family Law Amendment Act 2005**

**No. 98, 2005**

**An Act to amend the *Family Law Act 1975* and the  
*Bankruptcy Act 1966*, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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# Family Law Amendment Act 2005

No. 98, 2005

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## **An Act to amend the *Family Law Act 1975* and the *Bankruptcy Act 1966*, and for related purposes**

[Assented to 6 July 2005]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Family Law Amendment Act 2005*.

### **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	6 July 2005
2. Schedule 1, Parts 1 to 15	The 28th day after the day on which this Act receives the Royal Assent.	3 August 2005
3. Schedule 1, Part 16	At the same time as Schedule 1 to the <i>Bankruptcy and Family Law Legislation Amendment Act 2005</i> commences.	18 September 2005
4. Schedule 1, Part 17	Immediately after the commencement of Schedule 1 to the <i>Bankruptcy and Family Law Legislation Amendment Act 2005</i> .	18 September 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### **Part 1—Parenting compliance regime**

#### *Family Law Act 1975*

##### **1 At the end of section 65F**

Add:

(4) In this section:

*proceedings for a parenting order* includes:

- (a) proceedings for the enforcement of a parenting order; and
- (b) any other proceedings in which a contravention of a parenting order is alleged.

##### **2 Subsection 65LA(3)**

Insert:

*proceedings for a parenting order* includes:

- (a) proceedings for the enforcement of a parenting order; and
- (b) any other proceedings in which a contravention of a parenting order is alleged.

##### **3 After Subdivision A of Division 13A of Part VII**

Insert:

#### **Subdivision AA—Court’s powers where contravention without reasonable excuse not established**

##### **70NEB Court’s power to vary parenting order**

- (1) The court may make an order varying a parenting order if:
  - (a) proceedings in relation to the parenting order are brought before a court having jurisdiction under this Act and it is alleged in those proceedings that a person (the *respondent*) committed a contravention of the primary order; and
  - (b) either:

**Schedule 1** Amendments

**Part 1** Parenting compliance regime

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- (i) the court is not satisfied that the respondent has committed a contravention of the parenting order; or
  - (ii) the court is satisfied that the respondent has committed a contravention of the parenting order but the respondent proves that the respondent had a reasonable excuse for the contravention.
- (2) Subsection (1) applies whether the parenting order is made before or after the commencement of this Subdivision.

**4 Application**

The amendments made by this Part apply to:

- (a) contraventions, and alleged contraventions, of parenting orders (whether occurring before, at or after the commencement of this Part); and
- (b) proceedings in which it is alleged that a person committed a contravention of a parenting order (whether those proceedings are commenced before, at or after the commencement of this Part).



## **Part 2—Costs and offers of settlement**

### *Family Law Act 1975*

#### **5 Paragraph 117(2A)(f)**

Omit “, in accordance with section 117C or otherwise,”.

#### **6 Section 117C**

Repeal the section, substitute:

#### **117C Offers of settlement**

(1) This section applies to proceedings under this Act other than the following proceedings:

- (a) proceedings under Part VI;
- (b) proceedings under Division 6, 9 or 13 of Part VII;
- (c) proceedings to enforce a decree or injunction made under Division 6, 9 or 13 of Part VII.

(2) If:

- (a) a party to proceedings to which this section applies makes an offer to the other party to the proceedings to settle the proceedings; and
- (b) the offer is made in accordance with any applicable Rules of Court;

the fact that the offer has been made, or the terms of the offer, must not be disclosed to the court in which the proceedings are being heard except for the purposes of the consideration by the court of whether it should make an order as to costs under subsection 117(2) and the terms of any such order.

(3) A judge of the court is not disqualified from sitting in the proceedings only because the fact that an offer has been made is, contrary to subsection (2), disclosed to the court.

#### **7 Application**

The amendments made by this Part apply to offers to settle proceedings that are made on or after the commencement of this Part.

## Part 3—Suspension of sentences of imprisonment

### *Family Law Act 1975*

#### **8 After subsection 70NO(4)**

Insert:

- (4A) A court that sentences a person to imprisonment under paragraph 70NJ(3)(e) may:
- (a) suspend the sentence upon the terms and conditions determined by the court; and
  - (b) terminate a suspension made under paragraph (a).

#### **9 After subsection 112AE(4)**

Insert:

- (4A) A court that sentences a person to imprisonment under paragraph 112AD(2)(d) may:
- (a) suspend the sentence upon the terms and conditions determined by the court; and
  - (b) terminate a suspension made under paragraph (a).

## **Part 4—Enforcement (removal of information procedure)**

### *Family Law Act 1975*

#### **10 Subsections 70NN(2) to (7)**

Repeal the subsections, substitute:

- (2) If the court (whether or not constituted by the judge or magistrate who made the community service order or required the bond to be entered into in accordance with section 70NM) is satisfied that the person has, without reasonable excuse, failed to comply with the order or bond, the court may take action under subsection (8).

#### **11 Subsection 70NN(10)**

Repeal the subsection.

#### **12 Subsections 112AH(2) to (7)**

Repeal the subsections, substitute:

- (2) If the court (whether or not constituted by the judge or magistrate who imposed the sentence or made the order) is satisfied that the person has, without reasonable excuse, failed to comply with:
  - (a) the sentence or order; or
  - (b) any requirements made in relation to the sentence or order by or under the applied provisions;the court may take action under subsection (8).

#### **13 Subsection 112AH(10)**

Repeal the subsection.

#### **14 Application**

The amendments made by this Part apply to failures to comply with orders, bonds or sentences that occur on or after the commencement of this Part.

## Part 5—Private arbitration

### *Family Law Act 1975*

#### 15 Subsection 4(1)

Insert:

*Part VIIIA proceedings* means proceedings in relation to a financial agreement.

#### 16 Subsection 4(1)

Insert:

*Part VIIIB proceedings* means:

- (a) proceedings in relation to a superannuation agreement (within the meaning of Part VIIIB); or
- (b) proceedings in relation to a payment split or payment flag (within the meaning of that Part); or
- (c) any other proceedings under that Part.

#### 17 Subsection 4(1)

Insert:

*section 106A proceedings* means proceedings under section 106A.

#### 18 Subsection 19E(3) (paragraph (a) of the definition of *dispute*)

Repeal the paragraph, substitute:

- (a) Part VIII proceedings, Part VIIIA proceedings, Part VIIIB proceedings or section 106A proceedings; or

## **Part 6—Change of venue**

### *Family Law Act 1975*

#### **19 After section 27**

Insert:

#### **27A Change of venue**

The Court or a Judge may, at any stage of a proceeding in the Court, direct that the proceeding or a part of the proceeding be conducted or continued at a place specified in the order, subject to such conditions (if any) as the Court or Judge imposes.

## Part 7—Definition of disposition

### *Family Law Act 1975*

#### **20 Subsection 106B(5) (definition of *disposition*)**

Repeal the definition, substitute:

*disposition* includes:

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

#### **21 Subsection 106B(5)**

Insert:

*interest*:

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

#### **22 Application**

The amendments made by this Part apply to dispositions that occur on or after the commencement of this Part.

## **Part 8—Appeals**

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

#### **23 Subsection 94(2D)**

After “Applications”, insert “of a procedural nature, including applications”.

#### **24 After paragraph 94(2D)(d)**

Insert:

- or (e) for an extension of time within which to file an application for leave to appeal; or
- (f) for security for costs in relation to an appeal; or
- (g) to reinstate an appeal dismissed under a provision of the Rules of Court; or
- (h) to adjourn the hearing of an appeal; or
- (i) to vacate the hearing date of an appeal; or
- (j) to expedite the hearing of an appeal;

#### **25 Subsection 94AAA(10)**

After “Applications”, insert “of a procedural nature, including applications”.

#### **26 After paragraph 94AAA(10)(d)**

Insert:

- or (e) for an extension of time within which to file an application for leave to appeal; or
- (f) for security for costs in relation to an appeal; or
- (g) to reinstate an appeal dismissed under a provision of the Rules of Court; or
- (h) to adjourn the hearing of an appeal; or
- (i) to vacate the hearing date of an appeal; or
- (j) to expedite the hearing of an appeal;

#### **27 After section 94AAA**

Insert:

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

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



## **Part 9—Transfer of matters from State courts of summary jurisdiction to the Federal Magistrates Court**

### *Family Law Act 1975*

#### **28 Paragraphs 46(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the court must, 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:
  - (i) the Family Court; or
  - (ii) the Supreme Court of a State or Territory; or
  - (iii) the Federal Magistrates Court; and
- (b) unless the parties consent to the court hearing and determining the proceedings—the court must transfer the proceedings to:
  - (i) the Family Court; or
  - (ii) the Supreme Court of a State or Territory; or
  - (iii) the Federal Magistrates Court.

#### **29 Subsection 46(1B)**

Repeal the subsection, substitute:

- (1B) Subject to subsection (1C), if:
  - (a) proceedings referred to in subsection (1) are instituted in a court of summary jurisdiction; and
  - (b) the parties consent to the proceedings being heard and determined by that court;a party is not entitled subsequently to object to the proceedings being so heard and determined.
- (1C) If the court subsequently gives leave to a party to object to the proceedings being so heard and determined, the court must transfer the proceedings to:

**Schedule 1** Amendments

**Part 9** Transfer of matters from State courts of summary jurisdiction to the Federal Magistrates Court

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- (a) the Family Court; or
- (b) the Supreme Court of a State or Territory; or
- (c) the Federal Magistrates Court.

**30 Subsection 46(2A)**

Repeal the subsection, substitute:

(2A) If:

- (a) proceedings for a divorce order have been instituted in or transferred to a court of summary jurisdiction; and
  - (b) the proceedings are defended;
- the court is required to transfer the proceedings to:
- (c) the Family Court; or
  - (d) the Supreme Court of a State or Territory; or
  - (e) the Federal Magistrates Court.

**31 Subsection 46(3A)**

Repeal the subsection, substitute:

- (3A) If proceedings instituted under this Act, or continued under section 9, are pending in a court of summary jurisdiction, each of the following Courts:
- (a) the Family Court;
  - (b) the Supreme Court of a State or Territory;
  - (c) the Federal Magistrates Court;
- may, on the application of a party or of its own motion, order that the proceedings be removed to that Court.

**32 Subsections 69N(2) and (3)**

Repeal the subsections, substitute:

- (2) The court must, before going on 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:
- (a) the Family Court; or
  - (b) a Family Court of a State; or
  - (c) the Supreme Court of the Northern Territory; or
  - (d) the Federal Magistrates Court.

- (3) If the parties do not consent to the court hearing and determining the proceedings, the court must transfer the proceedings to:
- (a) the Family Court; or
  - (b) a Family Court of a State; or
  - (c) the Supreme Court of the Northern Territory; or
  - (d) the Federal Magistrates Court.

### **33 Paragraph 69N(5)(b)**

Repeal the paragraph, substitute:

- (b) the court may, on its own initiative, transfer the proceedings to:
- (i) the Family Court; or
  - (ii) a Family Court of a State; or
  - (iii) the Supreme Court of the Northern Territory; or
  - (iv) the Federal Magistrates Court.

### **34 Subsection 69N(6)**

Repeal the subsection, substitute:

- (6) If the court subsequently gives leave to a party to object to the proceedings being heard and determined by the court, the court must transfer the proceedings to:
- (a) the Family Court; or
  - (b) a Family Court of a State; or
  - (c) the Supreme Court of the Northern Territory; or
  - (d) the Federal Magistrates Court.

### **35 Application**

The amendments made by this Part apply to proceedings initiated before or after the commencement of this Part.

## Part 10—Terminology relating to divorce and principal relief

### *Family Law Act 1975*

#### **36 Subsection 4(1) (definition of *decree*)**

Repeal the definition, substitute:

*decree* means decree, judgment or order and includes:

- (a) an order dismissing an application; or
- (b) a refusal to make a decree or order.

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

Insert:

*divorce* means the termination of a marriage otherwise than by the death of a party to the marriage.

Note: Annulment does not involve the termination of a marriage but simply a declaration that a purported marriage is in fact void.

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

Insert:

*divorce or validity of marriage proceedings* means:

- (a) proceedings between the parties to a marriage, or by the parties to a marriage, for:
  - (i) a divorce order in relation to the marriage; or
  - (ii) a decree of nullity of marriage; or
- (b) proceedings for a declaration as to the validity of:
  - (i) a marriage; or
  - (ii) a divorce; or
  - (iii) the annulment of a marriage;by decree or otherwise.

#### **39 Subsection 4(1) (paragraphs (d) and (e) of the definition of *marriage counselling*)**

Repeal the paragraphs, substitute:

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- (d) divorce or the annulment of a marriage; or
- (e) adjusting to divorce or the annulment of a marriage;

**40 Subsection 4(1) (paragraphs (a) and (b) of the definition of *matrimonial cause*)**

Repeal the paragraphs, substitute:

- (a) proceedings between the parties to a marriage, or by the parties to a marriage, for:
  - (i) a divorce order in relation to the marriage; or
  - (ii) a decree of nullity of marriage; or
- (b) proceedings for a declaration as to the validity of:
  - (i) a marriage; or
  - (ii) a divorce; or
  - (iii) the annulment of a marriage;by decree or otherwise; or

**41 Subsection 4(1) (subparagraph (ca)(ii) of the definition of *matrimonial cause*)**

Omit “proceedings between those parties for principal relief”, substitute “divorce or validity of marriage proceedings between those parties”.

**42 Subsection 4(1) (subparagraph (ca)(iii) of the definition of *matrimonial cause*)**

Repeal the subparagraph, substitute:

- (iii) in relation to the divorce of the parties to that marriage, the annulment of that marriage or the legal separation of the parties to that marriage, being a divorce, annulment or legal separation effected in accordance with the law of an overseas jurisdiction, where that divorce, annulment or legal separation is recognised as valid in Australia under section 104; or

**43 Subsection 4(1) (definition of *prescribed proceedings*)**

Repeal the definition, substitute:

*prescribed proceedings* means:

- (a) divorce or validity of marriage proceedings; or
- (b) proceedings in relation to concurrent, pending or completed divorce or validity of marriage proceedings.

**44 Subsection 4(2)**

Repeal the subsection, substitute:

- (2) A reference in this Act, the standard Rules of Court or the related Federal Magistrates Rules to a party to a marriage includes a reference to a person who was a party to a marriage that has been:
- (a) terminated by divorce (in Australia or elsewhere); or
  - (b) annulled (in Australia or elsewhere); or
  - (c) terminated by the death of one party to the marriage.

**45 Section 14B (paragraph (a) of the definition of *Division 2 proceedings*)**

Repeal the paragraph, substitute:

- (a) proceedings for a divorce order; or

**46 Paragraph 33A(2)(a)**

Repeal the paragraph, substitute:

- (a) proceedings for a divorce order; or

**47 Paragraph 37A(2)(a)**

Repeal the paragraph, substitute:

- (a) a divorce order in proceedings that are defended; or

**48 Paragraph 37A(2)(c)**

Repeal the paragraph, substitute:

- (c) a declaration as to the validity of:
  - (i) a marriage; or
  - (ii) a divorce; or
  - (iii) the annulment of a marriage; or

**49 Subsection 39(3)**

Omit “a decree of dissolution of marriage”, substitute “a divorce order”.

**50 Subsection 39(3)**

Omit “the decree”, substitute “the order”.

**51 Subsection 39(4)**

Omit “a decree of dissolution of marriage”, substitute “a divorce order”.

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**52 Subsection 44(1A)**

Repeal the subsection, substitute:

- (1A) Proceedings under this Act for:
- (a) a divorce order in relation to a marriage; or
  - (b) a decree of nullity of marriage;
- may be instituted by either party to the marriage or jointly by both parties to the marriage.

**53 Subsection 44(1B)**

Omit “dissolution of a marriage”, substitute “a divorce order in relation to a marriage”.

**54 Subsection 44(1C)**

Omit “dissolution of a marriage”, substitute “a divorce order in relation to a marriage”.

**55 Paragraph 44(3)(a)**

Repeal the paragraph, substitute:

- (a) a divorce order has taken effect; or

**56 Paragraph 44(3)(c)**

Repeal the paragraph, substitute:

- (c) in a case referred to in paragraph (a)—the date on which the divorce order took effect; or

**57 Paragraph 44(3A)(a)**

Repeal the paragraph, substitute:

- (a) a divorce order has taken effect or a decree of nullity of marriage has been made; and

**58 Subparagraph 44(3A)(c)(i)**

Repeal the subparagraph, substitute:

- (i) the date on which the divorce order took effect or the date of the making of the decree of nullity, as the case may be; or

**59 Paragraph 44(3B)(a)**

Repeal the paragraph, substitute:

- (a) a divorce order has taken effect or a decree of nullity of marriage has been made; and

**60 Subparagraph 44(3B)(c)(i)**

Repeal the subparagraph, substitute:

- (i) the date on which the divorce order took effect or the date of the making of the decree of nullity, as the case may be; or

**61 Section 44A**

Omit “a decree of dissolution of marriage”, substitute “a divorce order”.

Note: The heading to section 44A is altered by omitting “**decree of dissolution of marriage**” and substituting “**divorce order**”.

**62 Paragraph 46(2A)(a)**

Omit “a decree of dissolution of a marriage”, substitute “a divorce order”.

**63 Part VI (heading)**

Repeal the heading, substitute:

**Part VI—Divorce and nullity of marriage**

**64 Subsection 48(1)**

Omit “a decree of dissolution of a marriage”, substitute “a divorce order in relation to a marriage”.

Note: The heading to section 48 is replaced by the heading “**Divorce**”.

**65 Subsection 48(2)**

Omit “a decree of dissolution of the marriage”, substitute “the divorce order”.

**66 Subsection 48(2)**

Omit “dissolution of marriage”, substitute “the divorce order”.

**67 Subsection 48(3)**

Omit “decree of dissolution of marriage”, substitute “divorce order”.

**68 Subsection 50(1)**

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Omit “a decree of dissolution of marriage”, substitute “a divorce order”.

**69 Section 52**

Omit “a decree of dissolution of that marriage”, substitute “a divorce order in relation to that marriage”.

Note: The heading to section 52 is altered by omitting “**decree of dissolution**” and substituting “**divorce order**”.

**70 Section 52**

Omit “a decree of dissolution of the marriage”, substitute “a divorce order in relation to the marriage”.

**71 Section 54**

Repeal the section.

**72 Subsections 55(1) to (5)**

Repeal the subsections, substitute:

- (1) Subject to this section, a divorce order made under this Act takes effect by force of this section:
  - (a) at the expiration of a period of 1 month from the making of the order; or
  - (b) from the making of an order under section 55A; whichever is the later.
- (2) If a divorce order has been made in any proceedings, the court of first instance (whether or not it made the order), or a court in which an appeal has been instituted, may, either before or after it has disposed of the proceedings or appeal, and whether or not a previous order has been made under this subsection:
  - (a) make an order extending the period at the expiration of which the divorce order will take effect, having regard to the possibility of an appeal or further appeal; or
  - (b) make an order reducing the period at the expiration of which the divorce order will take effect if it is satisfied that there are special circumstances that justify its so doing.
- (3) If an appeal is instituted (whether or not it is the first appeal) before a divorce order has taken effect, then, notwithstanding any order in force under subsection (2) at the time of the institution of the appeal but subject to any such order made after the institution

**Schedule 1** Amendments

**Part 10** Terminology relating to divorce and principal relief

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of the appeal, the divorce order, unless reversed or rescinded, takes effect by force of this section:

- (a) at the expiration of a period of 1 month from the day on which the appeal is determined or discontinued; or
  - (b) on the day on which the divorce order would have taken effect under subsection (1) if no appeal had been instituted; whichever is the later.
- (4) A divorce order does not take effect by force of this section if either of the parties to the marriage has died.
- (5) In this section:

*appeal*, in relation to a divorce order, means:

- (a) an appeal or application for leave to appeal against, or an intervention or application for a re-hearing relating to:
  - (i) the divorce order; or
  - (ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or
- (b) an application under section 57 or 58 for rescission of the divorce order or an appeal or application for leave to appeal arising out of such an application.

Note: The heading to section 55 is altered by omitting “**decree becomes absolute**” and substituting “**divorce order takes effect**”.

**73 Subsection 55A(1)**

Omit “A decree *nisi* of dissolution of marriage does not become absolute”, substitute “A divorce order in relation to a marriage does not take effect”.

Note: The heading to section 55A is altered by omitting “**Decree absolute**” and substituting “**Divorce order**”.

**74 Subparagraph 55A(1)(b)(ii)**

Omit “the decree *nisi* should become absolute”, substitute “the divorce order should take effect”.

**75 Subsection 55A(2)**

Omit “a decree of dissolution of marriage”, substitute “a divorce order in relation to a marriage”.

**76 Subsection 55A(4)**

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Omit “the decree *nisi* of dissolution of marriage”, substitute “the divorce order”.

### **77 Subsections 56(1) and (2)**

Repeal the subsections, substitute:

- (1) If a divorce order takes effect, the Registry Manager of the court by which the order was made must prepare and file a memorandum of the fact and of the date on which the divorce order took effect.
- (2) If a divorce order has taken effect, any person is entitled, on application to the Registry Manager of the court by which the divorce order was made, to receive a certificate signed by the Registrar of that court that the divorce order has taken effect.

Note: The heading to section 56 is altered by omitting “**decree absolute**” and substituting “**divorce order**”.

### **78 Sections 57 to 59**

Repeal the sections, substitute:

#### **57 Rescission of divorce order where parties reconciled**

Despite anything contained in this Part, if a divorce order has been made in relation to a marriage, the court may, at any time before the order takes effect, upon the application of the parties to the marriage, rescind the divorce order on the ground that the parties have become reconciled.

#### **58 Rescission of divorce order on ground of miscarriage of justice**

If a divorce order has been made in proceedings but has not taken effect, the court by which the divorce order was made may, on the application of a party to the proceedings, or on the intervention of the Attorney-General, if it is satisfied that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence or any other circumstance, rescind the divorce order and, if it thinks fit, order that the proceedings be re-heard.

**59 Re-marriage**

If a divorce order under this Act in relation to a marriage has taken effect, a party to the marriage may marry again.

**79 Paragraph 60F(2)(a)**

Repeal the paragraph, substitute:

- (a) a marriage that has been terminated by divorce or annulled (in Australia or elsewhere); or

**80 Paragraph 69P(3)(d)**

Omit “the dissolution of the marriage”, substitute “the divorce of the parties”.

**81 Subparagraph 69ZH(3)(b)(ii)**

Omit “proceedings between those parties for principal relief”, substitute “divorce or validity of marriage proceedings between those parties”.

**82 Subparagraph 69ZH(3)(b)(iii)**

Repeal the subparagraph, substitute:

- (iii) in relation to the divorce of the parties to that marriage, an annulment of that marriage or a legal separation of the parties to that marriage, that is effected in accordance with the law of an overseas jurisdiction and that is recognised as valid in Australia under section 104.

**83 Paragraph 75(2)(g)**

Omit “the marriage has been dissolved”, substitute “or divorced”.

**84 Paragraphs 79(1B)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) parties to concurrent, pending or completed divorce or validity of marriage proceedings; or
- (ba) parties to a marriage who have divorced under the law of an overseas country, where that divorce is recognised as valid in Australia under section 104; or
- (bb) parties to a marriage that has been annulled under the law of an overseas country, where that annulment is recognised as valid in Australia under section 104; or

**85 Paragraphs 79(1C)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) divorce or validity of marriage proceedings are instituted by one or both of those parties; or
- (ba) the parties to the marriage have divorced under the law of an overseas country and the divorce is recognised as valid in Australia under section 104; or
- (bb) the marriage is annulled under the law of an overseas country and the annulment is recognised as valid in Australia under section 104; or

**86 Paragraph 90(2)(a)**

Omit “the dissolution or”, substitute “the termination of the marriage to which the maintenance agreement relates by divorce or the”.

**87 Paragraph 90(2)(b)**

Omit “the dissolution or”, substitute “the termination of the marriage to which the maintenance agreement relates by divorce or the”.

**88 Paragraph 90(2)(d)**

Omit “the dissolution or”, substitute “the termination of the marriage to which the maintenance agreement relates by divorce or the”.

**89 Paragraph 90(2)(e)**

Omit “the dissolution or”, substitute “the termination of the marriage to which the maintenance agreement relates by divorce or the”.

**90 Paragraph 90B(2)(a)**

Omit “the dissolution of the marriage”, substitute “divorce”.

**91 Subparagraph 90B(2)(b)(ii)**

Omit “the dissolution of the marriage”, substitute “divorce”.

**92 Subparagraph 90B(2)(b)(iii)**

Repeal the subparagraph, substitute:

- (iii) both during the marriage and after divorce.

**93 Subparagraph 90C(2)(b)(ii)**

Omit “the dissolution of the marriage”, substitute “divorce”.

**94 Subparagraph 90C(2)(b)(iii)**

Repeal the subparagraph, substitute:

(iii) both during the marriage and after divorce.

**95 Paragraph 90D(1)(a)**

Omit “a decree nisi dissolving a marriage is made”, substitute “a divorce order is made in relation to a marriage (whether it has taken effect or not)”.

Note: The heading to section 90D is altered by omitting “**dissolution of marriage**” and substituting “**divorce order is made**”.

**96 Subparagraph 90MI(a)(i)**

Omit “the decree absolute dissolving the marriage”, substitute “the divorce order that has terminated the marriage”.

**97 Subsection 90MK(2) (subparagraph (a)(i) of the definition of service time)**

Omit “the decree absolute dissolving the marriage”, substitute “the divorce order that has terminated the marriage”.

**98 Subsection 91(1A)**

Omit “a decree *nisi* has been made in any proceedings and before it has become absolute”, substitute “a divorce order has been made in any proceedings and before it has taken effect”.

**99 Subsection 92(1)**

Omit “other than proceedings for principal relief”, substitute “(other than divorce or validity of marriage proceedings)”.

**100 Subsection 92(1A)**

Omit “proceedings for principal relief”, substitute “divorce or validity of marriage proceedings”.

**101 Section 93**

Omit “a decree of dissolution of marriage after the decree has become absolute”, substitute “a divorce order after the order has taken effect”.

Note: The heading to section 93 is altered by omitting “**decree absolute**” and substituting “**divorce order takes effect**”.

**102 Paragraph 98(1)(a)**

Omit “proceedings for principal relief”, substitute “divorce or validity of marriage proceedings”.

**103 Paragraph 98(1)(b)**

Omit “other than proceedings for principal relief”, substitute “other than divorce or validity of marriage proceedings”.

**104 Subsection 98A(1)**

Omit “dissolution of marriage”, substitute “a divorce order in relation to a marriage”.

**105 Subsection 98A(2)**

Omit “dissolution of marriage”, substitute “a divorce order in relation to a marriage”.

**106 Subsection 98A(2A)**

Omit “the dissolution of marriage”, substitute “the divorce order in relation to the marriage”.

**107 Subsection 98A(4)**

Omit “dissolution of the marriage”, substitute “the divorce order in relation to the marriage”.

**108 Subsection 104(1) (definition of *applicant*)**

Omit “the dissolution or”, substitute “a divorce or the”.

**109 Subsection 104(1) (paragraph (a) of the definition of *applicant*)**

Omit “dissolution”, substitute “divorce”.

**110 Subsection 104(1) (paragraph (b) of the definition of *applicant*)**

Omit “dissolution”, substitute “divorce”.

**111 Subsection 104(1) (definition of *relevant date*)**

Omit “the dissolution or”, substitute “a divorce or the”.

**112 Subsection 104(1) (definition of *relevant date*)**

Omit “dissolution,”, substitute “divorce,”.

**113 Subsection 104(1) (definition of *respondent*)**

Omit “the dissolution or”, substitute “a divorce or the”.

**114 Subsection 104(1) (definition of *respondent*)**

Omit “dissolution,”, substitute “divorce,”.

**115 Subsection 104(3)**

Omit “A dissolution or”, substitute “A divorce or the”.

**116 Paragraph 104(3)(f)**

Omit “dissolution of marriage,”, substitute “divorce, the”.

**117 Subsection 104(4)**

Omit “A dissolution or”, substitute “A divorce or the”.

**118 Subsection 104(5)**

Omit “Any dissolution or”, substitute “Any divorce or any”.

**119 Subsection 104(7)**

Omit “a dissolution or”, substitute “a divorce or an”.

**120 Paragraph 104(7)(a)**

Omit “the dissolution” (wherever occurring), substitute “the divorce”.

**121 Paragraph 104(7)(b)**

Omit “the dissolution”, substitute “the divorce”.

**122 Subsection 104(8)**

Omit “a dissolution or”, substitute “a divorce or the”.

**123 Subsection 104(9)**

Omit “a dissolution or”, substitute “a divorce or the”.

**124 Subsection 104(9)**

Omit “the dissolution”, substitute “the divorce”.

**125 Subsection 104(10)**

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Omit “dissolutions”, substitute “divorces”.

**126 Subsection 104A(2)**

Omit “dissolution”, substitute “divorce or the”.

**127 Subsection 104A(3)**

Omit “dissolution”, substitute “divorce or the”.

**128 Paragraph 123(1)(n)**

Omit “applications for dissolution of marriage”, substitute “an application for a divorce order in relation to a marriage”.

**129 Transitional arrangements in relation to decrees nisi made before the commencement of this Part**

- (1) A decree nisi of the dissolution of a marriage under this Act that:
  - (a) was made before the commencement of this Part; and
  - (b) had become final before the commencement of this Part;has effect on and after the commencement of this Part as if it were a divorce order that had taken effect on the day on which the decree nisi became absolute.
  
- (2) A decree nisi of the dissolution of a marriage under this Act that:
  - (a) was made before the commencement of this Part; and
  - (b) had not become final before the commencement of this Part;has effect on and after the commencement of this Part as if it were a divorce order that had been made on the day on which the decree nisi was made.

## Part 11—Leave to appeal

### *Family Law Act 1975*

#### 130 Subsections 94AA(1) to (2C)

Repeal the subsections, substitute:

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

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

- (2) Despite subsection (1), an order by consent disposing of an application under this section for leave to appeal under subsection 94(1) or (1AA) (including an order for costs) may be made by:
- (a) a Full Court of the Family Court; or
  - (b) a Judge of the Appeal Division; or
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- (c) another Judge if there is no Judge of the Appeal Division available.
- (2A) Despite subsection (1), an order by consent disposing of an application under this section for leave to appeal under subsection 94AAA(1) (including an order for costs) may be made by:
  - (a) a Full Court of the Family Court; or
  - (b) a single Judge of the Family Court (who need not be a member of the Appeal Division).

### **131 Application**

The amendment made by this Part applies to applications for leave to appeal made on or after the commencement of this Part.

## **Part 12—Power to dismiss appeal**

### *Family Law Act 1975*

#### **132 After section 96**

Insert:

#### **96AA Power to dismiss appeal**

If it appears to a court hearing an appeal under this Part that the notice of the appeal does not disclose proper grounds of appeal (whether generally, or in relation to a particular ground of appeal), the court may order that the proceedings on the appeal be stayed or dismissed (either generally or in relation to that ground).

#### **133 Application**

The amendment made by this Part applies to appeals that are initiated before or after this Part commences.

## **Part 13—Appeals to High Court**

### *Family Law Act 1975*

#### **134 Section 95**

Repeal the section, substitute:

#### **95 Appeals to High Court**

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

#### **135 Application**

The amendment made by this Part applies to appeals in relation to proceedings whether initiated before or after this Part commences.

## **Part 14—Recovery of amounts paid under maintenance orders**

### *Family Law Act 1975*

#### **136 At the end of Division 7 of Part VII**

Add:

#### **Subdivision G—Recovery of amounts paid under maintenance orders**

#### **66X Recovery of amounts paid, and property transferred or settled, under maintenance orders**

- (1) This section applies if:
  - (a) a court has at any time purported to make an order (the *purported order*) of a kind referred to in paragraph 66P(1)(a), (b) or (c) requiring a person (the *maintenance provider*) to pay an amount, or to transfer or settle property, by way of maintenance for a child; and
  - (b) the maintenance provider has:
    - (i) paid another person an amount or amounts; or
    - (ii) transferred or settled property; in compliance, or partial compliance, with the purported order; and
  - (c) a court has determined that the maintenance provider is not a parent or step-parent of the child.
- (2) If the maintenance provider applies to a court having jurisdiction under this Part for an order under this subsection, the court must make such order as it considers just and equitable in the circumstances, for:
  - (a) if the purported order was of a kind referred to in paragraph 66P(1)(a) or (b)—the repayment to the maintenance provider, by the person to whom the amount or amounts referred to in subparagraph (1)(b)(i) of this section were paid, of an amount up to, or equal to, that amount or the sum of those amounts; or

- (b) if the purported order was of the kind referred to in paragraph 66P(1)(c)—the return to the maintenance provider of:
  - (i) the property referred to in subparagraph (1)(b)(ii) of this section; or
  - (ii) an amount up to, or equal to, the value of that property.

The court may only order the repayment of an amount that is less than the amount, or the sum of the amounts, referred to in subparagraph (1)(b)(i) of this section, or the return of an amount that is less than the value of the property referred to in subparagraph (1)(b)(ii) of this section, in exceptional circumstances.
- (3) If the purported order was of the kind referred to in paragraph 66P(1)(c) and the court that made the order did so:
  - (a) in part by way of providing maintenance for the child; and
  - (b) in part for some other purpose;

the reference in paragraph (2)(b) to the property, or the value of the property, referred to in subparagraph (1)(b)(ii) is taken to be a reference to that property, or the value of that property, only to the extent to which that property was transferred or settled by way of providing maintenance for the child.
- (4) Without limiting paragraph (2)(b), the orders that the court may make under that paragraph include the following:
  - (a) an order that a specified payment be made;
  - (b) an order that a specified transfer or settlement of property be made;
  - (c) an order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order.
- (5) An amount paid to the Commonwealth under section 30 of the *Child Support (Registration and Collection) Act 1988* is to be taken, for the purposes of this section, to have been paid to the person to whom, apart from that section, the amount would have been payable.

## **Part 15—Powers of judicial registrars**

### *Family Law Act 1975*

#### **137 Paragraph 26B(1A)(e)**

Omit “paragraph 70NG(1)(b)”, substitute “subsection 70NEB(1) or paragraph 70NG(1)(b) or (ba)”.



## **Part 16—Jurisdiction of Family Court of Western Australia**

### ***Bankruptcy Act 1966***

#### **138 After section 35A**

Insert:

#### **35B Family Court of Western Australia**

- (1) Sections 27, 35 and 35A apply to the Family Court of Western Australia in a corresponding way to the way in which they apply to the Family Court of Australia.
- (2) Paragraph 35A(3)(f) has effect, in relation to a proceeding transferred to the Family Court of Western Australia, as if:
  - (a) each reference in subparagraph 35A(3)(f)(ii) or (iii) to a Family Court Judge were a reference to a judge of the Family Court of Western Australia; and
  - (b) the reference in subparagraph 35A(3)(f)(iv) to a Registrar of the Family Court were a reference to a registrar of the Family Court of Western Australia.

## Part 17—Alteration of property interests

### *Family Law Act 1975*

#### **139 After subsection 79(10)**

Insert:

- (10A) Subsection (10) does not apply to a creditor of a party to the proceedings:
- (a) if the party is a bankrupt—to the extent to which the debt is a provable debt (within the meaning of the *Bankruptcy Act 1966*); or
  - (b) if the party is a debtor subject to a personal insolvency agreement—to the extent to which the debt is covered by the personal insolvency agreement.
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*[Minister's second reading speech made in—  
Senate on 16 March 2005  
House of Representatives on 22 June 2005]*

(42/05)