

Family Court Amendment Bill 2001

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in committee)

Family Court Amendment Bill 2001

A Bill for

An Act to amend the *Family Court Act 1997*, the *Administration Act 1903*, and the *Stamp Act 1921*.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Family Court Amendment Act 2001*.

5 **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. The Act amended

10 The amendments in this Act are to the *Family Court Act 1997**, unless otherwise specified.

[* *Act No. 40 of 1997.*

For subsequent amendments see 2000 Index to Legislation of Western Australia Table 1, p. 149 and Act No. 43 of 2000.]

**Part 2 — Amendments about the consequences of
failure to comply with orders and other obligations**

4. Section 5 amended

Section 5 is amended as follows:

- 5 (a) by inserting in the appropriate alphabetical position the
following definition —

“

“Child Support (Registration and Collection) Act”

10 means the *Child Support (Registration and
Collection) Act 1988* of the Commonwealth as
adopted by the *Child Support (Adoption of Laws)
Act 1990*;

”;

- 15 (b) in the definition of “family and child mediation” by
inserting after “mediation” —

“ , conducted in accordance with the regulations, ”;

- (c) in the definition of “family and child mediator” by
deleting paragraph (a) and inserting the following
paragraph instead —

20 “

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

”.

25 **5. Section 78A inserted**

After section 78 the following section is inserted —

“

**78A. Explanation by person advising or assisting in the
making of a parenting plan — FLA s. 63DA**

- 30 (1) If a person who is a family and child counsellor, a
family and child mediator or a legal practitioner gives

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advice or assistance to people in connection with the making by them of a parenting plan, the person must explain to them, in language likely to be readily understood by them —

- 5 (a) the obligations that the plan creates;
- (b) the consequences that may follow if either of them fails to comply with any of those obligations; and
- 10 (c) the availability of programs to help people who experience difficulties in complying with a parenting plan.
- (2) A court may cause to be prepared, and given to persons who are making a parenting plan, a document setting out particulars of the availability of programs to help
- 15 people who experience difficulties in complying with a parenting plan.

”.

6. Section 86A inserted

After section 86 the following section is inserted —

- 20 “
- 86A. Measures to promote the exercise of parental responsibility — FLA s. 65AA**
- (1) Measures designed, as stage 1 of a parenting compliance regime, to improve communication
- 25 between separated parents and to educate parents about their respective responsibilities in relation to their children are contained in this Division (see section 89A).
- (2) Remedial measures designed, as stage 2 of a parenting compliance regime, to enable parents to resolve issues
- 30 of conflict about parenting and to help in the negotiation of improved parenting are contained in Division 13 Subdivision 2.

- 5 (3) Further measures designed, as stage 3 of a parenting compliance regime, to ensure that, as a last resort, a parent is dealt with for deliberate disregard of an order made by a court are contained in Division 13 Subdivision 3.

”.

7. **Section 89 amended**

Section 89 is amended by inserting after subsection (2) the following subsection —

10

“

- (3) If the application for the parenting order was made as a result of the adjournment under section 205H(1)(c) of proceedings under Division 13 Subdivision 2 —
- 15 (a) the court must hear and determine the application as soon as practicable; and
- (b) if the court makes a parenting order on the application, the court may, if it thinks it is appropriate to do so, dismiss the proceedings under that Subdivision.

15

20

”.

8. **Section 89A inserted**

After section 89 the following section is inserted —

“

25 **89A. Parenting orders: stage 1 of parenting compliance regime — FLA s. 65DA**

25

- (1) This section applies when a court makes a parenting order.
- (2) It is the duty of the court to include in the order particulars of —
- 30 (a) the obligations that the order creates; and
- (b) the consequences that may follow if a person contravenes the order.

30

Family Court Amendment Bill 2001

Part 2

Amendments about the consequences of failure to comply with orders and other obligations

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- (3) If any of the persons to whom the order is directed is not represented by a legal practitioner, it is also the duty of the court to explain to the person, or to each of the persons —
- 5 (a) the availability of programs to help people to understand their responsibilities under parenting orders; and
- (b) the availability and use of location and recovery orders to ensure that parenting orders are
- 10 complied with.
- (4) The court may cause to be prepared, and given to persons to whom a parenting order is directed, a document setting out particulars of the matters mentioned in subsection (3)(a) and (b).
- 15 (5) If a person to whom the order is directed is represented by a legal practitioner, the court may request the practitioner —
- (a) to assist in explaining to the person the matters mentioned in subsection (2)(a) and (b); and
- 20 (b) to explain to the person the matters mentioned in subsection (3)(a) and (b).
- (6) If a request is made by the court to a legal practitioner under subsection (5)(a) or (b), it is the duty of the practitioner to comply with the request.
- 25 (7) Failure to comply with a requirement of, or with a request made under, this section does not affect the validity of a parenting order.
- (8) Any matter that is required by this section to be included in a parenting order or any explanation that is
- 30 required by this section to be given to a person is to be expressed in language that is likely to be readily

understood by the person to whom the order is directed
or the explanation is given.

”.

9. Section 99 amended

5 Section 99(1)(c) and (d) are amended by deleting “section 226”
in both places where it occurs and inserting instead —

“ Division 13 ”.

10. Section 103 amended

10 Section 103(1)(b) and (c) are amended by deleting
“section 226” in both places where it occurs and inserting
instead —

“ Division 13 ”.

11. Section 104 amended

15 Section 104(1)(b) and (c) are amended by deleting
“section 226” in both places where it occurs and inserting
instead —

“ Division 13 ”.

12. Division 13 inserted in Part 5

20 After Part 5 Division 12 the following Division is inserted in
Part 5 —

“

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

Subdivision 1 — Preliminary

25 **205A. Definitions — FLA s. 70NB**

In this Division —

“**appropriate post-separation parenting program**”
or “**appropriate program**”, in relation to a
person, means a post-separation parenting program

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that is available within a reasonable distance from the person's place of residence or place of work;

“community service order” has the meaning given by section 205M;

5 **“contravened an order”** has the meaning given by section 205C;

“order under this Act affecting children”, in relation to a court, means —

- (a) a parenting order;
- 10 (b) an injunction granted by a court —
 - (i) under section 235; or
 - (ii) under section 235A in so far as the injunction is for the protection of a child;
- 15 (c) an undertaking given to, and accepted by a court in proceedings under this Act that relate wholly or partly to, or to the making of, a parenting order;
- 20 (d) a subpoena issued under the rules in proceedings under this Act that relate wholly or partly to a parenting order, being a subpoena issued to a party to the proceedings;
- 25 (e) a parenting plan registered in a court under section 79;
- (f) a bond entered into —
 - (i) under a parenting order;
 - (ii) under section 205L(5)(b); or

(iii) for the purposes of section 205Q(5),
and includes an order, injunction, plan or bond
that —

5

(g) is an order under this Act affecting children
made by another court because of
paragraph (a), (b), (e) or (f); and

(h) has been registered in the first-mentioned
court;

10

“post-separation parenting program” or “program”
has the same meaning as in section 70NB of the
Family Law Act;

“primary order” has the meaning given by
section 205G or 205L;

15

“reasonable excuse for contravening an order”
includes the meanings given by section 205E.

205B. Application of Division — FLA s. 70NBA

20

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

25

**205C. Meaning of “contravened an order” —
FLA s. 70NC**

For the purposes of this Division, a person is to be
treated as having contravened an order under this Act
affecting children if, and only if —

30

(a) where the person is bound by the order, the
person has —

(i) intentionally failed to comply with the
order; or

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(ii) made no reasonable attempt to comply with the order;

or

(b) in any other case, the person has —

5

(i) intentionally prevented compliance with the order by a person who is bound by it; or

(ii) aided or abetted a contravention of the order by a person who is bound by it.

10

205D. Requirements treated as included in certain orders — FLA s. 70ND

For the purposes of this Division —

15

(a) a residence order is to be treated as including a requirement that persons act in accordance with section 96 in relation to the order;

(b) a contact order is to be treated as including a requirement that persons act in accordance with section 97 in relation to the order; and

20

(c) a specific issues order to which section 98 applies is to be treated as including a requirement that persons act in accordance with that section in relation to the order.

205E. Meaning of “reasonable excuse for contravening an order” — FLA s. 70NE

25

(1) The circumstances in which a person may be treated as having had, for the purposes of this Division, a reasonable excuse for contravening an order under this Act affecting children include, but are not limited to, the circumstances set out in subsections (2), (4), (5) and (6).

30

- (2) A person (the “**respondent**”) is to be treated as having a reasonable excuse for contravening an order under this Act affecting children if —
- 5 (a) the respondent contravened the order because, or substantially because, the respondent did not, at the time of the contravention, understand the obligations imposed by the order on the person who was bound by it; and
- 10 (b) the court is satisfied that the respondent ought to be excused in respect of the contravention.
- (3) If a court decides that a person had a reasonable excuse for contravening an order under this Act for the reason referred to in subsection (2)(a), it is the duty of the court to explain to the person, in language likely to be
- 15 readily understood by the person, the obligations imposed on the person by the order and the consequences that may follow if the person again contravenes the order.
- (4) A person (the “**respondent**”) is to be treated as having a reasonable excuse for contravening a residence order in a way that resulted in a child not living with a person in whose favour the order was made if —
- 20 (a) the respondent believed on reasonable grounds that the actions constituting the contravention were necessary to protect the health or safety of a person (including the respondent or the child); and
- 25 (b) the period during which, because of the contravention, the child did not live with the person in whose favour the order was made was not longer than was necessary to protect the health or safety of the person referred to in
- 30 paragraph (a).

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- 5
- (5) A person (the “**respondent**”) is to be treated as having a reasonable excuse for contravening a contact order in a way that resulted in a person and a child being deprived of contact they were supposed to have had under the order if —
- (a) the respondent believed on reasonable grounds that the deprivation of contact was necessary to protect the health or safety of a person (including the respondent or the child); and
- 10 (b) the deprivation of contact was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).
- (6) A person (the “**respondent**”) is to be treated as having had a reasonable excuse for contravening a specific issues order by acting contrary to section 98 if —
- 15 (a) the respondent believed on reasonable grounds that the action constituting the contravention was necessary to protect the health or safety of a person (including the respondent or the child); and
- 20 (b) the period during which, because of that action, a person in whose favour the order was made was hindered in or prevented from discharging responsibilities under the order was not for
- 25 longer than was necessary to protect the health or safety of the person referred to in paragraph (a).

**205F. Standard of proof of reasonable excuse —
FLA s. 70NEA**

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

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

205G. Application of Subdivision — FLA s. 70NF

- 5 (1) Subject to subsection (2), this Subdivision applies if —
- (a) an order under this Act affecting children (the
“**primary order**”) has been made, whether
before or after the commencement of this
Division;
 - 10 (b) a court is satisfied that a person has, whether
before or after that commencement, committed
a contravention (the “**current contravention**”)
of the primary order;
 - (c) the person does not prove that the person had a
15 reasonable excuse for the current contravention;
and
 - (d) either of the following applies —
 - 20 (i) a court has not previously determined
that the person has, without reasonable
excuse, contravened the primary order;
 - (ii) a court has previously determined that
the person has, without reasonable
25 excuse, contravened the primary order
but the court dealing with the current
contravention is satisfied that it is more
appropriate for that contravention to be
dealt with under this Subdivision,
- and, if the primary order is an order for the
30 maintenance of a child, this Subdivision applies
irrespective of the period since the current
contravention occurred.

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

205H. Powers of court — FLA s. 70NG

- 10 (1) If this Subdivision applies, a court may do any or all of the following —
- 15 (a) make an order in respect of the person who committed the current contravention, or (subject to subsection (2)) in respect of both that person and another specified person, as follows —
- 20 (i) directing the person or each person to attend before the provider of a specified appropriate post-separation parenting program so that the provider can make an initial assessment as to the suitability of the person concerned to attend such a program;
- 25 (ii) if a person so attending before a provider is assessed by the provider to be suitable to attend such a program or a part of such a program and the provider nominates a particular appropriate program for the person to attend, directing the person to attend that program or that part of that program;
- 30 (b) make a further parenting order that compensates for contact forgone as a result of the current contravention;
- (c) adjourn the proceedings to allow either or both of the parties to the primary order to apply for a

further parenting order under Part 5 Division 6 that discharges, varies or suspends the primary order or revives some or all of an earlier parenting order.

- 5 (2) In deciding whether to adjourn the proceedings as mentioned in subsection (1)(c), the court must have regard to the following —
- (a) whether the primary order was made by consent;
- 10 (b) whether either or both of the parties to the proceedings in which the primary order was made were represented in those proceedings by a legal practitioner;
- (c) the length of the period between the making of the primary order and the occurrence of the current contravention;
- 15 (d) any other matters that the court thinks relevant.
- (3) The court must not make an order under subsection (1)(a) directed to a person other than the person who committed the current contravention unless —
- 20 (a) the person brought the proceedings before the court in relation to the current contravention or is otherwise a party to those proceedings; and
- (b) the court is satisfied that it is appropriate to direct the order to the person because of the connection between the current contravention and the carrying out by the person of the person's parental responsibilities in relation to
- 25 the child or children to whom the primary order relates.
- 30 (4) If the court makes an order under subsection (1)(a) that a person is to attend before the provider of a program

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for assessment, or is to attend a program, the court must cause the provider of the program to be notified, in accordance with the rules, of the making of the order.

5 **205I. Duties of provider of program — FLA s. 70NH**

- 10 (1) The provider of a program before whom a person attends under an order made under section 205H(1)(a)(i) must inform the court, in accordance with the rules, if the person is unsuitable to attend any program.
- 15 (2) If a person is ordered to attend a program or a part of a program, the provider of the program must inform the court, in accordance with the rules, if —
- (a) the person fails to attend the program or the part of the program; or
- (b) the provider considers that the person is unsuitable to take any further part in the program or part of the program.

20 **205J. Evidence — FLA s. 70NI**

- Evidence of anything said, or of any admission made, by a person attending before the provider of a program for assessment, or attending a program, is not admissible —
- 25 (a) in a court (whether of a kind referred to in section 8(a) or (b) or otherwise); or
- (b) in any proceedings before a person authorised by a law of the Commonwealth, or of a State or Territory, or by the consent of the parties, to hear evidence.

205K. Court may make further orders in relation to attendance at program — FLA s. 70NIA

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

Subdivision 3 — Court to take action in respect of person who contravenes an order: stage 3 of parenting compliance regime**205L. Powers of court — FLA s. 70NJ**

- 10
- (1) Subject to subsection (2), this Subdivision applies if —
- 15 (a) an order under this Act affecting children (the “**primary order**”) has been made, whether before or after the commencement of this Division;
- 20 (b) a court is satisfied that a person has, whether before or after that commencement, committed a contravention (the “**current contravention**”) of the primary order;
- (c) the person does not prove that the person had a reasonable excuse for the current contravention; and
- 25 (d) either of the following applies —
- (i) a court has not previously determined that the person has, without reasonable excuse, contravened the primary order but the court dealing with the current contravention is satisfied that the person
- 30 has behaved in a way that showed a serious disregard of the person’s obligations under the primary order;

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- (ii) a court has previously determined that the person has, without reasonable excuse, contravened the primary order.
 - (2) This Subdivision does not apply if a court dealing with the current contravention is satisfied that it is more appropriate for that contravention to be dealt with under Subdivision 2.
 - (3) If this Subdivision applies, a court must make, in respect of the person who committed the current contravention, the order or orders available to be made under subsection (5) that it considers to be appropriate in the circumstances.
 - (4) This section applies whether the primary order was made, and whether the current contravention occurred, before or after the commencement of this Division.
 - (5) The orders that are available to be made by a court are —
 - (a) a community service order of a kind referred to in, and in accordance with, section 205M;
 - (b) an order requiring the person to enter into a bond in accordance with section 205O;
 - (c) if the person has contravened a parenting order, an order varying the order so contravened, subject to subsection (7);
 - (d) to fine the person —
 - (i) in the case of a natural person, not more than \$6 600; or
 - (ii) in the case of a body corporate, not more than \$33 000;
- or

- (e) subject to subsection (8), to impose a sentence of imprisonment on the person in accordance with section 205Q.
- 5 (6) If a court varies or discharges under section 205N a community service order made under subsection (5)(a), the court may give any directions as to the effect of the variation or discharge that the court considers appropriate.
- 10 (7) When making an order under subsection (5)(c) varying a parenting order, the court, in addition to regarding, under section 90, the best interests of the child as the paramount consideration, must, if any of the following considerations is relevant, take that consideration into account —
 - 15 (a) the person who contravened the parenting order did so after having attended, after having refused or failed to attend, or after having been found to be unsuitable to take any further part in, a post-separation parenting program or a part of such a program;
 - 20 (b) there was no appropriate post-separation parenting program that the person who contravened the parenting order could attend;
 - 25 (c) because of the behaviour of the person who contravened the parenting order, it was not appropriate, in the court’s opinion, for the person to attend a post-separation parenting program, or a part of such a program;
 - 30 (d) the parenting order was a compensatory parenting order made under section 205H(1)(b) after the person had contravened a previous order under this Act affecting children.
- (8) The court must not make an order imposing a sentence of imprisonment on a person under this section in

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respect of a contravention of a child maintenance order made under this Act unless the court is satisfied that the contravention was intentional or fraudulent.

- 5 (9) The court must not make an order imposing a sentence of imprisonment on a person under this section in respect of —
- (a) a contravention of an administrative assessment of child support made under the Child Support (Assessment) Act;
- 10 (b) a breach of a child support agreement made under that Act; or
- (c) a contravention of an order made by a court under Part 7 Division 4 of that Act for a departure from such an assessment (including such an order that contains matters mentioned in section 141 of that Act).
- 15
- (10) An order under this section may be expressed to take effect immediately, at the end of a specified period or on the occurrence of a specified event.
- 20 (11) When a court makes an order under this section, the court may make any other orders that the court considers necessary to ensure compliance with the order that was contravened.

25 **205M. When court is empowered to impose a community service order — FLA s. 70NK**

- (1) In this section —
“**Sentencing Act**” means the *Sentencing Act 1995*.
- (2) A community service order imposed on a person under section 205L(5)(a) can be one of the following kinds —
- 30 (a) a community based order, within the meaning of the Sentencing Act, imposed in accordance with the provisions of Part 9 of that Act;

- (b) an intensive supervision order, within the meaning of the Sentencing Act, imposed in accordance with the provisions of Part 10 of that Act.
- 5 (3) For the purposes of this Act —
- (a) a reference in Part 9 or 10 of the Sentencing Act to an offence includes a reference to the contravention of an order;
- 10 (b) a reference in Part 9 or 10 of the Sentencing Act to an offender is a reference to a person who contravened an order; and
- (c) a reference in Part 9 or 10 of the Sentencing Act to an offender's criminal behaviour is a reference to the behaviour of a person who contravened an order when contravening that order.
- 15
- (4) A person who, under the Sentencing Act —
- (a) is the chief executive officer; or
- (b) is a community corrections officer,
- 20 has, for the purposes of this Act, the same functions as the person has under Part 9 or 10 of the Sentencing Act, unless a court orders otherwise.
- (5) Where, under section 205L(5)(a), a court proposes to impose a community service order of a kind referred to in this section on a person, the court must, before doing so, explain or cause to be explained to the person, in language likely to be readily understood by the person —
- 25
- (a) the purpose and effect of the proposed community service order;
- 30 (b) the requirements, obligations and conditions applicable to that person under the proposed community service order;

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- 5
- (c) the consequences that may follow if the person fails to comply with the proposed community service order or with any requirement, obligation or condition applicable to that person under the proposed community service order; and
- (d) how the proposed community service order may be discharged or varied.
- 10 (6) If, in the application of Part 9 or 10 of the Sentencing Act for the purposes of this Act, there is any inconsistency between the provisions of the Sentencing Act and this Act, the provisions of this Act prevail.

205N. Variation and discharge of community service orders — FLA s. 70NL

15 If —

- (a) the Court makes a community service order under section 205L(5)(a) then the Court can vary or discharge the order; or
- 20 (b) a court other than the Court makes a community service order under section 205L(5)(a) then that court or the Court can vary or discharge the order.

205O. Bonds — FLA s. 70NM

- 25 (1) This section provides for bonds that a court may require a person to enter into under section 205L(5)(b).
- (2) A bond must be for a specified period of up to 2 years.
- (3) A bond may be —
- (a) with or without surety; and
- (b) with or without security.

-
- 5 (4) The conditions that may be imposed on a person by a bond include, but are not limited to, conditions of the following kinds —
- (a) a condition requiring the person to attend upon a family and child counsellor, or a welfare officer, for counselling;
- (b) a condition requiring the person to be of good behaviour.
- 10 (5) Where a court proposes to require a person to enter into a bond it must, before making the requirement, explain to the person, in language likely to be readily understood by the person —
- (a) the purpose and effect of the proposed requirement; and
- 15 (b) the consequences that may follow if the person —
- (i) fails to enter into the bond; or
- (ii) having entered into the bond, fails to act in accordance with the bond.

20 **205P. Procedure for enforcing community service orders or bonds — FLA s. 70NN**

- 25 (1) This section applies where a court (the “**court**”) makes a community service order under section 205L(5)(a) in respect of a person, or an order under paragraph 205L(5)(b) requiring a person to enter into a bond in accordance with section 205O.
- (2) Sections 62(3) and 69(4) of the *Sentencing Act 1995* do not apply for the purposes of this Act.
- 30 (3) If an information is laid before a magistrate, whether before or after the end of the period for which the community service order or the bond is to operate, or operated, alleging that the person has, without

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reasonable excuse, contravened the order or any requirement made in relation to the order, or the bond, the magistrate may —

- 5
- (a) issue a summons directing the person to appear, on a date, at a time and at a place fixed in the summons, before the court; or
 - (b) if the information is laid on oath and the magistrate thinks that proceedings against the person by summons might not be effective,
- 10

(4) If —

- (a) the person is served with a summons issued under subsection (3); and
 - (b) the person fails to attend before the court as required by the summons,
- 15

the court may, on proof of the service of the summons, issue a warrant for the arrest of the person.

(5) If —

- (a) the person is arrested under a warrant issued under subsection (3), (4) or (7); and
 - (b) the court is not sitting at the time of the arrest,
- 20

the person is to be brought before a magistrate.

(6) The magistrate may —

- (a) order that the person be released from custody upon the person entering into a bond (with or without surety or security) that the person will attend before the court on a date, at a time and at a place specified by the magistrate; or
 - (b) direct that the person be kept in custody in accordance with the warrant.
- 25
- 30

(7) If —

(a) on entering into a bond under subsection (6),
the person is released under an order made by a
magistrate under subsection (6)(a); and

5

(b) the person fails to attend before the court as
required by the bond,

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

(8) If —

10

(a) in accordance with this section, the person is
brought before the court; and

15

(b) the court (whether or not constituted by the
Judge or magistrate who made the community
service order or required the bond to be entered
into in accordance with section 205O) is
satisfied that the person has, without reasonable
excuse, failed to comply with the order or bond,

the court may take action under subsection (9).

(9) The court may —

20

(a) without prejudice to the continuance of the
community service order or the bond entered
into in accordance with section 205O, impose a
fine not exceeding \$1 100 on the person; or

25

(b) revoke the community service order or the bond
entered into in accordance with section 205O
and, subject to subsection (10), deal with the
person, for the contravention in respect of
which the community service order was made
or the bond was entered into, in any manner in
which the person could have been dealt with for
the contravention if —

30

(i) the community service order had not
been made or the bond had not been
entered into; and

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(ii) the person was before the court under section 205L in respect of the contravention.

- 5 (10) In dealing with the person as mentioned in subsection (9)(b), the court must, in addition to any other matters that it considers should be taken into account, take into account —
- (a) the fact that the community service order was made or the bond was entered into;
- 10 (b) anything done under the community service order or pursuant to the bond; and
- (c) any fine imposed, and any other order made, for or in respect of the contravention.

- 15 (11) A warrant issued under subsection (3), (4) or (7) in relation to the person authorises —
- (a) the arrest of the person;
- (b) the bringing of the person before the court as soon as practicable after the person is arrested; and
- 20 (c) the detention of the person in custody until the person is released by order of the court, or in accordance with subsection (6).

205Q. Sentences of imprisonment — FLA s. 70NO

- 25 (1) A sentence of imprisonment imposed on a person under paragraph 205L(5)(e) must be expressed to be —
- (a) for a specified period of 12 months or less; or
- (b) for a period ending when the person —
- (i) complies with the order concerned; or
- 30 (ii) has been imprisoned under the sentence for 12 months or such lesser period as is specified by the court,

whichever happens first.

- 5
- (2) A court must not sentence a person to imprisonment under section 205L(5)(e) unless the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention under any of the other paragraphs of section 205L(5).
- 10
- (3) If a court sentences a person to imprisonment under section 205L(5)(e), the court must —
- (a) state the reasons why it is satisfied as mentioned in subsection (2); and
- (b) cause those reasons to be entered in the records of the court.
- 15
- (4) The failure of a court to comply with subsection (3) does not invalidate a sentence.
- 20
- (5) A court, when sentencing a person to imprisonment under paragraph 205L(5)(e), may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a bond described in subsection (6) after the person has served a specified part of the term of imprisonment.
- 25
- (6) A bond for the purposes of subsection (5) is a bond (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.
- 30
- (7) A court that has sentenced a person to imprisonment for a period referred to in subsection (1)(b) may order the release of the person if it is satisfied that the person will, if released, comply with the order concerned.
- (8) To avoid doubt, the serving by a person of a period of imprisonment under a sentence imposed on the person under section 205L(5)(e) for failure to make a payment under a child maintenance order does not affect the person's liability to make the payment.

205R. Relationship between Subdivision and other laws — FLA s. 70NP

- (1) This section applies where an act or omission by a person —
- 5 (a) constitutes a contravention of an order under this Act affecting children; and
- (b) is also an offence under a written law (an “**offence**”).
- (2) If a person is prosecuted in respect of an offence then a court in which proceedings brought under section 205L in respect of the contravention of the order must either —
- 10 (a) adjourn those proceedings until the prosecution has been completed; or
- 15 (b) dismiss those proceedings.
- (3) A person may be prosecuted for, and convicted of, an offence.
- (4) Nothing in this section renders a person liable to be punished twice in respect of the same act or omission.

20 **205S. Subdivision does not affect enforcement of child maintenance orders etc. — FLA s. 70NR**

Nothing in this Subdivision is intended to limit the operation of section 220.

”.

25 **13. Section 220A inserted**

After section 220 the following section is inserted —

“

220A. Rules relating to enforcement — FLA s. 109A

- 30 (1) The power of the Judges, or a majority of them, under section 244 to make rules extends to making rules for

or in relation to, or for or in relation to anything
incidental to, the enforcement by a court of —

- (a) an order under this Act affecting children
(within the meaning of Part 5 Division 13);
 - 5 (b) an order under this Act (within the meaning of
section 223);
 - (c) the Child Support (Registration and Collection)
Act; or
 - (d) the Child Support (Assessment) Act.
- 10 (2) Without limiting the generality of subsection (1), the
rules may make provision for and in relation to —
- (a) requiring a person to do any one or more of the
following —
 - 15 (i) to attend before a court or Registrar and
answer questions or produce documents;
 - (ii) to deliver a document or article to, or to
a person specified by, a court or
Registrar;
 - 20 (iii) to transfer the ownership of specified
property to another person;
 - (iv) to give another person possession
(including exclusive possession) of
specified property;
 - 25 (v) to deliver a specified chattel to another
person;
 - (vi) to do, or abstain from doing, any other
act;
 - (b) prescribing the practice and procedure to be
30 followed for a hearing before a court or
Registrar for the purpose of giving effect to a
requirement made under paragraph (a)(i);

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- (c) taking any one or more of the actions mentioned in subsection (3) in respect of a person who —
- 5 (i) fails to pay the amount of a fine imposed under Part 5 Division 13 or under Part 10 Division 2;
 - (ii) fails to pay an amount payable under a bond entered into under Part 5 Division 13 or under Part 10 Division 2;
 - 10 (iii) fails to pay under section 123 an amount of maintenance for a person who is 18 or more years of age;
 - (iv) fails to pay an amount payable under a registered maintenance liability under the Child Support (Registration and Collection) Act or the Child Support (Assessment) Act; or
 - 15 (v) fails to comply with a requirement made as referred to in paragraph (a);
- 20 and
- (d) delegating to a Registrar all or any of the powers conferred on a court by rules referred to in this section.
- 25 (3) Subject to subsection (4), the actions in respect of a person the taking of which may be provided for by rules as mentioned in subsection (2)(c) are as follows —
- 30 (a) the issue of a warrant for the arrest of the person;
 - (b) the issue of a warrant of execution against property of the person;
 - (c) the making of an order authorising the taking of possession of property of the person;

- 5
- (d) the making of an order for the sequestration, and if necessary the sale, of property of the person;
 - (e) the making of an order for the attachment, by garnishment or attachment of earnings, of debts owed to the person;
 - (f) the appointment of a receiver of property of the person.
- 10
- (4) A reference in subsection (2)(c) to a failure to pay an amount is a reference to any such failure irrespective of the length of the period during which the failure has continued, and includes a reference to a failure to pay part of an amount.
- 15
- (5) In this section —
- “**property**” means real or personal property;
- “**Registrar**” means —
- (a) in relation to the Court, the Principal Registrar, a Registrar or a Deputy Registrar; and
 - (b) in relation to any other court, the clerk of petty sessions of that court.

”.

14. Section 222A inserted

After section 222 the following section is inserted in Part 9 —

25 “

222A. People not to be imprisoned for failure to comply with certain orders — FLA s.

107

- 30
- (1) A person must not be imprisoned or otherwise placed in custody because of a contravention of an order made under this Act for the payment of money.

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- (2) This section does not affect the operation of Part 5 Division 13 or the operation of Part 10 Division 2.

”.

15. Heading to Part 10 replaced

5 The heading to Part 10 is deleted and the following heading is inserted instead —

“

Part 10 — Sanctions for failure to comply with orders, and other obligations, that do not affect children

10

”.

16. Section 223 replaced

Section 223 is repealed and the following section is inserted instead —

15

“

223. Interpretation — FLA s. 112AA

In this Part —

“**maintenance order**”, in relation to a court, means an order made by a court —

20

- (a) under Part 5 Division 8 Subdivision 2; or
(b) under this Act that deals with the maintenance of a person;

“**order under this Act**”, in relation to a court, means —

25

- (a) an order (however described) made under this Act by a court (other than a parenting order);
(b) an injunction granted by a court under section 235A except in so far as the injunction is for the protection of a child;

30

- (c) an undertaking given to, and accepted by, a court in proceedings under this Act other than proceedings that relate wholly or partly to, or to the making of, a parenting order;
- 5 (d) a subpoena issued under the rules in proceedings under this Act other than a subpoena issued in, and so issued to a party to, proceedings that relate wholly or partly to, or to the making of, a parenting order;
- 10 (e) a bond —
 - (i) entered into under an order of a court under this Act other than an order under Part 5 Division 13; or
 - 15 (ii) entered into, for the purposes of section 227(5), on the direction of the court,and includes an order, injunction or bond that —
- (f) is an order under this Act made by another court because of paragraph (a), (b) or (e);
- 20 and
- (g) has been registered in the first-mentioned court in accordance with the regulations.

”.

17. Section 224 amended

25 Section 224(2) is repealed.

18. Section 225 amended

- (1) Section 225(1) is amended by deleting “this section” and inserting instead —
“ subsection (2) ”.
- 30 (2) Section 225(3), (4) and (5) are repealed.

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19. Section 226 amended

- (1) Section 226(1), (2), (3) and (4) are repealed and the following subsections are inserted instead —

“

- 5 (1) If —
- (a) a court is satisfied that a person has contravened an order under this Act; and
 - (b) the person does not prove on the balance of probabilities that the person had a reasonable
- 10 excuse for contravening the order,
- then the court may make an order for the imposing, in respect of the person, of one or more of the sanctions available to be imposed under subsection (3) that it considers to be appropriate in the circumstances.
- 15 (2) The power given to a court under subsection (1) in respect of a contravention of a maintenance order applies even if the order has been complied with before the matter of the contravention comes before the court.
- (3) The sanctions that are available to be imposed by a
- 20 court are —
- (a) to require the person to enter into a bond in accordance with section 228;
 - (b) to impose a sentence on the person, or make an order directed to the person, in accordance with
- 25 section 229;
- (c) to fine the person —
 - (i) in the case of a natural person, not more than \$6 600; or
 - (ii) in the case of a body corporate, not
- 30 more than \$33 000;

or

(d) to impose a sentence of imprisonment on the person in accordance with section 227.

5 (4) A court must not impose a sentence of imprisonment on a person under subsection (3)(d) in respect of the contravention of a maintenance order unless the court is satisfied that the contravention was intentional or fraudulent.

”.

(2) Section 226(5) is amended by deleting “or (2)”.

10 (3) Section 226(6) is amended by deleting “or (2)”.

(4) Section 226(7) is repealed.

20. Section 227 amended

(1) Section 227(1) is amended by deleting “(a)” and inserting instead —

15 “ (d) ”.

(2) Section 227(2) is amended by deleting “(a)” and inserting instead —

“ (d) ”.

(3) Section 227(3) is amended by deleting “(a)” and inserting instead —

20

“ (d) ”.

(4) Section 227(5) and (6) are repealed and the following subsections are inserted instead —

“

25 (5) A court, when sentencing a person to imprisonment under section 226(3)(d) may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a bond described in

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subsection (6) after the person has served a specified part of the term of imprisonment.

- 5 (6) A bond for the purposes of subsection (5) is a bond (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.

”.

- (5) After section 227(7) the following subsection is inserted —

“

- 10 (8) To avoid doubt, the serving by a person of a period of imprisonment under a sentence imposed on the person under section 226(3)(d) for failure to make a payment under a child maintenance order does not affect the person’s liability to make the payment.

15

”.

21. Section 228 replaced

Section 228 is repealed and the following section is inserted instead —

“

20 **228. Bonds — FLA s. 112AF**

- (1) This section provides for bonds that a court may require a person to enter into under section 226(3)(a).
- (2) A bond must for a specified period of up to 2 years.
- (3) A bond may be —
- 25 (a) with or without surety; and
- (b) with or without security.
- (4) The conditions that may be imposed on a person by a bond include a condition requiring the person to be of good behaviour.

(5) Where a court proposes to require a person to enter into a bond it must, before making the requirement, explain to the person, in language likely to be readily understood by the person —

5

(a) the purpose and effect of the proposed requirement; and

(b) the consequences that may follow if the person —

10

(i) fails to enter into the bond; or

(ii) having entered into the bond, fails to act in accordance with the bond.

”.

22. Section 229 amended

15

(1) Section 229(2) is amended by deleting “(d)” and inserting instead —

“ (b) ”.

(2) Section 229(5) is amended by deleting “(d)” and inserting instead —

“ (b) ”.

20

23. Section 230 amended

Section 230(1) is amended by deleting “(d)” and inserting instead —

“ (b) ”.

24. Section 232 amended

25

Section 232(5) is repealed.

25. Saving

The amendments effected by this Part do not affect any act or thing done by a court under Part 10 Division 2 of the *Family*

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Court Act 1997 before the commencement of this Part, and any such act or thing continues to have effect according to its terms after that commencement as if those amendments had not been made.

5 **26. Heading to Part 10 Division 3 replaced and section 233A inserted**

The heading to Part 10 Division 3 is deleted and the following heading and section are inserted —

“

10

Part 10A — Contempt of court

233A. Interpretation

In this Part —

“**contravene an order**” has the same meaning as in section 224;

15

“**maintenance order**” has the same meaning as in section 223;

“**order under this Act**” has the same meaning as in section 223.

”.

20 **27. Section 234 amended**

(1) Section 234(1) is amended by deleting “This” and inserting instead —

“ Subject to subsection (1a), this ”.

(2) After section 234(1) the following subsection is inserted —

25

“

(1a) This section does not apply to a contempt that constitutes a contravention of a maintenance order if the order has been complied with before the matter of the contravention comes before the court.

30

”.

(3) After section 234(7) the following subsection is inserted —

“

(8) To avoid doubt, the serving by a person of a period of imprisonment as a result of a contempt of a court arising out of a failure by the person to make a payment in respect of the maintenance of another person does not affect the first-mentioned person's liability to make the payment.

”.

10 **28. Section 244 amended**

Section 244(3)(n) is deleted.

Part 3 — Amendments about de facto relationships

29. Section 5 amended

- (1) Section 5 is amended by inserting in the appropriate alphabetical positions the following definitions —

5

“

(FLA s. 4(1))

“**arbitrator**” means a person who meets the prescribed requirements for an arbitrator;

(FLA s. 4(1))

10

“**Part 5A proceedings**” means proceedings under Part 5A for orders with respect to the maintenance of a de facto partner or to the property of de facto partners, but does not include any proceedings specified in the regulations for the purposes of this definition;

15

(FLA s. 4(1))

“**private arbitration**” means arbitration other than arbitration carried out as a result of an order made under section 60A;

20

”.

- (2) Section 5 is amended in the definition of “step-parent” by inserting after “married to” —

“ , or in a de facto relationship with, ”.

30. Section 8 amended

25

Section 8 is amended by inserting —

- (a) after “5” —

“ , 5A ”; and

- (b) after “10” —
“ , 10A ”.

31. Section 33 amended

Section 33(3) is amended as follows:

- 5 (a) after paragraph (c) by deleting “or”;
- (b) after paragraph (d) by deleting the comma and inserting —
“
; or
10 (e) an order setting aside a registered award under section 60E,
”.

32. Section 36 amended

- (1) After section 36(4) the following subsection is inserted —

- 15 “
 - (4a) Without limiting subsection (1), the Court has jurisdiction under Part 5A to —
 - (a) make declarations and to revoke declarations that it has made;
 - 20 (b) hear and decide all other matters under that Part,
and in particular the Court has jurisdiction to hear and decide the following —
 - (c) applications for orders with respect to property;
 - 25 (d) applications for orders for the provision of maintenance.
”.

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(2) After section 36(7) the following subsection is inserted —

“

(8) Non-federal jurisdiction conferred on the Court is exclusive of any other court except as provided under section 39 or where an appeal lies to the Supreme Court.

”.

33. Section 39 amended

Section 39 is amended by inserting after “section 37” —

“ , where applicable ”.

34. Section 43 amended

(1) Section 43(1) is repealed and the following subsection is inserted instead —

“

(1) This section applies —

(a) if —

(i) proceedings for a parenting order (other than a child maintenance order) or an order relating to the welfare of a child are instituted in a court of summary jurisdiction (“**the court**”); and

(ii) the respondent, in answer to the application by which the proceedings were instituted, seeks an order different from that sought in the application;

or

(b) if —

(i) Part 5A proceedings are instituted in, or transferred to, a court of summary jurisdiction that is of a class or

5 description prescribed in the regulations
for the purposes of this paragraph
6 (“**the court**”) in relation to property of
a total value exceeding \$300 000, or
such other amount, if any, as is
prescribed in the regulations; and
7
8 (ii) the respondent, in answer to the
application by which the proceedings
9 are instituted, seeks an order different
10 from that sought in the application.
”.

(2) After section 43(4) the following subsections are inserted —

“

- 15 (4a) A reference in subsection (1)(b) to proceedings in
respect of property does not include a reference to
proceedings with respect to arrears of maintenance.
- (4b) In determining the value of any property for the
20 purposes of subsection (1)(b), any mortgage, lien,
charge or other security over the property is to be
disregarded.

”.

35. Section 43A inserted

After section 43 the following section is inserted —

“

- 25 **43A. Transfer of proceedings from a court of summary
jurisdiction in other cases**
- (1) If proceedings are instituted in a court of summary
jurisdiction, other than a court prescribed for the
30 purposes of section 43(1)(b) (“**the court**”), in relation
to property of a total value exceeding \$20 000 and the
respondent, in answer to the application by which the

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proceedings are instituted, seeks an order different from that sought in the application —

- 5
- (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 the Court; and
- 10
- (b) unless the parties consent to the court hearing and determining the proceedings, the court must transfer the proceedings to the Court.
- (2) A reference in subsection (1) to proceedings in respect of property does not include a reference to proceedings with respect to arrears of maintenance.
- 15
- (3) In determining the value of any property for the purposes of subsection (1), any mortgage, lien, charge or other security over the property is to be disregarded.
- 20
- (4) If proceedings referred to in subsection (1) are instituted in the court and the parties consent 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 is
- 25
- to transfer the proceedings to the Court.
- (5) Where proceedings referred to in subsection (1) are before it, the court may transfer the proceedings of its own motion, notwithstanding that the parties would be
- 30
- willing for the court to hear and determine the proceedings.

- 5
- 10
- (6) Before transferring proceedings under this section, the court may make such orders as it considers necessary pending the disposal of the proceedings by the Court.
 - (7) Where proceedings are transferred or removed to a court in pursuance of this section, that court shall proceed as if the proceedings had been originally instituted in that court.
 - (8) Failure by the court to comply with this section does not invalidate any order of the court in the proceedings.
- ”.

36. Section 46 amended

- 15
- 20
- 25
- (1) Section 46 is amended by deleting “Before” and inserting instead —
“ (1) Subject to subsection (2), before ”.
 - (2) At the end of section 46 the following subsection is inserted —
“
 - (2) In addition to the orders referred to in subsection (1), a court of summary jurisdiction prescribed for the purposes of section 43(1)(b) may —
 - (a) make such interim orders under Part 5A Division 2; or
 - (b) make such interim orders, or grant such injunctions, under section 235A,as it considers necessary.
- ”.

37. Section 47 amended

Section 47 is amended in the definition of “primary dispute resolution methods” as follows:

- (a) after paragraph (b) by deleting “and”;

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(b) after paragraph (c) by deleting the full stop and inserting instead —

“

; and

5 (d) arbitration services provided by arbitrators.

”.

38. Section 48 amended

Section 48(a) is amended by inserting after “mediation” —

“ , arbitration ”.

10 **39. Division 3A inserted in Part 4**

After section 60 the following Division and Division heading is inserted —

“

Division 3A — Arbitration

15 **60A. Court may refer proceedings to arbitration —
FLA s. 19D**

(1) In any Part 5A proceedings the court may, subject to the rules, make an order referring the proceedings, or any part of them, or any matter arising in them, to an arbitrator for arbitration in accordance with the rules.

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

25 (3) Where a court makes an order under subsection (1), it may, if necessary, adjourn the proceedings and may make such additional orders as it thinks appropriate to facilitate the effective conduct of the arbitration.

(4) Where a court makes an order under subsection (1), the arbitration must be carried out by the arbitrator in accordance with the rules.

5 (5) A party to an award in an arbitration carried out as a result of an order under this section may register the award, in accordance with the regulations, in the court that made that order and the award, when so registered, has effect as if it were a decree made by that court.

60B. Private arbitration — FLA s. 19E

10 (1) A court may, on application by a party to the private arbitration of a dispute, make such orders as the court thinks appropriate to facilitate the effective conduct of the arbitration.

15 (2) A party to an award made in a private arbitration of a dispute may register the award, in accordance with the regulations, in a court and the award, when so registered, has effect as if it were a decree made by that court.

20 (3) In this section —
“dispute” means —
(a) Part 5A proceedings;
(b) any part of such proceedings;
(c) any matter arising in such proceedings; or
25 (d) a dispute about a matter with respect to which such proceedings could be instituted.

60C. Referral by arbitrator of questions of law to a court — FLA s. 19EA and 19EB

30 (1) At any time before making an award in section 60A arbitration or private arbitration, the arbitrator may refer for determination by a court a question of law arising in relation to the arbitration.

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- 5
- (2) The arbitrator may do so —
- (a) on the arbitrator's own initiative; or
 - (b) at the request of one or more of the parties to the arbitration if the arbitrator considers it appropriate to do so.
- (3) The arbitrator must not make an award in the arbitration before a court has either —
- (a) determined the question of law; or
 - (b) remitted the matter to the arbitrator having found that no question of law arises.
- 10

60D. Review of awards by a court — FLA s. 19F and 19FA

- 15
- (1) A party to a registered award made in section 60A arbitration or private arbitration may apply to a court for review of the award on questions of law.
- (2) On a review of an award under this section, a court may —
- (a) determine all questions of law arising in relation to the arbitration; and
 - (b) make such decrees as it thinks appropriate, including a decree affirming, reversing or varying the award.
- 20

60E. Setting aside awards — courts — FLA s. 19G and 19GA

- 25
- If an award made in section 60A arbitration or private arbitration, or an agreement made as a result of such arbitration, is registered in a court, a court may make a decree affirming, reversing or varying the award or agreement if it is satisfied that —
- (a) the award or agreement was obtained by fraud (including non-disclosure of a material matter);
- 30

- 5
- (b) the award or agreement is void, voidable or unenforceable;
 - (c) in the circumstances that have arisen since the award or agreement was made it is impracticable for some or all of it to be carried out; or
 - (d) the arbitration was affected by bias, or there was a lack of procedural fairness in the way in which the arbitration process, as agreed between the parties and the arbitrator, was conducted.
- 10

60F. Fees for arbitration — FLA s. 19H

- 15
- (1) An arbitrator conducting section 60A arbitration or private arbitration may charge the parties to the arbitration fees for conducting it.
 - (2) The arbitrator must give written information about those fees to the parties before the arbitration starts.

Division 4 — Miscellaneous

20 **40. Section 61 amended**

- (1) Section 61(1)(a) is amended by inserting after “mediation” —
“ or arbitration ”.
- (2) Section 61(2) is amended by inserting after “mediation” —
“ and arbitration ”.

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41. Section 62A inserted

After section 62 the following section is inserted —

“

62A. Oath or affirmation by arbitrator — FLA s. 19L

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An arbitrator must, before performing any function under this Act of an arbitrator, make before a person authorised to take affidavits in this State, an oath or affirmation in accordance with the prescribed form.

”.

10 **42. Section 63 amended**

Section 63 is amended as follows:

(a) by inserting after “mediator” in the first place where it occurs —

“ and an arbitrator ”;

15

(b) by inserting after “mediator” in the second place where it occurs —

“ or arbitrator ”.

43. Heading to Part 4 Division 4 deleted

The Heading to Part 4 Division 4 is deleted.

20 **44. Section 65 amended**

After section 65(2) the following subsection is inserted —

“

(3) An arbitrator may, in accordance with any relevant regulations, advertise at the Court’s registry the arbitration services the arbitrator provides.

25

”.

45. Section 124 amended

Section 124(3)(b) is amended by inserting after “to” —
“ , or de facto relationship with, ”.

46. Section 160 amended

5 Section 160(1) is amended as follows:

- (a) after paragraph (c) by deleting “or”;
- (b) after paragraph (d) by deleting the full stop and inserting —

10 “
; or
(e) an arbitrator.

”.

47. Part 5A inserted

After Part 5 the following Part is inserted —

15 “
Part 5A — De facto relationships
Division 1 — Introductory

205T. Interpretation

In this Part —

20 “**child**”, of a de facto relationship, includes —

- (a) a biological child of both of the de facto partners born before the commencement of the de facto relationship;
 - (b) a child adopted since the commencement of the de facto relationship by the de facto partners or by either of them with the consent of the other; or
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(c) a child of a de facto partner whose de facto partner is presumed or proved to be the other parent of the child under a Commonwealth, State or Territory law,

5 and includes a child of a de facto relationship that has ended;

(FLA s. 4(1))

10 **“financial agreement”** means a financial agreement within the meaning of section 205ZN, 205ZO or 205ZP;

(FLA s. 4(1))

“financial matters”, in relation to de facto partners, means matters with respect to —

15 (a) the maintenance of one of the de facto partners;

(b) the property of those partners or either of them; or

(c) the maintenance of children of the de facto partners;

20 **“former financial agreement”** means an agreement made before the commencement of this Part between de facto partners with respect to any of the matters mentioned in sections 205ZN(2)(a) or (b), 205ZO(2)(a) or (b) or 205ZP(2)(a) or (b), or matters incidental or ancillary to those matters;

(FLA s. 4(1))

30 **“income tested pension, allowance or benefit”** means a pension, allowance or benefit prescribed, or included in a class of pensions, allowances or benefits prescribed, for the purposes of this definition;

(FLA s. 4(1))

“property”, in relation to de facto partners, or either of them, means property to which those parties are, or that party is, as the case may be, entitled, whether in possession or reversion.

5 **205U. Application of Part generally**

- (1) This Part applies to de facto relationships.
- (2) However, this Part does not apply to a de facto relationship that ended before the commencement of this Part.
- 10 (3) This Part does not authorise anything that would otherwise be unlawful.

205V. Right to certain civil proceedings limited

15 A de facto partner who is, or was, eligible to apply for an order with respect to property under Division 2 may not apply to the Supreme Court in its equitable jurisdiction for relief in respect of that property.

Division 2 — Property adjustment orders and maintenance orders

Subdivision 1 — Introductory

20 **205W. This Division does not apply to certain matters covered by binding financial agreements or former financial agreements — FLA s. 71A**

- (1) This Division does not apply to —
 - 25 (a) financial matters to which a financial agreement that is binding on the parties to the agreement applies; or
 - (b) financial resources to which a financial agreement that is binding on the parties to the agreement applies.

- (2) This Division does not apply to —
- (a) financial matters to which a former financial agreement that is binding on the parties to the agreement applies; or
 - (b) financial resources to which a former financial agreement that is binding on the parties to the agreement applies.

205X. People to whom this Part applies — connection with WA

Despite section 36(5), before making an order under this Division a court must be satisfied —

- (a) that one or both of the parties to the application were resident in Western Australia on the day on which the application was made; and
- (b) that —
 - (i) both parties have resided in Western Australia for at least one third of the duration of their de facto relationship; or
 - (ii) substantial contributions of the kind referred to in section 205ZG(4)(a), (b) or (c) have been made in the State by the applicant.

205Y. Court not otherwise limited by connection with WA referred to in section 205X

Where a court is satisfied as to the matters specified in section 205X(a) and (b), it may make an order under this Division by reason of facts and circumstances even if those facts and circumstances, or some of them, took place before the day on which the application was made or outside the State.

205Z. Where court may make order under this Division

- (1) A court may make an order in relation to a de facto relationship only if satisfied —
- (a) there has been a de facto relationship between the partners for at least 2 years;
 - (b) there is a child of the de facto relationship who has not yet attained the age of 18 years and failure to make the order would result in serious injustice to the partner caring or responsible for the child; or
 - (c) the de facto partner who applies for the order made substantial contributions of a kind mentioned in section 205ZG(4)(a), (b) or (c) and failure to make the order would result in serious injustice to the partner.
- (2) In deciding whether there has been a de facto relationship between the partners for at least 2 years, the court must consider whether there was any break in the continuity of the relationship and, if so, the length of the break and the extent of the breakdown in the relationship.
- (3) Subsection (2) does not limit the matters the court may consider.

205ZA. Declaration of interests in property — FLA s. 78

- (1) In a proceeding between de facto partners with respect to existing title or rights in respect of property, a court may declare the title or rights, if any, that a partner has in respect of the property.
- (2) Where a court makes a declaration under subsection (1), it may make consequential orders to give effect to the declaration, including orders as to

sale or partition and interim or permanent orders as to possession.

- (3) A declaration or order under this section is binding on the de facto partners but not on anyone else.

5 **Subdivision 2 — Alteration of property interests, and maintenance**

205ZB. Applications, and notifications to spouses

- 10 (1) A de facto partner whose de facto relationship has ended may apply for an order under this Division in relation to the relationship only if the application is made within one year (“**the application period**”) after the relationship ended.
- 15 (2) However, the court may grant a de facto partner leave to apply after the application period if satisfied that hardship would be caused to a de facto partner if leave were not granted.
- 20 (3) If a de facto partner who is a party to an application under this Division has a spouse, that person is to give that spouse notification of the application in accordance with the rules.

205ZC. Right of de facto partner to maintenance — FLA s. 72

25 A de facto partner is liable to maintain the other de facto partner, to the extent that the first-mentioned partner is reasonably able to do so, if, and only if, that other party is unable to support herself or himself adequately whether —

- 30 (a) by reason of having the care and control of a child of the de facto relationship who has not attained the age of 18 years;

- (b) by reason of age or physical or mental incapacity for appropriate gainful employment; or
- (c) for any other adequate reason,

5 having regard to any relevant matter referred to in section 205ZD.

205ZD. Maintenance orders — FLA s. 75

- (1) A court may make such order as it considers proper for the maintenance of a de facto partner.
- 10 (2) In exercising jurisdiction under this section, the court must take into account only the matters referred to in subsection (3).
- (3) The matters to be taken into account are —
 - 15 (a) the age and state of health of each of the de facto partners;
 - (b) the income, property and financial resources of each of the de facto partners and the physical and mental capacity of each of them for appropriate gainful employment;
 - 20 (c) whether either de facto partner has the care or control of a child of the de facto relationship who has not attained the age of 18 years;
 - (d) commitments of each of the de facto partners that are necessary to enable the partner to support —
 - 25 (i) himself or herself; and
 - (ii) a child or another person that the party has a duty to maintain;
 - 30 (e) the responsibilities of either party to support any other person;

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- (f) subject to subsection (4), the eligibility of either party for a pension, allowance or benefit under —
 - (i) any law of the Commonwealth, of a State or Territory or of another country; or
 - (ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia,and the rate of any such pension, allowance or benefit being paid to either party;
 - (g) a standard of living that in all the circumstances is reasonable;
 - (h) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;
 - (i) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;
 - (j) the duration of the de facto relationship and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;
 - (k) the need to protect a party who wishes to continue that party's role as a parent;

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- (l) if either party is cohabiting with another person, the financial circumstances relating to the cohabitation;
 - (m) the terms of any order made or proposed to be made under section 205ZG in relation to the property of the parties;
 - (n) any child support under the Child Support (Assessment) Act that a de facto partner has provided, is to provide, or might be liable to provide in the future, for a child of the de facto relationship;
 - (o) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; and
 - (p) the terms of any financial agreement or former financial agreement that is binding on the parties.
- (4) In exercising its jurisdiction under this section, a court must disregard any entitlement of the de facto partner whose maintenance is under consideration to an income tested pension, allowance or benefit.

**205ZE. Urgent de facto partner maintenance cases —
FLA s. 77**

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Where, in proceedings with respect to the maintenance of a de facto partner, it appears to the court that the partner is in immediate need of financial assistance, but it is not practicable in the circumstances to determine immediately what order, if any, should be made, the court may order the payment, pending the disposal of the proceedings, of such periodic sum or other sums as the court considers reasonable.

205ZF. Specifications in orders of payments etc. for de facto maintenance purposes — FLA s. 77A

(1) Where —

- 5
- (a) a court makes an order under this Act (whether or not the order is made in proceedings in relation to the maintenance of a de facto partner, is made by consent or varies an earlier order), and the order has the effect of requiring —
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- (i) payment of a lump sum, whether in one amount or by instalments; or
- (ii) the transfer or settlement of property;
- and
- (b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a de facto partner,
- 15

the court must —

- 20
- (c) express the order to be an order to which this section applies; and
- (d) specify the portion of the payment, or the value of the portion of the property, attributable to the provision of maintenance for the partner.

(2) Where —

- 25
- (a) a court makes an order of a kind referred to in subsection (1)(a); and
- (b) the order —
- (i) is not expressed to be an order to which this section applies; or
- 30
- (ii) is expressed to be an order to which this section applies, but does not comply with subsection (1)(d),

5 any payment, transfer or settlement of a kind referred
to in subsection (1)(a), that the order has the effect of
requiring, is to be taken not to make provision for the
maintenance of a de facto partner to the relevant
de facto relationship.

205ZG. Alteration of property interests — FLA s. 79

- 10 (1) In proceedings with respect to the property of de facto
partners, or either of them, the court may make such
order as it considers appropriate altering the interests of
the parties in the property, including an order for a
settlement of property in substitution for any interest in
the property and including an order requiring either or
both of the partners to make, for the benefit of either or
both of the partners or a child of the de facto
15 relationship, such settlement or transfer of property as
the court determines.
- 20 (2) An order made under subsection (1) in proceedings
with respect to the property of de facto partners, or
either of them may, after the death of a partner to the
proceedings, be enforced on behalf of, or against, as
the case may be, the estate of the deceased party.
- 25 (3) The court must not make an order under this section
unless it is satisfied that, in all the circumstances, it is
just and equitable to make the order.
- 30 (4) In considering what order (if any) should be made
under this section in proceedings with respect to any
property of de facto partners, or either of them, the
court must take into account —
(a) the financial contribution made directly or
indirectly by or on behalf of a de facto partner
to the de facto relationship or a child of the
de facto relationship to the acquisition,
conservation or improvement of any of the

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- 5 property of the de facto partners, 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 de facto partners or either of them;
- 10 (b) the contribution (other than a financial
contribution) made directly or indirectly by or
on behalf of a de facto partner or a child of the
de facto relationship to the acquisition,
conservation or improvement of any of the
property of the de facto partners 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 de facto partners or either of them;
- 15 (c) the contribution made by a de facto partner to
the welfare of the family constituted by the
de facto partners and any children of the
de facto partners, including any contribution
made in the capacity of homemaker or parent;
- 20 (d) the effect of any proposed order upon the
earning capacity of either de facto partner;
- 25 (e) the matters referred to in section 205ZD(3) so
far as they are relevant;
- (f) any other order made under this Act affecting a
de facto partner or a child of the de facto
relationship; and
- 30 (g) any child support under the Child Support
(Assessment) Act that a de facto partner has
provided, is to provide, or might be liable to
provide in the future, for a child of the de facto
relationship.

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

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(a) that there is likely to be a significant change in the financial circumstances of the de facto partners, 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

10

(b) that an order that the court could make with respect to the property of the de facto partners, or either of them if that significant change in financial circumstances occurs is more likely to do justice as between the de facto partners than an order that the court could make immediately with respect to the property of the de facto partners, or either of them,

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

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(6) Where a court proposes to adjourn proceedings as provided by subsection (5), the court may, before so adjourning the proceedings, make such interim order or orders or such other order or orders (if any) as it considers appropriate with respect to any of the property of the de facto partners or of either of them.

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(7) The court may, in forming an opinion for the purposes of subsection (5) as to whether there is likely to be a significant change in the financial circumstances of

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either or both of the de facto partners, have regard to any change in the financial circumstances of a de facto partner that may occur by reason that the partner —

5

(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

10

(b) may become entitled to property as the result of the exercise in his or her favour, by the trustee of a discretionary trust, of a power to distribute trust property,

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but nothing in this subsection is to 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 de facto partner.

(8) Where, before proceedings with respect to the property of de facto partners, or either of them are completed, either party to the proceedings dies —

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(a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable rules may make provision in relation to the substitution of the legal personal representative as a party to the proceedings;

25

(b) if the court is of the opinion —

30

(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 de facto partners, 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.

- 5 (9) A court must not make an order under this section in proceedings with respect to the property of de facto partners, 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 —
 - 10 (a) the parties to the proceedings have attended a conference in relation to the matter to which the proceedings relate with the Principal Registrar, a Registrar or a Deputy Registrar;
 - 15 (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
 - 20 (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).

**205ZH. Setting aside of orders altering property interests —
FLA s. 79A**

- 25 (1) Where, on application by a person affected by an order made by a court under section 205ZG in proceedings with respect to the property of de facto partners, or either of them, the court is satisfied that —
 - 30 (a) there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence (including failure to disclose relevant information), the giving of false evidence or any other circumstance;

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- (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;
- 5 (c) a person has defaulted in carrying out an obligation imposed on the person by the order and, in the circumstances that have arisen as a result of that default, it is just and equitable to vary the order or to set the order aside and
- 10 make another order in substitution for the order; or
- (d) in the circumstances that have arisen since the making of the order, being circumstances of an exceptional nature relating to the care, welfare
- 15 and development of a child of the de facto relationship, the child or, where the applicant has caring responsibility for the child (within the meaning of subsection (3)), the applicant, will suffer hardship if the court does not vary
- 20 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 considers appropriate, make
- 25 another order under section 205ZG in substitution for the order so set aside.
- (2) A court may, on application by a person affected by an order made by a court under section 205ZG in
- 30 proceedings with respect to the property of de facto partners, 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 considers appropriate, make another order under section 205ZG in substitution for the order so set aside.

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- (3) For the purposes of subsection (1)(d), a person has caring responsibility for a child if —
 - (a) the person is a parent of the child with whom the child lives;
 - (b) the person has a residence order in relation to the child; or
 - (c) the person has a specific issues order in relation to the child under which the person is responsible for the child’s long-term or day-to-day care, welfare and development.
 - (4) An order varied or made under subsection (1) or (2) 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.
 - (5) Where, before proceedings under this section in relation to an order made under section 205ZG 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 rules 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 subsection (1) or (2) in relation to the order if the deceased party had not died; and
 - (ii) that it is still appropriate to exercise its powers under subsection (1) or (2) in relation to the order,

the court may vary the order, set the order aside, or set the order aside and make another order under section 205ZG in substitution for the order so set aside; and

- 5 (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.
- 10 (6) In the exercise of its powers under subsection (1), (2) or (5), a court is to have regard to the interests of, and shall make any order proper for the protection of, a bona fide purchaser or other person interested.

205ZI. General powers of court — FLA s. 80

- 15 (1) The court, in exercising its powers under this Division, may do any or all of the following —
- (a) order payment of a lump sum, whether in one amount or by instalments;
- (b) order payment of a weekly, monthly, yearly or other periodic sum;
- 20 (c) order that a specified transfer or settlement of property be made by way of maintenance for a de facto partner;
- (d) order that payment of any sum ordered to be paid be wholly or partly secured in such
- 25 manner as the court directs;
- (e) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out
- 30 effectively or to provide security for the due performance of an order;
- (f) appoint or remove trustees;

- 5 (g) order that payments be made direct to a de facto partner, to a trustee to be appointed or into court or to a public authority for the benefit of the de facto partner;
- (h) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for a life or during joint lives or until further order;
- 10 (i) impose terms and conditions;
- (j) make an order by consent;
- (k) make any other order (whether or not of the same nature as those mentioned in the preceding paragraphs), which it thinks it is necessary to make to do justice;
- 15 (l) subject to this Act and the rules, make an order under this Division at any time.
- (2) The making of an order of a kind referred to in subsection (1)(c), or of any other order under this Division, in relation to the maintenance of a de facto partner does not prevent a court from making a subsequent order in relation to the maintenance of the partner.
- 20
- (3) The rules may make provision with respect to the making of orders under this Division in relation to the maintenance of de facto partners (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.
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30 **205ZJ. Duty of court to end financial relations of de facto partners — FLA s. 81**

In considering what order to make in a proceeding under this Division, other than under section 205ZA, a court must, as far as practicable, make such orders as

will finally determine the financial relationships between de facto partners who are no longer in a de facto relationship and avoid further proceedings between them.

5 **205ZK. Cessation of de facto maintenance orders —**
 FLA s. 82

- 10 (1) An order with respect to the maintenance of a de facto partner ceases to have effect upon the death of the partner or the person liable to make payments under the order.
- (2) Nothing in this section affects the recovery of arrears due under an order at the time when the order ceased to have effect.
- 15 (3) An order with respect to the maintenance of a de facto partner ceases to have effect on the marriage of the person unless in special circumstances a court otherwise orders.
- (4) Where a marriage referred to in subsection (3) takes place, it is the duty of the person for whose benefit the order was made to inform without delay the person liable to make payments under the order of the date of the marriage.
- 20 (5) Any money paid in respect of a period after the event referred to in subsection (3) may be recovered in a court.
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205ZL. Modification of de facto maintenance orders —
 FLA s. 83

- 30 (1) In proceedings with respect to the maintenance of a de facto partner, if there is in force an order with respect to the maintenance of that person by the

de facto partner of that person made by a court, the court may, by order —

- (a) discharge the order if there is any just cause for so doing;
 - 5 (b) suspend its operation wholly or in part and either until further order or until a fixed time or the happening of a future event;
 - (c) revive wholly or in part an order suspended under paragraph (b); or
 - 10 (d) subject to subsection (2), vary the order —
 - (i) so as to increase or decrease any amount ordered to be paid; or
 - (ii) in any other manner.
- (2) A court must not make an order increasing or
- 15 decreasing an amount ordered to be paid by an order unless it is satisfied —
- (a) that, since the order was made or last varied —
 - 20 (i) the circumstances of a person for whose benefit the order was made have so changed;
 - (ii) the circumstances of the person liable to make payments under the order have so changed; or
 - 25 (iii) in the case of an order that operates in favour of, or is binding on, a legal personal representative, the circumstances of the estate are such, as to justify doing so;
 - 30 (b) that, since the order was made, or last varied, the cost of living has changed to such an extent as to justify its so doing (this is expanded on in subsections (3) and (4));

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- (c) in a case where the order was made by consent, that the amount ordered to be paid is not proper or adequate (this is expanded on in subsection (5)); or
- 5 (d) that material facts were withheld from the court that made the order or from a court that varied the order or material evidence previously given before such a court was false.
- 10 (3) In satisfying itself for the purposes of subsection (2)(b), a court must have regard to any changes that have occurred in the Consumer Price Index published by the Australian Statistician.
- 15 (4) A court must not, in considering the variation of an order, have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or was last varied having regard to a change in the cost of living.
- 20 (5) In satisfying itself for the purposes of subsection (2)(c), a court must have regard to any payments, and any transfer or settlement of property, previously made by a de facto partner to —
- (a) the other de facto partner; or
- (b) any other person for the benefit of the other de facto partner.
- 25 (6) An order decreasing the amount of a periodic sum payable under an order or discharging an order may be expressed to be retrospective to such date as the court considers appropriate.
- 30 (7) Where, as provided by subsection (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.

- 5 (8) Where, as provided by subsection (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.
- 10 (9) For the purposes of this section, the court must have regard to sections 205ZC and 205ZD.
- (10) The discharge of an order does not affect the recovery of arrears due under the order at the time as at which the discharge takes effect.

Division 3 — Financial agreements

15 **205ZM. Definition — FLA s. 90A**

In this Division —

“**dealt with**” includes the meaning given by section 205ZR(2).

20 **205ZN. Financial agreements before beginning a de facto relationship — FLA s. 90B**

- (1) If —
- 25 (a) people who are contemplating entering into a de facto relationship with each other make a written agreement with respect to any of the matters mentioned in subsection (2);
- 30 (b) at the time of the making of the agreement, no other agreement (whether made under this section or section 205ZO or 205ZP) is in force between the parties with respect to any of those matters; and

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- (c) the agreement is expressed to be made under this section,

the agreement is a financial agreement.

- (2) The matters referred to in subsection (1)(a) are the following —

- (a) how, in the event of the breakdown of the de facto relationship, all or any of the property or financial resources of either or both of them at the time when the agreement is made, or at a later time and before the breakdown of the relationship, is to be dealt with;
- (b) the maintenance of either of them —
 - (i) during the de facto relationship;
 - (ii) after the de facto relationship has ended; or
 - (iii) both during the defacto relationship and after the de facto relationship has ended.

- (3) A financial agreement made as mentioned in subsection (1) may contain matters incidental or ancillary to those mentioned in subsection (2).

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

205ZO. Financial agreements during de facto relationship — FLA s. 90C

- (1) If —
 - (a) de facto partners in a de facto relationship make a written agreement with respect to any of the matters mentioned in subsection (2);

- 5
- (b) at the time of the making of the agreement, no other agreement (whether made under this section or section 205ZN or 205ZP) is in force between the partners with respect to any of those matters; and
 - (c) the agreement is expressed to be made under this section,

the agreement is a financial agreement.

- 10
- (2) The matters referred to in subsection (1)(a) are the following —
- 15
- (a) how, in the event of the breakdown of the de facto relationship, all or any of the property or financial resources of either or both of them at the time when the agreement is made, or at a later time and during the de facto relationship, is to be dealt with;
 - (b) the maintenance of either of them —
 - (i) during the de facto relationship;
 - (ii) after the de facto relationship has ended; or
 - (iii) both during the de facto relationship and after the de facto relationship has ended.
- 20
- (3) A financial agreement made as mentioned in subsection (1) may contain matters incidental or ancillary to those mentioned in subsection (2).
- 25
- (4) A financial agreement made as mentioned in subsection (1) may terminate a previous financial agreement made as mentioned in that subsection, a financial agreement made as mentioned in section 205ZN(1), or a former financial agreement, between the same parties.
- 30

205ZP. Financial agreements after de facto relationship ends — FLA s. 90D

(1) If —

5

(a) after a de facto relationship is ended, the parties to the former de facto relationship make a written agreement with respect to any of the matters mentioned in subsection (2);

10

(b) at the time of the making of the agreement, no other agreement (whether made under this section or section 205ZN or 205ZO) is in force between the parties with respect to any of those matters; and

15

(c) the agreement is expressed to be made under this section,

the agreement is a financial agreement.

(2) The matters referred to in subsection (1)(a) are the following —

20

(a) how all or any of the property or financial resources that either or both of them had or acquired during the former de facto relationship is to be dealt with;

(b) the maintenance of either of them.

25

(3) A financial agreement made as mentioned in subsection (1) may contain matters incidental or ancillary to those mentioned in subsection (2).

30

(4) A financial agreement made as mentioned in subsection (1) may terminate a previous financial agreement made as mentioned in that subsection, a financial agreement made as mentioned in section 205ZN(1) or 205ZO(1), or a former financial agreement, between the same parties.

205ZQ. Requirements with respect to provisions in financial agreements relating to the maintenance of a de facto partner or a child or children — FLA s. 90E

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

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

205ZR. Certain provisions in agreements — FLA s. 90F

15 (1) No provision of a financial agreement (other than a financial agreement made under section 205ZN or 205ZO in the event of the breakdown of a de facto relationship) excludes or limits the power of a court to make an order in relation to the maintenance of a de facto partner if the court is satisfied that, when the agreement was made, the circumstances of the de facto partner were such that, taking into account the terms and effect of the agreement, the partner would have been unable to support himself or herself without an income tested pension, allowance or benefit.

25 (2) To avoid doubt, a provision in an agreement made as mentioned in section 205ZO(1) or 205ZP(1) that provides for property or financial resources owned by a party to the agreement to continue in the ownership of that party is taken, for the purposes of that section, to be a provision with respect to how the property or
30 financial resources are to be dealt with.

205ZS. When financial agreements and former financial agreements are binding — FLA s. 90G

(1) A financial agreement is binding on the parties to the agreement if, and only if —

- 5
- (a) the agreement is signed by both parties;
- (b) the agreement contains, in relation to each party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, as certified in an annexure to the agreement, with independent legal advice from a legal practitioner as to the following matters —
- 10
- (i) the effect of the agreement on the rights of that party;
- (ii) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement;
- 15
- (iii) whether or not, at that time, it was prudent for that party to make the agreement; and
- (iv) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable;
- 20
- (c) the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided;
- 25
- (d) the agreement has not been terminated and has not been set aside by a court; and
- 30

- (e) after the agreement is signed, the original agreement is given to one of the parties and a copy is given to the other.
- 5 (2) A former financial agreement is binding on the parties to the agreement if, and only if —
- (a) the agreement is signed by both parties; and
- (b) the agreement has not been terminated and has not been set aside by a court.
- 10 (3) A court may make such orders for the enforcement of a financial agreement, or a former financial agreement, that is binding on the parties to the agreement as it thinks necessary.

205ZT. Effect of death of party to financial agreement — FLA s. 90H

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

20 **205ZU. Termination of financial agreement and former financial agreement — FLA s. 90J**

- (1) The parties to a financial agreement or a former financial agreement may terminate the agreement only by —
- 25 (a) including a provision to that effect in another financial agreement as mentioned in section 205ZN(4), 205ZO(4) or 205ZP(4); or
- (b) making a written agreement (a “**termination agreement**”) to that effect.

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

- (e) after the agreement is signed, the original agreement is given to one of the parties and a copy is given to the other.

- (3) A court may, on an application by a person who was a party to the financial agreement, or the former financial agreement, that has been terminated, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that agreement and any other interested persons.

205ZV. Circumstances in which court may set aside a financial agreement, termination agreement or former financial agreement — FLA s. 90K

- (1) A court may make an order setting aside a financial agreement, a termination agreement or a former financial agreement if, and only if, the court is satisfied that —
 - (a) the agreement was obtained by fraud (including non-disclosure of a material matter);
 - (b) the agreement is void, voidable or unenforceable;
 - (c) in the circumstances that have arisen since the agreement was made it is impracticable for the agreement or a part of the agreement to be carried out;
 - (d) since the making of the agreement, a material change in circumstances has occurred (being circumstances relating to the care, welfare and development of a child of the de facto relationship) and, as a result of the change, the child or, if the applicant has caring responsibility for the child (within the meaning

of subsection (2)), a party to the agreement will suffer hardship if the court does not set the agreement aside; or

5 (e) in respect of the making of a financial agreement or former financial agreement, a party to the agreement engaged in conduct that was, in all the circumstances, unconscionable.

(2) For the purposes of subsection (1)(d), a person has caring responsibility for a child if —

10 (a) the person is a parent of the child with whom the child lives;

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

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

205ZW. Validity, enforceability and effect of financial agreements, termination agreements and former financial agreements — FLA s. 90KA

20

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

25

30 (a) subject to paragraph (b), has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the Supreme Court has, may grant and is required to have in proceedings in connection with

contracts or purported contracts, being proceedings in which the Supreme Court has original jurisdiction;

- 5 (b) has power to make an order for the payment, by a party to the agreement to another party to the agreement, of interest on an amount payable under the agreement, from the time when the amount became or becomes due and payable, at a rate not exceeding the rate prescribed by the rules; and
- 10 (c) in addition to, or instead of, making an order or orders under paragraph (a) or (b), may order that the agreement, or a specified part of the agreement, be enforced as if it were an order of the court.
- 15

”.

48. Section 235A inserted

After section 235 the following section is inserted —

“

20 **235A. Injunctions relating to de facto relationships — FLA s. 114**

- 25 (1) A person may institute proceedings in a court for an injunction in relation to a matter arising out of a de facto relationship and the court hearing the proceedings may make an order or grant an injunction as it considers proper with respect to the proceedings, including —
- (a) an injunction for the personal protection of a de facto partner;
- 30 (b) an injunction restraining a de facto partner from entering or remaining in —
- (i) the home previously shared by the de facto partners;

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- (ii) a de facto partner's principal place of residence;
- (iii) a place of residence or work of a de facto partner; or
- 5 (iv) a specified area that contains a place of a kind referred to in this paragraph;
- (c) an injunction in relation to the property of a de facto partner; or
- (d) an injunction relating to the use or occupancy
- 10 of the home previously shared by the de facto partner.
- (2) In any proceedings under this Act (other than proceedings to which subsection (1) applies) the court hearing the proceedings may grant an injunction with
- 15 respect to a matter to which the proceedings relate, by interlocutory order or otherwise, in any case in which it appears to the court to be just or convenient to do so.
- (3) An injunction or order under this section may be
- 20 granted unconditionally or on such terms and conditions as a court considers appropriate.

”.

49. Section 236 amended

- (1) Section 236(1)(a) is amended by inserting after “235” —
“ or 235A ”.
- 25 (2) Section 236(2) is amended by inserting after “235” —
“ or 235A ”.

50. Section 244 amended

Section 244(3) is amended as follows:

- (a) in paragraph (t) by inserting after “mediators” —
“ and arbitrators ”;
- 5 (b) in paragraph (u) by inserting after “mediation” —
“ or arbitration or orders under section 60B ”;
- (c) in paragraph (v) by inserting after “mediated” —
“ or arbitrated ”;
- (d) in paragraph (w) by —
10 (i) inserting after “mediator” —
“ or arbitrator ”; and
(ii) inserting after “mediating” —
“ or arbitrating ”;
- (e) in paragraph (x) by —
15 (i) inserting after “mediators” —
“ or arbitrators ”; and
(ii) inserting after “mediating” —
“ or arbitrating ”;
- (f) in paragraph (y) by inserting after “mediation” —
20 “ or arbitration ”;
- (g) in paragraph (z) by —
(i) inserting after “mediation” —
“ and arbitration ”; and
(ii) inserting after “mediators” —
25 “ and arbitrators ”;
- (h) at the end of paragraph (z) by deleting “and”;

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(i) after paragraph (z) by inserting —

“

(zaa) the registration of awards under sections 60A or 60B;

5

(zab) the time and manner of making applications for review of registered awards under section 60D or for orders setting aside registered awards under section 60E; and

”.

10 **51. Section 245 amended**

(1) After section 245(2)(b) the following paragraphs are inserted —

“

15

(ba) the requirements to be complied with by a person who is, or wishes to become, an arbitrator;

(bb) anything in respect of which rules may be made under section 244(3)(t), (u), (v), (w), (x), (y) or (z);

”.

20

(2) Section 245(2)(d) is amended by deleting “community mediator or a private” and inserting instead —

“ family and child ”.

(3) Section 245(4) is amended by inserting after “and” —

“ , subject to subsection (5), ”.

25

(4) After section 245(4) the following subsection is inserted —

“

(5) A penalty provided for contravention of a regulation made for the purposes of subsection (2)(d) is not to exceed \$1 100.

30

”.

52. Consequential and related amendments — Schedule 1

Schedule 1 has effect.

Part 4 — Other amendments

53. Section 44 amended

(1) Section 44 is amended by inserting before “Without” the subsection designation “(1)”.

5 (2) At the end of section 44 the following subsection is inserted —
“

(2) A transfer under subsection (1) may be made on the application of any party to the proceedings.

”.

10 **54. Section 79 amended**

(1) Section 79(2)(b) is amended as follows:

(a) after subparagraph (i) by deleting “or”;

(b) after subparagraph (ii) by deleting the full stop and inserting —

15 “

; or

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

20

”.

(2) After section 79(2) the following subsection is inserted —

“

25 (2a) A reference in subsection (2)(b)(i), (ii) and (iii) to the plan does not include a reference to any child maintenance provisions.

”.

55. Section 88 amended

After section 88(b) the following paragraph is inserted —

“ (ba) a grandparent of the child; ”.

56. Section 113 amended

5 Section 113 is amended after paragraph (d) by deleting “and”
and inserting —

“

(da) deals with varying the maintenance of certain
children (Subdivision 5A); and

10

”.

57. Section 118 amended

Section 118(1) is amended after paragraph (b) by deleting “or”
and inserting —

“ (ba) a grandparent of the child; or ”.

15 **58. Section 123 amended**

After section 123(1) the following subsection is inserted —

“

(1a) The court may make a child maintenance order referred
to in subsection (1), in relation to a child who is
20 17 years of age, to take effect when or after the child
attains the age of 18 years.

20

”.

59. Section 128 amended

(1) Section 128(1)(b) is amended by deleting “applies” and
25 inserting instead —

“ or persons (each of whom could do that) apply ”.

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(2) After section 128(1) the following subsections are inserted —

“

(1a) With the consent of all the parties to the first order, a court may make an order —

- 5 (a) discharging the first order;
- (b) suspending its operation wholly or in part and either until further order or until a fixed time or the happening of a future event;
- 10 (c) if the operation of the order has been suspended under paragraph (b) or subsection (2)(b), reviving its operation wholly or in part; or
- (d) varying the order —
- 15 (i) so as to increase or decrease any amount ordered to be paid by the order; or
- (ii) in any other way.

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

20

”.

(3) Section 128(2) is amended as follows:

- (a) by deleting “A” and inserting instead —
- 25 “ In any other case, a ”;
- (b) in paragraph (c) by inserting after “(b)” —
- “ or subsection (1a)(b) ”.

60. **Subdivision 5A inserted in Part 5 Division 7**

After section 128 the following Subdivision is inserted —

“

Subdivision 5A — Varying the maintenance of certain children

5

**128A. Varying the maintenance of certain children —
FLA s. 66SA**

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

10

15

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

20

- (2) The persons may, by registering a written agreement in a court, vary or revoke the original agreement or order to the extent that it deals with maintenance of the child.

25

- (3) However, the registered agreement is of no effect to the extent that it allows any entitlement of a child or another person to an income tested pension, allowance or benefit to affect the duty of that child’s parents to maintain the child.

30

- (4) If the original agreement or order is varied under subsection (2), it —
- (a) continues to operate despite the death of a party to the agreement or of a person entitled to

s. 61

receive, or required to pay, maintenance under the order; and

(b) operates in favour of, and is binding on, the legal representative of that party or person,

5 unless the agreement or order provides otherwise.

(5) However, despite anything in the agreement or order, it does not continue to operate, to the extent that it requires the periodic payment of maintenance, after the death of the person entitled to receive those payments.

10 (6) This section applies despite anything in Division 4.

”.

61. Section 131A inserted and transitional

(1) After section 131 the following section is inserted —

“

15 **131A. Children who are 18 or over: change of circumstances — FLA s. 66VA**

(1) A child maintenance order made under section 123 —

(a) to enable the child to complete the child’s education; or

20 (b) because of a mental or physical disability of the child,

stops being in force if the child ceases that education or ceases to have that disability.

25 (2) The person to whom the maintenance is payable must, as soon as practicable, inform the person required to pay it of that change in circumstances.

(3) Any amounts of maintenance paid under the child maintenance order after it stops being in force may be recovered in a court.

30

”.

- (2) The amendment effected by subsection (1) does not apply in relation to child maintenance orders made before the commencement of this section.

62. Section 132 replaced and transitional

- 5 (1) Section 132 is repealed and the following section is inserted instead —

“

132. Recovery of arrears — FLA s. 66W

- 10 (1) Nothing in section 123(3), or in this Subdivision (apart from subsection (2)), affects the recovery of arrears due under a child maintenance order in relation to a child when the order ceases to be in force.
- (2) If arrears are due under such an order when the order ceases to be in force, the court may, by order,
- 15 retrospectively —
- (a) discharge the order if there is just cause for doing so; or
- (b) vary the order so as to increase or decrease the arrears to be paid under the order if the court is
- 20 satisfied that —
- (i) the circumstances of the person liable to pay the arrears are such as to justify the variation;
- (ii) the circumstances of the person entitled to receive the arrears are such as to
- 25 justify the variation; or
- (iii) in the case of an order that operated in favour of, or that was binding on, a legal personal representative, the
- 30 circumstances of the estate are such as to justify the variation.

”.

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- (2) The amendment made by subsection (1), applies in relation to arrears that are outstanding on or after the commencement of this section.

63. Section 144 amended

5 Section 144 is amended after paragraph (c) by deleting “or” and inserting instead —

“ (ca) a grandparent of the child; or ”.

64. Section 149 amended

10 Section 149(g) is amended by deleting “the arrest, without warrant, of a” and inserting instead —

“ or directing a person to arrest, without warrant, a ”.

65. Section 152 amended

15 Section 152 is amended after paragraph (c) by deleting “or” and inserting instead —

“ (ca) a grandparent of the child; or ”.

66. Section 155 amended

- (1) Section 155 is amended by inserting before “A” the subsection designation “(1)”.

- (2) At the end of section 155 the following subsection is inserted —

20 “
(2) To avoid doubt, unless a recovery order specifically provides to the contrary, each term of the order continues to have effect until the end of the period for which it remains in force regardless of whether
25 anything has previously been done in accordance with the order.

”.

67. Section 214A inserted

After section 214 the following section is inserted —

“

5 **214A. Children swearing affidavits, being called as witnesses or being present in court — FLA s. 100B**

(1) A child, other than a child who is or is seeking to become a party to proceedings, must not swear an affidavit for the purposes of proceedings, unless a court makes an order allowing the child to do so.

10 (2) A child must not be called as a witness in, or be present during, proceedings in a court, unless a court makes an order allowing the child to be called as a witness or to be present (as the case may be).

15 (3) In this section —
“**child**” means a child under 18 years of age.

”.

68. Section 219A inserted

After section 219 the following section is inserted in Part 9 —

“

20 **219A. Maintenance orders — more than 12 months old — FLA s. 106**

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

”.

s. 69

69. Section 236 amended

(1) Section 236(1)(b) is amended by deleting “or molesting” and inserting instead —

“ , molesting or stalking ”.

5 (2) Section 236(6) is repealed and the following subsection is inserted instead —

“

(6) In this section —

10 **“holding period”**, in relation to a person’s arrest, means the period starting when the person is arrested and ending at the close of business on the next day that is not a Saturday, Sunday or public holiday.

”.

15 **70. Section 240 amended**

After section 240(2) the following subsection is inserted —

“

20 (2a) If a party files a copy of an offer and, before any notice of withdrawal is filed, the party to whom the offer is made files a notice that the offer has been accepted, the proceedings end (so far as they concern the party who accepted the offer) when the court makes an order giving effect to the terms of that offer.

”.

25 **71. Section 243 amended**

(1) Section 243 is amended in subsections (1) and (2) by deleting “or television” in both places where it occurs and inserting instead —

“ , television or other electronic means ”.

(2) Section 243(3) is amended in paragraphs (b) and (c) by inserting after “televised account” in both places where it occurs —

“ or an account by other electronic means ”.

(3) Section 243(7) is amended by deleting “Attorney General” and inserting instead —

“

Director of Public Prosecutions appointed under section 5 of the *Director of Public Prosecutions Act 1991*

”.

(4) Section 243(8) is amended as follows:

(a) by inserting after paragraph (d) the following paragraph —

“

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

”;

(b) after paragraph (f)(i) by deleting “or”;

(c) after paragraph (f)(ii) by deleting the full stop and inserting —

“

; or

(iii) to a natural person who is a party to any proceedings under this Act, in connection with the conduct of those proceedings.

”.

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(5) Section 243(9) is amended as follows:

(a) in the definition of “court” —

(i) in paragraph (a) by inserting after “Act” —
“ , the regulations ”; and

5 (ii) in paragraph (b) by deleting the full stop and
inserting a semicolon;

(b) after the definition of “court” by inserting —

“

“**electronic means**” includes —

10 (a) in the form of data, text or images by means
of guided and, or, unguided electromagnetic
energy; or

(b) in the form of speech by means of guided
and, or, unguided electromagnetic energy,
15 where the speech is processed at its
destination by an automated voice
recognition system.

”.

72. Section 243A inserted

20 After section 243 the following section is inserted —

“

**243A. Use of reasonable force in arresting persons —
FLA s. 122AA**

25 A person who is authorised or directed by a provision
of this Act or by a warrant issued under a provision of
this Act, to arrest another person may use such
reasonable force as is necessary to make the arrest or to
prevent the escape of that person after the arrest.

”.

73. Section 245 amended

After section 245(4) the following subsection is inserted —

“

- 5 (5) To the extent of any inconsistency between regulations made under this Act and rules made under this Act, the regulations prevail.

”.

74. References to “recognizance” changed to “bond”

- 10 (1) The provisions referred to in the Table to this subsection are amended by deleting “recognizance” in each place where it occurs and inserting instead —

“ bond ”.

Table

Section 103(2)(a)	Section 230(6) and (7)
Section 105(1)(b)	Section 244(3)(p)
Section 156(3)(b) and (c)	
Section 174 paragraph (v) of the definition of “Division 10 contact order”	

- 15 (2) Section 244(3)(o) is amended by deleting “recognizances” and inserting instead —

“ bonds ”.

75. Certain penalties increased

20 The provisions referred to in column 1 of the Table to this section are amended by deleting the amount specified in column 2 and inserting instead the amount specified in column 3.

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Provision amended	Table Amount deleted	Amount inserted
Section 109(2)	\$6 000	\$6 600
Section 110(2)	\$6 000	\$6 600
Section 148(1)	\$12 000	\$13 200
Section 156(3)(a)	\$1 000	\$1 100
Section 230(9)	\$1 000	\$1 100
Section 243(1), in paragraph (a) of the penalty provision	\$10 000	\$11 000
Section 243(1), in paragraph (b) of the penalty provision	\$5 000	\$5 500
Section 243(2), in paragraph (a) of the penalty provision	\$10 000	\$11 000
Section 243(2), in paragraph (b) of the penalty provision	\$5 000	\$5 500
Section 243(6), in paragraph (a) of the penalty provision	\$5 000	\$5 500
Section 243(6), in paragraph (b) of the penalty provision	\$2 500	\$2 750
Section 244(5)	\$5 000	\$5 500
Section 245(4)	\$5 000	\$5 500

Schedule 1 — Consequential and related amendments

[s. 52]

1. Administration Act 1903 amended

(1) The amendments in this clause are to the *Administration Act 1903**.

5 [* Reprinted as at 1 July 1999.]

(2) Section 13(1) is amended by deleting “section 14” and inserting instead —

“ sections 14 and 15 ”.

10 (3) Section 14(1) is amended by deleting “Where” and inserting instead —

“ Subject to this section and section 15, where ”.

(4) Section 14(6) is repealed and the following subsection is inserted instead —

15 “ (6) If —

(a) a surviving husband or wife of the intestate is not entitled to the whole of the intestate property in accordance with this section and section 15; and

20 (b) there is an interest within the meaning of clause 1(1)(b) of the Fourth Schedule,

then that Schedule applies with respect to that interest.

”.

(5) After section 14 the following section is inserted —

25 “ **15. De facto partners and distribution on intestacy**

(1) If the intestate dies leaving a de facto partner but no husband or wife, then where the de facto partner and the intestate lived as de facto partners for a period of at least 2 years immediately before the death of the intestate, the de facto partner shall be entitled, in accordance with

30

Schedule 1 Consequential and related amendments

section 14, to the intestate property to which a husband or wife of the intestate would have been entitled, had the intestate died leaving a husband or wife.

- 5 (2) If the intestate dies leaving a husband or wife and a de facto partner, then where —
- (a) the de facto partner and the intestate lived as de facto partners for a period of at least 2 years immediately before the death of the intestate; and
 - 10 (b) the intestate did not, during the whole or any part of that period, live as the husband or wife of the person to whom he or she was married,

the de facto partner shall be entitled, to one-half of the intestate property to which the husband or wife would have been entitled in accordance with section 14 but for this subsection and the husband or wife shall be entitled to the other half of that property.

- 15 (3) If the intestate dies leaving a husband or wife and a de facto partner, then where —
- 20 (a) the de facto partner and the intestate lived as de facto partners for a period of at least 5 years immediately before the death of the intestate; and
 - (b) the intestate did not, during the whole or any part of that period, live as the husband or wife of the person to whom he or she was married,

25 the de facto partner shall be entitled, in accordance with section 14, to the intestate property to which the husband or wife would have been entitled but for this subsection.

- 30 (4) Where under this section a de facto partner is entitled to intestate property and the intestate dies leaving more than one de facto partner so entitled, those de facto partners are entitled to that property in equal shares.
- (5) Where under this section a de facto partner is entitled to intestate property, then for the purposes of section 14 and the Fourth Schedule, the de facto partner is to be taken to be a husband or wife, as is applicable, and all references to a
- 35

husband or wife in those provisions are to be construed accordingly.

(6) In this section —

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“**the intestate**” and “**the intestate property**” have means the same respective meanings as they have in section 14.

(7) The amendments made to this Act by the *Family Court Amendment Act 2002* do not apply to or in respect of the estate of a person who died intestate as to all or any of the person’s property before the commencement of that Act, and the estate of such a person is to be distributed as if that Act had not been passed.

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”.

(6) Section 139(1)(a) is amended by deleting “person;” and inserting instead —

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“

person or a person who was living as a de facto partner of the deceased person immediately before the deceased person’s death;

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”.

(7) The heading to the Fourth Schedule is amended by deleting “of surviving spouse of intestate as respects the matrimonial home” and inserting instead —

“ **in respect of dwelling houses** ”.

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(8) Clause 1(1)(a) of the Fourth Schedule is deleted.

(9) Clause 1(1)(c) of the Fourth Schedule is amended by deleting “the Table” and inserting instead —

“ sections 14 and 15 ”.

2. Stamp Act 1921 amended

(1) The amendments in this clause are to the *Stamp Act 1921**.

[* *Reprinted as at 22 October 1999.*
For subsequent amendments see 2000 Index to Legislation of
5 *Western Australia Table 1, p. 423-4 and Act Nos. 3, 4, 10 and 12*
of 2001.]

(2) Section 112UA(1) is amended by inserting in the appropriate
alphabetical position the following definition —

“

10 **“de facto relationship”** means a de facto relationship which
 the Commissioner is satisfied comes within section
 205Z(1)(a), (b) or (c) of the *Family Court Act 1997*;

”.

(3) Section 112UB(1) is repealed and the following subsections are
15 inserted instead —

“

(1) Sections 112UC and 112UD do not apply to or in relation
to —

(a) an order; or

20 (b) a maintenance agreement between parties who are
 married to each other or have been married to each
 other,

 or in relation to an instrument of conveyance or transfer of
 property pursuant to such an order or agreement unless the
25 parties referred to in the order or the agreement are
 separated or divorced from each other.

(1a) Sections 112UC and 112UD do not apply to or in relation
to —

30 (a) an order under Part 5A of the *Family Court*
 Act 1997; or

(b) a maintenance agreement between de facto partners,

 or in relation to an instrument of conveyance or transfer of
 property pursuant to such an order or agreement unless the
35 de facto relationship between the de facto partners that are
 referred to in the order or agreement has ended.

”.

(4) After section 112UB(2) the following subsection is inserted —

“

(3) A statement in a maintenance agreement to the effect that —

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- (a) the parties to a marriage are separated or divorced from each other; or
- (b) the de facto relationship between de facto partners has ended,

is conclusive evidence of the fact stated, in the absence of evidence to the contrary.

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