

1974

(TWENTY-NINTH PARLIAMENT)

MEMORANDUM SHOWING THE DIFFERENCES BETWEEN THE FAMILY LAW BILL 1974 AS INTRODUCED IN THE SENATE ON 1 AUGUST 1974 AND THAT BILL AS IT WOULD APPEAR IF THE AMENDMENTS TO BE MOVED BY THE ATTORNEY-GENERAL WERE INCORPORATED IN IT

(Circulated by the Attorney-General)

The words printed in italics are words that would not appear in the Family Law Bill 1974 if it were amended as proposed by the Attorney-General.

The words printed in black type are words that do not appear in the Family Law Bill 1974 at present but would appear in it if the amendments to be moved by the Attorney-General were incorporated in the Bill.

A BILL

FOR

AN ACT

No. 43

Relating to Marriage and to Divorce and Matrimonial Causes and, in relation thereto Parental Rights and the Custody and Guardianship of Infants, and certain other Matters.

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

PART I—PRELIMINARY

- 1. This Act may be cited as the Family Law Act 1974. Short title.
- 2. This Act shall come into operation on a date to be fixed by Proclamation. Commencement.
- 3. (1) The Matrimonial Causes Act 1959, the Matrimonial Causes Act 1965 and the Matrimonial Causes Act 1966 are repealed. Repeal and saving.
- (2) Notwithstanding the repeal effected by sub-section (1)—
 - (a) the validity of a decree made before the commencement of the Matrimonial Causes Act 1959 by virtue of the Imperial Act entitled the Matrimonial Causes (War Marriages) Act, 1949 or Part I of

the Matrimonial Causes (War Marriages) Act 1947 of New Zealand and in force immediately before the commencement of this Act shall continue to be recognized in all courts in Australia;

(b) a decree of the Supreme Court of a State or Territory made before the commencement of the Matrimonial Causes Act 1959 in the exercise of jurisdiction invested or conferred by the Matrimonial Causes Act 1945, or that Act as amended by the Matrimonial Causes Act 1955, and in force immediately before the commencement of this Act shall continue to have effect throughout Australia; and

(c) a decree of the Supreme Court, or of a court of summary jurisdiction, of a State or Territory—

(i) made before the commencement of this Act in the exercise of jurisdiction invested or conferred by the repealed Act, or in a matrimonial cause or proceedings for a separation order instituted under the law of that State or Territory being a decree that was in force immediately before the commencement of this Act; or

(ii) made after the commencement of this Act in proceedings to which sub-section 9 (1) applied,

shall have, or continue to have, effect throughout Australia, and, except in the case of—

(iii) a decree of nullity of marriage made on the ground that the marriage was voidable;

(iv) a decree of judicial separation;

(v) a decree of restitution of conjugal rights;

(vi) a decree of jactitation of marriage; or

(vii) a separation order,

this Act applies to and in relation to the decree as if the decree had been made under this Act.

(3) For the purposes of paragraph (2) (c), a purported decree to which section 5 of the Matrimonial Causes Act 1971 applies made in a State shall be deemed to be a decree of the Supreme Court of that State made in the exercise of jurisdiction invested by the repealed Act.

4. (1) In this Act, unless the contrary intention appears—

“adopted”, in relation to a child, means adopted under the law of any place (whether in or out of Australia) relating to the adoption of children;

“appeal” includes an application for a re-hearing;

“applicant” includes a cross-applicant and, in relation to proceedings for dissolution of marriage instituted before the commencement of this Act, includes a petitioner or cross-petitioner;

Inter-
pretation.

“approved”, in relation to a marriage counselling organization, means approved by the Attorney-General in pursuance of section 12;

“Australia” includes Norfolk Island;

“court”, in relation to any proceedings, means the court exercising jurisdiction in those proceedings by virtue of this Act;

“court of summary jurisdiction” includes a Family Court of a State or Territory, not being a court that may be constituted by a Judge of the Supreme Court of a State or Territory;

“decree” means decree, judgment or order, and includes a decree nisi and an order dismissing an application or refusing to make a decree or order;

“Family Court” means the Family Court of Australia;

“financial matters”, in relation to the parties to a marriage, means matters with respect to—

(a) the maintenance of one of the parties;

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

(c) the maintenance of children of the marriage;

“financial or custodial proceedings” means proceedings (being, unless the context otherwise requires, proceedings under this Act) of a kind referred to in paragraph (c), (d) or (e) of the definition of “matrimonial cause” in this sub-section;

“made”, in relation to a decree, being a judgment, means given, and “make” has a corresponding meaning;

“maintenance agreement” means an agreement in writing made, whether before or after the commencement of this Act, between the parties to a marriage, being an agreement that makes provision with respect to financial matters, whether or not there are other parties to the agreement and whether or not it also makes provision with respect to other matters, and includes such an agreement that varies an earlier maintenance agreement;

“marriage counsellor” means—

(aa) a person appointed as a counsellor under section 17s;

(a) a person authorized by an approved marriage counselling organization to offer marriage counselling on behalf of the organization; or

(b) a person authorized under the regulations to offer marriage counselling;

“matrimonial cause” means—

(a) proceedings between the parties to a marriage for a decree of—

(i) dissolution of marriage; or

(ii) nullity of marriage;

- (b) proceedings for a declaration as to the validity of a marriage or of the dissolution or annulment of a marriage by decree or otherwise;
- (c) proceedings with respect to—
- (i) the maintenance of one of *those parties* **the parties to a marriage**;
 - (ii) the property of *those parties* **the parties to a marriage** or of either of them;
or
 - (iii) the custody, guardianship or maintenance of, or access to, *children of the marriage* **a child of a marriage**;
- (d) proceedings between the parties to a marriage for the approval by a court of a maintenance agreement or for the revocation of such an approval or for the registration of a maintenance agreement;
- (e) proceedings for an order or injunction in circumstances arising out of *the* a marital relationship;
or
- (f) any other proceedings (including proceedings with respect to the enforcement of a decree or the service of process) in relation to concurrent, pending or completed proceedings of a kind referred to in any of paragraphs (a) to (e), including proceedings of such a kind pending at, or completed before, the commencement of this Act;

“ordinarily resident” includes habitually resident;

“overseas maintenance agreement” means a maintenance agreement that has force and effect in a prescribed overseas country by reason of the registration of the agreement, or the taking of any other action in relation to the agreement, under the law of that country and includes an agreement with respect to the maintenance of an ex-nuptial child that would be covered by the foregoing provisions of this definition if the child were a child of the marriage of the parties to the agreement;

“prescribed overseas country” means New Zealand or any other country outside Australia that is declared by the regulations to be a prescribed overseas country for the purposes of the provision in which the expression is used;

“proceedings” *includes cross-proceedings* means a proceeding in a court, whether between parties or not, and includes cross-proceedings or an incidental proceeding in the course of or in connexion with a proceeding;

“proceedings for principal relief” means proceedings under this Act of a kind referred to in paragraph (a) or (b) of the definition of “matrimonial cause” in this sub-section;

“property”, in relation to the parties to a marriage 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;

“Registrar”, in relation to a court, means the Registrar, Master or other proper officer of that court;

“repealed Act” means the Matrimonial Causes Act 1959 and includes that Act as amended by *the Matrimonial Causes Act 1965* and by *the Matrimonial Causes Act 1966* at any time;

“separation order” means a decree, not being a decree of dissolution or nullity of marriage or for a judicial separation, having the effect of relieving a party to a marriage from any obligation to cohabit with the other party to the marriage;

“Superior Court” means *the Superior Court of Australia*;

“Territory” does not include an external Territory other than Norfolk Island;

“welfare officer” means—

(aa) a person appointed as a welfare officer under section 17s.;

(a) a person who is permanently or temporarily employed as a welfare officer in the Australian Public Service or in the Public Service of a Territory;

(b) a person who is permanently or temporarily employed as a welfare officer in the Public Service of a State and whose services have been made available for the purposes of this Act in pursuance of an arrangement between the Government of Australia and the Government of the State;

(c) a person nominated by an organization concerned with the welfare of children; or

(d) a person appointed as a welfare officer in accordance with the regulations.

(2) A reference in this Act to a party to a marriage includes a reference to a person who was a party to a marriage that has been dissolved or annulled in Australia or elsewhere.

(3) In ascertaining the domicile of a party to a marriage for the purposes of this Act—

(a) a person's domicile at any time (whether before or after the commencement of this Act) in any country, howsoever acquired, shall be deemed to have continued, or to continue, until the acquisition by that person of a domicile of choice in another country;

(b) the domicile of a woman who is, or has at any time been, married shall be determined as if she had never been married; and

- (c) a person who has attained the age of 18 years, or a person who has not attained that age but is, or has at any time been, married, has, and shall be deemed to have had at all times since that person attained that age or became married, the capacity to acquire a domicile of choice.

Certain children deemed to be children of a marriage.

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

- (a) a child adopted since the marriage by the husband and wife or by either of them with the consent of the other;
- (b) a child of the husband and wife born before the marriage; and
- (c) a child of either the husband or wife (including an exnuptial child of either of them and a child adopted by either of them) if, at the relevant time, the child was ordinarily a member of the household of the husband and wife,

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

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

- (a) the time immediately preceding the time when the husband and wife separated or, if they have separated on more than one occasion, the time immediately preceding the time when they last separated before the institution of the proceedings; or
- (b) if the husband and wife were living together at the time when the proceedings were instituted, the time immediately preceding the institution of the proceedings.

(3) The provisions of sub-sections (1) and (2) apply in relation to a purported marriage that is void as if the purported marriage were a marriage.

Polygamous marriages.

6. For the purpose of proceedings under this Act, a union in the nature of a marriage which is, or has at any time been, polygamous, being a union entered into in a place outside Australia, shall be deemed to be a marriage.

Extension of Act to Norfolk Island.

7. This Act extends to Norfolk Island.

Supersession of existing laws.

8. (1) After the commencement of this Act—

- (a) proceedings by way of a matrimonial cause shall not be instituted except under this Act; and

(b) proceedings by way of a matrimonial cause instituted before the commencement of this Act shall not be continued except in accordance with section 9.

(2) Proceedings for a decree of restitution of conjugal rights, of jactitation of marriage or of judicial separation shall not be instituted or continued after the commencement of this Act.

(3) Proceedings for a separation order shall not be instituted after the commencement of this Act.

9. (1) Subject to sub-section (2), pending proceedings for a decree of dissolution of marriage or for a decree of nullity of marriage on the ground that the marriage is voidable, and pending proceedings for a separation order, may be continued and shall be dealt with as if this Act had not been passed. Transitional.

(2) Pending proceedings for a decree of dissolution of marriage shall, if the applicant so requests, be dealt with as if they were proceedings instituted under this Act on the ground referred to in section 26.

(2) Where the parties have lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of commencement of this Act, pending proceedings for a decree of dissolution of marriage shall, if the applicant so requests, be dealt with as if they were proceedings instituted under this Act on the ground referred to in section 26, and, in relation to proceedings in which such a request is made, sub-section 26 (2) has effect as if the proceedings for dissolution of marriage had been instituted by an application filed on the date of commencement of this Act.

(3) Pending proceedings for a decree of nullity of marriage on the ground that the marriage is void or proceedings of a kind referred to in paragraph (b) of the definition of "matrimonial cause" in sub-section 4 (1) may be continued and shall be dealt with as if they were proceedings instituted under this Act.

(4) Pending proceedings constituting a matrimonial cause, not being proceedings for principal relief, whether instituted under the repealed Act or under the law of a State or Territory, may be continued and shall be dealt with as if they were proceedings instituted under this Act.

(4A) Section 92 (1) does not apply to proceedings continued and dealt with under this section.

(5) Where, in any proceedings constituting a matrimonial cause, a decree has been made before the commencement of this Act—

- (a) any appeal in respect of that decree may be continued or instituted;

- (b) any new trial or re-hearing ordered upon the hearing of such an appeal, or upon an appeal heard before the commencement of this Act, may be had and completed; and
- (c) any decree may be made upon any such appeal, new trial or re-hearing, and, if a decree so made is a decree nisi, the decree may become absolute,

as if this Act had not been passed.

(6) Where, in any proceedings constituting a matrimonial cause, a decree nisi was made before the commencement of this Act but did not become absolute before that date, the decree becomes absolute upon—

- (a) the expiration of 1 month from the date of making of the decree;
- (b) the expiration of 1 month from the date of making of a relevant order under sub-section 71 (1) of the repealed Act or section 42 of this Act; or
- (c) the date of commencement of this Act,

whichever is the latest.

(7) The law to be applied, and the practice and the procedure to be followed, in and in relation to pending proceedings that are continued as if this Act had not been passed shall be the same as if this Act had not been passed.

(8) In this section—

“ appeal ” includes—

- (a) an application for leave or special leave to appeal;
- (b) an application for a new trial or for a re-hearing; and
- (c) an intervention;

“ pending proceedings ” means proceedings that were instituted before the date of commencement of this Act but were not completed before that date.

10. (1) Subject to sub-section (3), a court shall not make an order under Part VI or Part VII for the maintenance, custody or guardianship of—

- (a) a child who, under the law of a State, is a ward of the State or a State child or is under the care and control of a Minister of State of the State; or
- (b) a child who has a similar status under a law of a Territory.

(2) Nothing in this Act, and no decree under this Act, affects—

- (a) the jurisdiction of a court, or the power of an authority, under a law of a State to make an order, or take any other action, whereby a child becomes a ward of the State or a State child, or is placed under the care and control of a Minister of State of a State or any similar jurisdiction or power under a law of a Territory;

Child welfare law not affected.

- (b) any such order made, or action taken, or the operation, in respect of a child in relation to whom any such order has been made or action taken, of the law under which the order was made or action taken;
 - (c) the jurisdiction of a court under a law of a State or Territory to make an order in respect of the maintenance of a child referred to in sub-section (1) in favour of an officer or authority of the State or Territory performing functions in relation to the welfare of children; or
 - (d) an order of a kind referred to in paragraph (c) made by a court.
- (3) The Superior Court or the Supreme Court of a State or Territory may make an order referred to in sub-section (1) if it is satisfied that there are special circumstances that justify the making of the order.

PART II—MARRIAGE COUNSELLING ORGANIZATIONS

11. The Attorney-General may, from time to time, out of moneys appropriated by the Parliament for the purposes of this Part, grant to an approved marriage counselling organization, upon such conditions as he thinks fit, such sums by way of financial assistance as he determines.

Grants to approved marriage counselling organizations.

12. (1) A voluntary organization may apply to the Attorney-General for approval under this Part as a marriage counselling organization.

Approval of marriage counselling organizations.

(2) The Attorney-General may approve any such organization as a marriage counselling organization where he is satisfied that—

- (a) the organization is willing and able to engage in marriage counselling; and
- (b) marriage counselling constitutes or will constitute the whole or the major part of its activities.

(3) The approval of an organization under this section may be given subject to such conditions as the Attorney-General determines.

(4) Where the approval of an organization has been given subject to conditions, the Attorney-General may, from time to time, revoke or vary all or any of those conditions or add further conditions.

(5) An approval of a voluntary organization under Part II of the repealed Act shall be deemed to be an approval under this section.

(6) The Attorney-General may, at any time, revoke the approval of an organization where—

- (a) the organization has not complied with a condition of the approval of the organization;
- (b) the organization has not furnished, in accordance with section 13, a statement or report that the organization was required by that section to furnish; or

(c) the Attorney-General is satisfied that the organization is not adequately carrying out marriage counselling.

(7) Notice of the approval of an organization under this section, and of the revocation of such an approval, shall be published in the *Gazette*.

Reports and financial statements of approved marriage counselling organizations.

13. (1) An approved marriage counselling organization shall, not later than 30 September in each year, furnish to the Attorney-General, in respect of the period of 12 months that ended on 30 June in that year—

- (a) an audited financial statement of the receipts and payments of the organization, in which receipts and payments in respect of its marriage counselling activities are shown separately from other receipts and payments; and
- (b) a report on its marriage counselling activities, including information as to the number of cases dealt with by the organization during the year.

(2) Where the Attorney-General is satisfied that it would be impracticable for an organization to comply with the requirements of subsection (1) or that the application of those requirements to an organization would be unduly onerous, he may, by writing under his hand, exempt the organization, wholly or in part, from those requirements.

PART III—RECONCILIATION

PART III—COUNSELLING AND RECONCILIATION

Reconciliation.

14. (1) Where proceedings for a dissolution of marriage have been instituted, or financial or custodial proceedings have been instituted by a party to a subsisting marriage, it is the duty of the Judge or magistrate constituting the court *and of every legal practitioner representing a party* to give consideration, from time to time, to the possibility of a reconciliation of the parties.

(2) If, in such proceedings, it appears at any time to the Judge or magistrate from the evidence in the proceedings or the attitude of the parties, or of either of them, or of a legal practitioner representing a party, that there is a reasonable possibility of such a reconciliation, the Judge or magistrate may—

- (a) adjourn the proceedings to afford the parties an opportunity to consider a reconciliation; and
- (b) if he thinks it desirable to do so, nominate—
 - (i) a marriage counsellor or an approved marriage counselling organization; or
 - (ii) in special circumstances, some other suitable person or organization,
 to assist those parties in considering a reconciliation.

(3) If, after an adjournment under sub-section (2) has taken place, either of the parties requests that the hearing be proceeded with, the Judge or magistrate shall resume the hearing as soon as practicable.

(4) Where the court makes an order or grants an injunction under section 90 which has the effect, either directly or indirectly, of requiring the parties to a marriage to live separately and apart, the court shall, if it is of opinion that it is in the interests of the parties or of the children of the marriage to do so, direct advise either or both of the parties to attend upon a marriage counsellor, but failure to comply with such a direction does not constitute a contempt of the court.

(5) Where a court having jurisdiction under this Act is of the opinion that counselling may assist the parties to a marriage to improve their relationship to each other and to any child of the marriage, it may advise the parties to attend upon a marriage counsellor or an approved marriage counselling organization and, if it thinks it desirable to do so, adjourn any proceedings before it to enable the attendance.

(6) Where it appears from an application for dissolution of a marriage that the parties have been married for less than 2 years preceding the date of filing of the application, the court shall not hear the proceedings unless the court is satisfied that—

- (a) the parties have had an opportunity to consider a reconciliation with the assistance of a marriage counsellor, an approved marriage counselling organization or some other suitable person or organization nominated by the Director of Counselling and Welfare; or
- (b) there are special circumstances by reason of which the hearing should proceed.

14A. (1) A party to a marriage may file in the Family Court a notice stating that the marriage has broken down.

Notice of marriage breakdown.

(2) Where such a notice is filed, the Director of Counselling and Welfare of the Family Court may arrange for the parties to the marriage to be interviewed by a marriage counsellor for the purpose of assisting the parties with a view to a reconciliation or the improvement of their relationship to each other and to the children of the marriage.

14B. The Director of Counselling and Welfare of the Family Court may advertise the existence and availability of the counselling and welfare facilities of the Family Court and of other courts having jurisdiction under this Act.

Advice as to counselling.

15. The regulations may provide for the furnishing to persons proposing to institute proceedings under this Act, and to their spouses, of documents—

Provision of documents setting out effects of divorce.

- (a) setting out the consequences of dissolution of marriage (including the consequences for the children of the marriage); and
- (b) specifying approved marriage counselling organizations available to assist the parties to a marriage in considering a reconciliation.

Provision
of certain
documents.

15. The regulations shall provide for the furnishing to persons proposing to institute proceedings under this Act and in appropriate cases to their spouses, of documents setting out—

- (a) the legal and possible social effects of the proposed proceedings (including the consequences for the children of the marriage); and
- (b) the counselling and welfare facilities available within the Family Court and elsewhere.

Admissions
made to
marriage
counsellors,
&c.

16. (1) This section applies to—

- (a) a marriage counsellor;
- (b) a person nominated, or acting on behalf of an organization nominated, in accordance with sub-paragraph 14 (2) (b) (ii); or
- (c) a person to whom a party to a marriage has been referred by a marriage counsellor, or by a person referred to in paragraph (b), for medical or other professional consultation.

(2) Evidence of anything said or of any admission made at a conference that takes place in pursuance of this Part with a person to whom this section applies with a person to whom this section applies acting in the capacity referred to in sub-section (1) is not admissible in any court (whether exercising federal jurisdiction or not) or in proceedings before a person authorized by a law of Australia or of a State or Territory, or by consent of parties, to hear evidence.

Oath or
affirmation of
secrecy.

17. (1) A marriage counsellor shall, before entering upon the performance of his functions as such a counsellor, make before a person authorized under the law of Australia or of a State or a Territory to take affidavits, an oath or affirmation of secrecy in accordance with the prescribed form.

(2) A marriage counsellor who has made an oath or affirmation of secrecy under the repealed Act shall be deemed to have made an oath or affirmation under this section.

PART IIIA—THE FAMILY COURT OF AUSTRALIA

Inter-
pretation.

17A. (1) In this Part, unless the contrary intention appears—

- “Chief Judge” means the Chief Judge of the Court, and includes a Senior Judge for the time being performing the duties and exercising the powers of the Chief Judge;
- “Court” means the Family Court of Australia;
- “Full Court” means the Family Court when constituted by three or more Judges or when constituted in accordance with sub-section 17J (4);
- “Judge” means a Judge of the Family Court (including the Chief Judge or a Senior Judge).

17B. (1) A court, to be known as the Family Court of Australia, is created by this Act. Creation of
Court.

(2) The Court is a superior court of record.

(3) The Court consists of a Chief Judge, the Senior Judges and the other Judges from time to time holding office in accordance with this Act.

17C. (1) A Judge—

- (a) shall be appointed by the Governor-General; and
- (b) shall not be removed except by the Governor-General, on an address from both Houses of the Parliament in the same session praying for his removal on the grounds of proved misbehaviour or incapacity.

(2) A person shall not be appointed as a Judge unless—

- (a) he is or has been a Judge of another court created by the Parliament or of a court of a State or has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory for not less than 5 years; and
- (b) by reason of training, experience and personality, he is a suitable person to deal with matters of family law.

(3) A Judge may resign his office by writing under his hand addressed to the Governor-General, and the resignation takes effect on the day on which it is received by the Governor-General or on such later day as is specified in the writing.

(4) A person may hold office at the one time as a Judge of the Family Court and as a judge of another court, or of two or more other courts, created by the Parliament but, if a judge of another court or courts created by the Parliament is appointed as a Judge of the Family Court, he is not, while he receives salary or annual allowance as a judge of that other court or courts, entitled to salary or annual allowance, as the case may be, under this Act except to the extent that the salary or annual allowance that would be payable to him under this Act apart from this sub-section exceeds the salary or annual allowance payable to him as a judge of that other court or courts, but his salary and annual allowance under this Act shall not be diminished during his continuance in office under this Act.

(5) A Judge or former Judge is entitled to be styled “The Honourable”.

17D. (1) The Chief Judge is senior to all other Judges of the Court. Seniority.

(2) The Senior Judges have seniority next to the Chief Judge according to the dates on which their appointments as Senior Judges took effect.

(3) Where, by reason of the fact that two or more commissions of appointment took effect on the same day, the foregoing provisions do not determine seniority between the Senior Judges appointed by those commissions, those Judges have such seniority in relation to each other as is assigned to them by the Governor-General.

Appoint-
ment,
removal and
resignation of
Judges.

Absence or illness of Chief Judge.

17E. Whenever—

- (a) the Chief Judge is absent from Australia or from duty; or
- (b) there is a vacancy in the office of Chief Judge, the next senior Judge who is in Australia and is available and willing to do so shall perform the duties and may exercise the powers of the Chief Judge.

Salary and allowances.

17F. (1) The Chief Judge shall receive salary at the rate of \$31,450 a year and an annual allowance at the rate of \$1,750 a year.

(2) Each Senior Judge shall receive salary at the rate of \$29,250 a year and an annual allowance at the rate of \$1,250.

(3) Each other Judge shall receive salary at the rate of \$25,000 a year and an annual allowance at the rate of \$1,200 a year.

(4) The salary and annual allowances of the Judges accrue from day to day and are payable monthly.

(5) A Judge shall be paid such other allowances as are prescribed.

Oath or affirmation of office.

17G. A Judge shall, before proceeding to discharge the duties of his office, take, before the Chief Justice or a Justice of the High Court of Australia or a Judge of the Family Court or of another court created by the Parliament, an oath or affirmation in the following form:—

“I, _____, do swear that I will well and truly serve in the office of the (Chief Judge, Senior Judge or Judge, as the case may be) of the Family Court of Australia and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will, So help me God.”

or

“I, _____, do solemnly and sincerely promise and declare that . . .” (as above, omitting the words “So help me God”).

Place of sitting.

17H. Sittings of the Court shall be held from time to time as required at the places at which the registries of the Court are established, but the Court may sit at any place in Australia.

Exercise of jurisdiction.

17J. (1) The original jurisdiction of the Court may be exercised by one or more Judges.

(2) The jurisdiction of the Court in an appeal from a court of summary jurisdiction may be exercised by one or more Judges.

(3) The jurisdiction of the Court in an appeal from a Judge of the Court or of the Supreme Court of a State shall be exercised by a Full Court.

(4) Where, after a Full Court (including a Full Court constituted in accordance with this sub-section) has commenced the hearing, or further hearing, of an appeal and before the appeal has been determined, one of the Judges constituting the Full Court dies, resigns his office, or otherwise

becomes unable to continue as a member of the Full Court for the purposes of the appeal, then the hearing and determination, or the determination, of the appeal may be completed by a Full Court constituted by the remaining Judges, if at least 2 Judges remain, or, with the consent of the parties, by a Full Court constituted by the remaining Judge or Judges and an additional Judge or Judges.

(5) A Full Court constituted in accordance with sub-section (4) may have regard to any evidence given or received, and arguments adduced, by or before the Full Court as previously constituted.

(6) The Court constituted by one or more Judges may sit and exercise the jurisdiction of the Court notwithstanding that the Court constituted by one or more other Judges is at the same time sitting and exercising the jurisdiction of the Court.

17K. (1) The Family Court has jurisdiction to hear and determine—

Appellate jurisdiction.

(a) appeals referred to in section 71; and

(b) appeals from judgments of the Family Court, constituted otherwise than as a Full Court, in the exercise of jurisdiction otherwise than under this Act.

(2) The Family Court has jurisdiction to hear and determine appeals under section 73 except where the Supreme Court of a State has jurisdiction to hear such appeals.

(3) Subject to section 73, in an appeal the Court shall have regard to the evidence given in the proceedings out of which the appeal arose and has power to draw inferences of fact and, in its discretion, to receive further evidence upon questions of fact, which evidence may be given by affidavit, by oral examination before the Court or a Judge or in such other manner as the Court may direct.

17L. If the Judges constituting the Court for the purposes of any proceedings are divided in opinion as to the judgment to be pronounced, judgment shall be pronounced according to the opinion of the majority, if there is a majority, but, if the Judges are equally divided in opinion—

Court divided in opinion.

(a) in the case of an appeal from a judgment of the Family Court constituted by a single Judge, or of the Supreme Court of a State—the judgment appealed from shall be affirmed; and

(b) in any other case—the opinion of the Chief Judge or, if he is not one of the Judges constituting the Court, the opinion of the most senior of those Judges, shall prevail.

17M. (1) The Family Court has jurisdiction in—

Jurisdiction of Family Court.

(a) matrimonial causes instituted or continued under this Act;

(b) proceedings instituted or continued under the Marriage Act 1961-1973;

(c) matters arising under a law of a Territory concerning—

- (i) the adoption of children;
- (ii) the guardianship, custody or maintenance of children; or
- (iii) payments of a kind referred to in section 85;

(d) matters in which jurisdiction is conferred on it by a law made by the Parliament.

(2) Subject to such restrictions and conditions (if any) as are contained in the regulations, the jurisdiction of the Family Court may be exercised in relation to persons or things outside Australia and the Territories.

(3) In exercising the jurisdiction conferred on it by this Part, the Family Court shall have regard to—

- (a) the need to protect the institution of marriage and family life generally;
- (b) the need to protect the rights of children and to promote their welfare; and
- (c) the means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationships to each other and to the children of the marriage.

Jurisdiction
in associated
matters.

17N. To the extent that the Constitution permits, jurisdiction is conferred on the Court in respect of matters not otherwise within the jurisdiction expressed by this Act or any law to be conferred on the Court that are associated with matters (including matters before the Court upon an appeal) in which the jurisdiction of the Court is invoked or that arise in proceedings (including proceedings upon an appeal) before the Court.

Issue of
certain
writs, &c.

17P. (1) The Court has power, in relation to matters in which it has jurisdiction, to make orders of such kinds, and to issue, or direct the issue of, writs of such kinds, as the Court thinks appropriate.

(2) Without limiting the generality of sub-section (1), the Court may issue, or direct the issue of, writs and orders of such kinds as are prescribed.

Contempt of
court.

17Q. Subject to this and any other Act, the Family Court has the same power to punish contempts of its power and authority as is possessed by the High Court in respect of contempts of the High Court.

Registries.

17R. (1) The Governor-General shall cause such Registries of the Court to be established as he thinks fit.

(2) Unless and until the regulations otherwise provide, the Principal Registry shall be located in Sydney.

Officers of
Court.

17S. (1) The Attorney-General may appoint such officers of the Court as are referred to in this section and such other officers of the Court as are necessary.

(2) The officers of the Court have such duties, powers and functions as are provided by this Act and the regulations and such other duties and functions as the Chief Judge directs.

(3) There shall be a Registrar of the Court and such Deputy Registrars of the Court as are necessary.

(4) There shall be a Marshal of the Court and such Deputy Marshals of the Court as are necessary.

(5) The Marshal—

- (a) is charged with the service and execution of all writs, orders, decrees, warrants, precepts, process and commands of the Court that are directed to him; and
- (b) shall take, receive and detain any person who is committed to his custody by the Court, and shall discharge all such persons when directed by the Court or required by law.

(6) A Deputy Marshal may, subject to any directions of the Marshal, exercise or perform any of the powers and functions of the Marshal.

(7) The Marshal or a Deputy Marshal may authorize such persons as he thinks fit to assist him in the exercise of any power or the performance of any function.

(8) There shall be a Director of Counselling and Welfare, and such other counsellors and welfare officers as are necessary.

17T. (1) Subject to this Act, the practice and procedure of the Court shall be in accordance with the regulations. Practice and
procedure.

(2) In so far as the provisions applicable in accordance with sub-section (1) are insufficient, the Rules of the High Court, as in force for the time being, apply, mutatis mutandis, so far as they are capable of application and subject to any directions of the Court or a Judge, to the practice and procedure of the Court.

(3) In this section, "practice and procedure" includes all matters with respect to which regulations may be made under this Act.

PART IV—JURISDICTION IN MATRIMONIAL CAUSES

18. (1) Subject to this Part, a person may institute a matrimonial cause under this Act— Jurisdiction
in matri-
monial
causes.

- (a) in the *Superior Family Court*; or
- (b) in the Supreme Court of a State or a Territory.

(2) Subject to this Part, a person may institute a matrimonial cause under this Act, not being proceedings for principal relief, in a court of summary jurisdiction of a State or Territory.

(3) Proceedings for a decree of dissolution of marriage may be instituted under this Act by a party to the marriage if, at the date on which the application for the decree is filed in a court, either party to the marriage—

- (a) is an Australian citizen;
- (b) is domiciled in Australia; or
- (c) is ordinarily resident in Australia and has been so resident for 1 year immediately preceding that date.

(4) Proceedings of a kind referred to in any of paragraphs (a) to (e) of the definition of "matrimonial cause" in sub-section 4 (1), other than proceedings for a decree of dissolution of marriage, may be instituted under this Act if—

- (a) either party to the marriage is an Australian citizen;
- (b) either party to the marriage is present in Australia; or
- (c) the proceedings relate to a child of the marriage and the child is present in Australia.

(5) Subject to this Part, the Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred on the *Superior Family Court* and on the Supreme Court of each Territory, to hear and determine—

- (a) matrimonial causes instituted under this Act;
- (b) matrimonial causes continued in accordance with section 9; and
- (c) proceedings instituted under regulations made for the purposes of section 83, 85, 86 or 87.

(6) Subject to this Part, the courts of summary jurisdiction of each State are invested with federal jurisdiction, and jurisdiction is conferred on the courts of summary jurisdiction of each Territory, to hear and determine—

- (a) matrimonial causes, not being proceedings for principal relief, instituted under this Act;
- (b) matrimonial causes, not being proceedings for principal relief, continued in accordance with section 9; and
- (c) proceedings instituted under regulations made for the purposes of section 83, 85, 86 or 87.

(6A) The Governor-General may, by Proclamation, fix a date as the date on and after which proceedings under this Act may not be instituted in or transferred to a court of summary jurisdiction in a State or Territory or in a part of a State or Territory specified in the Proclamation and a court of summary jurisdiction shall not hear and determine any such proceedings so instituted in, or transferred to, that court on or after that date.

(7) Jurisdiction under this Act in a matrimonial cause instituted under this Act is not conferred on a court of a Territory unless at least one of

the parties to the proceedings is, at the date of the institution of the proceedings or the date of the transfer of the proceedings to the court of the Territory, ordinarily resident in the Territory.

(8) Jurisdiction under this Act in a matrimonial cause continued in accordance with section 9 is not invested in or conferred on a court other than the court in which the matrimonial cause was instituted or to which it has been transferred under sub-section 19 (6) or section 23.

19. (1) The jurisdiction of the *Superior Family Court* under this Act shall not be exercised except in accordance with Proclamations under this section. Jurisdiction
of *Superior*
Family
Court.

(2) The Governor-General may, by Proclamation, fix a date as the date on and after which the jurisdiction of the *Superior Family Court* under this Act may be exercised in respect of all proceedings, or a class of proceedings, in such States and Territories as are specified in the Proclamation.

(3) The Governor-General may, by Proclamation, fix a date as the date on and after which proceedings under this Act may not be instituted in or transferred to the Supreme Court of a State or Territory specified in the Proclamation, or may be so instituted or transferred only where specified conditions are complied with, and such a Proclamation may be expressed to apply only to proceedings of specified classes and may be expressed to apply only to the institution of proceedings in, or the transfer of proceedings to, a particular Registry or Registries of a Supreme Court referred to in the Proclamation.

(4) The Supreme Court of a State or Territory shall not hear and determine proceedings under this Act instituted in or transferred to that Court otherwise than in accordance with any Proclamation in force under sub-section (3), but nothing in this section invalidates a decree made by such a Supreme Court.

(5) Proclamations under sub-section (2) and (3) may be made from time to time.

(6) A party to proceedings instituted or continued under this Act that are at any time pending in the Supreme Court of a State or Territory, being proceedings that could, at the date of the application under this sub-section, have been instituted in the *Superior Family Court*, may apply to the *Superior Family Court* for an order transferring the proceedings to the *Superior Family Court*, and the Court may order accordingly.

(7) The regulations may make provision in relation to matters arising in or in connexion with the transfer of proceedings in accordance with an order under sub-section (6).

Jurisdiction
of courts of
summary
jurisdiction.

20. The jurisdiction of a court of summary jurisdiction shall not be exercised in proceedings with respect to the property of the parties or of either party to a marriage, or with respect to the custody or guardianship of, or access to, a child of a marriage—

- (a) if there are pending proceedings with respect to the same matter in the Superior Court or in the Supreme Court of a State or Territory; or
- (b) if an order of the Superior Court or of the Supreme Court of a State or Territory is in force in relation to that matter, unless the exercise of the jurisdiction of the court of summary jurisdiction is permitted by the terms of that order.

Law to be
applied.

21. (1) The jurisdiction conferred on a court, or with which a court is invested, by this Act shall be exercised in accordance with this Act.

(2) Where it would be in accordance with the common law rules of private international law to apply the laws of any country or place (including a State or Territory), the court shall apply the laws of that country or place.

Institution of
proceedings.

22. (1) Subject to this section, proceedings under this Act shall be instituted by application.

(2) A respondent may, in an answer to an application, include an application for any decree or declaration under this Act.

(3) Where a decree nisi of dissolution of marriage or of nullity of marriage has been made, proceedings of a kind referred to in subparagraph (c) (i) or (ii) of the definition of "matrimonial cause" in subsection 4 (1) (not being proceedings seeking the discharge, suspension, revival or variation of an order previously made in proceedings with respect to the maintenance of a party) shall not be instituted after the expiration of 12 months after the date of the making of the decree or the date of commencement of this Act, whichever is the later, except by leave of the court in which the proceedings are to be instituted.

(4) The court shall not grant leave under sub-section (3) unless it is satisfied that hardship would be caused to a child of the marriage if leave were not granted.

Staying and
transfer of
proceedings.

23. (1) Where it appears to a court in which a matrimonial cause (including a matrimonial cause instituted before the commencement of this Act) is pending that a matrimonial cause (including a matrimonial cause instituted before the commencement of this Act) in respect of the same marriage or void marriage is pending in another court, the first-mentioned court may stay the proceedings in that court for such time as it thinks fit or may dismiss the proceedings.

(2) Where it appears to a court in which a matrimonial cause has been instituted or is being continued under this Act that it is in the interests of justice that the proceedings be dealt with in another court having jurisdiction under this Act, the court may transfer the proceedings to the other court.

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

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

and the respondent, in an answer to the application by which the proceedings were instituted, seeks an order different from that sought in the application, the court shall, unless the parties agree to the court hearing and determining the proceedings, transfer the proceedings to the Superior Family Court or to the Supreme Court of a State or Territory.

(1A) Where proceedings referred to in sub-section (1) are before it, the court may transfer the proceedings of its own motion, notwithstanding that the parties would be willing for the court to hear and determine the proceedings.

(2) Before transferring proceedings under sub-section (1), the court may make such orders, including an order under section 41, as it considers necessary pending the disposal of the proceedings by the court to which they are to be transferred.

(3) Where proceedings are transferred to a court in pursuance of this section, that court shall proceed as if the proceedings had been originally instituted in that court.

(4) Without prejudice to the duty of a court of summary jurisdiction to comply with this section, failure by such a court so to comply does not invalidate any order of the court in the proceedings.

25. All courts having jurisdiction under this Act shall severally act in aid of and be auxiliary to each other in all matters under this Act.

Transfer of
proceedings
from court of
summary
jurisdiction
in certain
cases.

Courts to
act in aid of
each other.

PART V—DISSOLUTION AND NULLITY OF MARRIAGE

26. (1) An application under this Act by a party to a marriage for a decree of dissolution of the marriage shall be based on the ground that the marriage has broken down irretrievably.

(2) Subject to sub-section (3), in a proceeding instituted by such an application, the ground shall be held to have been established, and a decree of dissolution of the marriage shall be made, if, and only if, the court is satisfied that the parties separated and thereafter lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of the commencement of the hearing of the application, filing of the application for dissolution of marriage

Dissolution
of marriage.

(3) A decree of dissolution of marriage shall not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

Meaning of separation.

27. (1) The parties to a marriage may be held to have separated notwithstanding that the cohabitation was brought to an end by the action or conduct of one only of the parties.

(2) The parties to a marriage may be held to have separated and to have lived separately and apart notwithstanding that they have continued to reside in the same residence or that either party has rendered some household services to the other.

Separation order or agreement not a bar.

28. A decree of dissolution of marriage may be made notwithstanding that there was in existence at any relevant time—

- (a) a separation order in relation to the parties to the marriage; or
- (b) an agreement between those parties for separation.

Effect of resumption of cohabitation.

29. (1) For the purposes of proceedings for a decree of dissolution of marriage, where, after the parties to the marriage separated, they resumed cohabitation on one occasion but, within a period of 3 months after the resumption of cohabitation, they again separated and thereafter lived separately and apart up to the date of the commencement of the hearing of the application, the periods of living separately and apart before and after the period of cohabitation may be aggregated as if they were one continuous period, but the period of cohabitation shall not be deemed to be part of the period of living separately and apart.

(2) For the purposes of sub-section (1), a period of cohabitation shall be deemed to have continued during any interruption of the cohabitation that, in the opinion of the court, was not substantial.

Nullity of marriage.

30. (1) An application under this Act for a decree of nullity of marriage shall be based on the ground that the marriage is void.

(2) A marriage that takes place after the commencement of this Act is void where—

- (a) either of the parties is, at the time of the marriage, lawfully married to some other person;
- (b) the parties are within a prohibited relationship;
- (c) the marriage is not a valid marriage under the law of the place where the marriage takes place, by reason of a failure to comply with the requirements of the law of that place with respect to the form of solemnization of marriages;

(d) the consent thereto of either of the parties is not a real consent because—

- (i) it was obtained by duress or fraud;
- (ii) that party is mistaken as to the identity of the other party or as to the nature of the ceremony performed; or
- (iii) that party is mentally incapable of understanding the nature and effect of the marriage ceremony; or

(e) either of the parties is not of marriageable age, and not otherwise.

(3) Marriages that are within a prohibited relationship are marriages—

- (a) between a person and an ancestor or descendant of the person; or
- (b) between a brother and a sister (whether of the whole blood or the half-blood).

(4) Any relationship specified in sub-section (3) includes a relationship traced through, or to, a person who is or was an adopted child, and, for that purpose, the relationship between an adopted child and his adoptive parent, or each of his adoptive parents, shall be deemed to be or to have been the natural relationship of child and parent.

(5) Nothing in sub-section (4) makes it lawful for a person to marry a person whom the first-mentioned person could not lawfully have married if that sub-section had not been enacted.

(6) For the purposes of this section—

- (a) a person who has at any time been adopted by another person shall be deemed to remain the adopted child of that other person notwithstanding that any order by which the adoption was effected has been annulled, cancelled or discharged or that the adoption has for any other reason ceased to be effective; and
- (b) a person who has been adopted on more than one occasion shall be deemed to be the adopted child of each person by whom he has been adopted.

(7) Paragraph (2) (c) does not apply in relation to a marriage solemnized under Part V of the Marriage Act 1961 or of that Act as amended or to any other marriage recognized in Australia by virtue of that Act or regulations made under that Act."

31. Where both an application for a decree of nullity of a marriage and an application for a decree of dissolution of that marriage are before a court, the court shall not make a decree of dissolution of the marriage unless it has dismissed the application for a decree of nullity of the marriage.

Court not to make decree of dissolution where application for decree of nullity before it.

Circumstances occurring before commencement of Act or outside Australia.

32. A decree may be made, or refused, under this Part by reason of facts and circumstances notwithstanding that those facts and circumstances, or some of them, took place before the commencement of this Act or outside Australia.

Decree nisi in first instance.

33. A decree of dissolution of marriage under this Act shall, in the first instance, be a decree nisi.

When decree becomes absolute.

34. (1) Subject to this section, a decree nisi made under this Act becomes absolute by force of this section at the expiration of a period of 1 month from the making of the decree or from the making of an order under section 42, whichever is the later.

(2) Where a decree nisi has been made in any proceedings, the court of first instance (whether or not it made the decree), or a court in which an appeal has been instituted, may, either before or after it has disposed of the proceedings or appeal, and whether or not a previous order has been made under this sub-section—

- (a) having regard to the possibility of an appeal or further appeal, make an order extending the period at the expiration of which the decree nisi will become absolute; or
- (b) if it is satisfied that there are special circumstances that justify its so doing, make an order reducing the period at the expiration of which the decree nisi will become absolute.

(3) Where an appeal is instituted (whether or not it is the first appeal) before a decree nisi has become absolute, then, notwithstanding any order in force under sub-section (2) at the time of the institution of the appeal but subject to any such order made after the institution of the appeal, the decree nisi, unless reversed or rescinded, becomes absolute by force of this section—

- (a) at the expiration of a period of 1 month from the day on which the appeal is determined or discontinued; or
- (b) on the day on which the decree would have become absolute under sub-section (1) if no appeal had been instituted,

whichever is the later.

(4) A decree nisi shall not become absolute by force of this section where either of the parties to the marriage has died.

(5) In this section, "appeal", in relation to a decree nisi, means—

- (a) an appeal or application for leave to appeal against, or an intervention or application for a re-hearing relating to—
 - (i) the decree nisi; or
 - (ii) an order under section 42 in relation to the proceedings in which the decree nisi was made; or

(b) an application under section 36 or 37 for rescission of the decree or an appeal or application for leave to appeal arising out of such an application.

(6) For the purposes of this section, where an application for leave to appeal, or for a re-hearing, is granted, the application shall be deemed not to have been determined or discontinued so long as—

- (a) the leave granted remains capable of being exercised; or
- (b) an appeal or re-hearing instituted in pursuance of the leave is pending.

35. (1) Where a decree nisi becomes absolute, the Registrar of the court by which the decree was made shall prepare and file a memorandum of the fact and of the date upon which the decree became absolute. Certificate as to decree absolute.

(2) Where a decree nisi has become absolute, any person is entitled, on application to the Registrar of the court by which the decree was made, to receive a certificate signed by the Registrar that the decree nisi has become absolute.

(3) A certificate given under sub-section (2) is, in all courts (whether exercising federal jurisdiction or not) and for all purposes, evidence of the matters specified in the certificate.

(4) The regulations may provide for the establishment of central records of decrees made under this Act and for the notification of decrees to the appropriate marriage registering authorities of the States and Territories.

36. Notwithstanding anything contained in this Part, where a decree nisi has been made in proceedings for a decree of dissolution of marriage, the court may, at any time before the decree becomes absolute, upon the application of the parties to the marriage, rescind the decree on the ground that the parties have become reconciled. Rescission of decree nisi where parties reconciled.

37. Where a decree nisi has been made but has not become absolute, the court by which the decree was made may, on the application of a party to the proceedings, or on the intervention of the Attorney-General, if it is satisfied that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence or any other circumstance, rescind the decree and, if it thinks fit, order that the proceedings be re-heard. Rescission of decree nisi on ground of miscarriage of justice.

38. Where a decree of dissolution of marriage under this Act has become absolute, a party to the marriage may marry again. Re-marriage.

PART VI—WELFARE AND CUSTODY OF CHILDREN

39. In this Part—

"marriage" includes a void marriage;

Definitions.

"overseas custody order" means an order made by a court in a prescribed overseas country, being—

- (a) an order for custody of, or access to, a child who has not attained the age of 18 years; or
- (b) an order varying or discharging an order of the kind referred to in paragraph (a), including an order of that kind made under this Act.

Rights of guardianship and custody of children.

40. (1) Subject to any order of a court for the time being in force, each of the parties to a marriage is a guardian of any child of the marriage who has not attained the age of 18 years and those parties have the joint custody of the child.

(2) A party to a marriage may institute proceedings under this Act with respect to the custody or guardianship of, or access to, a child of the marriage.

(3) An order with respect to the custody or guardianship of, or access to, a child—

- (a) shall not be made in respect of a child who has attained the age of 18 years or is or has been married; and
- (b) ceases to be in force when the child attains the age of 18 years or is adopted by a person who is not a party to the marriage marries.

(3A) Unless a court having jurisdiction under this Act otherwise orders, an order in respect of the custody or guardianship of, or access to, a child of a marriage ceases to be in force if the child is adopted by a person who is not a party to the marriage.

(4) On the death of a party to a marriage in whose favour a custody order has been made in respect of a child of the marriage, the other party to the marriage is entitled to the custody of the child only if the court so orders on application by that other party and, upon such an application, any other person who had the care and control of the child at the time of the application is entitled to be a party to the proceedings.

41. (1) Where—

- (a) there is a child (being a child who has not attained the age of 18 years) of a marriage in respect of which proceedings for principal relief have been instituted; or
- (b) proceedings for the custody or guardianship of, or access to, a child of a marriage who has not attained the age of 18 years are contested,

the court may, at any stage of the proceedings, of its own motion or upon the request of a party to the proceedings, make an order directing the parties to the proceedings to attend a conference with a welfare officer to discuss the welfare of the child and, if there are any differences between the parties as to matters affecting the welfare of the child, to endeavour to resolve those differences.

Conferences with, and reports by, welfare officers.

(2) Where the court makes an order under sub-section (1), it may fix a place and time for the conference to take place or direct that the conference shall take place at a place and time to be fixed by a welfare officer.

(3) If a party fails to attend a conference in respect of which an order has been made under sub-section (1), it is the duty of the welfare officer to report the failure to the court *but the failure does not constitute a contempt of the court.*

(4) The court may adjourn any proceedings referred to in sub-section (1) until a report has been obtained from a welfare officer on such matters relevant to the proceedings as the court considers desirable, and may receive the report in evidence.

(5) Subject to sub-section (4), evidence of anything said or of any admission made at a conference that takes place in pursuance of an order made under this section is not admissible in any court (whether exercising federal jurisdiction or not) or in proceedings before a person authorized by a law of Australia or of a State or Territory, or by consent of parties, to hear evidence.

42. (1) A decree nisi of dissolution of marriage does not become absolute unless the court, by order, has declared that it is satisfied—

Decree absolute where children.

- (a) that there are no children of the marriage who have not attained the age of 18 years; or
- (b) that the only children of the marriage who have not attained the age of 18 years are the children specified in the order and that—
 - (i) proper arrangements in all the circumstances have been made for the welfare of those children; or
 - (ii) there are circumstances by reason of which the decree nisi should become absolute notwithstanding that the court is not satisfied that such arrangements have been made.

(2) Where, in proceedings for a decree of dissolution of marriage, the court is in doubt whether the arrangements made for the welfare of a child of the marriage are proper in all the circumstances, the court may adjourn the proceedings until a report has been obtained from a welfare officer regarding those arrangements.

43. (1) In proceedings with respect to the custody or guardianship of, or access to, a child of a marriage—

Powers of Court in custodial proceedings.

- (a) the court shall regard the welfare of the child as the paramount consideration and in doing so shall take into account the wishes of the child;

(b) *except where the court is satisfied that it is necessary to do so by reason of special circumstances, the court shall not make an order with respect to the custody of, or access to, a child who has attained the age of 14 years where the order would be contrary to the wishes of the child; and*

(c) *Subject to paragraphs (a) and (b), the court may make such order in respect of those matters as it thinks proper.*

(1) **In proceedings with respect to the custody or guardianship of, or access to, a child of a marriage—**

(a) **the court shall regard the welfare of the child as the paramount consideration;**

(b) **where the child has attained the age of 14 years, the court shall not make an order under this Part contrary to the wishes of the child unless the court is satisfied that, by reason of special circumstances, it is necessary to do so; and**

(c) **subject to paragraph (a) and (b), the court may make such order in respect of those matters as it thinks proper, including an order until further order.**

(2) **In proceedings with respect to the custody of a child of a marriage, the court may, if it is satisfied that it is desirable to do so, make an order placing the child in the custody of a person other than a party to the marriage.**

(3) **Where the court makes an order placing a child of a marriage in the custody of a party to the marriage, or of a person other than a party to the marriage, it may include in the order such provision as it thinks proper for access to the child by any person.**

(3A) **Where a court makes an order for joint custody of a child of a marriage or declines to make an order for the sole custody of the child, it may make orders as to access or such other orders as it thinks proper.**

(4) **Where a court makes an order under this Part with respect to a child, the court may also, if it thinks the welfare of the child so requires, by order direct that compliance with the first-mentioned order shall, as far as practicable, be supervised by a welfare officer.**

(5) *An order under this section may be a permanent order or an order pending the disposal of the proceedings.*

(5) **Where the court is of the opinion that there is a possibility or threat that a child will be removed from Australia, it may order the passport of the child and of any other person concerned to be delivered up to the court upon such conditions as the court thinks fit.**

(6) **The court may discharge or vary an order under this section, or may suspend any part of the order and may revive the operation of any part so suspended.**

(7) **On an application for the discharge or variation of an order under this section in respect of a child who has attained the age of 14 years, if the court is satisfied that the discharge or variation of the order would be in accordance with the wishes of the child, it shall discharge or vary the order accordingly unless the court is satisfied that it is undesirable to do so by reason of special circumstances.**

(8) **Where an order made by a court (including a court of a prescribed overseas country) with respect to the custody of a child is in force, a court having jurisdiction under this Act may issue a warrant authorizing or directing the person, or any of the persons, to whom it is addressed to take possession of the child and to deliver the child to the person entitled to custody or to some other person or authority (including a person or authority in or from a prescribed overseas country) named in the order on behalf of the person entitled to custody.**

(9) **Where an order made by a court (including a court of a prescribed overseas country) entitling a person to access to a child is in force, a court having jurisdiction under this Act may, for the purpose of giving effect to the order, issue a warrant authorizing or directing the person, or any of the persons, to whom it is addressed to take possession of the child and to deliver the child to the person so entitled to access.**

(10) **Where an order entitles more than one person to the custody of a child, a warrant shall not be issued under this section for the removal of the child from the possession of one of those persons and the delivery of the child to another of them.**

(11) **The Attorney-General may appoint persons to be enforcement officers for the purposes of this Part and a warrant under sub-section (8) or (9) may be addressed to a person so appointed.**

44. **Where, in proceedings with respect to the custody, guardianship or maintenance of, or access to, a child of a marriage, it appears to the court that the child ought to be separately represented, the court may, of its own motion, or on the application of the child or of an organization concerned with the welfare of children or of any other person, order that the child be separately represented, and the court may make such other orders as it thinks necessary for the purpose of securing such separate representation.**

Separate representation of child.

45. **The court may proceed with the hearing of proceedings in relation to a child notwithstanding that the person by whom the proceedings were instituted has failed to comply with an order of the court or of another court having jurisdiction under this Act.**

Where applicant in contempt.

46. (1) **In this section—**

“court”, in relation to a State or Territory, means the Supreme Court, or a court of summary jurisdiction, of that State or Territory;

“custody order” means a subsisting order for custody of, or access to, an ex-nuptial child who has not attained the age of 18 years.

Registration inter-State of orders for custody of ex-nuptial children.

(2) The regulations may make provision for and in relation to—

- (a) the registration in the courts of a State of custody orders made by the courts of other States or by the courts of the Territories; and
- (b) the registration in the courts of a Territory of custody orders made by the courts of other Territories or by the courts of the States.

(3) Where a custody order is registered in a court under this section, the order has the same force and effect as if it were an order made by that court under this Act.

Overseas
custody
orders.

47. (1) The regulations may make provision for and in relation to the registration in courts in Australia of overseas custody orders.

(2) Where an overseas custody order is registered in a court under this section, the order has the same force and effect as if it were an order made by that court under this Act.

(3) Where an overseas custody order is so registered, a court in Australia shall not, where it becomes aware of the order, exercise jurisdiction in proceedings for the custody of, or access to, the child the subject of the overseas custody order, unless—

- (a) every person having rights of custody or access in relation to the child under the overseas custody order consents to the exercise of jurisdiction by the court in the proceedings; or
- (b) the court is satisfied that there are substantial grounds for believing that the welfare of the child will be adversely affected if the court does not exercise jurisdiction in the proceedings.

(4) Where the court exercises jurisdiction in proceedings for the custody of, or access to, a child who is the subject of an overseas custody order, the court shall not make an order with respect to the custody of, or access to, the child unless the person who instituted the proceedings satisfies the court—

- (a) that the welfare of the child is likely to be adversely affected if the order is not made; or
- (b) that there has been such a change in the circumstances of the child that the order ought to be made.

Transmission
of Australian
custody
orders to
overseas
country.

48. (1) Where an order made by a court in Australia with respect to the custody of, or access to, a child who has not attained the age of 18 years may be enforced in a prescribed overseas country under provisions corresponding to the provisions of section 47, the Registrar of the court shall, if so requested in writing by a person having rights of custody or access in relation to the child under the order, send to an appropriate court or authority in that country such documents and information as are necessary for securing the enforcement of the order in the overseas country.

(2) The regulations may make provision for an in relation to the transmission to a prescribed overseas country of copies of, and documents relating to, an order made by a court in Australia with respect to custody of, or access to, a child who is the subject of an overseas custody order.

49. (1) Where an order is made under this Act granting to a person the custody of a child of a marriage, a person shall not remove the child from the care and control of the first-mentioned person contrary to the order or interfere with the exercise of the first-mentioned person's rights under the order in respect of the child. Interfering
with child
subject to
custody
order.

(2) Where an order is made under this Act granting to a person the custody of a child of a marriage, being a child that is in the care and control of another person, that other person shall, upon demand by the person entitled to the custody of the child under the order, deliver the child to that person.

(3) Where an order under this Act provides for a person to have access to a child of a marriage, a person shall not, without just cause or excuse, hinder or prevent the first-mentioned person from obtaining access to the child in accordance with the order or interfere with the access to the child that the first-mentioned person is entitled to in accordance with the order.

(4) Sub-sections (1), (2) and (3) apply to an order registered in a court under section 46 or 47 as if the order were an order made under this Act.

(5) A person shall not prevent or hinder the execution of a warrant issued in pursuance of section 43.

(6) If a court having jurisdiction under this Act is satisfied that a person has knowingly and without reasonable cause contravened or failed to comply with a provision of this section, that court may—

- (a) order that person to pay a fine not exceeding \$1,000;
- (b) require that person to enter into a recognizance, with or without sureties, in such reasonable amount as the court thinks fit, that that person will comply with the relevant order, or order that person to be imprisoned until that person enters into such a recognizance or until the expiration of 3 months, whichever first occurs;
- (c) order that person to deliver up to the court that person's passport and such other documents as the court thinks fit; and
- (d) make such other orders as the court considers necessary to enforce compliance with this section.

(6A) Where an act or omission referred to in sub-section (6) is an offence against any other law, the person committing the offence may be prosecuted and convicted under that law, but nothing in this section shall render any person liable to be punished twice in respect of the same offence.

(7) Sub-section (6) does not prejudice the power of a court to punish a person for contempt of court.

PART VII—MAINTENANCE AND PROPERTY

Definition.

50. In this Part—

“marriage” includes a void marriage;

“re-marriage”, in relation to a person who was a party to a purported marriage that is void, means marriage.

Right of spouse to maintenance.

51. A party to a marriage is liable to maintain the other party, to the extent that the first-mentioned party is reasonably able to do so, if, and only if, that other party is unable to support herself or himself adequately, whether by reason of having the care or control of a child of the marriage who has not attained the age of 18 years, or by reason of age or physical or mental incapacity for appropriate gainful employment or for any other adequate reason having regard to any relevant matter referred to in sub-section 54 (2).

Maintenance of children.

52. The parties to a marriage are liable, according to their respective financial resources, to maintain the children of the marriage who have not attained the age of 18 years.

Powers of court in maintenance proceedings.

53. In proceedings with respect to the maintenance of a party to a marriage or of a child of a marriage, the court may make such order as it thinks proper for the provision of maintenance in accordance with this Part.

Matters to be taken into consideration in proceedings with respect to maintenance.

54. (1) In determining—

(a) what constitutes adequate support of a party to a marriage for the purpose of section 51;

(b) whether to make an order for the maintenance of a party to a marriage or a child of a marriage; or

(c) the period for which such an order should continue in force or the amount of any payment to be required to be made under such an order,

the court shall take into account only the matters referred to in sub-section (2).

(1) In exercising jurisdiction under this Part, the court shall take into account only the matters referred to in sub-section (2).

(2) The matters to be so taken into account are—

(a) the age and state of health of each of the parties;

(b) the income, earning capacity, property and other financial resources of each of these parties;

(b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;

(ba) whether either party has the care or control of a child of the marriage who has not attained the age of 18 years;

(c) the financial needs and obligations of each of the parties;

(d) the responsibilities of either party to support any other person;

(e) the eligibility of either party for a pension, allowance or benefit under any law of Australia or of a State or Territory or under any superannuation fund or scheme, or the rate of any such pension, allowance or benefit being paid to either party;

(f) where the parties have separated or the marriage has been dissolved, the standard of living of the parties before the breakdown of the marriage; a standard of living that in all the circumstances is reasonable.

(g) 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;

(ga) 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;

(h) the duration of the marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;

(j) if the party whose maintenance is under consideration is cohabiting with another person—the financial circumstances relating to the cohabitation of the cohabitation; and

(k) the terms of any order made or proposed to be made under section 58 in relation to the property of the parties.

55. (1) In determining—

(a) whether to make an order for the maintenance of a child of a marriage; or

(b) the period for which such an order should continue in force or the amount of any payment to be required to be made under such an order,

the court shall, in addition to the matters referred to in section 54, take into account—

(c) the income, earning capacity, property and other financial resources of the child;

(d) the financial needs of the child; and

(e) the manner in which the child is being, and in which the parties to the marriage expected the child to be, educated or trained.

Maintenance of children.

- (2) Subject to sub-sections (3) and (4)—
- (a) an order shall not be made for the maintenance of a child who has attained the age of 18 years; and
 - (b) an order for the maintenance of a child ceases to be in force when the child attains the age of 18 years.
- (3) The court may—
- (a) provide in an order for the maintenance of a child who has not attained the age of 18 years that the order shall continue in force until a day that is later than, or for a period that extends beyond, the day on which the child will attain that age; or
 - (b) make an order for the maintenance of a child who has attained the age of 18 years, being an order that is expressed to continue in force until a day, or for a period, specified in the order,

if the court is satisfied that the provision of the maintenance is necessary to enable the child to complete his education (including vocational training or apprenticeship) or because he is mentally or physically handicapped, and, in that case, the order continues in force until that day or the expiration of that period, as the case may be.

(4) The court shall not make an order under sub-section (3) unless it is satisfied that, having regard to the child's standard of living and the availability of educational and social benefits, refusal to make the order would subject the child to substantial hardship.

Urgent
maintenance
cases.

56. Where, in proceedings with respect to the maintenance of a party to a marriage or a child of a marriage, it appears to the court that the party or child 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 as the court considers reasonable.

Declaration
of interests
in property.

57. (1) In proceedings between the parties to a marriage with respect to existing title or rights in respect of property, the court may declare the title rights, if any, that a party has in respect of the property.

(1A) Where a court makes a declaration under sub-section (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.

(2) An order under this section is binding on the parties to the marriage but not on any other person.

58. (1) In proceedings with respect to the property of the parties to the a marriage or either of them, the court may make such order as it thinks fit altering the interests of the parties in the property, including an order requiring either or both of the parties to make, for the benefit of either or both of the parties or a child of the marriage *who has not attained the age of 18 years*, such settlement or transfer of property as the court determines.

Alteration of
property
interests.

(2) The court shall not make an order under this section unless it is satisfied that, in all circumstances, it is just and equitable to make the order.

(3) The court shall not make an order under this section unless a decree nisi for dissolution of the marriage, or a decree of nullity of the marriage, has been made or proceedings for a decree of dissolution or nullity of the marriage have been instituted in that court or in another court having jurisdiction under this Act.

(4) In considering what order should be made under this section the court shall take into account—

- (a) the financial contribution made directly or indirectly by or on behalf of a party or a child to the acquisition, conservation or improvement of the property;
- (b) the contribution made **directly or indirectly** to the acquisition, conservation or improvement of the property by either party in the capacity of homemaker or parent *or otherwise*;
- (c) the effect of any proposed order upon the earning capacity of either party;
- (d) the matters referred to in sub-section 54 (2) so far as they are relevant; and
- (e) any other order made under this Act affecting a party.

59. The court, in exercising its powers under this Part, may do any or all of the following:—

General
powers of
court.

- (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;
- (c) order that payment of any sum ordered to be paid be wholly or partly secured in such manner as the court directs;
- (d) 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 effectively or to provide security for the due performance of an order;
- (e) appoint or remove trustees;

- (f) order that payments be made direct to a party to the marriage, to a trustee to be appointed or into court or to a public authority for the benefit of a party to the marriage;
 - (g) order that payment of maintenance in respect of a child be made to such person or public authority as the court specifies;
 - (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;
 - (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 of this section), which it thinks it is necessary to make to do justice; and
- (1) subject to this Act, make an order under this Part at any time before or after the making of a decree under another Part.

Duty of court to end financial relations.

60. In proceedings under this Part, other than proceedings under section 57 or proceedings with respect to maintenance payable during the subsistence of a marriage, the court shall, as far as practicable, make such orders as will finally determine the financial relationships between the parties to the marriage and avoid further proceedings between them.

Cessation of orders.

61. (1) An order with respect to the maintenance of a party to a marriage or a child of a marriage ceases to have effect upon the death of the party or child.

(2) Subject to sub-section (3), an order with respect to the maintenance of a party to a marriage or a child of a marriage ceases to have effect upon the death of the person liable to make payments under the order.

(3) Sub-section (2) does not apply in relation to an order if the order is expressed to continue in force throughout the life of the person for whose benefit the order was made or for a period that had not expired at the time of the death of the person liable to make payments under the order and, in that case, the order is binding upon the legal personal representative of the deceased person.

(4) *An order with respect to the maintenance of a party to a marriage or a child of a marriage ceases to have effect upon the re-marriage of the party or the marriage of the child.*

(4) An order with respect to the maintenance of a party to a marriage ceases to have effect upon the re-marriage of the party.

(4A) An order with respect to the maintenance of a child of a marriage ceases to have effect upon the marriage of the child.

(4B) Where a re-marriage referred to in sub-section (4) or a marriage referred to in sub-section (4A) 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 re-marriage or marriage.

(4C) Any moneys paid in respect of a period after the event referred to in sub-section (4) or (4A) may be recovered in a court having jurisdiction under this Act.

(5) Nothing in this section affects the recovery of arrears due under an order at the time when the order ceased to have effect.

62. (1) In proceedings with respect to the maintenance of a party to a marriage or of a child of a marriage, if there is in force an order (whether made before or after the commencement of this Act) with respect to the maintenance of that party or child by the other party to the marriage—

Modification of maintenance order.

- (a) made by the court; or
- (b) made by another court (including the Superior Court or the Supreme Court of a State or Territory) and registered in the first-mentioned court in accordance with the regulations,

the court may—

- (c) discharge the order if there is any just cause for so doing;
- (d) suspend its operation wholly or in part and either until further order or until a fixed time or the happening of some future event;
- (e) revive wholly or in part an order suspended under paragraph (d); or
- (f) subject to sub-section (2), vary the order so as to increase or decrease any amount ordered to be paid or in any other manner.

(2) The court shall not make an order increasing or decreasing an amount ordered to be paid by an order unless it is satisfied—

- (a) that, since the order was made or last varied—
 - (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
 - (iii) in the case of an order that is binding on a legal personal representative, the circumstances of the estate are such, as to justify its so doing;
- (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; or
- (c) 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.

(3) Sub-section (2) does not prevent the court from making an order varying an order made before the date of commencement of this Act if the first-mentioned order is made for the purpose of giving effect to section 51 this Part.

(4) In satisfying itself for the purposes of paragraph (2) (b), the court shall have regard to any changes that have occurred in the Consumer Price Index published by the Commonwealth Statistician.

(5) The court shall 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.

(6) An order decreasing the amount of a periodic sum payable under an order or discharging an order shall not be expressed to be retrospective to a date earlier than 12 months before the date of the application for the variation or discharge.

(7) For the purposes of this section, the court shall have regard to the provisions of sections 51, 54 and 55.

(8) 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.

63. (1) Where—

- (a) an order under this Part has directed a person to execute a deed or instrument; and
- (b) that person has refused or neglected to comply with the direction or, for any other reason, the court thinks it necessary to exercise the powers of the court under this sub-section,

the court may appoint an officer of the court or other person to execute the deed or instrument in the name of the person to whom the direction was given and to do all acts and things necessary to give validity and operation to the deed or instrument.

(2) The execution of the deed or instrument by the person so appointed has the same force and validity as if it had been executed by the person directed by the order to execute it.

(3) The court may make such order as it thinks just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

64. (1) In proceedings under this Part, the court may set aside or restrain the making of an instrument or disposition by or on behalf of, or by direction or in the interest of, a party if it is made or proposed to be made to defeat an existing or anticipated order in those proceedings for costs, maintenance or the declaration or alteration of any interests in property.

Execution of instruments by order of court.

Transactions intended to defeat claims.

(2) The court may order that any money or real or personal property dealt with by any such instrument or disposition may be taken in execution or charged with the payment of such sums for costs or maintenance as the court directs, or that the proceeds of a sale shall be paid into court to abide its order.

(3) The court shall have regard to the interests of, and shall make any order proper for the protection of, a bona fide purchaser or other person interested.

(4) A party or a person acting in collusion with a party may be ordered to pay the costs of another party or of a bona fide purchaser or other person interested of and incidental to any such instrument or disposition and the setting aside or restraining of the instrument or disposition.

(5) In this section, "disposition" includes a sale and a gift.

65. (1) A maintenance agreement is not enforceable unless it has been approved by the court and the approval has not been revoked. Maintenance agreements.

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

(3) A maintenance agreement ceased to be in force upon the death of a party to the agreement unless the agreement otherwise provides.

(4) A court may revoke its approval of a maintenance agreement only if it is satisfied that the concurrence of a party or the approval of the court was obtained by fraud or that the parties to the agreement desire the revocation of the approval.

(5) Where a court has approved a maintenance agreement and the approval has not been revoked, the agreement shall be deemed to be registered in that court.

(6) The regulations may make provision for and in relation to the registration in a court having jurisdiction under this Act of a maintenance agreement that has been approved by another court under this section.

(7) A subsisting maintenance agreement that is registered in a court may be enforced as if it were an order of that court.

(8) Subject to sub-section (9), where a subsisting maintenance agreement that is registered makes provision with respect to financial matters, the court shall not make an order with respect to the financial matters dealt with in the agreement.

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

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

(11) Subject to section 66, this section does not apply to overseas maintenance agreements.

Overseas maintenance agreements.

66. The regulations may make provision for and in relation to—

- (a) the application of section 65, with such additions, exceptions and modifications as are prescribed, to overseas maintenance agreements; and
- (b) the transmission to appropriate courts or authorities of prescribed overseas countries of, or of copies of, maintenance agreements and of agreements for maintenance of ex-nuptial children for the purpose of securing the enforcement of those agreements in those countries.

Instruments not liable to stamp duty.

67. A maintenance agreement, or a deed or other instrument executed by a person for the purposes of such an agreement or for the purposes of, or in accordance with an order under, this Part, is not subject to any duty or charge *stamp duty* under any law of a State or Territory.

PART VIII—INTERVENTION

Intervention by Attorney-General.

68. (1) The Attorney-General may intervene in, and contest or argue any question arising in—

- (a) any proceedings under this Act where the court requests him to do so or a matter arises that affects the public interest; or
- (b) any proceedings under this Act with respect to the custody or guardianship of, or access to, children.

(2) Where the Attorney-General intervenes in any proceedings, he shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

Intervention by other persons.

69. (1) In proceedings other than proceedings for principal relief, any person may apply for leave to intervene in the proceedings, and the court may make an order entitling that person to intervene in the proceedings.

(2) An order under this section may be made upon such conditions as the court thinks fit.

(3) Where a person intervenes in any proceedings by leave of the court he shall, unless the court otherwise orders, be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

PART IX—APPEALS

70. An appeal does not lie from a decree of dissolution of marriage after the decree has become absolute. No appeal after decree absolute.

71. (1) *A person aggrieved by a decree of a Judge of the Supreme Court of a State exercising jurisdiction with which that Court is invested by this Act may, within such time as is prescribed, appeal from the decree to the Supreme Court of that State sitting as a Full Court or as a Court of Appeal.* Appeals from single Judges of State Supreme Court.

(2) *The Supreme Court of each State is invested with jurisdiction to hear and determine appeals under this section.*

(3) *Upon such an appeal the Court may affirm, reverse or vary the decree the subject of the appeal and may make such decree as, in the opinion of the Court, ought to have been made in the first instance, or may, if it thinks fit, order a re-hearing on such terms and conditions, if any, as it thinks just.*

71. (1) A person aggrieved by a decision of a Judge of the Supreme Court of a State exercising jurisdiction under this Act or of the Family Court exercising original jurisdiction under this Act may, within the time prescribed by the regulations, appeal from the decree to the Full Court of the Family Court. Appeals from courts exercising original jurisdiction.

(2) Upon such an appeal, the Full Court may affirm, reverse or vary the decree the subject of the appeal and may make such decree as, in the opinion of the court, ought to have been made in the first instance, or may, if it thinks fit, order a re-hearing, on such terms and conditions, if any, as it thinks fit.

72. *Notwithstanding anything contained in the Judiciary Act 1903–1973, an appeal does not lie to the High Court, except by special leave of the High Court, from a judgment, decree or order of the Supreme Court of a State given or made under this Act, whether in the exercise of original or appellate jurisdiction.* Appeals to High Court.

72. Notwithstanding anything contained in the Judiciary Act 1903–1973, an appeal does not lie from a judgment, decree or order of a court exercising jurisdiction under this Act, whether original or appellate, except— Appeals to High Court.

(a) by special leave of the High Court; or

(b) upon a certificate of the Full Court of the Family Court that an important question of law or of public interest is involved.

Appeals from courts of summary jurisdiction.

73. (1) A person aggrieved by the decree of a court of summary jurisdiction of a State or Territory exercising jurisdiction under this Act may, within such time as is prescribed, appeal to the *Superior Family Court* or to the Supreme Court of that State or Territory.

(2) The Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred on the *Superior Family Court* and on the Supreme Court of each Territory, to hear and determine appeals instituted in that Court under this section.

(2A) The Governor-General may, by Proclamation, fix a date as the date on or after which appeals to the Supreme Court of a specified State or Territory under this section may not be instituted.

(3) A court shall determine an appeal under this section in accordance with—

(a) the law in force on the date on which the hearing of the appeal is concluded; and

(b) the evidence that was before the court of summary jurisdiction and any other evidence adduced with the leave of that court under sub-section (4).

(4) On the hearing of an appeal to which this section applies a party is not entitled to adduce evidence except with the leave of the court—

(a) granted on the ground that the evidence relates to matters that occurred after the hearing of the proceedings in the court of summary jurisdiction; or

(b) granted in special circumstances on another ground.

PART X—PROCEDURE AND EVIDENCE

Procedure.

74. (1) Subject to sub-section (2) and to the regulations, all proceedings under this Act in the Family Court, or in another court when exercising jurisdiction under this Act, shall be heard in closed court.

(2) Subject to the regulations, relatives or friends of either party, marriage counsellors, welfare officers and legal practitioners may be present in court unless in a particular case the court otherwise orders.

(3) In proceedings under this Act, the court shall proceed without undue formality and shall endeavour to ensure that the proceedings are not protracted.

(4) Neither the Judge hearing proceedings under this Act nor counsel shall robe.

75. The regulations may provide for evidence of any material matter to be given on affidavit at the hearing of—

(a) proceedings for principal relief that are undefended at the time of hearing; and

Evidence by affidavit in undefended proceedings.

(b) proceedings other than proceedings for principal relief.

76. Where the paternity of a child is a question in issue in proceedings under this Act, the court may make an order requiring either party to the marriage or any other person to give such evidence as is material to the question. Evidence as to paternity.

77. (1) The parties to proceedings under this Act are competent and compellable witnesses. Evidence of husbands and wives.

(2) The parties to a marriage are competent and compellable to disclose communications made between them during the marriage.

(3) Sub-section (2) applies to communications made before, as well as to communications made after, the date of commencement of this Act.

78. The court shall forbid the asking of, or excuse a witness from answering, a question that it regards as offensive, scandalous, insulting or humiliating, unless the court is satisfied that it is essential in the interests of justice that the question be answered. Offensive or scandalous questions.

79. In proceedings under this Act, the court may receive as evidence of the facts stated in it a document purporting to be either the original or a certified copy of a certificate, entry or record of a birth, death or marriage alleged to have taken place whether in Australia or elsewhere. Proof of birth, death or marriage.

PART XI—RECOGNITION OF DECREES

80. A decree under this Act has effect throughout Australia and the external Territories other than Papua New Guinea. Decrees under this Act.

81. (1) In this section—

“applicant”, in relation to the dissolution or annulment of a marriage, means the party at whose instance the dissolution or annulment was effected;

“marriage” includes a purported marriage that is void;

“overseas country” means a country, or part of a country, outside Australia;

“relevant date”, in relation to a dissolution or annulment of a marriage, means the date of the institution of the proceedings that resulted in the dissolution or annulment;

“respondent”, in relation to the dissolution or annulment of a marriage, means a party to the marriage not being the party at whose instance the dissolution or annulment was effected.

(2) For the purposes of this section, a person who is a national of a country of which an overseas country forms part shall be deemed to be a national of that overseas country. Overseas decrees.

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

- (a) the respondent was ordinarily resident in the overseas country at the relevant date;
- (b) the applicant was ordinarily resident in the overseas country at the relevant date and either—
 - (i) the ordinary residence of the applicant had continued for not less than 1 year immediately before the relevant date; or
 - (ii) the last place of cohabitation of the parties to the marriage was in that country;
- (c) the applicant or the respondent was domiciled in the overseas country at the relevant date;
- (d) the respondent was a national of the overseas country at the relevant date;
- (e) the applicant was a national of the overseas country at the relevant date and either—
 - (i) the applicant was ordinarily resident in that country at that date; or
 - (ii) the applicant had been ordinarily resident in that country for a continuous period of 1 year falling, at least in part, within the 2 years immediately before the relevant date; or
- (f) the applicant was a national of, and present in, the overseas country at the relevant date and the last place of cohabitation of the parties to the marriage was in an overseas country the law of which, at the relevant date, did not provide for dissolution of marriage or annulment of marriage, as the case may be.

(4) A dissolution or annulment of a marriage shall not be recognized as valid by virtue of sub-section (3) where—

- (a) under the common law rules of private international law, recognition of its validity would be refused on the ground that a party to the marriage had been denied natural justice or that the dissolution or annulment was obtained by fraud; or
- (b) recognition would manifestly be contrary to public policy.

(5) Any dissolution or annulment of a marriage that would be recognized as valid under the common law rules of private international law but to which none of the preceding provisions of this section applies shall be recognized as valid in Australia, and the operation of this sub-section shall not be limited by any implication from those provisions.

(6) Notwithstanding anything contained in this section, the annulment in accordance with the law of an overseas country of a marriage solemnized under Part V of the *Marriage Act* 1961 or of that Act as amended, being an annulment on the ground only of non-compliance with the formalities prescribed by the law of the country in which the marriage was solemnized, shall not be recognized as valid in Australia.

(7) For the purposes of this section, a court in Australia, in considering the validity of a dissolution or annulment effected under the law of an overseas country, may treat as proved any facts found by a court of the overseas country or otherwise established for the purposes of the law of the overseas country.

(8) For the purposes of the preceding provisions of this section but without limiting the operation of those provisions, a dissolution or annulment of a marriage shall be deemed to have been effected in accordance with the law of an overseas country if it was effected in another overseas country in circumstances in which, at the relevant date, it would have been recognized as valid by the law of the first-mentioned overseas country.

(9) Where a dissolution or annulment of a marriage is to be recognized as valid in accordance with this section, the capacity of a party to that marriage to re-marry in accordance with the law of Australia is not affected by the fact that the validity of the dissolution or annulment is not recognized under the law of some other country.

(10) The preceding provisions of this section apply in relation to dissolutions and annulments effected whether by decree, legislation or otherwise, whether before, on or after the commencing date, and, for the purposes of this section, any decree, legislation or other process by which it is established that a purported marriage was or is to become void shall be deemed to be an annulment of the marriage.

PART XII—ENFORCEMENT OF DECREES

82. (1) Subject to this Part and to the regulations, all decrees made under this Act may be enforced by any court having jurisdiction under this Act. Enforcement generally.

(2) A court shall not entertain a proceeding under this Act for the enforcement of a decree made by another court unless the decree is registered in the first-mentioned court in accordance with the regulations.

(3) Where a person bound by a decree made under this Act has died, the decree may, by leave of the court by which it was made and on such terms and conditions as the court thinks fit, be enforced, in respect of liabilities that arose under the decree before the death of that person, against the estate of that person.

Methods of enforcement.

83. The regulations may make provision for and in relation to the manner in which decrees made under this Act may be enforced including provision for conferring jurisdiction on courts of the Territories or investing State courts with Federal jurisdiction.

Persons in prison at commencement of Act.

84. (1) After the commencement of this Act, no person shall be imprisoned or otherwise placed in custody by reason of contravention of, or failure to comply with, an order for the payment of money made in a matrimonial cause and any person who is in a prison or other custody at the commencement of this Act as a result of contravention of, or failure to comply with, such an order shall be released forthwith.

(2) The release from prison or other custody under sub-section (1) of a person who was in that prison or custody by reason of failure to pay any moneys does not release the person from any liability to pay those moneys.

(3) This section does not affect the operation of sub-section 49 (6) or sub-section 90 (3).

Contempt.

84A. (1) Notwithstanding any other provision of law, a court having jurisdiction under this Act may punish persons for contempt in the face of the court when exercising that jurisdiction or for wilful disobedience of any decree made by the court in the exercise of jurisdiction under this Act.

(2) The regulations may provide for practice and procedure as to charging with contempt and the hearing of the charge.

(3) Where a person in contempt is not a corporation, the court may punish the contempt by committal to prison or fine or both.

(4) Where a corporation is in contempt, the court may punish the contempt by sequestration or fine or both.

(5) The court may make an order for—

- (a) punishment on terms;
- (b) suspension of punishment; or
- (c) the giving of security for good behaviour.

(6) Where a person is committed to prison for a term for contempt, the court may order his discharge before the expiry of that term.

85. (1) This section applies to an order for the payment of—

- (a) the expenses of maintaining, for a period immediately before her confinement or expected confinement, a woman who has been, or is expected to be, confined for the purposes of childbirth;

Inter-State enforcement of affiliation and like orders.

- (b) medical, surgical, hospital or nursing expenses in respect of the confinement of such a woman;
- (c) the expenses of maintaining such a woman for a period immediately following her confinement;
- (d) the expenses of maintaining a woman who is expecting a child, where the order was made by reason that she was expecting the child;
- (e) an amount in respect of the maintenance of an ex-nuptial child who has not attained the age of 18 years where the order was made on the basis that the person against whom the order was made is a parent of the child;
- (f) funeral expenses in respect of an ex-nuptial child, where the order was made on the basis that the person against whom the order was made is a parent of the child;
- (g) funeral expenses in respect of the mother of an ex-nuptial child where the order was made on the basis that the person against whom the order was made is the father of the child; or
- (h) medical, surgical, hospital or nursing expenses in respect of a person, where the order was made by reason that an order for the payment of expenses referred to in a preceding paragraph has been made in relation to that person.

(2) The regulations may make provision for and in relation to—

- (a) the enforcement by a court of a State having jurisdiction under this Act of orders to which this section applies made by a court of another State or of a Territory; and
- (b) the enforcement by a court of a Territory having jurisdiction under this Act of orders to which this section applies made by a court of another Territory or of a State.

(2) The regulations may make provision for and in relation to the enforcement in a State or Territory by a court having jurisdiction under this Act of orders to which this section applies made by a court in another State or Territory.

86. (1) In this section—

“country with restricted reciprocity” means a country outside Australia declared by the regulations to be a country with restricted reciprocity for the purposes of this section;

“maintenance order” means an order with respect to the maintenance of a party to a marriage or of a child of a marriage who has not attained the age of 18 years or, to the extent provided by the regulations, an order of the kind referred to in section 85;

“reciprocating country” means a country outside Australia declared by the regulations to be a reciprocating country for the purposes of this section.

Overseas enforcement of maintenance orders.

- (2) The regulations may make provision for an in relation to—
- (a) the registration in, and enforcement by, courts having jurisdiction under this Act of maintenance orders made by courts of reciprocating countries or of countries with restricted reciprocity;
 - (b) the transmission to appropriate courts or authorities of reciprocating countries or of countries with restricted reciprocity of maintenance orders made by courts having jurisdiction under this Act for the purpose of securing the enforcement of those orders in those countries;
 - (c) the making of orders (including provisional orders) for the variation, discharge, suspension or revival of maintenance orders registered in accordance with regulations under this section or transmitted to other countries in accordance with regulations under this section, and the effect in Australia of orders under this paragraph; and
 - (d) the making of orders for the confirmation of provisional orders made by courts in reciprocating countries or in countries with restricted reciprocity, being provisional maintenance orders or provisional orders varying, discharging, suspending or reviving maintenance orders, and the effect in Australia of orders under this paragraph.

(3) The regulations may make different provision under this section in relation to reciprocating countries from the provision made in relation to countries with restricted reciprocity.

Convention
on Recovery
Abroad of
Maintenance.

87. The regulations may make such provision as is necessary to enable the performance of the obligations of Australia under the Convention on the Recovery Abroad of Maintenance signed at New York on 20 June 1956 but any such regulations shall not come into operation until the day on which that Convention enters into force for Australia.

Arrange-
ments with
States.

88. The Government of Australia may make arrangements with the Government of a State for the performance by officers of the State of functions under the regulations.

PART XIII—DECLARATIONS AND INJUNCTIONS

Proceedings
for
declarations.

89. In proceedings of the kind referred to in paragraph (b) of the definition of "matrimonial cause" in sub-section 4 (1), the court may make such declaration as is justified.

Injunctions.

90. (1) In proceedings of the kind referred to in paragraph (e) of the definition of "matrimonial cause" in sub-section 4 (1), the court may make such order or grant such injunction as it thinks proper with respect to the matter to which the proceedings relate, including an injunction for the personal protection of a party to the marriage or of a child of the marriage or for the protection of the marital relationship or in relation to the property of a party to the marriage.

(1A) In exercising its powers under sub-section (1) the court may make an order relieving a party to a marriage from any obligation to perform marital services or render conjugal rights.

(2) A court exercising jurisdiction under this Act in proceedings other than proceedings to which sub-section (1) applies may grant an injunction, by interlocutory order or otherwise (including an injunction in aid of the enforcement of a decree), in any case in which it appears to the court to be just or convenient to do so and either unconditionally or upon such terms and conditions as the court thinks appropriate.

(3) If a court having jurisdiction under this Act is satisfied that a person has knowingly and without reasonable cause contravened or failed to comply with an injunction or order under this section, that court may—

- (a) order that person to pay a fine not exceeding \$1,000;
- (b) require that person to enter into a recognizance, with or without sureties, in such reasonable amounts as the court thinks fit, that he will comply with the injunction or order, or order him to be imprisoned until he enters into such a recognizance or until the expiration of 3 months, whichever first occurs;
- (c) order that person to deliver up to the court such documents as the court thinks fit; and
- (d) make such other orders as the court considers necessary to enforce compliance with this injunction or order.

(4) Sub-section (3) does not prejudice the power of a court to punish a person for contempt of court.

(5) Where an act or omission referred to in sub-section (3) is an offence against any other law, the person committing the offence may be prosecuted and convicted under that law, but nothing in this section renders any person liable to be punished twice in respect of the same offence.

PART XIV—MISCELLANEOUS

91. (1) *The Attorney-General may establish a Family Law Advisory Committee, consisting of persons appointed by him in accordance with sub-section (2).*

(2) *The Committee shall consist of a Judge of the Family Division of the Superior Court of Australia and such other judges, magistrates, officers of the Public Service of Australia or of a State, representatives of marriage counselling organizations and other persons as the Attorney-General thinks fit.*

(3) *The function of the Committee is to advise the Attorney-General on the working of this Act and on other matters relating to family law.*

(4) The Attorney-General shall appoint one of the members to be the Chairman of the Committee.

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

(6) Meetings of the Committee shall be convened by the Chairman or the Attorney-General.

(7) The Committee shall meet at least once a year.

(8) The Chairman shall cause records of meetings of the Committee to be kept and shall promptly report to the Attorney-General on the deliberations of the Committee.

Family Law
Council.

91. (1) The Attorney-General may establish a Family Law Council consisting of persons appointed by him in accordance with sub-section (2).

(2) The Council shall consist of a Judge of the Family Court and such other judges, officers of the Public Service of Australia or of a State, representatives of marriage counselling organizations and other persons as the Attorney-General thinks fit.

(3) It is the function of the Council to advise and make recommendations to the Attorney-General, either of its own motion or upon request made to it by the Attorney-General, concerning—

- (a) the working of this Act and other legislation relating to family law;
- (b) the working of legal aid in proceedings in family law; and
- (c) any other matters relating to family law.

(4) The Attorney-General shall appoint one of its members to be Chairman of the Council.

(5) The members of the Council shall be paid such allowances in respect of expenses in connexion with their duties as are prescribed.

(6) A member (including the Chairman) may resign his office by writing signed by him and delivered to the Attorney-General.

(7) Meetings of the Council shall be convened by the Chairman or the Attorney-General.

(8) The Council shall cause records to be kept of its meetings.

(9) The Council shall, within 60 days after each year ending on 30 June, furnish to the Attorney-General, for presentation to the Parliament, a report with respect to its operations in that year.

91A. (1) There is established by this Act an Institute by the name of the Institute of Family Studies. Institute of
Family
Studies.

(2) The Institute shall consist of—

- (a) a Director; and
- (b) 4 or more other members,

each of whom shall be appointed by the Attorney-General.

(3) The functions of the Institute are—

- (a) to promote, by the encouragement and co-ordination of research and other appropriate means, the identification of, and development of understanding of, the factors affecting marital and family stability in Australia, with the object of promoting the protection of the family as the natural and fundamental group unit in society; and
- (b) to advise and assist the Attorney-General in relation to the making of grants, out of moneys available under appropriations made by the Parliament, for purposes related to the functions of the Institute and the supervising of the employment of grants so made.

(4) The regulations may prescribe any matters that are necessary or convenient to be prescribed in connexion with the conduct of the affairs of the Institute, including matters relating to the conduct of the meetings of the Institute, and, subject to the Remuneration Tribunals Act 1973-1974, payment of remuneration and allowances to the Director or other members of the Institute.

92. (1) Subject to sub-section (2) and section 93, each party to proceedings under this Act shall bear his own costs. Costs.

(2) If the court is of opinion in a particular case that there are exceptional circumstances that justify it in doing so, the court may, subject to the regulations, make such orders as to costs and security for costs, whether by way of interlocutory order or otherwise, as the court thinks just.

(3) A person who has instituted a matrimonial cause or a person who is entitled to participate in proceedings either as a respondent or intervener may apply to the Australian Legal Aid Office for legal assistance under this section in respect of the proceedings.

(4) Where an application is made by a person under sub-clause (3), the Attorney-General, the Director of the Australian Legal Aid Office or a person employed in the Australian Legal Aid Office authorized by the Director in writing in that behalf may (in the case of a person employed in the Australian Legal Aid Office, subject to any restriction in that authority in writing), authorize legal assistance to the applicant in accordance with the means and needs test of the Australian Legal Aid Office for the giving of legal assistance.

Frivolous or vexatious proceedings.

93. The court may, at any stage of proceedings under this Act, if it is satisfied that the proceedings are frivolous or vexatious, dismiss the proceedings and make such orders as to costs as it thinks just.

Married persons may sue each other.

94. Either party to a marriage may bring proceedings in contract or in tort against the other party.

Criminal conversation, adultery and enticement.

94A. After the commencement of this Act, no action lies for criminal conversation, damages for adultery, or for enticement of a party to a marriage.

Restrictions on publication of reports or evidence.

95. (1) A person shall not print or publish, or cause to be printed or published, any statement or report that proceedings have been instituted under this Act unless the statement or report relates to proceedings the hearing of which has commenced or been completed.

(2) Except as provided by this section, a person shall not, in relation to any proceedings under this Act, print or publish, or cause to be printed or published, any account of evidence in the proceedings, or any other account or particulars of the proceedings other than—

- (a) the names and addresses of the parties and the name or names of the member or members of the court and of the counsel and solicitors;
- (b) a concise statement of the nature of the proceedings;
- (c) submissions on any points of law arising in the course of the proceedings, and the decision of the court on those points; or
- (d) particulars of the decree made by the court,

and a person shall not print any matter referred to in any of the paragraphs of this sub-section in letters larger than 12 point Times or publish any matter so printed.

95. (1) A person shall not print or publish—

- (a) any statement or report that proceedings have been instituted in the Family Court or in another court exercising jurisdiction under this Act; or
- (b) any account of evidence in proceedings instituted in the Family Court or in another court having jurisdiction under this Act, or any other account or particulars of any such proceedings.

(3) (2) A person who contravenes sub-section (1) or (2) is guilty of an offence punishable, on conviction—

- (a) in the case of a first offence, or a second or subsequent offence prosecuted summarily—by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months; and
- (b) in the case of a second or subsequent offence, being an offence prosecuted on indictment—by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 1 year.

Restriction on publication of evidence.

(4) (3) Any offence against this section may be prosecuted summarily, and a second or subsequent offence by a person against this section may be prosecuted summarily or on indictment.

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

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

- (a) the printing of any pleading, transcript of evidence or other document for use in connexion with proceedings in any court or the communication of any such document to persons concerned in the proceedings;
- (b) the printing or publishing of a notice or report in pursuance of the direction of a court;
- (c) the printing or publishing of law court lists; or
- (d) the printing or publishing of any publication bona fide intended primarily for the use of members of the legal or medical profession, being—
 - (i) a separate volume or part of a series of law reports; or
 - (ii) any other publication of a technical character; or
- (e) the printing or publishing of a photograph of any person, not being a photograph forming part of the evidence in proceedings under this Act.

(7) (6) In this section, "court" includes an officer of a court investigating a matter in accordance with the regulations and "judgment of the court" includes a report made to a court by such an officer.

96. The Governor-General may make regulations, not inconsistent with this Act, for or in relation to the practice and procedure of the courts having jurisdiction under this Act, or any of them, including regulations—

- (a) prescribing matters relating to the costs of proceedings and the assessment or taxation of those costs;
- (b) authorizing a court to refer to an officer of the court for investigation, report and recommendation claims or applications for or relating to any matter before the court;
- (c) authorizing an officer making an investigation referred to in paragraph (b) to take evidence on oath or affirmation, and to obtain and receive in evidence a report from a welfare officer, and enabling the summoning of witnesses before an officer making such an investigation for the purpose of giving evidence or producing books and documents;
- (d) regulating the procedure of a court upon receiving a report of an officer who has made an investigation referred to in paragraph (b);

Regulations.

- (e) providing for the manner of service of process of a court under this Act, and for dispensing with such service;
- (f) subject to the Constitution, authorizing an officer of a court to perform and exercise powers and functions, on behalf of the court or otherwise in relation to proceedings under this Act and enabling the court to review the decision of that officer in relation to the performance or exercise of any function or power;
- (g) providing for and in relation to the grant of legal aid in proceedings under this Act;
- (h) prescribing matters incidental to the matters specified in the preceding paragraphs of this section; and
- (i) prescribing penalties not exceeding \$200 for offences against the regulations.

Regulations.

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

(2) The regulations may make provision for or in relation to the practice and procedure to be followed in the Family Court and in other courts exercising jurisdiction under this Act, and for or in relation to all matters and things incidental to any such practices or procedure, or necessary or convenient to be prescribed for the conduct of any business in those courts.

(3) Without limiting the generality of sub-section (2), the regulations may make provision for or in relation to—

- (a) the attendance of witnesses;
- (b) providing for the manner of service of process of the Family Court or another court exercising jurisdiction under this Act, and for dispensing with such service;
- (c) the enforcement and execution of the judgements of the Family Court and other courts exercising jurisdiction under this Act;
- (d) the time and manner of institution of appeals in and to the Family Court;
- (e) the duties of officers of the Family Court;
- (f) subject to the Constitution, authorizing an officer of the Family Court or of another court exercising jurisdiction under this Act to perform and exercise powers and functions, on behalf of the court or otherwise, in relation to proceedings instituted in the Family Court or proceedings under this Act, and enabling the court concerned to review the decision of that officer in relation to the performance or exercise of any function or power;
- (g) the seals and stamps to be used in the Family Court and in courts having jurisdiction under this Act;

- (h) prescribing matters relating to the costs of proceedings and the assessment or taxation of those costs;
- (i) authorizing a court to refer to an officer of the court for investigation, report and recommendation claims or applications for or relating to any matters before the court;
- (j) authorizing an officer making an investigation referred to in paragraph (i) to take evidence on oath or affirmation, and to obtain and receive in evidence a report from a welfare officer, and enabling the summoning of witnesses before an officer making such an investigation for the purpose of giving evidence or producing books and documents;
- (k) regulating the procedure of a court upon receiving a report of an officer who has made an investigation referred to in paragraph (i);
- (l) prescribing matters incidental to the matters specified in the preceding paragraphs of this section;
- (m) prescribing penalties not exceeding \$500 for offences against the regulations.