FAMILY COURT AMENDMENT (FAMILY VIOLENCE AND OTHER MEASURES) BILL 2011

EXPLANATORY MEMORANDUM

OUTLINE

The Family Court Amendment (Family Violence and Other Measures) Bill 2011 (the "Family Violence Bill") will amend the *Family Court Act 1997* (WA) to provide better protection for children and families at risk of violence and abuse. The Bill also makes several technical amendments which correct drafting and minor policy oversights and provide other efficiencies for the courts and litigants.

Successive Western Australian Parliaments have enacted legislation relating to ex-nuptial children which, as a general matter, corresponds with Commonwealth legislation relating to children of a marriage. This legislative arrangement has been adopted because the Western Australian Parliament, unlike other States, has not referred power over ex-nuptial children to the Commonwealth Parliament. As a result the Western Australian Parliament (not the Commonwealth Parliament) has legislative power in relation to ex-nuptial children in the Family Court of Western Australia.

The Family Court Amendment (Family Violence and Other Measures) Bill 2012 addresses a matter of paramount concern to the Western Australian community. The Bill mirrors the *Family Law Legislation Amendment Act 2011* of the Commonwealth which relates to the children of a marriage. The Commonwealth Act commenced operation on 7 June 2012.

Therefore, as from 7 June 2012, the law under the *Family Law Act 1975* (Cth) substantially changed in relation to children of a marriage. Until the appropriate amendments are made to the *Family Court Act 1997* (WA), ex-nuptial children in Western Australia will be subject to quite different laws to all other children in Australia in determinations regarding their best interests.

The Family Violence Bill responds to reports received by the Commonwealth Government into the 2006 family law reforms and how the family law system deals with family violence. The reports indicate that the Act fails to adequately protect children and other family members from family violence and child abuse. These reports are the *Evaluation of the 2006 family law reforms* by the Australian Institute of Family Studies (AIFS); *Family Courts Violence Review* by the Honourable Professor Richard Chisholm AM; and *Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues* by the Family Law Council.

The safety of children is of critical importance and the Government takes the issue of addressing and responding to family violence and child abuse very seriously. The family law system must prioritise the safety of children to

ensure the best interests of children are met. The Family Violence Bill sends a clear message that family violence and child abuse are unacceptable.

These amendments address issues of significant community concern by strengthening the role of family courts, advisers and parents in preventing harm to children while continuing to support the concepts of shared parental responsibility and shared care, where this is safe for children.

The key amendments made by the Family Violence Bill will:

- prioritise the safety of children in parenting matters;
- change the definitions of ‘abuse’ and ‘family violence’ to better capture harmful behaviour;
- strengthen advisers obligations by requiring family consultants, family counsellors, family dispute resolution practitioners and legal practitioners to prioritise the safety of children;
- ensure the courts have better access to evidence of abuse and family violence by improving reporting requirements; and
- make it easier for state and territory child protection authorities to participate in family law proceedings where appropriate.

NOTES ON CLAUSES

Part 1 - Preliminary

Clause 1: Short title

This clause provides that the Bill, once enacted, will be known as the *Family Court Amendment (Family Violence and Other Measures) Act 2011.*

Clause 2: Commencement

This clause provides for the commencement of the Act. Part 1 will commence on the day the Act receives the Royal Assent. The balance of the Act will commence on the following day.

Clause 3: Act amended

Clause 3 provides that this proposed Act amends the *Family Court Act 1997* (WA).

Part 2 - Amendments Relating To Family Violence

Clause 4. Section 5 amended

Subclause (1) deletes the present definitions of "***abuse***", "***family violence***" and "***member of the family***". A new definition of "***abuse***" is inserted by subclause (2). The proposed new definition includes assault; sexual abuse and exploitation; causing a child to suffer serious psychological harm including where the child is exposed to family violence; and serious neglect of the child. The new definition widens the existing definition in accordance with accepted community standards and expectations.

New definitions of "***exposed***", "***family violence***" and "***member of the family***" are included by subclause (2). The new definitions of "***exposed***" and "***family violence***" are defined by proposed new section 9A inserted by clause 6 of this Bill while the new definition of "***member of the family***" is found in section 6 of the Act as amended by clause 5 of the Bill.

Clause 5. Section 6 amended

Clause 5 amends section 6 of the *Family Court Act 1997* (WA) by deleting the existing subsection 6(a) and inserting two new paragraphs that refer to the definition of "***step-parent***" in section 5(1) and the meaning of "***family violence***" in section 9A. The clause also amends the existing section 6(c) by inserting reference to two new sections 66HA and 66HB.

Clause 6. Section 9A inserted

Clause 6 inserts proposed new section 9A to define "***family violence***". "***Family violence***" is defined to mean any violent, threatening or other behaviour that coerces or controls a family member or causes the person to be fearful. The proposed section lists examples of behaviour that may constitute family violence including an actual assault, stalking taunts through to "unreasonably denying the family member" financial autonomy. A child is exposed to family violence if they see or hear violence. The new definition widens the existing definition in accordance with accepted community standards and expectations.

Clause 7. Section 37 amended

Clause 7 amends section 37(1)(d) by deleting the word "safety" where it appears and inserting the word "protection". This is consistent with the rest of the Act.

The clause also inserts "and" after each of subsections (1)(a) to (c) and "or" after subsection (2)(a) in line with modern drafting techniques.

Clause 8. Section 66 amended

Clause 8 inserts a new subsection (4) into section 66 of the Act to provide that a further object of Part VII of the Act is to give effect to the United Nations *Convention on the Rights of the Child* (the Convention). The provision is an interpretative matter with the purpose of confirming, in cases of ambiguity, the obligation on decision makers to interpret Part VII of the Act, to the extent its language permits, consistently with Australia's obligations under the Convention. To the extent that the Act departs from the Convention, the Act would prevail. This provision does not incorporate the Convention into WA domestic law.

Clause 9. Part 5 Division 1 Subdivision 2 heading replaced

Clause 9 deletes the present heading to Part 5 Division 1 Subdivision 2 before section 66A and inserts a new heading. In effect the words ": court proceedings" are added to the heading.

Clause 10. Section 66C amended

Subclause (1) inserts a new subsection (3A) after existing section 66C(2). The new subsection requires the court, when determining what is in a child's best interests, to give greater weight to the primary consideration that protects the child from harm in cases if there is inconsistency in applying the considerations, that is the provisions of subsection (2)(b). Section 66C(2) of the Act provides that the two primary considerations are: (a) the benefit to the child of having a meaningful relationship with both of the child's parents; and (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence. Where child safety is a concern, this new provision will provide the courts with clear

legislative guidance that protecting the child from harm pursuant to subsection (2)(b) is the priority consideration.

Subclause 2(a) repeals existing subsection 66C(3)(c) of the Act and replaces it with new subsections 66C(3)(c) and (da). Current subsection 66C(3)(c) is commonly referred to as the 'friendly parent provision'. This provision required the family courts to consider the willingness of one parent towards the other in facilitating a child's relationship with other parent. The AIFS *Evaluation of the 2006 Family Law Reforms* and the Family Law Council report to the Attorney-General, *Improving responses to family violence in the family law system*, noted the impact this provision had in discouraging disclosures of family violence and child abuse. These reports indicate that parties were not disclosing concerns of family violence and child abuse for fear of being found to be an "unfriendly parent".
The repeal of subsection 66C(3)(c) is intended to remove this disincentive and enable all relevant information to be put before the courts for consideration in making parenting orders. Removal of the "friendly parent" provision will not prevent the court from considering a range of matters relevant to the care, welfare and development of the child such as a parent's attitude to the responsibilities of parenthood.

Proposed subsection 66C(3)(c) will require the court to consider the extent to which each of the child's parents has fulfilled, or failed to fulfil, his or her responsibilities as a parent. This will include the extent to which each parent has taken, or failed to take, the opportunity to spend time with the child, communicate with the child, and participate in decision-making about major long-term issues in relation to the child.

Proposed subsection 66C(3)(da) will require the court to consider the extent to which each parent has facilitated, or failed to facilitate, the other parent doing these things and the extent to which each parent has fulfilled, or failed to fulfil, his or her obligation to maintain the child.

Subclause 2(b) deletes paragraph 66C(3)(k) and replaces it with a similar provision which removes the requirement that a family violence orders must be final or contested. The effect of this new paragraph is the courts must have regard to any family violence order made-including interim, non-contested and police issued order-and give appropriate weight to these orders. The definition of "family violence order" remains unchanged.

Subclause (3) deletes the existing sections 66C(4) and (5). The repealed section 66C(4) has been substantially re-enacted as the new section 66(3)(c).

Clause 11. Sections 66HA and 66HB inserted

Clause 11 inserts new sections 66HA and 66HB into the Act.

Section 66HA. - Informing court of care arrangements under child welfare laws - FLA section 60CH

Proposed section 66HA requires parties to parenting proceedings to notify the court if the child or another child who is a member of the child's family is under the care of a person under a child welfare laws. This proposed section further provides that a person who is not party to proceedings may advise the court if the child or another child who is a member of the child's family is under the care of a person under a child welfare law. Under proposed subsection 66HA(3), the validity of any orders made by the court will not be affected by a failure to inform the court about such care arrangements. Despite this, the limitation in section 202 of the Act, which restricts the circumstances in which the courts can make orders in relation to a child who is under the care of a person under a child welfare order, will prevail over section 66HA.

Section 66HB. – Informing court of notification to, and investigations by, prescribed State or Territory agencies – FLA section 60CI

Proposed section 66HB requires parties to parenting proceedings to disclose to the court whether the child has been the subject of a notification or report to, or investigation, inquiry or assessment by, a prescribed government agency. This proposed section will further provide that a person who is not a party to the proceedings may advise the court about whether the child has been the subject of a notification or report to, or investigation, inquiry or assessment by, a prescribed government agency. A failure to inform the court will not affect the validity of any orders made by the court. The Regulations prescribe the government agencies as the Department of Child Protection and WA Police.

Clause 12. Part 5 Division 1 Subdivision 3A inserted

Clause 12 inserts a new Subdivision 3A before existing Subdivision 3. The new Subdivision inserts new section 66HC and provides for the adviser's obligations in relation to the best interests of the child.

The proposed section 66HC outlines the obligations on advisers when working with parents to reach parenting arrangements for their children. As with current section 78A of the Act, an adviser is defined as a legal practitioner, family counsellor, family dispute resolution practitioner or a family consultant.

The proposed new section directs advisers to focus on the best interests of a child when providing advice about parenting arrangements and other matters relating to that child under Part 5 of the Act.

Where there is inconsistency in applying the primary considerations of a child's right to a meaningful relationship with each parent and the child's right to be protected from harm, advisers are required to encourage parents to prioritise a child's safety. This approach is consistent with the amendments made section 66C which concerns the best interests of a child in court

proceedings. The new adviser obligations help parents to consider the protection of their children from harm as a priority at an early stage of discussions with the assistance of their advisers.

Clause 13. Section 66J deleted

Clause 13 proposes to delete the existing section 66J of the Act which provides that the Court is to take prompt action in elation to allegations of child abuse or family violence.

Section 66J will be substantially re-enacted in proposed section 162B (Court to take prompt action in relation to allegations of child abuse or family violence) – FLA section 67ZBB. Proposed section 162B is located more appropriately near section 162A which imposes obligations to report child abuse and family violence to the courts.

Clause 14. Section 78A amended

Clause 14 inserts a new section 78A(1A) into the Act. The proposed new subsection provides that new adviser obligations set out in new section 66HC are in addition to obligations on advisers under section 78A of the Act to give certain advice in connection with the making of parenting plans in relation to a child.

Clause 15. Section 133 amended

Clause 15 amends subsection 133(c) of the Act to insert the words “and family violence” after “child abuse”. The amendment informs the reader that Part 5 contains provisions relating to allegations of family violence as well as child abuse. The clause also inserts the word ”and” after each of paragraphs (a) and (b) of section 133 in line with modern drafting practice.

Clause 16. Part 5 Division 8 Subdivision 4 heading replaced

Clause 16 effectively inserts the words “and family violence” into the heading so that it will read “Allegations of child abuse and family violence”.

Clause 17. Section 159 amended

Subclause (1) amends section 159 to insert a new subsection (1A) before subsection (1). New subsection (1A) defines who is an “interested person” in proceedings under the Act. The new definition is broader than currently, namely, a party to proceedings under the Act. The new definition of “interested person” ensures that section 159 applies to parties to proceedings under the Act, an independent children’s lawyer who represents the interests of a child in the case and other persons prescribed by the regulations. The heading of section 159 is also altered to reflect the broadening of the persons covered by that provision. The court must then notify the Department of Child Protection of the allegations made.

Subclause (2) amends subsection 159(1) to refer to “interested person” instead of “party”. This reflects other amendments, which extend section 159 to interested persons and define these in broad terms. Under this item, an “interested person” will be required to file a notice in the court and serve a true copy of the notice upon the person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.

Clause 18. Sections 162A and 162B inserted

Clause 18 inserts new sections 162A and 162B after Part 5 Division 8 Subdivision 4 of the Act.

Section 162A – Where interested person makes allegation of family violence – FLA section 67ZBA

Proposed new section 162A creates obligations upon an ‘interested person’ in proceedings for an order under Part 5 of the Act who makes an allegation of family violence. This provision is based on section 159 of the Act which creates similar obligations in relation to allegations of child abuse. It is intended to ensure that family courts receive the best possible evidence of family violence.

Proposed subsection 162A(2) applies if family violence has been alleged by an interested party, as a consideration that is relevant to whether the court should make or refuse to make an order sought under Part 5 of the Act.

Subsection 162A(3) provides that where an interested person makes an allegation of family violence, that person must file a notice in the prescribed form in the court, and serve a true copy of the notice on the party to proceedings to whom the allegation referred to in subsections (2)(a) or (b) relates. It would be open to the courts to prescribe the same notice for the purposes of subsection 162A (3) as is prescribed for the purposes of subsection 162(3). This amendment makes the reporting requirements for family violence the same as for child abuse.

Section 162B – Court to take prompt action in relation to allegations of child abuse or family violence – FLA section 67ZBB

Proposed new section 162B substantially re-enacts existing section 66J which is to be repealed. The proposed provision will now be located in a more appropriate position as that subdivision deals with allegations of child abuse and family violence.

As with section 66J, proposed section 162B will place an obligation on the court to take prompt action in relation to allegations of child abuse or family violence. The new provision operates in broadly in the same way as section 66J.

New subsection 162B(1) sets out the application of section 162B. It applies where a notice is filed under subsection 159 or 162A in proceedings for an order under Part 5 in relation to a child and the notice alleges, as a consideration relevant to whether the court should make or refuse to make the order, that: there has been abuse of the child or would be a risk of such abuse if the proceedings were delayed; or there has been family violence by one of the parties to proceedings or is a risk of such family violence.

Importantly, new paragraph 162B(2)(c) requires the court to deal with the issues raised by the allegation of child abuse or family violence (or risk thereof) as expeditiously as possible. In addition, the combined effect of new subsections 162B(2) and (3) is that the court must, as soon as practicable and if appropriate within eight weeks after the notice is filed, consider what interim or procedural orders (if any) should be made to enable appropriate evidence about the allegations to be obtained expeditiously as possible and to protect the child or any of the parties to proceedings. The kinds of orders encompassed by paragraphs 162B(2)(a) and (b) include orders for the preparation of a family report, orders requiring the appointment of an independent children's lawyer; and orders to obtain documents or information from a prescribed government agency under section 202K. Paragraph 162B(2)(b) states that the court must make such orders where appropriate.

New subsection 162B(4) requires the court, which has to consider what orders (if any) it should make under proposed subsection 162B(2)(a)(i) to enable appropriate evidence about the allegation to be obtained as expeditiously as possible, to specifically consider whether it should make orders under section 202K to obtain documents or information relating to the allegation from a prescribed government agency. This new subsection will not limit the powers of the court under subsection 162B(2)(a)(i).

New subsection 162B(5) requires the court, which has to consider what orders (if any) it should make under proposed subsection 162B(2)(a)(ii) to protect the child or any of the parties to proceedings, to specifically consider whether it should make orders or grant an injunction under section 235. This new subsection will not limit the powers of the court under subsection 162B(2)(a)(ii).

Proposed new subsection 162B(6) provides that the validity of an order will not be affected by a failure to comply with proposed section 162B.

Clause 19. Section 202B amended

Clause 19 amends section 202B(6)(a) by deleting the words "the child concerned against family violence, child abuse and child neglect; and" and inserting in its place the words "the child concerned from being subjected to, abuse, neglect or family violence; and". The new words are commonly used in the Act.

Clause 20. Section 202E amended

Clause 20 amends section 202E to insert a new subsection (aa). The new subsection imposes a new duty on the court to actively ask each party to child-related proceedings about the existence, or risk, of child abuse or family violence. The imposition of this duty implements the courts obligation to conduct proceedings in a way that will safeguard the child and the parties to the proceedings from harm. The duty does not currently extend to requiring the court to proactively inquire about other information which might be useful evidence from people or agencies other than parties to the proceedings.

Clause 21. Section 237 amended

Clause 21 amends section 237 dealing with costs. Subclause (1) deletes a reference to section 237A which is repealed by this legislation. Subclause (2) inserts a reference to proposed subsection (6A) of section 237. Subclause (3) inserts a proposed new subsection (6A) which effectively provides that the court must not make a order for costs or security for costs against an officer of the Department of Child Protection if it has engaged or employed an officer where the officer has intervened in proceedings at the request of the court and acted in good faith in relation to the proceedings. Subclause (4) inserts "and" after each subsection in accordance with modern drafting practice.

Clause 22. Section 237A deleted

Clause 22 deletes existing section 237A dealing with costs where a false allegation or statement has been made. Section 237A presently requires the court to make a mandatory costs order against a party to the proceedings, for some or all of the costs of another party, where the court is satisfied that the first party knowingly made a false allegation or statement in the proceedings. However, the AIFS *Evaluation of the 2006 Family Law Reforms* and the Family Law Council report to the Attorney-General, *Improving responses to family violence in the family law system,* indicate that section 237A has operated as a disincentive to disclosing family violence. Vulnerable parents may choose to not raise legitimate safety concerns for themselves and their children due to fear they will be subject to a costs order if they cannot substantiate the claims. Section 237 as amended will allow courts to make costs orders in response to false statements in appropriate cases.

Part 3 – Other amendments

Clause 23. Section 65 amended

Clause 23 amends subsection 65(1) of the Act to expressly empower courts exercising jurisdiction under the Act to order the parties to proceedings to arrange for children who are the subject of proceedings to attend an appointment or a series of appointments with a family consultant. This amendment will remove doubt about the courts' ability to order these

appointments which is currently taking place and being enforced in accordance with paragraph 65A of the Act.

Clause 24. Section 65A amended

Clause 24 amends section 65A by deleting the existing subsection (2) and inserting two new subsection (2A) and (2).

Proposed new subsection (2A) requires family consultants to report to the court where a person has failed to comply with an order under subsection 65(1) to arrange for a child to attend an appointment with a family consultant, or where the child fails to attend an appointment arranged in compliance with such an order.

Proposed new subsection (2) extends the power of the court to make further orders where the family consultant reports failures to comply with orders to attend family consultant appointments to reports received under subsections 65.

Clause 25. Section 73 amended

Clause 25 makes consequential amendments to section 73 of the Act, which enables a court, in proceedings where the care, welfare and development of a child who is under 18 is relevant, to direct a family consultant to give the court a report on relevant matters.

Subclause (1) amends subsection 73(5), which enables the court to make appropriate orders and directions for the purpose of the preparation of a report it has asked a family consultant to give. One example of such an order or direction currently set out in subsection 73(5) is an order or direction that "a party to proceedings, or the child, attend an appointment or a series of appointments with a family consultant". The amendment expands the example to refer to an order or direction that "one or more parties to the proceedings attend, or arrange for the child to attend, an appointment or a series of appointments with a family consultant".

Reflecting the recasting of the example in subsection 73(5), subclause (2) amends subsection 73(6) to include new paragraph 73(6)(b) which provides that the family consultant must report any failure of a child to attend an appointment arranged in compliance with an order or direction under subsection 73(5).

Clause 26. Section 84 amended

Clause 26 inserts a proposed new subsection (2A) to clarify that a declaration or order under Subdivision 4 Division 11 of Part 5 is not a "parenting order". This amendment relates to parentage testing orders under section 195, and other parenting orders under the Act, for example, orders to make the parentage testing procedure more effective and reliable, and orders requiring

people who have prepared reports about information obtained from parentage testing to give evidence in relation to those reports.

Clause 27. Section 113 amended

Clause 27 updates section 113 which provides an outline of what Division 7 of Part 5 deals with and contains. An additional paragraph is included to indicate that Division 7 "deals with the recovery of amounts paid under maintenance orders (Subdivision 7)" which was overlooked in a previous amendment.

Clause 28. Section 202I deleted

Clause 28 deletes section 202I from the Act. Section 202I currently restricts the use of an opinion given by a family consultant unless it is given as sworn evidence. Section 202I reflects past practice under which family consultants were sworn in on the first day of a less adversarial trial ensuring that any future testimony given in the matter had the character of sworn evidence. This practice is no longer followed. This means that family consultant reports ordered under section 73 of the Act and other documents prepared by family consultants must be verified by affidavit if they contain statements of opinion. Section 202I treats statements of opinion by family consultants less favourably than statements made by other persons that are routinely admitted into evidence in parenting proceedings through documents produced on subpoena.

For the above reasons, section 202I is repealed to enable a court to be able to take into account any opinion expressed by a family consultant in child related proceedings under the Act without the family consultant having given the opinion as sworn evidence.

Clause 29. Section 205F amended

Clause 29 inserts into section 205F references to sections 205O(1)(ea) and 205QA(3)(a). the effect is that to make an order under either of those sections the court must be satisfied beyond reasonable doubt that grounds for making the order exist. Section 205O(1)(ea) relates to failure, without reasonable excuse to enter into a bond under section 205P and 205QA(3)(a) relates to the continuation of such bond.

Clause 30. Section 205O amended

Clause 30 amends subsection 205O of the Act to insert new subsection 205(ea). This proposed subsection would enable a court, if a person fails without reasonable excuse to enter into a bond as required by a court for a less serious contravention of an order affecting a child, to impose on the person a fine not exceeding $1,100.

Clause 31. Section 205QA inserted - FLA section 70NECA

Clause 31 inserts new section 205QA which sets out, in similar terms to section 205SF, the consequences of failing to comply with a bond entered into for a less serious contravention of an order affecting a child. The consequences enable a court, where satisfied that the person has failed, without reasonable excuse, to comply with the bond, to impose a fine not exceeding $1,100 or to revoke the bond and deal with the person for his or her original contravention in any manner in which he or she could have been dealt with for that contravention if the bond had not been entered into.

Clause 32. Section 211B replaced

Clause 32 enhances the Court of Appeal's and Family Court's power to dismiss appeals. The clause repeals existing section 211B and replaces it with a new provision that give these courts power to dismiss an appeal (generally or in relation to a particular ground) where, having regard to the grounds of appeal disclosed in the relevant notice of appeal, the appeal has no reasonable prospect of success (either generally or in relation to a particular ground).

The amendment will mean that these court's power to dismiss appeal proceedings is available at times other than, as well as during, the hearing of the appeal. The amendment also changes the basis on which the court may dismiss an appeal. Currently, the court may only dismiss an appeal where there are no proper grounds of appeal. Under this item, the courts will be able to dismiss an appeal if it appears to the court, having regard to the grounds of appeal as disclosed in the notice of appeal, that the notice of appeal has no reasonable prospect of success. That is, the focus of new section 211B is on the "prospect of success". The amendment would allow the court to dismiss an appeal that is founded on a proper ground of appeal, but which has no reasonable prospect of success.

Proposed section 211B will not limit any other powers of the courts. For example, the courts power to order a stay of appeal proceedings would remain even though the express reference to this power will be removed.

Clause 33. Sections 215A and 215B inserted

Clause 33 inserts new sections 215A and 215B into the Act. Respectively, these new provisions will authorise the categories of people before whom an oath or affirmation may be administered, and an affidavit may be sworn or affirmed, for the purposes of the Family Court of Western Australia and Magistrates Court exercising family law jurisdiction..

Proposed section 215A(1) provides that the executive manager of the court may authorise a registrar or a member of the staff of the court in writing to administer oaths and affirmations. Proposed subsection (2) provides that persons authorised under the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA) can also administer oaths and affirmations in the court and subsection (4) provides that this authority applies in the federal and non-federal jurisdictions of the court.

Proposed subsection 215B(1) provides that an affidavit to be used in the court may be sworn or affirmed before a person authorised under the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA), section 215A or a person to whom section 98AB(1) of the *Family Law Act 1975* (Cth) applies. The authority applies in the federal and non-federal jurisdictions of the court.

Clause 34. Section 244 amended

Clause 34 inserts a reference to the *Bankruptcy Act 1996* (Cth) into the rule making power of the court. The inclusion means that consistent with the *Family Law Act 1975* (Cth) the Family Court of Western Australia can make rules with respect to bankruptcy matters. The clause also inserts the word "and" after subsection (1) consistent with modern drafting practice.

Part 4 – Transitional provisions

Clause 35. Section 247 replaced

Section 247 presently provides that Schedule 2 of the Act has effect in relation to the repeal of the former *Family Court Act 1975* (WA). The amended section effectively creates two Divisions to Schedule 2 the first relating the repeal of the *Family Court Act 1975* (WA) and the second to this legislation. Division 1 of Schedule 2 preserves certain matters that would otherwise have no effect after the repeal of the *Family Court Act 1975* (WA). Apart from some consequential amendments Division 1 is not altered. Division 2 preserves certain matters repealed by this legislation.

Clause 36. Schedule 2 Division 1 heading inserted

Clause 36 inserts a new Division heading in Schedule 2.

Clause 37. Schedule 2 clause 1 amended

Clause 37 deletes the word "Schedule" where it appears in clause 1 of the Division and inserts the word "Division".

Clause 38. Schedule 2 clause 2 amended

Clause 38 deletes the word "Schedule" where it appears in clause 2 of the Division and inserts the word "Division".

Clause 39. Schedule 2 Division 2 inserted

Clause 39 inserts a new Schedule 2 Division 2 into the Act to provide for transitional matters.

Item 11(1) provides definitions for the terms "commencement" and "old Act". These terms are defined to improve the readability of provisions in this Part

and to help the reader to determine whether particular provisions commence before or after the Act commences.

Item 11(2) provides that family violence matters apply at or after commencement of this legislation. Item 11(3) preserve certificates made under section 66H(7) of the old Act and item 11(4) provides that these amendments do not, of themselves, constitute circumstances that will allow parties to apply to discharge, vary suspend or revive prior parenting orders.

Item 12 of the Schedule preserves certain orders made under the old Act.

Item 13 of the Schedule enables regulations to be made about matters of a transitional, application or saving nature relating to amendments made by the Schedule 2 Division 2. If such regulations are made, those regulations would prevail over any transitional, application or savings provisions set out in Schedule 1 Division 2, to the extent of any inconsistency. The purpose of this amendment is to allow the rules to be adjusted to take account of any unexpected transitional, application and savings matters or to take other action such as to carve out proceedings that are part heard or where judgment is reserved if that is considered appropriate.