

FAMILY COURT.

No. 30 of 1978.

AN ACT to amend the Family Court Act, 1975-1976.

[Assented to 22nd May, 1978.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Family Court Act Amendment Act, 1978*. Short title and citation.

(2) In this Act the Family Court Act, 1975-1976 is referred to as the principal Act. Act No. 106 of 1975 amended by Acts Nos. 16 of 1976 and 111 of 1976.

(3) The principal Act as amended by this Act may be cited as the Family Court Act, 1975-1978.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Section 4
amended.

3. Section 4 of the principal Act is amended—
 - (a) by adding after the interpretation “Chairman” the following interpretation—

“child of the marriage”, in relation to the parties to a marriage, means—

 - (a) any child of both parties; and
 - (b) any child of either party who has been accepted as one of the family by the other party;
 - (b) by adding after the expression “26” in line two of the interpretation “non-federal jurisdictions of the Court” the passage “to section 26G, inclusive”;
 - (c) by adding after the interpretation “non-federal jurisdictions of the Court” the following interpretation—

“party to a marriage” includes a person who was party to a void marriage;

Section 25
amended.

4. Section 25 of the principal Act is amended—
 - (a) by deleting the word “federal” in line one and substituting the passage “non-federal”;
 - (b) by deleting the word “and” after paragraph (c);
 - (c) by deleting the passage “marriage.” in the last line of paragraph (d) and substituting the passage “marriage; and”; and
 - (d) by adding after paragraph (d) the following paragraph—
 - (e) the effect of any order on the stability of the marriage and the welfare of the children of the marriage.

5. Section 26 of the principal Act is amended by adding after the word "under" in line two the words "this or".

Section 26
amended.

6. The principal Act is amended by adding after section 26 the following sections—

Sections 26A
to 26F added.

26A. (1) In proceedings between the parties to a marriage with respect to existing title or rights in respect of the property of such parties or either of them except the interest of a party to the marriage in a partnership with a person who is neither a party to the marriage nor a child of the marriage, the Court may declare the title or rights, if any, that a party has in respect of the property.

Declaration
of interests
in property.

(2) Where the Court makes a declaration under subsection (1), it may, if it thinks fit having regard to the principles set out in section 25 and all the circumstances of the case that it is just and equitable to do so, make consequential orders to give effect to the declaration, including orders as to sale or partition and interim or permanent orders as to possession.

26B. (1) In proceedings between the parties to a marriage with respect to the property of such parties or either of them except the interest of a party to the marriage in a partnership with a person who is neither a party to the marriage nor a child of the marriage, the Court may make such order as it thinks fit altering the interests of the parties in the property, including an order for a settlement of property in substitution for any interest in the property and including an order requiring either or both of the parties to make, for the benefit of either or both parties or a child of the marriage, such settlement or transfer of property as the Court determines.

Alteration
of property
interests.

(2) In proceedings under this section the Court may adjourn the proceedings upon such terms and conditions as it thinks fit for any period including such period as may be expedient to enable the Court to consider the likely effect if any of an order on the marriage and the children of the marriage, and shall not make an order unless it is satisfied having regard to the principles set out in section 25 and all the circumstances of the case that it is just and equitable to do so.

(3) 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, or otherwise in relation to the property;
- (b) the contribution made directly or indirectly to the acquisition, conservation or improvement of the property by either party, including any contribution made in the capacity of homemaker or parent;
- (c) the effect of any proposed order upon the earning capacity of either party;
- (d) the matters referred to in subsection (2) of section 75 of the Family Law Act so far as they are relevant; and
- (e) any other order made under this or any other Act affecting a party.

Setting aside
of orders
altering
property
interests.

26C. (1) Where, on application by a person affected by an order made by the Court under section 26B, the Court is satisfied that the order was obtained by fraud, by duress, by the giving of false evidence or by the suppression of evidence, the court may, in its discretion, set aside the order and, if it thinks fit, but subject to

subsections (2) and (3) of section 26B, make another order under section 26B in substitution for the order so set aside.

(2) In the exercise of its powers under subsection (1), 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.

26D. The Court, in exercising its powers under this Division, 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.

Execution of
instruments
by order of
Court.

26E. (1) Where—

- (a) an order under this Division 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 subsection,

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.

Transactions
to defeat
claims.

26F. (1) In proceedings under this Division, 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 which is made or proposed to be made to defeat an existing or anticipated order in proceedings for costs, maintenance or the declaration or alteration of any interests in property or which, irrespective of intention, is likely to defeat any such order.

(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 any other 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.

26G. (1) The Court in exercising its non-federal jurisdictions under this Act may grant an injunction, either unconditionally or upon such terms and conditions as the Court thinks appropriate, by interlocutory order or otherwise (including an injunction in aid of the enforcement of an order), in any case in which it appears to the Court, having regard to the principles set out in section 25, to be just or convenient to do so. Injunctions.

(2) If the Court in the exercise of its non-federal jurisdictions is satisfied that a person has knowingly and without reasonable cause contravened or failed to comply with an injunction or order under this section, the 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 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 three 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 the injunction or order.

(3) Where an act or omission referred to in subsection (2) 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.

Section 29
amended.

7. Section 29 of the principal Act is amended by deleting the expression “(d)” in line seven and substituting the expression “(e)”.

Section 30
amended.

8. Section 30 of the principal Act is amended—

- (a) by deleting the word “Courts” in line one and substituting the passage “(1) Subject to subsection (2) of this section, courts”;
- (b) by deleting the passage “1896.” in the last line and substituting the passage “1896, and in exercising such jurisdiction, shall have regard to the principles mentioned in paragraphs (a) to (e) inclusive of section 25.”;
- (c) by adding the following subsections—

(2) Where proceedings are instituted in a court of summary jurisdiction with respect to 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 of summary jurisdiction shall, unless the parties agree to the court of summary jurisdiction hearing and determining the proceedings, transfer the proceedings to the Court.

(3) Where proceedings referred to in subsection (2) are before it, the court of summary jurisdiction may transfer the proceedings of its own motion, notwithstanding that the parties would be willing for the court of summary jurisdiction to hear and determine the proceedings.

(4) Before transferring proceedings under subsection (2), the court of summary jurisdiction may make such orders as it considers necessary pending the disposal of the proceedings by the Court.

(5) Where proceedings are transferred to the Court in pursuance of this section the Court shall proceed as if the proceedings had been originally instituted in the Court.

(6) 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. .
