



Queensland

# Commonwealth Powers (Family Law—Children) Act 1990

Reprinted as in force on 1 March 2006

Reprint No. 2A

This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
Warning—This reprint is not an authorised copy

# Information about this reprint

This Act is reprinted as at 1 March 2006. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

## **Dates shown on reprints**

**Reprints dated at last amendment** All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

**Replacement reprint date** If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.



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# Commonwealth Powers (Family Law— Children) Act 1990

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## **Commonwealth Powers (Family Law—Children) Act 1990**

[as amended by all amendments that commenced on or before 1 March 2006]

### **An Act to refer to the Commonwealth Parliament certain matters relating to children**

#### **1 Short title**

This Act may be cited as the *Commonwealth Powers (Family Law—Children) Act 1990*.

#### **3 Reference of certain matters relating to children**

- (1) The following matters, to the extent to which they are not otherwise included in the legislative powers of the Parliament of the Commonwealth, are referred to the Parliament of the Commonwealth—
- (a) the maintenance of children and the payment of expenses in relation to children or child bearing;
  - (b) the custody and guardianship of, and access to, children;
  - (c) the determination of a child's parentage for the purposes of the law of the Commonwealth, whether or not the determination of the child's parentage is incidental to the determination of any other matter within the legislative powers of the Commonwealth.
- (1A) A reference under subsection (1)(a), (b) or (c) has effect for a period—
- (a) beginning at the beginning of the commencement day; and
  - (b) ending at the beginning of a day fixed under section 4 as the day on which it terminates;

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but not longer.

- (2) The matters referred to the Parliament of the Commonwealth pursuant to subsection (1) do not include the matter of adoption of children or the matter of the taking, or the making of provision for or in relation to authorising the taking, of action that would prevent or interfere with—
- (a) a Minister, an officer of the State or any other person having or acquiring the custody, guardianship or care of children under a provision specified in the schedule; or
  - (b) the jurisdiction of the Supreme Court, or a court of the State under a provision specified in the schedule, to make orders or take any other action in respect of—
    - (i) the adoption of children; or
    - (ii) the custody, guardianship or care of children; or
    - (iii) access to children or the supervision of children.
- (3) Despite subsection (2), the matters referred by subsection (1) include the matter of the taking, or the making of a provision in relation to authorising the taking, of action of the kind specified in subsection 2(a) and (b) if—
- (a) the Minister responsible for the administration of the relevant provision specified in the schedule; or
  - (b) a person authorised, in writing, by that Minister to act on his or her behalf for the purposes of Part VII<sup>1</sup> of the *Family Law Act 1975* (Cwlth) as amended and in force for the time being;
- consents, in writing, to the taking of action of the kind specified in subsection (2)(a) and (b) by way of instituting, or continuing, proceedings under the *Family Law Act 1975* (Cwlth) in a court having jurisdiction under that Act.
- (4) In this section—
- (a) references to children are to be read as references to persons under the age of 18 years;

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<sup>1</sup> Part VII (Children) of the *Family Law Act 1975* (Cwlth)

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- (b) references to the maintenance of, and the payment of expenses in relation to, children are to be read as including references to the maintenance of, and the payment of expenses in relation to, persons who have attained the age of 18 years and who have special needs in respect of maintenance or expenses by reason of being engaged in a course of education or training or by reason of a physical or mental handicap;
  - (c) references to a provision specified in the schedule must be read as references to the provision as amended and in force from time to time, and as including a reference to any provision or provisions replacing that provision and as amended and in force from time to time.
- (5) In this section—
- commencement day*, in relation to a matter referred to the Parliament of the Commonwealth, means—
- (a) for a matter referred under subsection (1)(a) or (b)—1 August 1990; or
  - (b) for a matter referred under subsection (1)(c)—the day this subsection commences.

#### **4 Termination of reference**

The Governor in Council may at any time by proclamation fix a day on which the reference made in accordance with section 3 is to terminate.

## Schedule

## Statutory provisions

section 3

<b>Act</b>	<b>Provision</b>
<i>Adoption of Children Act 1964</i>	<ul style="list-style-type: none"> <li>section 5B (Inherent jurisdiction of Supreme Court preserved)</li> <li>section 16 (Discharge of adoption orders)</li> <li>section 25 (Court may dispense with consents)</li> <li>section 26 (Consent of child)</li> <li>section 26A (Provisions concerning court's jurisdiction—appeals)</li> <li>section 27 (Guardianship of child awaiting adoption)</li> <li>section 27B (Renunciation of guardianship of child to be adopted in another State or Territory)</li> <li>section 27C (Chief executive may enter into arrangements)</li> <li>section 28 (General effect of adoption orders)</li> <li>section 33 (Making of interim orders)</li> <li>section 35 (Discharge of interim orders)</li> <li>section 38AC (Conversion of simple adoption in convention country)</li> <li>section 38AD (Conversion of simple adoption by chief executive)</li> <li>section 39 (Declarations of validity of foreign adoptions)</li> </ul>
<i>Child Protection Act 1999</i>	<ul style="list-style-type: none"> <li>section 16 (Contact with child at immediate risk of harm)</li> <li>section 17 (Contact with children in school, child care centre, family day care etc.)</li> <li>section 18 (Child at immediate risk may be taken into custody)</li> </ul>



## Schedule (continued)

**Act****Provision**

section 27 (Making of temporary assessment order)

section 34 (Extension of temporary assessment orders)

section 35 (Variation of temporary assessment orders)

section 44 (Making of court assessment order)

section 49 (Extension of court assessment orders)

section 50 (Variation and revocation of court assessment orders)

section 59 (Making of child protection order)

section 64 (Extension of certain child protection orders)

section 65 (Variation and revocation of child protection orders)

section 67 (Court's powers to make interim orders on adjournment)

section 68 (Court's other powers on adjournment of proceedings for child protection orders)

section 78 (Chief executive's powers)

section 99 (Custody or guardianship of child continues pending decision on application for order)

section 207 (Chief executive may transfer order)

section 214 (Court may transfer order)

section 219 (Order may be revived under this Act)

section 223 (Effect of registration)

section 228 (Court may transfer proceeding)

Schedule (continued)

<b>Act</b>	<b>Provision</b>
	section 230 (Court may make interim order)
	section 235 (Filing and registration of interstate transfer decision)
	section 236 (Effect of registration of interstate transfer decision)
	section 237 (Effect of registration of associated interim order)
	section 239 (Appeal against decision of Childrens Court)
	section 240 (Interim orders)
	section 243 (Transfer from a non-participating State)
	section 245 (Transfer to a non-participating State)
<i>Public Health Act 2005</i>	section 197 (Designated medical officer may make care and treatment order for child)
	section 201 (Designated medical officer may extend care and treatment order)
<i>Succession Act 1981</i>	section 61G (Application by testamentary guardian)
	section 61H (Application by parent)
	section 61I (Supreme Court decision on application)
	section 61J (Supreme Court's powers not limited)

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 March 2006. Future amendments of the Commonwealth Powers (Family Law—Children) Act 1990 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

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### 3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	1 August 1990	21 December 1995
1A rv	1999 Act No. 10	1 August 1990	27 October 1999
1B	1999 Act No. 10	23 March 2000	24 March 2000
1C	2000 Act No. 55	23 March 2000	9 February 2001
2	2001 Act No. 66	25 October 2001	2 November 2001

  

Reprint No.	Amendments included	Effective	Notes
2A	2005 Act No. 48	1 March 2006	

### 5 Tables in earlier reprints

Name of table	Reprint No.
Obsolete and redundant provisions	1

## 6 List of legislation

### **Commonwealth Powers (Family Law—Children) Act 1990 No. 37**

date of assent 21 June 1990

ss 1–2 commenced on date of assent (see s 2(1))

remaining provisions commenced 1 August 1990 (proc pubd gaz 21 July 1990 p 1818)

amending legislation—

### **Child Protection Act 1999 No. 10 ss 1, 2(2), 205 sch 3**

date of assent 30 March 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 23 March 2000 (2000 SL No. 45)

### **Succession and Other Acts Amendment Act 2000 No. 55 pts 1, 3**

date of assent 17 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 23 March 2000 (see s 2)

### **Commonwealth Powers (Family Law—Children) Amendment Act 2001 No. 66**

date of assent 25 October 2001

commenced on date of assent

### **Public Health Act 2005 No. 48 ss 1–2, 492 sch 1**

date of assent 2 November 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2006 (2006 SL No. 21)

## 7 List of annotations

### **Commencement**

s 2 om R1 (see RA s 37)

### **Reference of certain matters relating to children**

s 3 amd 2000 No. 55 s 6; 2001 No. 66 s 3

### **Repeal of certain Act**

s 5 om R1 (see RA s 40)

### **SCHEDULE—STATUTORY PROVISIONS**

**sch hdg** amd 2000 No. 55 s 7(1)

amd 1999 No. 10 s 205 sch 3; 2000 No. 55 s 7(2)

sub 2001 No. 66 s 4

amd 2005 No. 48 s 492 sch 1