Divorce – Family Law Act Provisions

48 Divorce

 (1) An application under this Act for a divorce order in relation to a marriage shall be based on the ground that the marriage has broken down irretrievably.

 (2) Subject to subsection (3), in a proceeding instituted by such an application, the ground shall be held to have been established, and the divorce order 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 filing of the application for the divorce order.

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

49 Meaning of separation

 (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.

50 Effect of resumption of cohabitation

 (1) For the purposes of proceedings for a divorce order, 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 filing 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 subsection (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.

55 When divorce order takes effect

 (1) Subject to this section, a divorce ordermade under this Act takes effect by force of this section:

 (a) at the expiration of a period of 1 month from the making of the order

55A Divorce order where children

 (1) A divorce order in relation to a marriage does not take effect unless the court has, by order, declared that it is satisfied:

 (a) that there are no children of the marriage who have not attained 18 years of age; or

 (b) that the only children of the marriage who have not attained 18 years of age are the children specified in the order and that:

 (i) proper arrangements in all the circumstances have been made for the care, welfare and development of those children; or

 (ii) there are circumstances by reason of which the divorce order should take effect even though the court is not satisfied that such arrangements have been made.

 (2) Where, in proceedings for a divorce order in relation to a marriage, the court doubts whether the arrangements made for the care, welfare and development 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 family consultant regarding those arrangements.

 (3) For the purposes of this section, a child (including an ex‑nuptial child of either the husband or the wife, a child adopted by either of them or a child who is not a child of either of them) is a child of the marriage if the child was treated by the husband and wife as a child of their family at the relevant time.

 (4) For the purposes of subsection (3), the relevant time is the time immediately before the time when the husband and wife separated or, if they have separated on more than one occasion, the time immediately before the time when they last separated before the institution of the proceedings in which the divorce order was made.