



# **Family Law Amendment (Shared Parental Responsibility) Act 2006**

**No. 46, 2006**

**An Act to amend the *Family Law Act 1975*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Family Law Amendment (Shared Parental Responsibility) Act 2006

No. 46, 2006

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## An Act to amend the *Family Law Act 1975*, and for related purposes

[Assented to 22 May 2006]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Family Law Amendment (Shared Parental Responsibility) Act 2006*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	22 May 2006
2. Schedules 1 and 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 3	1 July 2006.	1 July 2006
4. Schedule 4, items 1 to 8	The day on which this Act receives the Royal Assent.	22 May 2006
5. Schedule 4, items 9 to 139	At the same time as the provision(s) covered by table item 2.	
6. Schedules 5 to 7	At the same time as the provision(s) covered by table item 2.	
7. Schedule 8, item 1	At the same time as the provision(s) covered by table item 2. However, if section 6 of the <i>Australian Citizenship Act 2006</i> commences before that time, the provision does not commence at all.	



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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
8. Schedule 8, item 2	The later of: (a) the time that the provision(s) covered by table item 2 commence; and (b) immediately after section 6 of the <i>Australian Citizenship Act 2006</i> commences.  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
9. Schedule 8, items 3 to 104	At the same time as the provision(s) covered by table item 2.	
10. Schedule 9	At the same time as the provision(s) covered by table item 2.	
11. Schedule 10	The day on which this Act receives the Royal Assent.	22 May 2006

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Shared parental responsibility

### Part 1—Amendments

#### *Family Law Act 1975*

##### 1 Subsection 4(1)

Insert:

*Aboriginal child* means a child who is a descendant of the Aboriginal people of Australia.

##### 2 Subsection 4(1)

Insert:

*Aboriginal or Torres Strait Islander culture* in relation to a child:

- (a) means the culture of the Aboriginal or Torres Strait Islander community or communities to which the child belongs; and
- (b) includes Aboriginal or Torres Strait Islander lifestyle and traditions of that community or communities.

##### 3 Subsection 4(1)

Insert:

*family violence* means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety.

Note: A person reasonably fears for, or reasonably is apprehensive about, his or her personal wellbeing or safety in particular circumstances if a reasonable person in those circumstances would fear for, or be apprehensive about, his or her personal wellbeing or safety.

##### 4 Subsection 4(1)

Insert:

*major long-term issues*, in relation to a child, means issues about the care, welfare and development of the child of a long-term

nature and includes (but is not limited to) issues of that nature about:

- (a) the child's education (both current and future); and
- (b) the child's religious and cultural upbringing; and
- (c) the child's health; and
- (d) the child's name; and
- (e) changes to the child's living arrangements that make it significantly more difficult for the child to spend time with a parent.

To avoid doubt, a decision by a parent of a child to form a relationship with a new partner is not, of itself, a *major long-term issue* in relation to the child. However, the decision will involve a *major long-term issue* if, for example, the relationship with the new partner involves the parent moving to another area and the move will make it significantly more difficult for the child to spend time with the other parent.

## **5 Subsection 4(1)**

Insert:

*relative* of a child:

- (a) in Part VII, means:
  - (i) a step-parent of the child; or
  - (ii) a brother, sister, half-brother, half-sister, step-brother or step-sister of the child; or
  - (iii) a grandparent of the child; or
  - (iv) an uncle or aunt of the child; or
  - (v) a nephew or niece of the child; or
  - (vi) a cousin of the child; and
- (b) in subsection (1AB), has the meaning given by subsection (1AC).

## **6 Subsection 4(1)**

Insert:

*Torres Strait Islander child* means a child who is a descendant of the Indigenous inhabitants of the Torres Strait Islands.

## **7 At the end of section 4**

Add:

- (4) A reference in this Act to a person who has parental responsibility for a child is a reference to a person who:
  - (a) has some or all of that responsibility solely; or
  - (b) shares some or all of that responsibility with another person.
- (5) A reference in this Act to a person who shares parental responsibility for a child with another person is a reference to a person who shares some or all of the parental responsibility for the child with that other person.

## **8 Section 60B**

Repeal the section, substitute:

### **60B Objects of Part and principles underlying it**

- (1) The objects of this Part are to ensure that the best interests of children are met by:
  - (a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and
  - (b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and
  - (c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and
  - (d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.
- (2) The principles underlying these objects are that (except when it is or would be contrary to a child's best interests):
  - (a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
  - (b) children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents

- and other people significant to their care, welfare and development (such as grandparents and other relatives); and
- (c) parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and
  - (d) parents should agree about the future parenting of their children; and
  - (e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).
- (3) For the purposes of subparagraph (2)(e), an Aboriginal child's or Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:
- (a) to maintain a connection with that culture; and
  - (b) to have the support, opportunity and encouragement necessary:
    - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
    - (ii) to develop a positive appreciation of that culture.

## **9 After Subdivision B of Division 1 of Part VII**

Insert:

### **Subdivision BA—Best interests of the child**

#### **60CA Child's best interests paramount consideration in making a parenting order**

In deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

#### **60CB Proceedings to which Subdivision applies**

- (1) This Subdivision applies to any proceedings under this Part in which the best interests of a child are the paramount consideration.

Note: Division 10 also allows a court to make an order for a child's interests to be independently represented by a lawyer in proceedings under this Part in which the best interests of a child are the paramount consideration.

- (2) This Subdivision also applies to proceedings, in relation to a child, to which subsection 60G(2), 63F(2) or 63F(6) or section 68R applies.

### **60CC How a court determines what is in a child's best interests**

#### *Determining child's best interests*

- (1) Subject to subsection (5), in determining what is in the child's best interests, the court must consider the matters set out in subsections (2) and (3).

#### *Primary considerations*

- (2) The 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.

Note: Making these considerations the primary ones is consistent with the objects of this Part set out in paragraphs 60B(1)(a) and (b).

#### *Additional considerations*

- (3) Additional considerations are:
- (a) any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views;
  - (b) the nature of the relationship of the child with:
    - (i) each of the child's parents; and
    - (ii) other persons (including any grandparent or other relative of the child);
  - (c) the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent;
  - (d) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:
    - (i) either of his or her parents; or

- (ii) any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living;
- (e) the practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;
- (f) the capacity of:
  - (i) each of the child's parents; and
  - (ii) any other person (including any grandparent or other relative of the child);to provide for the needs of the child, including emotional and intellectual needs;
- (g) the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant;
- (h) if the child is an Aboriginal child or a Torres Strait Islander child:
  - (i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
  - (ii) the likely impact any proposed parenting order under this Part will have on that right;
- (i) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
- (j) any family violence involving the child or a member of the child's family;
- (k) any family violence order that applies to the child or a member of the child's family, if:
  - (i) the order is a final order; or
  - (ii) the making of the order was contested by a person;
- (l) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;
- (m) any other fact or circumstance that the court thinks is relevant.

- (4) Without limiting paragraphs (3)(c) and (i), the court must consider the extent to which each of the child's parents has fulfilled, or failed to fulfil, his or her responsibilities as a parent and, in particular, the extent to which each of the child's parents:
- (a) has taken, or failed to take, the opportunity:
    - (i) to participate in making decisions about major long-term issues in relation to the child; and
    - (ii) to spend time with the child; and
    - (iii) to communicate with the child; and
  - (b) has facilitated, or failed to facilitate, the other parent:
    - (i) participating in making decisions about major long-term issues in relation to the child; and
    - (ii) spending time with the child; and
    - (iii) communicating with the child; and
  - (c) has fulfilled, or failed to fulfil, the parent's obligation to maintain the child.
- (4A) If the child's parents have separated, the court must, in applying subsection (4), have regard, in particular, to events that have happened, and circumstances that have existed, since the separation occurred.

*Consent orders*

- (5) If the court is considering whether to make an order with the consent of all the parties to the proceedings, the court may, but is not required to, have regard to all or any of the matters set out in subsection (2) or (3).

*Right to enjoy Aboriginal or Torres Strait Islander culture*

- (6) For the purposes of paragraph (3)(h), an Aboriginal child's or a Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:
- (a) to maintain a connection with that culture; and
  - (b) to have the support, opportunity and encouragement necessary:
    - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
    - (ii) to develop a positive appreciation of that culture.



### **60CD How the views of a child are expressed**

- (1) Paragraph 60CC(3)(a) requires the court to consider any views expressed by a child in deciding whether to make a particular parenting order in relation to the child. This section deals with how the court informs itself of views expressed by a child.
- (2) The court may inform itself of views expressed by a child:
  - (a) by having regard to anything contained in a report given to the court under subsection 62G(2); or
  - (b) by making an order under section 68L for the child's interests in the proceedings to be independently represented by a lawyer; or
  - (c) subject to the applicable Rules of Court, by such other means as the court thinks appropriate.

Note 1: Paragraph (a)—subsection 62G(3A) generally requires the person giving the report to ascertain the child's views and include those views in the report.

Note 2: Paragraph (b)—paragraph 68LA(5)(b) requires the independent children's lawyer for the child to ensure that the child's views are fully put before the court.

### **60CE Children not required to express views**

Nothing in this Part permits the court or any person to require the child to express his or her views in relation to any matter.

### **60CF Informing court of relevant family violence orders**

- (1) If a party to the proceedings is aware that a family violence order applies to the child, or a member of the child's family, that party must inform the court of the family violence order.
- (2) If a person who is not a party to the proceedings is aware that a family violence order applies to the child, or a member of the child's family, that person may inform the court of the family violence order.
- (3) Failure to inform the court of the family violence order does not affect the validity of any order made by the court.

### **60CG Court to consider risk of family violence**

- (1) In considering what order to make, the court must, to the extent that it is possible to do so consistently with the child's best interests being the paramount consideration, ensure that the order:
  - (a) is consistent with any family violence order; and
  - (b) does not expose a person to an unacceptable risk of family violence.
- (2) For the purposes of paragraph (1)(b), the court may include in the order any safeguards that it considers necessary for the safety of those affected by the order.

### **10 Subsection 60G(2) (note)**

Omit "Division 10 deals", substitute "Sections 60CB to 60CG deal".

### **11 At the end of Division 1 of Part VII**

Add:

### **Subdivision E—Family dispute resolution**

#### **60I Attending family dispute resolution before applying for Part VII order**

##### *Object of this section*

- (1) The object of this section is to ensure that all persons who have a dispute about matters that may be dealt with by an order under this Part (a **Part VII order**) make a genuine effort to resolve that dispute by family dispute resolution before the Part VII order is applied for.

##### *Phase 1 (from commencement to 30 June 2007)*

- (2) The dispute resolution provisions of the *Family Law Rules 2004* impose the requirements for dispute resolution that must be complied with before an application is made to the Family Court of Australia for a parenting order.
- (3) By force of this subsection, the dispute resolution provisions of the *Family Law Rules 2004* also apply to an application to a court (other than the Family Court of Australia) for a parenting order.

Those provisions apply to the application with such modifications as are necessary.

- (4) Subsection (3) applies to an application for a parenting order if the application is made:
- (a) on or after the commencement of this section; and
  - (b) before 1 July 2007.

*Phase 2 (from 1 July 2007 to first proclaimed date)*

- (5) Subsections (7) to (12) apply to an application for a Part VII order in relation to a child if:
- (a) the application is made on or after 1 July 2007 and before the date fixed by Proclamation for the purposes of this paragraph; and
  - (b) none of the parties to the proceedings on the application has applied, before 1 July 2007, for a Part VII order in relation to the child.

*Phase 3 (from second proclaimed date)*

- (6) Subsections (7) to (12) apply to all applications for a Part VII order in relation to a child that are made on or after the date fixed by Proclamation for the purposes of this subsection.

*Requirement to attempt to resolve dispute by family dispute resolution before applying for a parenting order*

- (7) Subject to subsection (9), a court exercising jurisdiction under this Act must not hear an application for a Part VII order in relation to a child unless the applicant files in the court a certificate given to the applicant by a family dispute resolution practitioner under subsection (8). The certificate must be filed with the application for the Part VII order.

*Certificate by family dispute resolution practitioner*

- (8) A family dispute resolution practitioner may give one of these kinds of certificates to a person:
- (a) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but the person's failure to do

so was due to the refusal, or the failure, of the other party or parties to the proceedings to attend;

- (aa) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, because the practitioner considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to conduct the proposed family dispute resolution;
- (b) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, and that all attendees made a genuine effort to resolve the issue or issues;
- (c) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the person, the other party or another of the parties did not make a genuine effort to resolve the issue or issues.

Note: When an applicant files one of these certificates under subsection (7), the court may take the kind of certificate into account in considering whether to make an order referring to parties to family dispute resolution (see section 13C) and in determining whether to award costs against a party (see section 117).

*Exception*

- (9) Subsection (7) does not apply to an application for a Part VII order in relation to a child if:
  - (a) the applicant is applying for the order:
    - (i) to be made with the consent of all the parties to the proceedings; or
    - (ii) in response to an application that another party to the proceedings has made for a Part VII order; or
  - (b) the court is satisfied that there are reasonable grounds to believe that:
    - (i) there has been abuse of the child by one of the parties to the proceedings; or

- (ii) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or
- (iii) there has been family violence by one of the parties to the proceedings; or
- (iv) there is a risk of family violence by one of the parties to the proceedings; or
- (c) all the following conditions are satisfied:
  - (i) the application is made in relation to a particular issue;
  - (ii) a Part VII order has been made in relation to that issue within the period of 12 months before the application is made;
  - (iii) the application is made in relation to a contravention of the order by a person;
  - (iv) the court is satisfied that there are reasonable grounds to believe that the person has behaved in a way that shows a serious disregard for his or her obligations under the order; or
- (d) the application is made in circumstances of urgency; or
- (e) one or more of the parties to the proceedings is unable to participate effectively in family dispute resolution (whether because of an incapacity of some kind, physical remoteness from dispute resolution services or for some other reason); or
- (f) other circumstances specified in the regulations are satisfied.

*Referral to family dispute resolution when exception applies*

- (10) If:
- (a) a person applies for a Part VII order; and
  - (b) the person does not, before applying for the order, attend family dispute resolution with a family dispute resolution practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with; and
  - (c) subsection (7) does not apply to the application because of subsection (9);
- the court must consider making an order that the person attend family dispute resolution with a family dispute resolution practitioner and the other party or parties to the proceedings in relation to that issue or those issues.

- (11) The validity of:
- (a) proceedings on an application for a Part VII order; or
  - (b) any order made in those proceedings;
- is not affected by a failure to comply with subsection (7) in relation to those proceedings.
- (12) In this section:
- dispute resolution provisions* of the *Family Law Rules 2004* means:
- (a) Rule 1.05 of those Rules; and
  - (b) Part 2 of Schedule 1 to those Rules;
- to the extent to which they deal with dispute resolution.

**60J Family dispute resolution not attended because of child abuse or family violence**

- (1) If:
- (a) subsections 60I(7) to (12) apply to an application for a Part VII order (see subsections 60I(5) and (6)); and
  - (b) subsection 60I(7) does not apply to the application because the court is satisfied that there are reasonable grounds to believe that:
    - (i) there has been abuse of the child by one of the parties to the proceedings; or
    - (ii) there has been family violence by one of the parties to the proceedings;
- a court must not hear the application unless the applicant has indicated in writing that the applicant has received information from a family counsellor or family dispute resolution practitioner about the services and options (including alternatives to court action) available in circumstances of abuse or violence.
- (2) Subsection (1) does not apply if the court is satisfied that there are reasonable grounds to believe that:
- (a) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or
  - (b) there is a risk of family violence by one of the parties to the proceedings.
- (3) The validity of:

- (a) proceedings on an application for a Part VII order; or
- (b) any order made in those proceedings;

is not affected by a failure to comply with subsection (1) in relation to those proceedings.

(4) If:

- (a) the applicant indicates in writing that the applicant has not received information about the services and options (including alternatives to court action) available in circumstances of abuse or violence; and
- (b) subsection (2) does not apply;

the principal executive officer of the court concerned must ensure that the applicant is referred to a family counsellor or family dispute resolution practitioner in order to obtain information about those matters.

### **60K Court to take prompt action in relation to allegations of child abuse or family violence**

(1) This section applies if:

- (a) an application is made to a court for a Part VII order in relation to a child; and
- (b) a document is filed in the court, on or after the commencement of this section, in relation to the proceedings for the order; and
- (c) the document alleges, as a consideration that is relevant to whether the court should grant or refuse the application, that:
  - (i) there has been abuse of the child by one of the parties to the proceedings; or
  - (ii) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or
  - (iii) there has been family violence by one of the parties to the proceedings; or
  - (iv) there is a risk of family violence by one of the parties to the proceedings; and
- (d) the document is a document of the kind prescribed by the applicable Rules of Court for the purposes of this paragraph.

(2) The court must:

- (a) consider what interim or procedural orders (if any) should be made:
    - (i) to enable appropriate evidence about the allegation to be obtained as expeditiously as possible; and
    - (ii) to protect the child or any of the parties to the proceedings; and
  - (b) make such orders of that kind as the court considers appropriate; and
  - (c) deal with the issues raised by the allegation as expeditiously as possible.
- (2A) The court must take the action required by paragraphs (2)(a) and (b):
- (a) as soon as practicable after the document is filed; and
  - (b) if it is appropriate having regard to the circumstances of the case—within 8 weeks after the document is filed.
- (3) Without limiting subparagraph (2)(a)(i), the court must consider whether orders should be made under section 69ZW to obtain reports from State and Territory agencies in relation to the allegations.
- (4) Without limiting paragraph (2)(a)(ii), the court must consider whether orders should be made, or an injunction granted, under section 68B.
- (5) A failure to comply with a provision of this section in relation to an application does not affect the validity of any order made in the proceedings in relation to the application.

## **12 At the end of subsection 61C(1)**

Add:

- Note 1: This section states the legal position that prevails in relation to parental responsibility to the extent to which it is not displaced by a parenting order made by the court. See subsection (3) of this section and subsection 61D(2) for the effect of a parenting order.
- Note 2: This section does not establish a presumption to be applied by the court when making a parenting order. See section 61DA for the presumption that the court does apply when making a parenting order.
- Note 3: Under section 63C, the parents of a child may make a parenting plan that deals with the allocation of parental responsibility for the child.



### **13 After section 61D**

Insert:

#### **61DA Presumption of equal shared parental responsibility when making parenting orders**

- (1) When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

Note: The presumption provided for in this subsection is a presumption that relates solely to the allocation of parental responsibility for a child as defined in section 61B. It does not provide for a presumption about the amount of time the child spends with each of the parents (this issue is dealt with in section 65DAA).

- (2) The presumption does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in:
  - (a) abuse of the child or another child who, at the time, was a member of the parent's family (or that other person's family); or
  - (b) family violence.
- (3) When the court is making an interim order, the presumption applies unless the court considers that it would not be appropriate in the circumstances for the presumption to be applied when making that order.
- (4) The presumption may be rebutted by evidence that satisfies the court that it would not be in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

#### **61DB Application of presumption of equal shared parental responsibility after interim parenting order made**

If there is an interim parenting order in relation to a child, the court must, in making a final parenting order in relation to the child, disregard the allocation of parental responsibility made in the interim order.

### **14 At the end of Division 2 of Part VII**

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Add:

**61F Application to Aboriginal or Torres Strait Islander children**

In:

- (a) applying this Part to the circumstances of an Aboriginal or Torres Strait Islander child; or
- (b) identifying a person or persons who have exercised, or who may exercise, parental responsibility for such a child;

the court must have regard to any kinship obligations, and child-rearing practices, of the child's Aboriginal or Torres Strait Islander culture.

**15 After subsection 62G(3)**

Insert:

(3A) A family consultant who is directed to give the court a report on a matter under subsection (2) must:

- (a) ascertain the views of the child in relation to that matter; and
- (b) include the views of the child on that matter in the report.

Note: A person cannot require a child to express his or her views in relation to any matter (see section 60CE).

(3B) Subsection (3A) does not apply if complying with that subsection would be inappropriate because of:

- (a) the child's age or maturity; or
- (b) some other special circumstance.

**16 After paragraph 63C(1)(b)**

Insert:

- (ba) is signed by the parents of the child; and
- (bb) is dated; and

**16A After subsection 63C(1)**

Insert:

(1A) An agreement is not a *parenting plan* for the purposes of this Act unless it is made free from any threat, duress or coercion.

**17 Subsection 63C(2)**

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Repeal the subsection, substitute:

- (2) A parenting plan may deal with one or more of the following:
- (a) the person or persons with whom a child is to live;
  - (b) the time a child is to spend with another person or other persons;
  - (c) the allocation of parental responsibility for a child;
  - (d) if 2 or more persons are to share parental responsibility for a child—the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility;
  - (e) the communication a child is to have with another person or other persons;
  - (f) maintenance of a child;
  - (g) the process to be used for resolving disputes about the terms or operation of the plan;
  - (h) the process to be used for changing the plan to take account of the changing needs or circumstances of the child or the parties to the plan;
  - (i) any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.

Note: Paragraph (f)—if the *Child Support (Assessment) Act 1989* applies, provisions in a parenting plan dealing with the maintenance of a child (as distinct from child support under that Act) are unenforceable and of no effect unless the provisions in the plan are a child support agreement (see section 63CAA and subsection 63G(5) of this Act).

- (2A) The person referred to in subsection (2) may be, or the persons referred to in that subsection may include, either a parent of the child or a person other than the parent of the child (including a grandparent or other relative of the child).
- (2B) Without limiting paragraph (2)(c), the plan may deal with the allocation of responsibility for making decisions about major long-term issues in relation to the child.
- (2C) The communication referred to in paragraph (2)(e) includes (but is not limited to) communication by:
- (a) letter; and
  - (b) telephone, email or any other electronic means.

## **18 Section 63DA**

---

Repeal the section, substitute:

**63DA Obligations of advisers**

- (1) If an adviser gives advice or assistance to people in relation to parental responsibility for a child following the breakdown of the relationship between those people, the adviser must:
  - (a) inform them that they could consider entering into a parenting plan in relation to the child; and
  - (b) inform them about where they can get further assistance to develop a parenting plan and the content of the plan.
- (2) If an adviser gives advice to people in connection with the making by those people of a parenting plan in relation to a child, the adviser must:
  - (a) inform them that, if the child spending equal time with each of them is:
    - (i) reasonably practicable; and
    - (ii) in the best interests of the child;they could consider the option of an arrangement of that kind; and
  - (b) inform them that, if the child spending equal time with each of them is not reasonably practicable or is not in the best interests of the child but the child spending substantial and significant time with each of them is:
    - (i) reasonably practicable; and
    - (ii) in the best interests of the child;they could consider the option of an arrangement of that kind; and
  - (c) inform them that decisions made in developing parenting plans should be made in the best interests of the child; and
  - (d) inform them of the matters that may be dealt with in a parenting plan in accordance with subsection 63C(2); and
  - (e) inform them that, if there is a parenting order in force in relation to the child, the order may (because of section 64D) include a provision that the order is subject to a parenting plan they enter into; and
  - (f) inform them about the desirability of including in the plan:
    - (i) if they are to share parental responsibility for the child under the plan—provisions of the kind referred to in

- paragraph 63C(2)(d) (which deals with the form of consultations between the parties to the plan) as a way of avoiding future conflicts over, or misunderstandings about, the matters covered by that paragraph; and
- (ii) provisions of the kind referred to in paragraph 63C(2)(g) (which deals with the process for resolving disputes between the parties to the plan); and
  - (iii) provisions of the kind referred to in paragraph 63C(2)(h) (which deals with the process for changing the plan to take account of the changing needs or circumstances of the child or the parties to the plan); and
- (g) explain to them, in language they are likely to readily understand, the availability of programs to help people who experience difficulties in complying with a parenting plan; and
- (h) inform them that section 65DAB requires the court to have regard to the terms of the most recent parenting plan in relation to the child when making a parenting order in relation to the child if it is in the best interests of the child to do so.

Note: Paragraphs (a) and (b) only require the adviser to inform the people that they could consider the option of the child spending equal time, or substantial and significant time, with each of them. The adviser may, but is not obliged to, advise them as to whether that option would be appropriate in their particular circumstances.

- (3) For the purposes of paragraph (2)(b), a child will be taken to spend ***substantial and significant time*** with a parent only if:
- (a) the time the child spends with the parent includes both:
    - (i) days that fall on weekends and holidays; and
    - (ii) days that do not fall on weekends or holidays; and
  - (b) the time the child spends with the parent allows the parent to be involved in:
    - (i) the child's daily routine; and
    - (ii) occasions and events that are of particular significance to the child; and
  - (c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.

(4) Subsection (3) does not limit the other matters to which regard may be had in determining whether the time a child spends with a parent would be substantial and significant.

(5) In this section:

*adviser* means a person who is:

- (a) a legal practitioner; or
- (b) a family counsellor; or
- (c) a family dispute resolution practitioner; or
- (d) a family consultant.

**19 Paragraph 63E(3)(b)**

Omit “subsection 68F(2)”, substitute “subsections 60CC(2) and (3)”.

**20 Subsection 63F(6) (note)**

Omit “Division 10 deals”, substitute “Sections 60CB to 60CG deal”.

**21 Subsection 63H(2) (note)**

Omit “Division 10 deals”, substitute “Sections 60CB to 60CG deal”.

**22 Subsections 64B(2) to (4)**

Repeal the subsections, substitute:

- (2) A parenting order may deal with one or more of the following:
- (a) the person or persons with whom a child is to live;
  - (b) the time a child is to spend with another person or other persons;
  - (c) the allocation of parental responsibility for a child;
  - (d) if 2 or more persons are to share parental responsibility for a child—the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility;
  - (e) the communication a child is to have with another person or other persons;
  - (f) maintenance of a child;
  - (g) the steps to be taken before an application is made to a court for a variation of the order to take account of the changing needs or circumstances of:
    - (i) a child to whom the order relates; or

- (ii) the parties to the proceedings in which the order is made;
- (h) the process to be used for resolving disputes about the terms or operation of the order;
- (i) any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.

The person referred to in this subsection may be, or the persons referred to in this subsection may include, either a parent of the child or a person other than the parent of the child (including a grandparent or other relative of the child).

Note: Paragraph (f)—a parenting order cannot deal with the maintenance of a child if the *Child Support (Assessment) Act 1989* applies.

- (3) Without limiting paragraph (2)(c), the order may deal with the allocation of responsibility for making decisions about major long-term issues in relation to the child.
- (4) The communication referred to in paragraph (2)(e) includes (but is not limited to) communication by:
  - (a) letter; and
  - (b) telephone, email or any other electronic means.
- (4A) Without limiting paragraphs (2)(g) and (h), the parenting order may provide that the parties to the proceedings must consult with a family dispute resolution practitioner to assist with:
  - (a) resolving any dispute about the terms or operation of the order; or
  - (b) reaching agreement about changes to be made to the order.

### **23 Subsection 64B(5)**

Omit “(c)”, substitute “(f)”.

### **24 Subsections 64B(6) to (8)**

Repeal the subsections, substitute:

- (6) For the purposes of this Act:
  - (a) a parenting order that provides that a child is to live with a person is *made in favour* of that person; and
  - (b) a parenting order that provides that a child is to spend time with a person is *made in favour* of that person; and

- (c) a parenting order that provides that a child is to have communication with a person is *made in favour* of that person; and
- (d) a parenting order that:
  - (i) allocates parental responsibility for a child to a person; or
  - (ii) provides that a person is to share parental responsibility for a child with another person; is *made in favour* of that person.

## 25 At the end of Division 5 of Part VII

Add:

### 64D Parenting orders subject to later parenting plans

- (1) Subject to subsection (2), a parenting order in relation to a child is taken to include a provision that the order is subject to a parenting plan that is:
  - (a) entered into subsequently by the child's parents; and
  - (b) agreed to, in writing, by any other person (other than the child) to whom the parenting order applies.
- (2) The court may, in exceptional circumstances, include in a parenting order a provision that the parenting order, or a specified provision of the parenting order, may only be varied by a subsequent order of the court (and not by a parenting plan).
- (3) Without limiting subsection (2), exceptional circumstances for the purposes of that subsection include the following:
  - (a) circumstances that give rise to a need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence;
  - (b) the existence of substantial evidence that one of the child's parents is likely to seek to use coercion or duress to gain the agreement of the other parent to a parenting plan.

## 26 Section 65A

Before "This", insert "(1)".

## 27 At the end of section 65A



Add:

Note: Paragraph (a)—section 60I provides that people with disputes about matters that may be dealt with in a Part VII order (which includes a parenting order) should generally make use of family dispute resolution before applying for the order.

- (2) Measures designed to improve communication between separated parents and to educate parents about their respective responsibilities in relation to their children are contained in this Division (see section 65DA).

Note: Division 13A provides for the compliance regime for dealing with contraventions, and alleged contraventions, of parenting orders.

## **28 Section 65AA**

Repeal the section, substitute:

### **65AA Child’s best interests paramount consideration in making a parenting order**

Section 60CA provides that in deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

## **29 Subsection 65D(1)**

After “subject to”, insert “sections 61DA (presumption of equal shared parental responsibility when making parenting orders) and 65DAB (parenting plans) and”.

## **30 Subsection 65D(2)**

After “subject to”, insert “section 61DA (presumption of equal shared parental responsibility when making parenting orders) and 65DAB (parenting plans) and”.

## **31 After section 65D**

Insert:

**65DAA Court to consider child spending equal time or substantial and significant time with each parent in certain circumstances**

*Equal time*

- (1) If a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child, the court must:
- (a) consider whether the child spending equal time with each of the parents would be in the best interests of the child; and
  - (b) consider whether the child spending equal time with each of the parents is reasonably practicable; and
  - (c) if it is, consider making an order to provide (or including a provision in the order) for the child to spend equal time with each of the parents.

Note 1: The effect of section 60CA is that in deciding whether to go on to make a parenting order for the child to spend equal time with each of the parents, the court will regard the best interests of the child as the paramount consideration.

Note 2: See subsection (5) for the factors the court takes into account in determining what is reasonably practicable.

*Substantial and significant time*

- (2) If:
- (a) a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child; and
  - (b) the court does not make an order (or include a provision in the order) for the child to spend equal time with each of the parents; and
- the court must:
- (c) consider whether the child spending substantial and significant time with each of the parents would be in the best interests of the child; and
  - (d) consider whether the child spending substantial and significant time with each of the parents is reasonably practicable; and

- (e) if it is, consider making an order to provide (or including a provision in the order) for the child to spend substantial and significant time with each of the parents.

Note 1: The effect of section 60CA is that in deciding whether to go on to make a parenting order for the child to spend substantial time with each of the parents, the court will regard the best interests of the child as the paramount consideration.

Note 2: See subsection (5) for the factors the court takes into account in determining what is reasonably practicable.

- (3) For the purposes of subsection (2), a child will be taken to spend **substantial and significant time** with a parent only if:
- (a) the time the child spends with the parent includes both:
    - (i) days that fall on weekends and holidays; and
    - (ii) days that do not fall on weekends or holidays; and
  - (b) the time the child spends with the parent allows the parent to be involved in:
    - (i) the child's daily routine; and
    - (ii) occasions and events that are of particular significance to the child; and
  - (c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.
- (4) Subsection (3) does not limit the other matters to which a court can have regard in determining whether the time a child spends with a parent would be substantial and significant.

*Reasonable practicality*

- (5) In determining for the purposes of subsections (1) and (2) whether it is reasonably practicable for a child to spend equal time, or substantial and significant time, with each of the child's parents, the court must have regard to:
- (a) how far apart the parents live from each other; and
  - (b) the parents' current and future capacity to implement an arrangement for the child spending equal time, or substantial and significant time, with each of the parents; and
  - (c) the parents' current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind; and

(d) the impact that an arrangement of that kind would have on the child; and

(e) such other matters as the court considers relevant.

Note 1: Behaviour of a parent that is relevant for paragraph (c) may also be taken into account in determining what parenting order the court should make in the best interests of the child. Subsection 60CC(3) provides for considerations that are taken into account in determining what is in the best interests of the child. These include:

- (a) the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent (paragraph 60CC(3)(c));
- (b) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents (paragraph 60CC(3)(i)).

Note 2: Paragraph (c) reference to future capacity—the court has power under section 13C to make orders for parties to attend family counselling or family dispute resolution or participate in courses, programs or services.

### **65DAB Court to have regard to parenting plans**

When making a parenting order in relation to a child, the court is to have regard to the terms of the most recent parenting plan (if any) that has been entered into between the child's parents (to the extent to which that plan relates to the child) if doing so would be in the best interests of the child.

### **65DAC Effect of parenting order that provides for shared parental responsibility**

- (1) This section applies if, under a parenting order:
  - (a) 2 or more persons are to share parental responsibility for a child; and
  - (b) the exercise of that parental responsibility involves making a decision about a major long-term issue in relation to the child.
- (2) The order is taken to require the decision to be made jointly by those persons.

Note: Subject to any court orders, decisions about issues that are not major long-term issues are made by the person with whom the child is spending time without a need to consult the other person (see section 65DAE).

- (3) The order is taken to require each of those persons:
  - (a) to consult the other person in relation to the decision to be made about that issue; and
  - (b) to make a genuine effort to come to a joint decision about that issue.
- (4) To avoid doubt, this section does not require any other person to establish, before acting on a decision about the child communicated by one of those persons, that the decision has been made jointly.

**65DAE No need to consult on issues that are not major long-term issues**

- (1) If a child is spending time with a person at a particular time under a parenting order, the order is taken not to require the person to consult a person who:
  - (a) has parental responsibility for the child; or
  - (b) shares parental responsibility for the child with another person;about decisions that are made in relation to the child during that time on issues that are not major-long term issues.

Note: This will mean that the person with whom the child is spending time will usually not need to consult on decisions about such things as what the child eats or wears because these are usually not major long-term issues.

- (2) Subsection (1) applies subject to any provision to the contrary made by a parenting order.

**32 Section 65E**

Repeal the section.

**33 Paragraph 65G(2)(a)**

Repeal the paragraph, substitute:

- (a) the parties to the proceedings have attended a conference with a family consultant to discuss the matter to be determined by the proposed order; or

**34 Subsection 65L(2) (note)**

Omit “Division 10 deals”, substitute “Sections 60CB to 60CG deal”.

**35 Subsection 65LA(2) (note)**

Omit “Division 10 deals”, substitute “Sections 60CB to 60CG deal”.

**36 Section 67L (note)**

Omit “Division 10 deals”, substitute “Sections 60CB to 60CG deal”.

**37 Section 67V (note)**

Omit “Division 10 deals”, substitute “Sections 60CB to 60CG deal”.

**38 Subsection 67ZC(2) (note)**

Omit “Division 10 deals”, substitute “Sections 60CB to 60CG deal”.

**39 Subsection 69ZH(2)**

After “subsection,”, insert “Subdivision BA of Division 1,”.

**40 Subsection 117(1)**

After “sections 117AA”, insert “, 117AB”.

**41 After section 117AA**

Insert:

**117AB Costs where false allegation or statement made**

- (1) This section applies if:
  - (a) proceedings under this Act are brought before a court; and
  - (b) the court is satisfied that a party to the proceedings knowingly made a false allegation or statement in the proceedings.
- (2) The court must order that party to pay some or all of the costs of another party, or other parties, to the proceedings.

## Part 2—Application of amendments

### 42 Definitions

In this Part:

**commencement** means the commencement of this Schedule.

**new Act** means the *Family Law Act 1975* as in force after commencement.

**old Act** means the *Family Law Act 1975* as in force immediately before commencement.

### 43 Application

- (1) Section 60CC of the new Act applies to orders made on or after commencement.
- (2) The amendments made by items 13, 29 and 30 of this Schedule apply to parenting orders made on or after commencement.
- (3) The amendment made by item 14 of this Schedule applies to proceedings under Part VII, whether or not the proceedings were initiated before commencement.
- (4) The amendment made by item 15 of this Schedule applies to directions given under subsection 62G(2) of the new Act on or after commencement.
- (5) The amendments made by items 16 and 16A of this Schedule apply to parenting plans made on or after commencement.
- (6) The amendment made by item 22 of this Schedule applies to parenting orders made on or after commencement.
- (7) The amendment made by item 25 of this Schedule applies to parenting orders made on or after commencement. This includes, without limitation, a parenting order that varies an earlier parenting order, whether the earlier parenting order was made before or after commencement.
- (8) Sections 65DAA, 65DAB, 65DAC and 65DAE of the new Act apply to parenting orders made on or after commencement.

- (9) The amendment made by item 33 of this Schedule applies to a court proposing to make an order mentioned in subsection 65G(1) of the new Act, whether or not the proceedings to which the order relates were initiated before commencement.

#### **44 Grounds for discharging or varying parenting orders**

The amendments made by this Schedule are taken not to constitute changed circumstances that would justify making an order to discharge or vary, or to suspend or revive the operation of, some or all of a parenting order that was made before commencement.

Note: For the need for changed circumstances, see *Rice and Asplund* (1979) FLC 90-725.



## **Schedule 2—Compliance regime**

### **Part 1—Amendments**

#### *Family Law Act 1975*

##### **1 Section 60C (table item 6)**

Omit “—stage 1 of parenting compliance regime”.

##### **2 Section 60C (table item 13A)**

Omit “—stage 2 of parenting compliance regime”.

##### **3 Section 60C (table item 13A)**

Omit “—stage 3 of parenting compliance regime”.

##### **4 Subsection 65D(3)**

Omit “paragraph 70NG(1)(c) of proceedings under Subdivision B”, substitute “paragraph 70NEB(1)(c) of proceedings under Subdivision E”.

##### **5 Subsection 65D(3) (note)**

Omit “Subdivision B”, substitute “Subdivision E”.

Note: The heading to section 65DA is altered by omitting “: stage 1 of parenting compliance regime”.

##### **6 Division 13A of Part VII**

Repeal the Division, substitute:

### **Division 13A—Consequences of failure to comply with orders, and other obligations, that affect children**

#### **Subdivision A—Preliminary**

##### **70NAA Simplified outline of Division**

- (1) This Division deals with the powers that a court with jurisdiction under this Act has to make orders to enforce compliance with orders under this Act affecting children.

- (2) The court always has the power to vary the order under Subdivision B. In doing so, the court will have regard to any parenting plan that has been entered into since the order was made (see section 70NBB).
- (3) The other orders that the court can make depend on whether:
  - (a) a contravention is alleged to have occurred but is not established (Subdivision C); or
  - (b) the court finds that a contravention has occurred but there is a reasonable excuse for the contravention (Subdivision D); or
  - (c) the court finds that there was a contravention and there is no reasonable excuse for the contravention (Subdivision E for less serious contraventions and Subdivision F for more serious contraventions).

### **70NAB Application of Division**

Despite anything contained in any other provision of this Division, this Division does not apply in respect of a contravention, committed before this Division commences, of an order under this Act affecting children if a court made an order, in respect of that contravention before this Division commences, under this Act as previously in force.

### **70NAC Meaning of *contravened* an order**

A person is taken for the purposes of this Division to have *contravened* an order under this Act affecting children if, and only if:

- (a) where the person is bound by the order—he or she has:
  - (i) intentionally failed to comply with the order; or
  - (ii) made no reasonable attempt to comply with the order;or
- (b) otherwise—he or she has:
  - (i) intentionally prevented compliance with the order by a person who is bound by it; or
  - (ii) aided or abetted a contravention of the order by a person who is bound by it.

Note: Parenting orders may be subject to any subsequent parenting plan (see section 64D). This means that an action that would otherwise contravene a parenting order may not be a contravention, because of a

subsequent inconsistent parenting plan. Whether this is the case or not depends on the terms of the parenting order.

### **70NAD Requirements taken to be included in certain orders**

For the purposes of this Division:

- (a) a parenting order that deals with whom a child is to live with is taken to include a requirement that people act in accordance with section 65M in relation to the order; and
- (b) a parenting order that deals with whom a child is to spend time with is taken to include a requirement that people act in accordance with section 65N in relation to the order; and
- (c) a parenting order that deals with whom a child is to communicate with is taken to include a requirement that people act in accordance with section 65NA in relation to the order; and
- (d) a parenting order to which section 65P applies is taken to include a requirement that people act in accordance with that section in relation to the order.

### **70NAE Meaning of *reasonable excuse for contravening an order***

- (1) The circumstances in which a person may be taken to have had, for the purposes of this Division, a ***reasonable excuse for contravening*** an order under this Act affecting children include, but are not limited to, the circumstances set out in subsections (2), (4), (5), (6) and (7).
- (2) A person (the ***respondent***) is taken to have had a ***reasonable excuse for contravening*** an order under this Act affecting children if:
  - (a) the respondent contravened the order because, or substantially because, he or she did not, at the time of the contravention, understand the obligations imposed by the order on the person who was bound by it; and
  - (b) the court is satisfied that the respondent ought to be excused in respect of the contravention.
- (3) If a court decides that a person had a reasonable excuse for contravening an order under this Act for the reason referred to in paragraph (2)(a), it is the duty of the court to explain to the person, in language likely to be readily understood by the person, the

obligations imposed on him or her by the order and the consequences that may follow if he or she again contravenes the order.

- (4) A person (the *respondent*) is taken to have had a reasonable excuse for contravening a parenting order to the extent to which it deals with whom a child is to live with in a way that resulted in the child not living with a person in whose favour the order was made if:
- (a) the respondent believed on reasonable grounds that the actions constituting the contravention were necessary to protect the health or safety of a person (including the respondent or the child); and
  - (b) the period during which, because of the contravention, the child did not live with the person in whose favour the order was made was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).
- (5) A person (the *respondent*) is taken to have had a reasonable excuse for contravening a parenting order to the extent to which it deals with whom a child is to spend time with in a way that resulted in a person and a child not spending time together as provided for in the order if:
- (a) the respondent believed on reasonable grounds that not allowing the child and the person to spend time together was necessary to protect the health or safety of a person (including the respondent or the child); and
  - (b) the period during which, because of the contravention, the child and the person did not spend time together was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).
- (6) A person (the *respondent*) is taken to have had a reasonable excuse for contravening a parenting order to the extent to which it deals with whom a child is to communicate with in a way that resulted in a person and a child not having the communication provided for under the order if:
- (a) the respondent believed on reasonable grounds that not allowing the child and the person to communicate together was necessary to protect the health or safety of a person (including the respondent or the child); and
  - (b) the period during which, because of the contravention, the child and the person did not communicate was not longer

than was necessary to protect the health or safety of the person referred to in paragraph (a).

- (7) A person (the *respondent*) is taken to have had a reasonable excuse for contravening a parenting order to which section 65P applies by acting contrary to section 65P if:
- (a) the respondent believed on reasonable grounds that the action constituting the contravention was necessary to protect the health or safety of a person (including the respondent or the child); and
  - (b) the period during which, because of that action, a person in whose favour the order was made was hindered in or prevented from discharging responsibilities under the order was not for longer than was necessary to protect the health or safety of the person referred to in paragraph (a).

### **70NAF Standard of proof**

- (1) Subject to subsection (3), the standard of proof to be applied in determining matters in proceedings under this Division is proof on the balance of probabilities.
- (2) Without limiting subsection (1), that subsection applies to the determination of whether a person who contravened an order under this Act affecting children had a reasonable excuse for the contravention.
- (3) The court may only make an order under:
  - (a) paragraph 70NFB(2)(a), (d) or (e); or
  - (b) paragraph 70NFF(3)(a);if the court is satisfied beyond reasonable doubt that the grounds for making the order exist.

### **Subdivision B—Court’s power to vary parenting order**

#### **70NBA Variation of parenting order**

- (1) A court having jurisdiction under this Act may make an order varying a primary order if:
  - (a) proceedings in relation to the primary order are brought before a court having jurisdiction under this Act; and

- (b) it is alleged in those proceedings that a person committed a contravention of the primary order and either:
  - (i) the court does not find that the person committed a contravention of the primary order; or
  - (ii) the court finds that the person committed a contravention of the primary order.
- (2) If Subdivision F applies to the contravention, when making an order under subsection (1) varying a primary order, the court, in addition to regarding, under section 60CA, the best interests of the child as the paramount consideration, must, if any of the following considerations is relevant, take that consideration into account:
  - (a) the person who contravened the primary order did so after having attended, after having refused or failed to attend, or after having been found to be unsuitable to take any further part in, a post-separation parenting program or a part of such a program;
  - (b) there was no post-separation parenting program that the person who contravened the primary order could attend;
  - (c) because of the behaviour of the person who contravened the primary order, it was not appropriate, in the court's opinion, for the person to attend a post-separation parenting program, or a part of such a program;
  - (d) the primary order was a compensatory parenting order made under paragraph 70NEB(1)(b) or 70NFB(2)(c) after the person had contravened a previous order under this Act affecting children.
- (3) This section does not limit the circumstances in which a court having jurisdiction under this Act may vary a primary order.

### **70NBB Effect of parenting plan**

- (1) This section applies if:
  - (a) a parenting order has been made in relation to a child (whether before or after the commencement of this section); and
  - (b) after the parenting order was made, the parents of the child made a parenting plan that dealt with a matter (the ***relevant matter***) that was dealt with in the parenting order.
- (2) If:

- (a) section 70NBA applies to proceedings brought in relation to the parenting order in relation to the relevant matter; and
  - (b) the parenting plan was in force when the contravention of the parenting order:
    - (i) is alleged to have been committed; or
    - (ii) occurred;
- the court must, in exercising its powers under section 70NBA:
- (c) have regard to the terms of the parenting plan; and
  - (d) consider whether to exercise its powers under section 70NBA to make an order varying the parenting order to include (with or without modification) some or all of the provisions of the parenting plan.

Note: An action that would otherwise contravene a parenting order may not be a contravention because of a subsequent inconsistent parenting plan. Whether this is the case or not depends on the terms of the parenting order (see section 64D).

### **Subdivision C—Contravention alleged but not established**

#### **70NCA Application of Subdivision**

This Subdivision applies if:

- (a) a primary order has been made, whether before or after the commencement of this Subdivision; and
- (b) proceedings in relation to the primary order are brought before a court having jurisdiction under this Act; and
- (c) it is alleged in those proceedings that a person (the *respondent*) committed a contravention of the primary order; and
- (d) the court does not find that the respondent committed a contravention of the primary order.

Note: The court may also vary the primary order under Subdivision B.

#### **70NCB Costs**

- (1) The court may make an order that the person who brought the proceedings (the *applicant*) pay some or all of the costs of another party, or other parties, to the proceedings.
- (2) The court must consider making an order under subsection (1) if:

- (a) the applicant has previously brought proceedings in relation to the primary order or another primary order in which the applicant alleged that the respondent committed a contravention of the primary order or that other primary order; and
- (b) on the most recent occasion on which the applicant brought proceedings of the kind referred to in paragraph (a), the court before which the proceedings were brought:
  - (i) was not satisfied that the respondent had committed a contravention of the primary order or that other primary order; or
  - (ii) was satisfied that the respondent had committed a contravention of the primary order or that other primary order but did not make an order under section 70NBA, 70NDB, 70NDC, 70NEB or 70NFB in relation to the contravention.

### **Subdivision D—Contravention established but reasonable excuse for contravention**

#### **70NDA Application of Subdivision**

This Subdivision applies if:

- (a) a primary order has been made, whether before or after the commencement of this Subdivision; and
- (b) a court having jurisdiction under this Act is satisfied that a person (the *respondent*) has, whether before or after the commencement, committed a contravention (the *current contravention*) of the primary order; and
- (c) the respondent proves that he or she had a reasonable excuse for the current contravention.

Note: The court may also vary the primary order under Subdivision B.

#### **70NDB Order compensating person for time lost**

- (1) If:
  - (a) the primary order is a parenting order in relation to a child; and



(b) the current contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period);

the court:

(c) may make a further parenting order that compensates the person for time the person did not spend with the child (or the time the child did not live with the person) as a result of the current contravention; and

(d) must consider making that kind of order.

Note: If the person does not have a reasonable excuse for a contravention, the court has the power to make an order compensating a person for time lost under paragraph 70NEB(1)(b) or 70NFB(2)(c).

(2) The court must not make an order under paragraph (1)(c) if it would not be in the best interests of the child for the court to do so.

### **70NDC Costs**

(1) If the court does not make an order under section 70NDB in relation to the current contravention, the court may make an order that the person who brought the proceedings (the *applicant*) pay some or all of the costs of another party, or other parties, to the proceedings.

(2) The court must consider making an order under subsection (1) if:

(a) the applicant has previously brought proceedings in relation to the primary order or another primary order in which the applicant alleged that the respondent committed a contravention of the primary order or that other primary order; and

(b) on the most recent occasion on which the applicant brought proceedings of the kind referred to in paragraph (a), the court before which the proceedings were brought:

(i) was not satisfied that the respondent had committed a contravention of the primary order or that other primary order; or

(ii) was satisfied that the respondent had committed a contravention of the primary order or that other primary order but did not make an order under section 70NBA, 70NDB, 70NEB or 70NFB in relation to the contravention.

**Subdivision E—Contravention without reasonable excuse (less serious contravention)**

**70NEA Application of Subdivision**

- (1) Subject to subsection (4), this Subdivision applies if:
  - (a) a primary order has been made, whether before or after the commencement of this Division; and
  - (b) a court having jurisdiction under this Act is satisfied that a person has, whether before or after that commencement, committed a contravention (the *current contravention*) of the primary order; and
  - (c) the person does not prove that he or she had a reasonable excuse for the current contravention; and
  - (d) either subsection (2) or (3) applies;and, if the primary order is an order for the maintenance of a child, this Subdivision applies irrespective of the period since the current contravention occurred.
- (2) For the purposes of paragraph (1)(d), this subsection applies if no court has previously:
  - (a) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
  - (b) under paragraph 70NEB(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order.
- (3) For the purposes of paragraph (1)(d), this subsection applies if:
  - (a) a court has previously:
    - (i) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
    - (ii) under paragraph 70NEB(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order; and
  - (b) the court, in dealing with the current contravention, is satisfied that it is more appropriate for that contravention to be dealt with under this Subdivision.
- (4) This Subdivision does not apply if, in circumstances mentioned in subsection (2), the court dealing with the current contravention is

satisfied that the person who contravened the primary order has behaved in a way that showed a serious disregard for his or her obligations under the primary order.

### **70NEB Powers of court**

- (1) If this Subdivision applies, the court may do any or all of the following:
  - (a) make an order directing:
    - (i) the person who committed the current contravention; or
    - (ii) that person and another specified person;to attend a post-separation parenting program;
  - (b) if the current contravention is a contravention of a parenting order in relation to a child—make a further parenting order that compensates a person for time the person did not spend with the child (or time the child did not live with the person) as a result of the current contravention;
  - (c) adjourn the proceedings to allow either or both of the parties to the primary order to apply for a further parenting order under Division 6 of Part VII that discharges, varies or suspends the primary order or revives some or all of an earlier parenting order;
  - (d) make an order requiring the person who committed the current contravention to enter into a bond in accordance with section 70NEC;
  - (e) if:
    - (i) the current contravention is a contravention of a parenting order in relation to a child; and
    - (ii) the current contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period); and
    - (iii) the person referred to in subparagraph (ii) reasonably incurs expenses as a result of the contravention;make an order requiring the person who committed the current contravention to compensate the person referred to in subparagraph (ii) for some or all of the expenses referred to in subparagraph (iii);
  - (f) make an order that the person who committed the current contravention pay some or all of the costs of another party, or other parties, to the proceedings under this Division; and

- (g) if the court makes no other orders in relation to the current contravention—order that the person who brought the proceedings in relation to the current contravention pay some or all of the costs of the person who committed the current contravention.

Note 1: The court may also vary the primary order under Subdivision B.

Note 2: Paragraph (1)(a)—before making an order under this paragraph, the court must consider seeking the advice of a family consultant about the services appropriate to the person’s needs (see section 11E).

- (2) The court must not make an order under paragraph (1)(a) directed to a person other than the person who committed the current contravention unless:
  - (a) the person brought the proceedings before the court in relation to the current contravention or is otherwise a party to those proceedings; and
  - (b) the court is satisfied that it is appropriate to direct the order to the person because of the connection between the current contravention and the carrying out by the person of his or her parental responsibilities in relation to the child or children to whom the primary order relates.
- (3) If the court makes an order under paragraph (1)(a), the principal executive officer of the court must ensure that the provider of the program concerned is notified of the making of the order.
- (4) If:
  - (a) the current contravention is a contravention of a parenting order in relation to a child; and
  - (b) the contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period);the court must consider making an order under paragraph (1)(b) to compensate the person for the time the person did not spend with the child (or the time the child did not live with the person) as a result of the contravention.
- (5) The court must not make an order under paragraph (1)(b) if it would not be in the best interests of the child for the court to do so.
- (6) In deciding whether to adjourn the proceedings as mentioned in paragraph (1)(c), the court must have regard to the following:

- (a) whether the primary order was made by consent;
  - (b) whether either or both of the parties to the proceedings in which the primary order was made were represented in those proceedings by a legal practitioner;
  - (c) the length of the period between the making of the primary order and the occurrence of the current contravention;
  - (d) any other matters that the court thinks relevant.
- (7) The court must consider making an order under paragraph (1)(g) if:
- (a) the person (the ***applicant***) who brought the proceedings in relation to the current contravention has previously brought proceedings in relation to the primary order or another primary order in which the applicant alleged that the person (the ***respondent***) who committed the current contravention committed a contravention of the primary order or that other primary order; and
  - (b) on the most recent occasion on which the applicant brought proceedings of the kind referred to in paragraph (a), the court before which the proceedings were brought:
    - (i) was not satisfied that the respondent had committed a contravention of the primary order or that other primary order; or
    - (ii) was satisfied that the respondent had committed a contravention of the primary order or that other primary order but did not make an order under section 70NDB, 70NDC, 70NEB, 70NFB or 70NBA in relation to the contravention.

### **70NEC Bonds**

- (1) This section provides for bonds that a court may require a person to enter into under paragraph 70NEB(1)(d).
- (2) A bond is to be for a specified period of up to 2 years.
- (3) A bond may be:
  - (a) with or without surety; and
  - (b) with or without security.
- (4) The conditions that may be imposed on a person by a bond include (without limitation) conditions that require the person:

- (a) to attend an appointment (or a series of appointments) with a family consultant; or
  - (b) to attend family counselling; or
  - (c) to attend family dispute resolution; or
  - (d) to be of good behaviour.
- (5) If a court proposes to require a person to enter into a bond, it must, before making the requirement, explain to the person, in language likely to be readily understood by the person:
- (a) the purpose and effect of the proposed requirement; and
  - (b) the consequences that may follow if the person:
    - (i) fails to enter into the bond; or
    - (ii) having entered into the bond—fails to act in accordance with the bond.

### **70NED Duties of provider of post-separation parenting program**

The provider of a post-separation parenting program must inform the court if:

- (a) the provider considers that a person ordered to attend the program under paragraph 70NEB(1)(a) is unsuitable to attend the program, or to continue attending the program; or
- (b) a person ordered to attend the program under paragraph 70NEB(1)(a) fails to attend the program, or a part of it.

### **70NEF Evidence**

- (1) Evidence of anything said, or of any admission made, by a person attending a post-separation parenting program is not admissible:
  - (a) in any court (whether exercising federal jurisdiction or not); or
  - (b) in any proceedings before a person authorised by a law of the Commonwealth, of a State or of a Territory, or by the consent of the parties, to hear evidence.
- (2) Subsection (1) does not apply to the following:
  - (a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse;
  - (b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse;

unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

**70NEG Court may make further orders in relation to attendance at program**

The court may make such orders as it considers appropriate, other than the orders referred to in subsection 70NFB(2), in respect of a person, if:

- (a) it appears to the court that the person has not attended a post-separation parenting program that the person was ordered to attend; or
- (b) the person was assessed as unsuitable to attend a program.

**Subdivision F—Contravention without reasonable excuse (more serious contravention)**

**70NFA Application of Subdivision**

- (1) Subject to subsection (2), this Subdivision applies if:
  - (a) a primary order has been made, whether before or after the commencement of this Division; and
  - (b) a court having jurisdiction under this Act is satisfied that a person has, whether before or after that commencement, committed a contravention (the *current contravention*) of the primary order; and
  - (c) the person does not prove that he or she had a reasonable excuse for the current contravention; and
  - (d) either subsection (2) or (3) applies.

Note: For the standard of proof to be applied in determining whether a contravention of the primary order has been committed, see section 70NAF.

- (2) For the purposes of paragraph (1)(d), this subsection applies if:
  - (a) no court has previously:
    - (i) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or

- (ii) under paragraph 70NEB(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order; and
  - (b) the court dealing with the current contravention is satisfied that the person has behaved in a way that showed a serious disregard of his or her obligations under the primary order.
- (3) For the purposes of paragraph (1)(d), this subsection applies if a court has previously:
  - (a) made an order imposing a sanction or taking an action in respect of a contravention by the person of the primary order; or
  - (b) under paragraph 70NEB(1)(c), adjourned proceedings in respect of a contravention by the person of the primary order.
- (4) This Subdivision does not apply if the court dealing with the current contravention is satisfied that it is more appropriate for that contravention to be dealt with under Subdivision E.
- (5) This Subdivision applies whether the primary order was made, and whether the current contravention occurred, before or after the commencement of this Division.

#### **70NFB Powers of court**

- (1) If this Subdivision applies, the court must, in relation to the person who committed the current contravention:
  - (a) make an order under paragraph (2)(g), unless the court is satisfied that it would not be in the best interests of the child concerned to make that order; and
  - (b) if the court makes an order under paragraph (2)(g)—consider making another order (or other orders) under subsection (2) that the court considers to be the most appropriate of the orders under subsection (2) in the circumstances; and
  - (c) if the court does not make an order under paragraph (2)(g)—make at least one order under subsection (2), being the order (or orders) that the court considers to be the most appropriate of the orders under subsection (2) in the circumstances.
- (2) The orders that are available to be made by the court are:
  - (a) if the court is empowered under section 70NFC to make a community service order—to make such an order; or



- (b) to make an order requiring the person to enter into a bond in accordance with section 70NFE; or
- (c) if the current contravention is a contravention of a parenting order in relation to a child—to make a further parenting order that compensates a person for time the person did not spend with the child (or the time the child did not live with the person) as a result of the current contravention, unless it would not be in the best interests of the child concerned to make that order; or
- (d) to fine the person not more than 60 penalty units; or
- (e) subject to subsection (7), to impose a sentence of imprisonment on the person in accordance with section 70NFG; or
- (f) if:
  - (i) the current contravention is a contravention of a parenting order in relation to a child; and
  - (ii) the current contravention resulted in a person not spending time with the child (or the child not living with a person for a particular period); and
  - (iii) the person referred to in subparagraph (ii) reasonably incurs expenses as a result of the contravention;to make an order requiring the person who committed the current contravention to compensate the person referred to in subparagraph (ii) for some or all of the expenses referred to in subparagraph (iii); or
- (g) to make an order that the person who committed the current contravention pay all of the costs of another party, or other parties, to the proceedings under this Division; or
- (h) to make an order that the person who committed the current contravention pay some of the costs of another party, or other parties, to the proceedings under this Division.

Note: The court may also vary the primary order under Subdivision B.

- (3) If a court varies or discharges under section 70NFD a community service order made under paragraph (2)(a), the court may give any directions as to the effect of the variation or discharge that the court considers appropriate.
- (4) The court must not make an order imposing a sentence of imprisonment on a person under this section in respect of a contravention of a child maintenance order made under this Act

unless the court is satisfied that the contravention was intentional or fraudulent.

- (5) The court must not make an order imposing a sentence of imprisonment on a person under this section in respect of:
  - (a) a contravention of an administrative assessment of child support made under the *Child Support (Assessment) Act 1989*; or
  - (b) a breach of a child support agreement made under that Act; or
  - (c) a contravention of an order made by a court under Division 4 of Part 7 of that Act for a departure from such an assessment (including such an order that contains matters mentioned in section 141 of that Act).
- (6) An order under this section may be expressed to take effect immediately, at the end of a specified period or on the occurrence of a specified event.
- (7) When a court makes an order under this section, the court may make any other orders that the court considers necessary to ensure compliance with the order that was contravened.

**70NFC When court is empowered to make a community service order**

- (1) Subject to this section, if, under the law of a participating State or a participating Territory, a court is empowered (whether generally or in particular cases) to make a community service order in respect of a person convicted of an offence against the law of the State or Territory, a court exercising jurisdiction in the State or Territory may, under paragraph 70NFB(2)(a) make a community service order.
- (2) A community service order made under paragraph 70NFB(2)(a):
  - (a) is to be such that the total number of hours during which the order regulates the conduct of the person in respect of whom it is made does not exceed the maximum period in relation to the State or Territory in which the order is made; and
  - (b) ceases to have effect 2 years after it was made, or after such lesser period as is specified in the order.

- (3) A community service order may be an order of any of the following kinds:
- (a) an order known as:
    - (i) a community service order; or
    - (ii) a work order; or
    - (iii) an attendance centre order; or
    - (iv) an attendance order; or
    - (v) a community based order;
  - (b) an order that is similar to an order referred to in paragraph (a);
  - (c) an order prescribed for the purposes of this paragraph.
- (4) If a court exercising jurisdiction under section 70NFB in a particular State or Territory makes a community service order under paragraph 70NFB(2)(a), the provisions of the laws of the State or Territory with respect to a community service order that is made under those laws are, to the extent provided by the regulations and subject to such modifications as are specified in the regulations, to apply in relation to the order.
- (5) If a court proposes to make a community service order under paragraph 70NFB(2)(a), it must, before doing so, explain to the person in respect of whom it is made, in language likely to be readily understood by the person:
- (a) the purpose and effect of the proposed order; and
  - (b) the consequences that may follow if the person fails to comply with the proposed order or with any requirements made in relation to the order by or under the applied provisions; and
  - (c) if the proposed order may be revoked or varied under the applied provisions—that the proposed order may be so revoked or varied.
- (6) In this section:

***maximum period***, in relation to a State or Territory, means 500 hours or such lesser period as is prescribed in relation to the State or Territory.

***participating State*** means a State in relation to which an agreement under section 70NFI is in force.

*participating Territory* means a Territory in relation to which an agreement under section 70NFI is in force.

### **70NFD Variation and discharge of community service orders**

A community service order made under paragraph 70NFB(2)(a) may be varied or discharged:

- (a) if the court that made the order is the Family Court or the Federal Magistrates Court—by either of those Courts; or
- (b) otherwise—by the court that made the order or the Family Court.

### **70NFE Bonds**

- (1) This section provides for bonds that a court may require a person to enter into under paragraph 70NFB(2)(b).
- (2) A bond is to be for a specified period of up to 2 years.
- (3) A bond may be:
  - (a) with or without surety; and
  - (b) with or without security.
- (4) The conditions that may be imposed on a person by a bond include (without limitation) conditions that require the person:
  - (a) to attend an appointment (or a series of appointments) with a family consultant; or
  - (b) to attend family counselling; or
  - (c) to attend family dispute resolution; or
  - (d) to be of good behaviour.

Note: Before imposing a condition under this subsection, the court must consider seeking the advice of a family consultant about the services appropriate to the person's needs (see section 11E).

- (5) If a court proposes to require a person to enter into a bond, it must, before making the requirement, explain to the person, in language likely to be readily understood by the person:
  - (a) the purpose and effect of the proposed requirement; and
  - (b) the consequences that may follow if the person:
    - (i) fails to enter into the bond; or

- (ii) having entered into the bond—fails to act in accordance with the bond.

**70NFF Procedure for enforcing community service orders or bonds**

- (1) If a court makes a community service order under paragraph 70NFB(2)(a) in respect of a person, or an order under paragraph 70NFB(2)(b) requiring a person to enter into a bond in accordance with section 70NFE, the following provisions have effect.
- (2) If the court (whether or not constituted by the judge or magistrate who made the community service order or required the bond to be entered into in accordance with section 70NFE) is satisfied that the person has, without reasonable excuse, failed to comply with the order or bond, the court may take action under subsection (3).
- (3) The court may:
  - (a) without prejudice to the continuance of the community service order or the bond entered into in accordance with section 70NFE, impose a fine not exceeding 10 penalty units on the person; or
  - (b) revoke the community service order or the bond entered into in accordance with section 70NFE and, subject to subsection (4), deal with the person, for the contravention in respect of which the community service order was made or the bond was entered into, in any manner in which the person could have been dealt with for the contravention if:
    - (i) the community service order had not been made or the bond had not been entered into; and
    - (ii) the person was before the court under section 70NFB in respect of the contravention.
- (4) In dealing with the person as mentioned in paragraph (3)(b), the court must, in addition to any other matters that it considers should be taken into account, take into account:
  - (a) the fact that the community service order was made or the bond was entered into; and
  - (b) anything done under the community service order or pursuant to the bond; and
  - (c) any fine imposed, and any other order made, for or in respect of the contravention.

**70NFG Sentences of imprisonment**

- (1) A sentence of imprisonment imposed on a person under paragraph 70NFB(2)(e) is to be expressed to be:
  - (a) for a specified period of 12 months or less; or
  - (b) for a period ending when the person:
    - (i) complies with the order concerned; or
    - (ii) has been imprisoned under the sentence for 12 months or such lesser period as is specified by the court;whichever happens first.
- (2) A court must not sentence a person to imprisonment under paragraph 70NFB(2)(e) unless the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention under any of the other paragraphs of subsection 70NFB(2).
- (3) If a court sentences a person to imprisonment under paragraph 70NFB(2)(e), the court must:
  - (a) state the reasons why it is satisfied as mentioned in subsection (2); and
  - (b) cause those reasons to be entered in the records of the court.
- (4) The failure of a court to comply with subsection (3) does not invalidate a sentence.
- (5) A court that sentences a person to imprisonment under paragraph 70NFB(2)(e) may:
  - (a) suspend the sentence upon the terms and conditions determined by the court; and
  - (b) terminate a suspension made under paragraph (a).
- (6) A court, when sentencing a person to imprisonment under paragraph 70NFB(2)(e), may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a bond described in subsection (7) after he or she has served a specified part of the term of imprisonment.
- (7) A bond for the purposes of subsection (6) is a bond (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.

- (8) A court that has sentenced a person to imprisonment for a period expressed as provided by paragraph (1)(b) may order the release of the person if it is satisfied that the person will, if he or she is released, comply with the order concerned.
- (9) To avoid doubt, the serving by a person of a period of imprisonment under a sentence imposed on the person under paragraph 70NFB(2)(e) for failure to make a payment under a child maintenance order does not affect the person's liability to make the payment.

#### **70NFH Relationship between Subdivision and other laws**

- (1) This section applies where an act or omission by a person:
  - (a) constitutes a contravention of an order under this Act affecting children; and
  - (b) is also an offence against any law.
- (2) If the person is prosecuted in respect of the offence, a court in which proceedings have been brought under section 70NFB in respect of the contravention of the order must:
  - (a) adjourn those proceedings until the prosecution has been completed; or
  - (b) dismiss those proceedings.
- (3) The person may be prosecuted for, and convicted of, the offence.
- (4) Nothing in this section renders the person liable to be punished twice in respect of the same act or omission.

#### **70NFI Arrangements with States and Territories for carrying out of sentences and orders**

An arrangement made under section 112AN for or in relation to the carrying out of sentences imposed, or orders made, under Division 2 of Part XIII A is taken to extend to the carrying out of sentences imposed, or orders made, under this Subdivision.

#### **70NFJ Subdivision does not limit operation of section 105**

Nothing in this Subdivision is intended to limit the operation of section 105.

**7 Subsection 117(1)**

After “subsection (2)”, insert “, subsection 70NFB(1)”.



## Part 2—Application of amendments and savings

### 8 Definitions

In this Part:

**commencement** means the commencement of this Schedule.

**new Act** means the *Family Law Act 1975* as in force after commencement.

**old Act** means the *Family Law Act 1975* as in force immediately before commencement.

### 9 Application

The amendments made by this Schedule apply to a contravention or alleged contravention of a parenting order, if the contravention occurs, or the alleged contravention is alleged to occur, on or after commencement.

### 10 Saving of regulations

Despite the repeal of a provision of the old Act specified in the following table, regulations that:

- (a) were made for the purposes of that provision of the old Act; and
- (b) were in force immediately before commencement;

continue to have effect on and after commencement as if those regulations had been made for the purposes of the corresponding provision of the new Act that is specified in the table in relation to that provision of the old Act:

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<b>Saving regulations made under provisions of old Act</b>		
<b>Item</b>	<b>Provision of old Act</b>	<b>Corresponding provision of new Act</b>
1	paragraph 70NK(2A)(c)	paragraph 70NFC(3)(c)
2	subsection 70NK(3)	subsection 70NFC(4)
3	definition of <b>maximum period</b> in subsection 70NK(5)	definition of <b>maximum period</b> in subsection 70NFC(6)

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## Schedule 3—Amendments relating to the conduct of child-related proceedings

### Part 1—Amendments

#### *Evidence Act 1995*

##### 1 At the end of subsection 190(1)

Add:

Note: Matters related to evidence in child-related proceedings (within the meaning of section 69ZM of the *Family Law Act 1975*) are dealt with by that Act.

#### *Family Law Act 1975*

##### 2 Subsection 4(1)

Insert:

*child-related proceedings* has the meaning given by section 69ZM.

##### 3 Section 60C (after table item 12)

Insert:

12A     **Division 12A—Principles for conducting child-related proceedings**  
principles for conducting proceedings under this Part and certain other incidental proceedings  
duties and powers of the court related to giving effect to the principles

##### 4 After Division 12 of Part VII

Insert:

## **Division 12A—Principles for conducting child-related proceedings**

### **Subdivision A—Proceedings to which this Division applies**

#### **69ZM Proceedings to which this Division applies**

- (1) This Division applies to proceedings that are wholly under this Part.
- (2) This Division also applies to proceedings that are partly under this Part:
  - (a) to the extent that they are proceedings under this Part; and
  - (b) if the parties to the proceedings consent—to the extent that they are not proceedings under this Part.
- (3) This Division also applies to any other proceedings between the parties that involve the court exercising jurisdiction under this Act and that arise from the breakdown of the parties' marital relationship, if the parties to the proceedings consent.
- (4) Proceedings to which this Division applies are *child-related proceedings*.
- (5) Consent given for the purposes of paragraph (2)(b) or subsection (3) must be:
  - (a) free from coercion; and
  - (b) given in the form prescribed by the applicable Rules of Court.
- (6) A party to proceedings may, with the leave of the court, revoke a consent given for the purposes of paragraph (2)(b) or subsection (3).

### **Subdivision B—Principles for conducting child-related proceedings**

#### **69ZN Principles for conducting child-related proceedings**

##### *Application of the principles*

- (1) The court must give effect to the principles in this section:

- (a) in performing duties and exercising powers (whether under this Division or otherwise) in relation to child-related proceedings; and
- (b) in making other decisions about the conduct of child-related proceedings.

Failure to do so does not invalidate the proceedings or any order made in them.

- (2) Regard is to be had to the principles in interpreting this Division.

*Principle 1*

- (3) The first principle is that the court is to consider the needs of the child concerned and the impact that the conduct of the proceedings may have on the child in determining the conduct of the proceedings.

*Principle 2*

- (4) The second principle is that the court is to actively direct, control and manage the conduct of the proceedings.

*Principle 3*

- (5) The third principle is that the proceedings are to be conducted in a way that will safeguard:
  - (a) the child concerned against family violence, child abuse and child neglect; and
  - (b) the parties to the proceedings against family violence.

*Principle 4*

- (6) The fourth principle is that the proceedings are, as far as possible, to be conducted in a way that will promote cooperative and child-focused parenting by the parties.

*Principle 5*

- (7) The fifth principle is that the proceedings are to be conducted without undue delay and with as little formality, and legal technicality and form, as possible.

**69ZO This Division also applies to proceedings in Chambers**

A judge, Judicial Registrar, Registrar, Federal Magistrate or magistrate, who is hearing child-related proceedings in Chambers, has all of the duties and powers that a court has under this Division.

Note: An order made in Chambers has the same effect as an order made in open court.

**69ZP Powers under this Division may be exercised on court's own initiative**

The court may exercise a power under this Division:

- (a) on the court's own initiative; or
- (b) at the request of one or more of the parties to the proceedings.

**Subdivision C—Duties and powers related to giving effect to the principles**

**69ZQ General duties**

- (1) In giving effect to the principles in section 69ZN, the court must:
  - (a) decide which of the issues in the proceedings require full investigation and hearing and which may be disposed of summarily; and
  - (b) decide the order in which the issues are to be decided; and
  - (c) give directions or make orders about the timing of steps that are to be taken in the proceedings; and
  - (d) in deciding whether a particular step is to be taken—consider whether the likely benefits of taking the step justify the costs of taking it; and
  - (e) make appropriate use of technology; and
  - (f) if the court considers it appropriate—encourage the parties to use family dispute resolution or family counselling; and
  - (g) deal with as many aspects of the matter as it can on a single occasion; and
  - (h) deal with the matter, where appropriate, without requiring the parties' physical attendance at court.
- (2) Subsection (1) does not limit subsection 69ZN(1).

- (3) A failure to comply with subsection (1) does not invalidate an order.

**69ZR Power to make determinations, findings and orders at any stage of proceedings**

- (1) If, at any time after the commencement of child-related proceedings and before making final orders, the court considers that it may assist in the determination of the dispute between the parties, the court may do any or all of the following:
- (a) make a finding of fact in relation to the proceedings;
  - (b) determine a matter arising out of the proceedings;
  - (c) make an order in relation to an issue arising out of the proceedings.

Note: For example, the court may choose to use this power if the court considers that making a finding of fact at a particular point in the proceedings will help to focus the proceedings.

- (2) Subsection (1) does not prevent the court doing something mentioned in paragraph (1)(a), (b) or (c) at the same time as making final orders.
- (3) To avoid doubt, a judge, Judicial Registrar, Registrar, Federal Magistrate or magistrate who exercises a power under subsection (1) in relation to proceedings is not, merely because of having exercised the power, required to disqualify himself or herself from a further hearing of the proceedings.

**69ZS Use of family consultants**

At any time during child-related proceedings, the court may designate a family consultant as the family consultant in relation to the proceedings.

Note 1: Family consultants have the functions described in section 11A. These include assisting and advising people involved in proceedings, and this assistance and advice may involve helping people to better understand the effect of things on the child concerned. Family consultants can also inform people about other services available to help them.

Note 2: The court may also order parties to proceedings to attend appointments with a family consultant. See section 11F.

## **Subdivision D—Matters relating to evidence**

### **69ZT Rules of evidence not to apply unless court decides**

- (1) These provisions of the *Evidence Act 1995* do not apply to child-related proceedings:
  - (a) Divisions 3, 4 and 5 of Part 2.1 (which deal with general rules about giving evidence, examination in chief, re-examination and cross-examination), other than sections 26, 30, 36 and 41;  

Note: Section 26 is about the court's control over questioning of witnesses. Section 30 is about interpreters. Section 36 relates to examination of a person without subpoena or other process. Section 41 is about improper questions.
  - (b) Parts 2.2 and 2.3 (which deal with documents and other evidence including demonstrations, experiments and inspections);
  - (c) Parts 3.2 to 3.8 (which deal with hearsay, opinion, admissions, evidence of judgments and convictions, tendency and coincidence, credibility and character).
- (2) The court may give such weight (if any) as it thinks fit to evidence admitted as a consequence of a provision of the *Evidence Act 1995* not applying because of subsection (1).
- (3) Despite subsection (1), the court may decide to apply one or more of the provisions of a Division or Part mentioned in that subsection to an issue in the proceedings, if:
  - (a) the court is satisfied that the circumstances are exceptional; and
  - (b) the court has taken into account (in addition to any other matters the court thinks relevant):
    - (i) the importance of the evidence in the proceedings; and
    - (ii) the nature of the subject matter of the proceedings; and
    - (iii) the probative value of the evidence; and
    - (iv) the powers of the court (if any) to adjourn the hearing, to make another order or to give a direction in relation to the evidence.
- (4) If the court decides to apply a provision of a Division or Part mentioned in subsection (1) to an issue in the proceedings, the

court may give such weight (if any) as it thinks fit to evidence admitted as a consequence of the provision applying.

(5) Subsection (1) does not revive the operation of:

- (a) a rule of common law; or
- (b) a law of a State or a Territory;

that, but for subsection (1), would have been prevented from operating because of a provision of a Division or Part mentioned in that subsection.

### **69ZU Evidence of family consultants**

The court must not, without the consent of the parties to the proceedings, take into account an opinion expressed by a family consultant, unless the consultant gave the opinion as sworn evidence.

### **69ZV Evidence of children**

- (1) This section applies if the court applies the law against hearsay under subsection 69ZT(2) to child-related proceedings.
- (2) Evidence of a representation made by a child about a matter that is relevant to the welfare of the child or another child, which would not otherwise be admissible as evidence because of the law against hearsay, is not inadmissible in the proceedings solely because of the law against hearsay.
- (3) The court may give such weight (if any) as it thinks fit to evidence admitted under subsection (2).
- (4) This section applies despite any other Act or rule of law.
- (5) In this section:

*child* means a person under 18.

*representation* includes an express or implied representation, whether oral or in writing, and a representation inferred from conduct.



**69ZW Evidence relating to child abuse or family violence**

- (1) The court may make an order in child-related proceedings requiring a prescribed State or Territory agency to provide the court with the documents or information specified in the order.
- (2) The documents or information specified in the order must be documents recording, or information about, one or more of these:
  - (a) any notifications to the agency of suspected abuse of a child to whom the proceedings relate or of suspected family violence affecting the child;
  - (b) any assessments by the agency of investigations into a notification of that kind or the findings or outcomes of those investigations;
  - (c) any reports commissioned by the agency in the course of investigating a notification.
- (3) Nothing in the order is to be taken to require the agency to provide the court with:
  - (a) documents or information not in the possession or control of the agency; or
  - (b) documents or information that include the identity of the person who made a notification.
- (4) A law of a State or Territory has no effect to the extent that it would, apart from this subsection, hinder or prevent an agency complying with the order.
- (5) The court must admit into evidence any documents or information, provided in response to the order, on which the court intends to rely.
- (6) Despite subsection (5), the court must not disclose the identity of the person who made a notification, or information that could identify that person, unless:
  - (a) the person consents to the disclosure; or
  - (b) the court is satisfied that the identity or information is critically important to the proceedings and that failure to make the disclosure would prejudice the proper administration of justice.

- (7) Before making a disclosure for the reasons in paragraph (6)(b), the court must ensure that the agency that provided the identity or information:
- (a) is notified about the intended disclosure; and
  - (b) is given an opportunity to respond.

**69ZX Court's general duties and powers relating to evidence**

- (1) In giving effect to the principles in section 69ZN, the court may:
- (a) give directions or make orders about the matters in relation to which the parties are to present evidence; and
  - (b) give directions or make orders about who is to give evidence in relation to each remaining issue; and
  - (c) give directions or make orders about how particular evidence is to be given; and
  - (d) if the court considers that expert evidence is required—give directions or make orders about:
    - (i) the matters in relation to which an expert is to provide evidence; and
    - (ii) the number of experts who may provide evidence in relation to a matter; and
    - (iii) how an expert is to provide the expert's evidence; and
  - (e) ask questions of, and seek evidence or the production of documents or other things from, parties, witnesses and experts on matters relevant to the proceedings.
- (2) Without limiting subsection (1) or section 69ZR, the court may give directions or make orders:
- (a) about the use of written submissions; or
  - (b) about the length of written submissions; or
  - (c) limiting the time for oral argument; or
  - (d) limiting the time for the giving of evidence; or
  - (e) that particular evidence is to be given orally; or
  - (f) that particular evidence is to be given by affidavit; or
  - (g) that evidence in relation to a particular matter not be presented by a party; or
  - (h) that evidence of a particular kind not be presented by a party; or

- (i) limiting, or not allowing, cross-examination of a particular witness; or
  - (j) limiting the number of witnesses who are to give evidence in the proceedings.
- (3) The court may, in child-related proceedings:
- (a) receive into evidence the transcript of evidence in any other proceedings before:
    - (i) the court; or
    - (ii) another court; or
    - (iii) a tribunal;and draw any conclusions of fact from that transcript that it thinks proper; and
  - (b) adopt any recommendation, finding, decision or judgment of any court, person or body of a kind mentioned in any of subparagraphs (a)(i) to (iii).

Note: This subsection may be particularly relevant for Aboriginal or Torres Strait Islander children.

## **5 Section 100A**

Repeal the section.

## **6 At the end of section 102A**

Add:

Note: Section 69ZV is relevant to evidence of a representation by a child, if the admissibility of the evidence would otherwise be affected by the law against hearsay.

## **7 Part XI (heading)**

Repeal the heading, substitute:

## **Part XI—Procedure and evidence**

Note: Division 12A of Part VII has provisions about procedure and evidence that apply to child-related proceedings (within the meaning of Part VII).

## **Part 2—Application of amendments**

### **8 Application of amendments**

The amendments made by Part 1 of this Schedule apply:

- (a) to proceedings commenced by an application filed on or after 1 July 2006; and
- (b) to proceedings commenced by an application filed before 1 July 2006, if the parties to the proceedings consent and the court grants leave.

## **Schedule 4—Changes to dispute resolution**

### **Part 1—Changes to approval of organisations**

#### *Family Law Act 1975*

**1 Subsection 4(1) (definition of *voluntary organization*)**

Repeal the definition.

**2 Subsection 13A(1)**

Repeal the subsection.

**3 Subsection 13A(2)**

Omit “the organisation” (first occurring), substitute “an organisation”.

**4 Paragraph 13A2(b)**

Repeal the paragraph, substitute:

(b) the organisation’s activities include, or will include, family and child counselling.

**5 Subsection 13B(1)**

Repeal the subsection.

**6 Subsection 13B(2)**

Omit “the organisation” (first occurring), substitute “an organisation”.

**7 Paragraph 13B(2)(b)**

Repeal the paragraph, substitute:

(b) the organisation’s activities include, or will include, family and child mediation.

## Part 2—Protection of names

### *Family Law Act 1975*

#### 8 After Part I

Insert:

### Part IA—Protection of names

#### 9A Use of protected names and symbols

- (1) A person must not, without the Minister's written consent:
- (a) use in relation to a business, trade, profession or occupation;  
or
  - (b) use as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship, aircraft or other craft; or
  - (c) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let for hire;  
or
  - (d) use in relation to:
    - (i) goods or services; or
    - (ii) the promotion, by any means, of the supply or use of goods or services:
- either:
- (e) a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it; or
  - (f) a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

Penalty: 30 penalty units.

- (2) Subsection (1), so far as it applies in relation to a particular protected name or protected symbol, does not affect rights conferred by law on a person in relation to:
- (a) a trade mark that is a registered trade mark for the purposes of the *Trade Marks Act 1995*; or

- (b) a design registered under the *Designs Act 2003*;  
that was so registered, or was registered under the *Designs Act 1906*, at the protection time in relation to the name or symbol.
- (3) This section, so far as it applies in relation to a particular protected name or protected symbol, does not affect the use, or rights conferred by law relating to the use, of a name or symbol (the ***relevant name or symbol***) by a person in a particular manner if, at the protection time in relation to the protected name or protected symbol, the person:
- (a) was using the relevant name or symbol in good faith in that manner; or
  - (b) would have been entitled to prevent another person from passing off, by means of the use of the relevant name or symbol or a similar name or symbol, goods or services as the goods or services of the first-mentioned person.
- (4) In this section:

***protected name*** means a name prescribed for the purposes of this definition.

***protected symbol*** means a symbol whose design is set out in the regulations.

***protection time*** means:

- (a) in relation to a protected name—the time immediately before the commencement of the regulation prescribing the name; or
- (b) in relation to a protected symbol—the time immediately before the commencement of the regulation setting out the design of the symbol.

## Part 3—Changes to dispute resolution

### *Family Law Act 1975*

#### 9 Subsection 4(1)

Insert:

*abuse*, in relation to a child, means:

- (a) an assault, including a sexual assault, of the child which is an offence under a law, written or unwritten, in force in the State or Territory in which the act constituting the assault occurs; or
- (b) a person involving the child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned person or the other person, and where there is unequal power in the relationship between the child and the first-mentioned person.

#### 10 Subsection 4(1)

Insert:

*Accreditation Rules* means regulations made under section 10A.

#### 11 Subsection 4(1) (definition of *approved counselling organisation*)

Repeal the definition.

#### 12 Subsection 4(1) (definition of *approved mediation organisation*)

Repeal the definition.

#### 13 Subsection 4(1)

Insert:

*arbitration* has the meaning given by section 10L.

#### 14 Subsection 4(1) (definition of *arbitrator*)



Repeal the definition, substitute:

*arbitrator* has the meaning given by section 10M.

**15 Subsection 4(1) (definition of *child counselling*)**

Repeal the definition.

**16 Subsection 4(1) (definition of *community mediator*)**

Repeal the definition.

**17 Subsection 4(1) (definition of *court counsellor*)**

Repeal the definition.

**18 Subsection 4(1) (definition of *court mediator*)**

Repeal the definition.

**19 Subsection 4(1) (definition of *family and child counselling*)**

Repeal the definition.

**20 Subsection 4(1) (definition of *family and child counsellor*)**

Repeal the definition.

**21 Subsection 4(1) (definition of *family and child mediation*)**

Repeal the definition.

**22 Subsection 4(1) (definition of *family and child mediator*)**

Repeal the definition.

**23 Subsection 4(1)**

Insert:

*family consultant* has the meaning given by section 11B.

**24 Subsection 4(1)**

Insert:

*family counselling* has the meaning given by section 10B.

**25 Subsection 4(1)**

Insert:

*family counsellor* has the meaning given by section 10C.

**26 Subsection 4(1)**

Insert:

*family dispute resolution* has the meaning given by section 10F.

**27 Subsection 4(1)**

Insert:

*family dispute resolution practitioner* has the meaning given by section 10G.

**28 Subsection 4(1) (definition of *marriage counselling*)**

Repeal the definition.

**29 Subsection 4(1)**

Insert:

*post-separation parenting program* means a program:

- (a) that is designed to help people to resolve problems that adversely affect the carrying out of their parenting responsibilities (including by providing counselling services or by teaching techniques to resolve disputes); and
- (b) that consists of lectures, discussions (including group discussions) or other activities; and
- (c) that is provided by an organisation that meets the conditions in section 65LB.

**30 Subsection 4(1) (definition of *private arbitration*)**

Repeal the definition.

**31 Subsection 4(1) (definition of *private mediator*)**

Repeal the definition.

**32 Subsection 4(1)**

Insert:

*relevant property or financial arbitration* has the meaning given by subsection 10L(2).

**33 Subsection 4(1)**

Insert:

*section 13E arbitration* has the meaning given by subsection 10L(2).

**34 Subsection 4(1) (definition of *welfare officer*)**

Repeal the definition.

**35 After subsection 4(1)**

Insert:

- (1AA) A reference in this Act to a person or people involved in proceedings is a reference to:
- (a) any of the parties to the proceedings; and
  - (b) any child whose interests are considered in, or affected by, the proceedings; and
  - (c) any person whose conduct is having an effect on the proceedings.

**36 Parts II and III**

Repeal the Parts, substitute:

**Part II—Non-court based family services**

**Division 1—Accreditation of family counsellors, family dispute resolution practitioners and other family service providers**

**10A Accreditation Rules**

- (1) The regulations may prescribe Accreditation Rules. These are rules relating to:
- (a) the accreditation of persons as family counsellors; and
  - (b) the accreditation of persons as family dispute resolution practitioners; and
  - (c) the accreditation of persons to perform other roles prescribed by regulations made for the purposes of this paragraph.

- (2) Examples of matters that the Accreditation Rules may deal with are:
- (a) the standards that are to be met by persons who seek to be accredited; and
  - (b) who is responsible for determining whether a person meets the Accreditation Rules; and
  - (c) how accreditation is to be recognised (for example, by establishment of a register or other method); and
  - (d) the standards and other obligations that accredited persons must continue to meet to remain accredited; and
  - (e) who is responsible for monitoring compliance with ongoing requirements in the Rules; and
  - (f) the consequences of accredited persons failing to comply with the provisions of this Act and the Rules; and
  - (g) the obligations of accredited persons in relation to the monitoring of their compliance; and
  - (h) how and by whom an accredited person may have his or her accreditation (or recognition of that accreditation) suspended or cancelled; and
  - (i) review of decisions to refuse, suspend or cancel accreditation (or recognition of accreditation); and
  - (j) the process for handling complaints involving accredited persons; and
  - (k) who may deliver recognised training to accredited persons, and
  - (l) dealing with individuals or other persons who make false or misleading representations about a person's status as an accredited person.

## **Division 2—Family counselling**

### **10B Definition of *family counselling***

***Family counselling*** is a process in which a family counsellor helps:

- (a) one or more persons to deal with personal and interpersonal issues in relation to marriage; or
- (b) one or more persons (including children) who are affected, or likely to be affected, by separation or divorce to deal with either or both of the following:

- (i) personal and interpersonal issues;
- (ii) issues relating to the care of children.

### **10C Definition of *family counsellor***

- (1) A *family counsellor* is:
  - (a) a person who is accredited as a family counsellor under the Accreditation Rules; or
  - (b) a person who is authorised to act on behalf of an organisation designated by the Minister for the purposes of this paragraph; or
  - (c) a person who is authorised to act under section 38BD, or engaged under subsection 38R(1A), as a family counsellor; or
  - (d) a person who is authorised to act under section 93D of the *Federal Magistrates Act 1999*, or engaged under subsection 115(1A) of that Act, as a family counsellor; or
  - (e) a person who is authorised by a Family Court of a State to act as a family counsellor.
- (2) The Minister must publish, at least annually, a list of organisations designated for the purposes of paragraph (b) of the definition of *family counsellor*.
- (3) An instrument under this section is not a legislative instrument.

### **10D Confidentiality of communications in family counselling**

- (1) A family counsellor must not disclose a communication made to the counsellor while the counsellor is conducting family counselling, unless the disclosure is required or authorised by this section.
- (2) A family counsellor must disclose a communication if the counsellor reasonably believes the disclosure is necessary for the purpose of complying with a law of the Commonwealth, a State or a Territory.
- (3) A family counsellor may disclose a communication if consent to the disclosure is given by:
  - (a) if the person who made the communication is 18 or over—that person; or

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- (b) if the person who made the communication is a child under 18:
    - (i) each person who has parental responsibility (within the meaning of Part VII) for the child; or
    - (ii) a court.
  
  - (4) A family counsellor may disclose a communication if the counsellor reasonably believes that the disclosure is necessary for the purpose of:
    - (a) protecting a child from the risk of harm (whether physical or psychological); or
    - (b) preventing or lessening a serious and imminent threat to the life or health of a person; or
    - (c) reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person; or
    - (d) preventing or lessening a serious and imminent threat to the property of a person; or
    - (e) reporting the commission, or preventing the likely commission, of an offence involving intentional damage to property of a person or a threat of damage to property; or
    - (f) if a lawyer independently represents a child's interests under an order under section 68L—assisting the lawyer to do so properly.
  
  - (5) A family counsellor may disclose a communication in order to provide information (other than personal information within the meaning of section 6 of the *Privacy Act 1988*) for research relevant to families.
  
  - (6) Evidence that would be inadmissible because of section 10E is not admissible merely because this section requires or authorises its disclosure.

Note: This means that the counsellor's evidence is inadmissible in court, even if subsection (2), (3), (4) or (5) allows the counsellor to disclose it in other circumstances.
  
  - (7) Nothing in this section prevents a family counsellor from disclosing information necessary for the counsellor to give a certificate of the kind mentioned in paragraph 16(2A)(a) of the *Marriage Act 1961*.
-

(8) In this section:

*communication* includes admission.

**10E Admissibility of communications in family counselling and in referrals from family counselling**

(1) Evidence of anything said, or any admission made, by or in the company of:

- (a) a family counsellor conducting family counselling; or
- (b) a person (the *professional*) to whom a family counsellor refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person;

is not admissible:

- (c) in any court (whether or not exercising federal jurisdiction); or
- (d) in any proceedings before a person authorised to hear evidence (whether the person is authorised by a law of the Commonwealth, a State or a Territory, or by the consent of the parties).

(2) Subsection (1) does not apply to:

- (a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse; or
- (b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse;

unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

(3) Nothing in this section prevents a family counsellor from disclosing information necessary for the counsellor to give a certificate of the kind mentioned in paragraph 16(2A)(a) of the *Marriage Act 1961*.

(4) A family counsellor who refers a person to a professional (within the meaning of paragraph (1)(b)) must inform the professional of the effect of this section.

## Division 3—Family dispute resolution

### 10F Definition of *family dispute resolution*

*Family dispute resolution* is a process (other than a judicial process):

- (a) in which a family dispute resolution practitioner helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other; and
- (b) in which the practitioner is independent of all of the parties involved in the process.

### 10G Definition of *family dispute resolution practitioner*

A *family dispute resolution practitioner* is:

- (a) a person who is accredited as a family dispute resolution practitioner under the Accreditation Rules; or
  - (b) a person who is authorised to act on behalf of an organisation designated by the Minister for the purposes of this paragraph; or
  - (c) a person who is authorised to act under section 38BD, or engaged under subsection 38R(1A), as a family dispute resolution practitioner; or
  - (d) a person who is authorised to act under section 93D of the *Federal Magistrates Act 1999*, or engaged under subsection 115(1A) of that Act, as a family dispute resolution practitioner; or
  - (e) a person who is authorised by a Family Court of a State to act as a family dispute resolution practitioner.
- (2) The Minister must publish, at least annually, a list of organisations designated for the purposes of paragraph (b) of the definition of *family dispute resolution practitioner*.
- (3) An instrument under this section is not a legislative instrument.

### 10H Confidentiality of communications in family dispute resolution

- (1) A family dispute resolution practitioner must not disclose a communication made to the practitioner while the practitioner is



conducting family dispute resolution, unless the disclosure is required or authorised by this section.

- (2) A family dispute resolution practitioner must disclose a communication if the practitioner reasonably believes the disclosure is necessary for the purpose of complying with a law of the Commonwealth, a State or a Territory.
- (3) A family dispute resolution practitioner may disclose a communication if consent to the disclosure is given by:
  - (a) if the person who made the communication is 18 or over—that person; or
  - (b) if the person who made the communication is a child under 18:
    - (i) each person who has parental responsibility (within the meaning of Part VII) for the child; or
    - (ii) a court.
- (4) A family dispute resolution practitioner may disclose a communication if the practitioner reasonably believes that the disclosure is necessary for the purpose of:
  - (a) protecting a child from the risk of harm (whether physical or psychological); or
  - (b) preventing or lessening a serious and imminent threat to the life or health of a person; or
  - (c) reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person; or
  - (d) preventing or lessening a serious and imminent threat to the property of a person; or
  - (e) reporting the commission, or preventing the likely commission, of an offence involving intentional damage to property of a person or a threat of damage to property; or
  - (f) if a lawyer independently represents a child's interests under an order under section 68L—assisting the lawyer to do so properly.
- (5) A family dispute resolution practitioner may disclose a communication in order to provide information (other than personal information within the meaning of section 6 of the *Privacy Act 1988*) for research relevant to families.

- (6) A family dispute resolution practitioner may disclose information necessary for the practitioner to give a certificate under subsection 60I(8).
- (7) Evidence that would be inadmissible because of section 10J is not admissible merely because this section requires or authorises its disclosure.

Note: This means that the practitioner's evidence is inadmissible in court, even if subsection (2), (3), (4), (5) or (6) allows the practitioner to disclose it in other circumstances.

- (8) In this section:

*communication* includes admission.

### **10J Admissibility of communications in family dispute resolution and in referrals from family dispute resolution**

- (1) Evidence of anything said, or any admission made, by or in the company of:
  - (a) a family dispute resolution practitioner conducting family dispute resolution; or
  - (b) a person (the *professional*) to whom a family dispute resolution practitioner refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person;is not admissible:
  - (c) in any court (whether or not exercising federal jurisdiction); or
  - (d) in any proceedings before a person authorised to hear evidence (whether the person is authorised by a law of the Commonwealth, a State or a Territory, or by the consent of the parties).
- (2) Subsection (1) does not apply to:
  - (a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse; or
  - (b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse;unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

- (3) Subsection (1) does not apply to information necessary for the practitioner to give a certificate under subsection 60I(8).
- (4) A family dispute resolution practitioner who refers a person to a professional (within the meaning of paragraph (1)(b)) must inform the professional of the effect of this section.

### **10K Family dispute resolution practitioners must comply with regulations**

- (1) The regulations may prescribe requirements to be complied with by family dispute resolution practitioners in relation to the family dispute resolution services they provide.
- (2) The regulations may prescribe penalties not exceeding 10 penalty units in respect of offences against regulations made for the purposes of subsection (1).

## **Division 4—Arbitration**

### **10L Definition of *arbitration***

- (1) ***Arbitration*** is a process (other than the judicial process) in which parties to a dispute present arguments and evidence to an arbitrator, who makes a determination to resolve the dispute.
- (2) Arbitration may be either:
  - (a) ***section 13E arbitration***—which is arbitration of Part VIII proceedings carried out as a result of an order made under section 13E; or
  - (b) ***relevant property or financial arbitration***—which is arbitration (other than section 13E arbitration) of:
    - (i) Part VIII proceedings, Part VIIIA proceedings, Part VIIIB proceedings or section 106A proceedings; or
    - (ii) any part of such proceedings; or
    - (iii) any matter arising in such proceedings; or
    - (iv) a dispute about a matter with respect to which such proceedings could be instituted.

### **10M Definition of *arbitrator***

An *arbitrator* is a person who meets the requirements prescribed in the regulations to be an arbitrator.

### **10N Arbitrators may charge fees for their services**

- (1) An arbitrator conducting arbitration may charge the parties to the arbitration fees for conducting it.
- (2) The arbitrator must give written information about those fees to the parties before the arbitration starts.

Note: There may be Rules of Court or regulations relating to the costs of arbitration and how they are assessed or taxed (see paragraphs 123(1)(se) and 125(1)(bc)).

### **10P Immunity of arbitrators**

An arbitrator has, in performing his or her functions as an arbitrator, the same protection and immunity as a Judge of the Family Court has in performing the functions of a Judge.

Note: Communications with arbitrators are not confidential, and may be admissible in court.

## **Part III—Family consultants**

### **Division 1—About family consultants**

#### **11A Functions of family consultants**

The functions of family consultants are to provide services in relation to proceedings under this Act, including:

- (a) assisting and advising people involved in the proceedings; and
- (b) assisting and advising courts, and giving evidence, in relation to the proceedings; and
- (c) helping people involved in the proceedings to resolve disputes that are the subject of the proceedings; and
- (d) reporting to the court under sections 55A and 62G; and
- (e) advising the court about appropriate family counsellors, family dispute resolution practitioners and courses, programs

and services to which the court can refer the parties to the proceedings.

Note: See subsection 4(1AA) for people who are taken to be involved in proceedings.

### **11B Definition of *family consultant***

A *family consultant* is a person who is:

- (a) appointed as a family consultant under section 38N; or
- (b) appointed as a family consultant in relation to the Federal Magistrates Court under the *Federal Magistrates Act 1999*; or
- (c) appointed as a family consultant under the regulations; or
- (d) appointed under a law of a State as a family consultant in relation to a Family Court of that State.

Note: The Chief Executive Officers of the Family Court and the Federal Magistrates Court have all of the functions and powers of family consultants, and may direct consultants in the performance of their functions. See Division 1A of Part IVA of this Act and Division 1A of Part 7 of the *Federal Magistrates Act 1999*.

### **11C Admissibility of communications with family consultants and referrals from family consultants**

- (1) Evidence of anything said, or any admission made, by or in the company of:
  - (a) a family consultant performing the functions of a family consultant; or
  - (b) a person (the *professional*) to whom a family consultant refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person;

is admissible in proceedings under this Act.

Note 1: Communications with family consultants are not confidential (except in the special circumstances set out in subsection 38BD(3) in relation to consultants having several roles).

Note 2: Subsection (1) does not prevent things said or admissions made by or in the company of family consultants from being admissible in proceedings other than proceedings under this Act.

- (2) Subsection (1) does not apply to a thing said or an admission made by a person who, at the time of saying the thing or making the admission, had not been informed of the effect of subsection (1).
- (3) Despite subsection (2), a thing said or admission made is admissible even if the person who said the thing or made the admission had not been informed of the effect of subsection (1), if:
  - (a) it is an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse; or
  - (b) it is a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse;unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

### **11D Immunity of family consultants**

A family consultant has, in performing his or her functions as a family consultant, the same protection and immunity as a Judge of the Family Court has in performing the functions of a Judge.

## **Division 2—Courts' use of family consultants**

### **11E Courts to consider seeking advice from family consultants**

- (1) If, under this Act, a court has the power to:
  - (a) order a person to attend family counselling or family dispute resolution; or
  - (b) order a person to participate in a course, program or other service (other than arbitration); or
  - (c) order a person to attend appointments with a family consultant; or
  - (d) advise or inform a person about family counselling, family dispute resolution or other courses, programs or services;the court:
  - (e) may, before exercising the power, seek the advice of:
    - (i) if the court is the Family Court or the Federal Magistrates Court—a family consultant nominated by the Chief Executive Officer of that court; or

- (ii) if the court is the Family Court of a State—a family consultant of that court; or
  - (iii) if the court is not mentioned in subparagraph (i) or (ii)—an appropriately qualified person (whether or not an officer of the court);  
as to the services appropriate to the needs of the person and the most appropriate provider of those services; and
  - (f) must, before exercising the power, consider seeking that advice.
- (2) If the court seeks advice under subsection (1), the court must inform the person in relation to whom the advice is sought:
- (a) whom the court is seeking advice from; and
  - (b) the nature of the advice the court is seeking.

### **11F Court may order parties to attend appointments with a family consultant**

- (1) A court exercising jurisdiction in proceedings under this Act may order one or more parties to the proceedings to attend an appointment (or a series of appointments) with a family consultant.

Note: Before exercising this power, the court must consider seeking the advice of a family consultant about the services appropriate to the parties' needs (see section 11E).

- (2) When making an order under subsection (1), the court must inform the parties of the effect of section 11G (consequences of failure to comply with order).
- (3) The court may make orders under this section:
- (a) on its own initiative; or
  - (b) on the application of:
    - (i) a party to the proceedings; or
    - (ii) a lawyer independently representing a child's interests under an order made under section 68L.

### **11G Consequences of failure to comply with order under section 11F**

- (1) If a person who is ordered to attend an appointment with a family consultant under section 11F fails to comply with:
- (a) the order made by the court; or

- (b) any instruction the consultant gives to the person;  
the consultant must report the failure to the court.
- (2) On receiving the report, the court may make any further orders it considers appropriate.
- (3) The court may make orders under subsection (2):
  - (a) on its own initiative; or
  - (b) on the application of:
    - (i) a party to the proceedings; or
    - (ii) a lawyer independently representing a child's interests under an order made under section 68L.

## **Part IIIA—Obligations to inform people about non-court based family services and about court's processes and services**

### **Division 1—Introduction**

#### **12A Objects of this Part**

- (1) The objects of this Part are:
  - (a) to ensure that married couples considering separation or divorce are informed about the services available to help with a possible reconciliation, in situations where a reconciliation between the couple seems a reasonable possibility; and
  - (b) to ensure that people affected, or likely to be affected, by separation or divorce are informed about the services available to help them adjust to:
    - (i) separation or divorce; and
    - (ii) orders made under this Act; and
  - (c) to ensure that people affected, or likely to be affected, by separation or divorce are informed about ways of resolving disputes other than by applying for orders under this Act.



## **Division 2—Kind of information to be provided**

### **12B Prescribed information about non-court based family services and court's processes and services**

- (1) The regulations may prescribe information that is to be included in documents provided to persons under this Part, relating to non-court based family services and court's processes and services.
- (2) Without limitation, information prescribed under this section must include information about:
  - (a) the legal and possible social effects of the proposed proceedings (including the consequences for children whose care, welfare or development is likely to be affected by the proceedings); and
  - (b) the services provided by family counsellors and family dispute resolution practitioners to help people affected by separation or divorce; and
  - (c) the steps involved in the proposed proceedings; and
  - (d) the role of family consultants; and
  - (e) the arbitration facilities available to arbitrate disputes in relation to separation and divorce.

### **12C Prescribed information about reconciliation**

The regulations may prescribe information that is to be included in documents provided to persons under this Part, relating to services available to help with a reconciliation between the parties to a marriage.

### **12D Prescribed information about Part VII proceedings**

- (1) The regulations may prescribe information that is to be included in documents provided under this Part to persons involved in proceedings under Part VII.
- (2) Without limitation, the information must include information about the family counselling services available to assist the parties, and the child or children concerned, to adjust to the consequences of orders under that Part.

## Division 3—Who must provide information, and when

### 12E Obligations on legal practitioners

- (1) A legal practitioner who is consulted by a person considering instituting proceedings under this Act must give the person documents containing the information prescribed under section 12B (about non-court based family services and court's processes and services).
- (2) A legal practitioner who is consulted by, or who is representing, a married person who is a party to:
  - (a) proceedings for a divorce order in relation to the marriage; or
  - (b) financial or Part VII proceedings in relation to the marriage;must give the person documents containing the information prescribed under section 12C (about reconciliation).
- (3) A legal practitioner representing a party in proceedings under Part VII must give the party documents containing the information prescribed under section 12D (about Part VII proceedings).

Note: Section 63DA also imposes information-giving obligations on legal practitioners dealing with people involved in Part VII proceedings.
- (4) A legal practitioner does not have to comply with subsection (1), (2) or (3) if the practitioner has reasonable grounds to believe that the person has already been given documents containing the prescribed information mentioned in that subsection.
- (5) A legal practitioner does not have to comply with subsection (2) if the practitioner considers that there is no reasonable possibility of a reconciliation between the parties to the marriage.

### 12F Obligations on principal executive officers of courts

#### *Obligation to give prescribed information*

- (1) The principal executive officer of a court that has jurisdiction under this Act must ensure that any person who is considering instituting proceedings under this Act is, on the first occasion the person deals with a registry of the court, given documents containing the information prescribed under:

- (a) section 12B (about non-court based family services and court's processes and services); and
- (b) section 12C (about reconciliation).

*Obligation to respond to requests for information*

- (2) The principal executive officer of a court that has jurisdiction under this Act must ensure that, if a person involved in proceedings under this Act requests an officer or staff member of the court for information about family counselling services or family dispute resolution services, the person is given documents containing information about those services.

Note: See subsection 4(1AA) for people who are taken to be involved in proceedings.

**12G Obligations on family counsellors, family dispute resolution practitioners and arbitrators**

- (1) A family counsellor, family dispute resolution practitioner or arbitrator who deals with a married person considering instituting:
  - (a) proceedings for a divorce order in relation to the marriage; or
  - (b) financial or Part VII proceedings in relation to the marriage;must give the married person (and in appropriate cases, that person's spouse) documents containing the information prescribed under 12C (about reconciliation).

Note: Section 63DA also imposes information-giving obligations on family counsellors and family dispute resolution practitioners (not arbitrators) dealing with people involved in Part VII proceedings.

- (2) A family counsellor, family dispute resolution practitioner or arbitrator does not have to comply with subsection (1), if he or she:
  - (a) has reasonable grounds to believe that the person has already been given documents containing the prescribed information or
  - (b) considers that there is no reasonable possibility of a reconciliation between the parties to the marriage.

## **Part IIIB—Court’s powers in relation to court and non-court based family services**

### **Division 1—Introduction**

#### **13A Objects of this Part**

- (1) The objects of this Part are:
  - (a) to facilitate access to family counselling:
    - (i) to help married couples considering separation or divorce to reconcile; and
    - (ii) to help people adjust to separation or divorce; and
    - (iii) to help people adjust to court orders under this Act; and
  - (b) to encourage people to use dispute resolution mechanisms (other than judicial ones) to resolve matters in which a court order might otherwise be made under this Act, provided the mechanisms are appropriate in the circumstances and proper procedures are followed; and
  - (c) to encourage people to use, in appropriate circumstances, arbitration to resolve matters in which a court order might otherwise be made, and to provide ways of facilitating that use; and
  - (d) to give the court the power to require parties to proceedings under this Act to make use of court or non-court based family services appropriate to the needs of the parties.
- (2) The object mentioned in paragraph (1)(b) also lies behind the general requirement in section 60I for family dispute resolution services to be used before applications for orders under Part VII are made.

### **Division 2—Help with reconciliation**

#### **13B Court to accommodate possible reconciliations**

- (1) A court exercising jurisdiction in:
  - (a) proceedings for a divorce order; or
  - (b) financial or part VII proceedings instituted by a party to a subsisting marriage;

must consider, from time to time, the possibility of a reconciliation between the parties to the marriage.

(2) If, during the proceedings, the court considers, from the evidence in the proceedings or the attitude of the parties to the marriage, that there is a reasonable possibility of a reconciliation between the parties, the court may adjourn the proceedings to give the parties the opportunity to consider a reconciliation.

(3) If the court adjourns the proceedings under subsection (2), the court must advise the parties to attend family counselling, or use the services of another appropriate person or organisation.

Note: Before advising the parties, the court must consider seeking the advice of a family consultant about the services appropriate to the parties' needs (see section 11E).

(4) If, after an adjournment under subsection (2), either of the parties requests that the proceedings resume, the court must resume the proceedings as soon as practicable.

### **Division 3—Referrals to family counselling, family dispute resolution and other family services**

#### **13C Court may refer parties to family counselling, family dispute resolution and other family services**

(1) A court exercising jurisdiction in proceedings under this Act may, at any stage in the proceedings, make one or more of the following orders:

- (a) that one or more of the parties to the proceedings attend family counselling;
- (b) that the parties to the proceedings attend family dispute resolution;
- (c) that one or more of the parties to the proceedings participate in an appropriate course, program or other service.

Note 1: Before making an order under this section, the court must consider seeking the advice of a family consultant about the services appropriate to the parties' needs (see section 11E).

Note 2: The court can also order parties to attend appointments with a family consultant (see section 11F).

- (2) The court may suggest a particular purpose for the attendance or participation.
- (3) The order may require the party or parties to encourage the participation of specified other persons who are likely to be affected by the proceedings.  

Note: For example, the participation of children, grandparents or other relatives may be encouraged.
- (4) The court may make any other orders it considers reasonably necessary or appropriate in relation to the order.
- (5) The court may make orders under this section:
  - (a) on its own initiative; or
  - (b) on the application of:
    - (i) a party to the proceedings; or
    - (ii) a lawyer independently representing a child's interests under an order made under section 68L.

**13D Consequences of failure to comply with order under section 13C**

- (1) If a party fails to comply with an order of a court under section 13C, the family counsellor, family dispute resolution practitioner or provider of the course, program or other service must report the failure to the court.
- (2) On receiving the report, the court may make any further orders it considers appropriate.
- (3) The court may make orders under subsection (2):
  - (a) on its own initiative; or
  - (b) on the application of:
    - (i) a party to the proceedings; or
    - (ii) a lawyer independently representing a child's interests under an order made under section 68L.

## **Division 4—Court’s role in relation to arbitration of disputes**

### **13E Court may refer Part VIII proceedings to arbitration**

- (1) With the consent of all of the parties to the proceedings, a court exercising jurisdiction in Part VIII proceedings may make an order referring the proceedings, or any part of them, or any matter arising in them, to an arbitrator for arbitration.
- (2) If the court makes an order under subsection (1), it may, if necessary, adjourn the proceedings and may make any additional orders as it thinks appropriate to facilitate the effective conduct of the arbitration.

### **13F Court may make orders to facilitate arbitration of certain disputes**

A court that has jurisdiction under this Act may, on application by a party to relevant property or financial arbitration, make orders the court thinks appropriate to facilitate the effective conduct of the arbitration.

### **13G Family Court and Federal Magistrates Court may determine questions of law referred by arbitrator**

- (1) An arbitrator of section 13E arbitration or relevant property or financial arbitration may, at any time before making an award in the arbitration, refer a question of law arising in relation to the arbitration for determination by:
  - (a) a single judge of the Family Court; or
  - (b) a single judge of the Family Court of a State; or
  - (c) the Federal Magistrates Court.
- (2) The arbitrator may do so:
  - (a) on his or her own initiative; or
  - (b) at the request of one or more of the parties to the arbitration if the arbitrator considers it appropriate to do so.
- (3) The arbitrator must not make an award in the arbitration before the judge or Federal Magistrates Court has either:

- (a) determined the question of law; or
- (b) remitted the matter to the arbitrator having found that no question of law arises.

**13H Awards made in arbitration may be registered in court**

- (1) A party to an award made in section 13E arbitration or in relevant property or financial arbitration may register the award:
  - (a) in the case of section 13E arbitration—in the court that ordered the arbitration; or
  - (b) otherwise—in a court that has jurisdiction under this Act.
- (2) An award registered under subsection (1) has effect as if it were a decree made by that court.

**13J Family Court or Federal Magistrates Court can review registered awards**

- (1) A party to a registered award made in section 13E arbitration or relevant property or financial arbitration may apply for review of the award, on questions of law, by:
  - (a) a single judge of the Family Court; or
  - (b) a single judge of the Family Court of a State; or
  - (c) the Federal Magistrates Court.

Note: There may be Rules of Court providing for when, and how, an application for review of the award can be made (see paragraph 123(1)(sf)).

- (2) On a review of an award under this section, the judge or Federal Magistrates Court may:
  - (a) determine all questions of law arising in relation to the arbitration; and
  - (b) make such decrees as the judge or Federal Magistrates Court thinks appropriate, including a decree affirming, reversing or varying the award.



### **13K Family Court and Federal Magistrates Court may set aside registered awards**

- (1) If an award made in section 13E arbitration or relevant property or financial arbitration, or an agreement made as a result of such arbitration, is registered in:
  - (a) the Family Court; or
  - (b) the Federal Magistrates Court; or
  - (c) a Family Court of a State;the court in which the award is registered may make a decree affirming, reversing or varying the award or agreement.
- (2) The court may only make a decree under subsection (1) if the court is satisfied that:
  - (a) the award or agreement was obtained by fraud (including non-disclosure of a material matter); or
  - (b) the award or agreement is void, voidable or unenforceable; or
  - (c) in the circumstances that have arisen since the award or agreement was made it is impracticable for some or all of it to be carried out; or
  - (d) the arbitration was affected by bias, or there was a lack of procedural fairness in the way in which the arbitration process, as agreed between the parties and the arbitrator, was conducted.

### **37 Subsection 26B(1)**

Omit “19G”, substitute “13K”.

### **38 Subsection 37(2)**

Omit “(other than the court counsellors)”.

### **39 At the end of section 37**

Add:

- (3) Despite subsection (2), the Principal Registrar must not give directions that relate to an officer’s functions as a family consultant, family counsellor or family dispute resolution practitioner.

### **40 Paragraph 37A(1)(e)**

Repeal the paragraph, substitute:

- (e) the power to make orders under:
  - (i) sections 11F and 11G; and
  - (ii) sections 13C and 13D; and
  - (iii) subsection 65LA(1); and
  - (iv) paragraph 70NEB(1)(a);
- (ea) the power to direct a family consultant to give a report under section 62G;

**41 Paragraph 37A(2)(e)**

Omit “19G”, substitute “13K”.

**42 After Division 1 of Part IVA**

Insert:

**Division 1A—Administration of Court’s family services**

**38BA Chief Executive Officer has functions of family consultants**

- (1) The Chief Executive Officer has all of the functions conferred on family consultants by section 11A, and any associated powers and duties.
- (2) Without limiting subsection (1), sections 11C (admissibility of communications with family consultants) and 11D (immunity of family consultants) apply to the Chief Executive Officer while the Chief Executive Officer is performing those functions.
- (3) The Chief Executive Officer is responsible for administering the functions of family consultants.

**38BB Chief Executive Officer may delegate powers and functions that relate to family consultants**

- (1) The Chief Executive Officer may, in writing, delegate to a family consultant any of the Chief Executive Officer’s powers, functions and duties in relation to the functions of family consultants mentioned in section 11A.
- (2) A delegate is, in the exercise of a delegated power, function or duty, subject to the directions of the Chief Executive Officer.

**38BC Chief Executive Officer may give directions that relate to family services functions**

The Chief Executive Officer may give directions that relate to:

- (a) a Court officer's functions as a family consultant; or
- (b) a Court officer's or staff member's functions as a family counsellor or family dispute resolution practitioner.

**38BD Chief Executive Officer may authorise officer or staff member to act as family counsellor or family dispute resolution practitioner**

- (1) The Chief Executive Officer may authorise an officer or staff member of the Family Court to provide family counselling under this Act.
- (2) The Chief Executive Officer may authorise an officer or staff member of the Family Court to provide family dispute resolution under this Act.
- (3) If an officer who is a family consultant also becomes a family counsellor, or family dispute resolution practitioner, because of an authorisation under this section:
  - (a) section 11C (admissibility of communications with family consultants) does not apply to the officer at any time while the officer is acting as a family counsellor or family dispute resolution practitioner; and
  - (b) the officer must not perform the functions of a family consultant in relation to particular proceedings, if the officer has conducted family counselling or family dispute resolution with a person involved in those proceedings.

**43 Paragraphs 38N(1)(d), (da), (daa) and (db)**

Repeal the paragraphs, substitute:

- (d) such family consultants as are necessary;

**44 After subsection 38R(1)**

Insert:

- (1A) The Chief Executive Officer may engage persons to perform:
  - (a) family counselling services under this Act; or

(b) family dispute resolution services under this Act.

**45 Subsection 38R(2)**

After “subsection (1)”, insert “or (1A)”.

**46 Paragraph 41(4)(c)**

Omit “counselling facilities”, substitute “appropriate family counselling and family dispute resolution services, and family consultants”.

**47 Paragraph 44(1B)(a)**

Repeal the paragraph, substitute:

- (a) stating that the parties to the marriage have considered a reconciliation with the assistance of a specified person, who is:
  - (i) a family counsellor; or
  - (ii) if the court is the Family Court, the Federal Magistrates Court or the Family Court of a State—an individual or an organisation nominated for the parties by a family consultant; or
  - (iii) if the court is not the Family Court, the Federal Magistrates Court or the Family Court of a State—an individual or an organisation nominated for the parties by an appropriately qualified officer of the court; and

**48 Subsection 55A(2)**

Omit “a family and child counsellor or welfare officer”, substitute “a family consultant”.

**49 Section 60C (table item 3)**

Repeal the table item, substitute:

- |   |  |
|---|--|
| 3 | <b>Division 3—Reports relating to children under 18</b><br>preparation of reports for use in proceedings relating to children under 18 |
|---|--|

**50 Division 3 of Part VII (heading)**

Repeal the heading, substitute:

## **Division 3—Reports relating to children under 18**

### **51 Section 62A**

Repeal the section, substitute:

#### **62A What this Division does**

This Division deals with the preparation of reports for use in proceedings relating to children who are under 18.

### **52 Sections 62B, 62C, 62CA, 62D, 62E and 62F**

Repeal the sections, substitute:

#### **62B Court’s obligation to inform people to whom Part VII orders apply about family counselling, family dispute resolution and other family services**

If a court makes an order in proceedings under this Part, the court must inform the parties to the proceedings about the family counselling services, family dispute resolution services and other courses, programs and services available to help the parties adjust to the consequences of that order.

Note: Before informing the parties, the court must consider seeking the advice of a family consultant about the services appropriate to the parties’ needs (see section 11E).

### **53 Subsection 62G(2)**

Omit “a family and child counsellor or welfare officer”, substitute “a family consultant”.

Note: The heading to section 62G is altered by omitting “**family and child counsellors and welfare officers**” and substituting “**family consultants**”.

### **54 Subsections 62G(4) and (5)**

Repeal the subsections, substitute:

- (4) The family consultant may include in the report, in addition to the matters required to be included in it, any other matters that relate to the care, welfare or development of the child.
- (5) For the purposes of the preparation of the report, the court may make any other orders, or give any other directions, that the court

considers appropriate (including orders or directions that a party to proceedings, or the child, attend an appointment or a series of appointments with a family consultant).

Note: Before making orders under this section, the court must consider seeking the advice of a family consultant about the services appropriate to the parties' needs (see section 11E).

**55 Subsection 62G(6)**

Omit "counsellor or welfare officer", substitute "family consultant".

**56 Section 62H**

Repeal the section.

**57 Subsection 65F(1)**

Repeal the subsection.

**58 Paragraph 65F(2)(a)**

Omit "a conference with a family and child counsellor or a welfare officer", substitute "family counselling".

**59 Paragraph 65L(1)(a)**

Omit "a family and child counsellor or a welfare officer", substitute "a family consultant".

Note: The heading to section 65L is altered by omitting "Counsellors" and substituting "Family consultants".

**60 Paragraph 65L(1)(b)**

Omit "a family and child counsellor or a welfare officer", substitute "a family consultant".

**61 Subsection 65LA(1)**

Repeal the subsection, substitute:

- (1) In proceedings for a parenting order, the court may make an order directing a party to the proceedings to attend a post-separation parenting program.

Note: Before making an order under this section, the court must consider seeking the advice of a family consultant about the services appropriate to the party's needs (see section 11E).

**62 Subsection 65LA(3) (definition of *post-separation parenting program or program*)**

Repeal the definition.

**63 Subsection 65LA(3) (definition of *post-separation parenting program provider or provider*)**

Repeal the definition.

**64 After section 65LA**

Insert:

**65LB Conditions for providers of post-separation parenting programs**

- (1) An organisation meets the conditions in this section if:
  - (a) it is a recipient organisation (see subsection (2)); or
  - (b) there is a recipient organisation in relation to the organisation (see subsection (3)).
- (2) An organisation is a recipient organisation for the purposes of paragraph (1)(a) if it receives, or has been approved to receive, funding under a program or a part of a program designated by the Minister under subsection (4) in order to provide services that include post-separation parenting programs.
- (3) An organisation is a recipient organisation in relation to another organisation for the purposes of paragraph (1)(b) if:
  - (a) both:
    - (i) the other organisation is a member of the organisation; and
    - (ii) the organisation receives, or has been approved to receive, funding under a program or a part of a program designated by the Minister under subsection (4) in order that the organisation's members may provide services that include post-separation parenting programs; or
  - (b) both:
    - (i) the organisation acts on behalf of a group of organisations that includes the other organisation; and
    - (ii) the organisation receives, or has been approved to receive, funding under a program or a part of a program

designated by the Minister under subsection (4) in order that the organisations on whose behalf it acts may provide services that include post-separation parenting programs.

- (4) The Minister may, in writing, designate for the purposes of this section:
- (a) a program; or
  - (b) part of a program;
- administered by or on behalf of the Commonwealth Government under which money appropriated by the Parliament is provided to organisations for the purposes of making post-separation parenting programs available.
- (5) An instrument under this section is not a legislative instrument.

### **65 Subsection 67ZA(1)**

Repeal the subsection, substitute:

- (1) This section applies to a person in the course of performing duties or functions, or exercising powers, as:
- (a) the Registrar or a Deputy Registrar of a Registry of the Family Court of Australia; or
  - (b) the Registrar or a Deputy Registrar of the Family Court of Western Australia; or
  - (c) a Registrar of the Federal Magistrates Court; or
  - (d) a family consultant; or
  - (e) a family counsellor; or
  - (f) a family dispute resolution practitioner; or
  - (g) an arbitrator; or
  - (h) a lawyer independently representing a child's interests.

Note: The heading to section 67ZA is altered by omitting “**counsellor, mediator**” and substituting “**family counsellor, family dispute resolution practitioner**”.

### **66 Subsection 102A(5) (paragraph (b) of the definition of *examined*)**

Omit “family and child counsellor or welfare officer”, substitute “family counsellor or family consultant”.

### **67 Before subsection 111CV(1)**

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Insert:

(1A) This section covers:

- (a) a court; and
- (b) the Registrar or a Deputy Registrar of a Registry of the Family Court of Australia; and
- (c) the Registrar or a Deputy Registrar of a Registry of the Family Court of a State; and
- (d) a Registrar of the Federal Magistrates Court; and
- (e) a family consultant; and
- (f) a family counsellor; and
- (g) a family dispute resolution practitioner; and
- (h) an arbitrator; and
- (i) the provider of a course, program or service which a person is ordered to participate in under this Act.

**68 Subsection 111CV(1)**

Omit “A court must inform a competent authority of another country about any information the court”, substitute “A court or person covered by this section must inform a competent authority of another country about any information the court or person”.

**69 Subsection 111CV(5)**

Repeal the subsection.

**70 Subsection 115(2)**

Omit “representatives of organisations that provide family and child counselling”, substitute “family counsellors, family dispute resolution practitioners”.

**71 Paragraph 123(1)(j)**

Repeal the paragraph, substitute:

- (j) authorising an officer making an investigation mentioned in paragraph (h) to:
  - (i) take evidence on oath or affirmation; and
  - (ii) receive in evidence a report from a family consultant under section 55A or 62G; and

- (iii) receive in evidence a report from a person who has had dealings with a party to the matter under investigation under section 65F, 65L, 65LA, 70NEB or 70NEG; and
- (ja) enabling the summoning of witnesses before an officer making an investigation mentioned in paragraph (h) for the purposes of giving evidence or producing books or documents; and

**72 Paragraph 123(1)(s)**

Repeal the paragraph, substitute:

- (s) providing for and in relation to:
  - (i) the attendance at family counselling by parties to proceedings under this Act; and
  - (ii) the attendance at family dispute resolution by parties to proceedings under this Act; and
  - (iii) the giving of advice and assistance by family consultants to people involved in proceedings under this Act; and
  - (iv) the participation by parties to proceedings under this Act in courses, programs and other services (other than those mentioned in subparagraph (i), (ii) or (iii)) that the parties are ordered by the court to participate in; and
  - (v) the use, for the purposes of proceedings under this Act, by courts exercising jurisdiction under this Act and officers of such courts, of reports about the future conduct of the proceedings that have been prepared by persons who dealt with the parties in accordance with Rules of Court made under subparagraphs (i), (ii), (iii) or (iv); and

**73 Paragraph 123(1)(sa)**

Omit “court mediators”, substitute “family consultants”.

**74 Paragraph 123(1)(sb)**

Omit “mediation or”.

**75 Paragraph 123(1)(sb)**

Omit “section 19E”, substitute “sections 13E and 13F”.

**76 Paragraph 123(1)(sc)**

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Omit “mediated or”.

**77 After paragraph 123(1)(sc)**

Insert:

- (sca) prescribing the disputes, proceedings or matters in relation to which family consultants may, or must not, perform their functions; and

**78 Paragraph 123(1)(sd)**

Repeal the paragraph, substitute:

- (sd) providing for and in relation to:
  - (i) the functions to be performed by family consultants; and
  - (ii) the procedures to be followed in performing those functions; and
  - (iii) the procedures to be followed by persons involved in proceedings in relation to which a family consultant is performing functions; and
  - (iv) the procedures to be followed when a family consultant ceases performing functions in relation to a dispute, proceeding or matter; and
- (sda) providing for and in relation to:
  - (i) the procedures to be followed by a family counsellor authorised under subsection 38BD(1) or engaged under subsection 38R(1A); and
  - (ii) the procedures to be followed by persons attending family counselling with such a counsellor; and
  - (iii) the procedures to be followed when family counselling with such a counsellor ends; and
- (sdb) providing for and in relation to:
  - (i) the procedures to be followed by a family dispute resolution practitioner authorised under subsection 38BD(2) or engaged under subsection 38R(1A); and
  - (ii) the procedures to be followed by persons attending family dispute resolution with such a practitioner; and
  - (iii) the procedures to be followed when family dispute resolution with such a practitioner ends; and
- (sdc) providing for and in relation to:
  - (i) the procedures to be followed by an arbitrator in relation to a dispute, proceeding or matter under this Act; and

- (ii) the attendance by persons at conferences conducted by arbitrators for the purpose of arbitrating a dispute, proceeding or matter under this Act; and
- (iii) the procedure to be followed when arbitration ends, both where it has resulted in an agreement or award and where it has not; and

**79 Paragraph 123(1)(se)**

Repeal the paragraph, substitute:

- (se) prescribing matters relating to the costs of arbitration by arbitrators, and the assessment or taxation of those costs; and
- (sea) prescribing matters relating to the costs of family counselling by family counsellors authorised under subsection 38BD(1) or engaged under subsection 38R(1A); and
- (seb) prescribing matters relating to the costs of family dispute resolution by family dispute resolution practitioners authorised under subsection 38BD(2) or engaged under subsection 38R(1A); and

**80 Subparagraph 123(1)(sf)(i)**

Omit “19D or 19E”, substitute “13H”.

**81 Subparagraph 123(1)(sf)(ii)**

Omit “19F”, substitute “13J”.

**82 Subparagraph 123(1)(sf)(ii)**

Omit “19G”, substitute “13K”.

**83 Paragraph 125(1)(ba)**

Repeal the paragraph, substitute:

- (ba) providing for and in relation to the authorisation of:
  - (i) officers or staff members of the Family Court as family counsellors under subsection 38BD(1); and
  - (ii) officers or staff members of the Family Court as family dispute resolution practitioners under subsection 38BD(2); and

**84 After paragraph 125(1)(bb)**

Insert:

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(bba) the registration of awards made in section 13E arbitration and relevant property or financial arbitration; and

**85 Paragraph 125(1)(bc)**

Omit “(sc), (sd) or (se)”, substitute “(sc), (sca), (sd), (sda), (sdb), (sdc), (se), (sea) or (seb)”.

**86 Paragraph 125(1)(ca)**

Repeal the paragraph, substitute:

(ca) prescribing fees payable for services provided by the Family Court in circumstances other than where a court orders or directs the provision of the services; and

***Federal Magistrates Act 1999***

**87 Section 4**

Omit “promote the use of primary dispute resolution”, substitute “promote the use of dispute resolution”.

**88 Section 5**

Insert:

*Accreditation Rules* means regulations made under section 10A of the *Family Law Act 1975*.

**89 Section 5 (definition of *Family and child counsellor*)**

Repeal the definition.

**90 Section 5**

Insert:

*family consultant* means a family consultant within the meaning of the *Family Law Act 1975*.

**91 Section 5 (definition of *Welfare officer*)**

Repeal the definition.

**92 Part 4 (heading)**

Repeal the heading, substitute:

## **Part 4—Dispute resolution for proceedings other than proceedings under the Family Law Act 1975**

### **93 Before section 21**

Insert:

#### **20A This Part does not apply to proceedings under the *Family Law Act 1975***

This Part applies to proceedings in the Federal Magistrates Court other than proceedings under the *Family Law Act 1975*.

Note 1: For proceedings under the *Family Law Act 1975*, see in particular Parts II, III, IIIA and IIIB of that Act, which contain provisions dealing with family counselling, family dispute resolution and other processes that apply to the Federal Magistrates Court in relation to proceedings under that Act.

Note 2: This Part (other than Division 2: see section 33) applies to proceedings under the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988*.

### **94 Section 21 (definition of *primary dispute resolution processes*)**

Repeal the definition.

### **95 Section 21**

Insert:

***dispute resolution processes*** means procedures and services for the resolution of disputes otherwise than by way of the exercise of the judicial power of the Commonwealth, and includes:

- (a) counselling; and
- (b) mediation; and
- (c) arbitration; and
- (d) neutral evaluation; and
- (e) case appraisal; and
- (f) conciliation.

Note: The heading to section 21 is altered by omitting “**Primary dispute**” and substituting “**Dispute**”.

**96 Section 22**

Omit “primary”.

Note: The heading to section 22 is altered by omitting “**primary**”.

**97 Section 23 (including the note)**

Omit “primary” (wherever occurring).

Note: The heading to section 23 is altered by omitting “**primary**”.

**98 Section 24**

Omit “primary”.

Note: The heading to section 24 is altered by omitting “**primary**”.

**99 Subsection 25(1)**

Omit “primary”.

Note: The heading to section 25 is altered by omitting “**primary**”.

**100 Subsection 27(1)**

Omit “primary” (wherever occurring).

Note: The heading to section 27 is altered by omitting “**primary**”.

**101 Subsections 27(2), 28(1) and (2) and 29(1)**

Omit “primary”.

Note: The headings to sections 28 and 29 are altered by omitting “**primary**”.

**102 Paragraph 29(2)(a)**

Omit “primary”.

**103 Subparagraphs 29(2)(b)(i) and (ii)**

Omit “primary”.

**104 Paragraph 29(2)(c)**

Omit “primary”.

**105 Section 30**

Omit “primary” (wherever occurring).

Note: The headings to sections 30 and 31 are altered by omitting “**primary**”.

**106 After Division 1 of Part 7**

Insert:

**Division 1A—Administration of Federal Magistrates  
Court’s family services**

**93A Chief Executive Officer has functions of family consultants**

- (1) The Chief Executive Officer has all of the functions conferred on family consultants by section 11A of the *Family Law Act 1975*, and any associated powers and duties.
- (2) Without limiting subsection (1), sections 11C (admissibility of communications with family consultants) and 11D (immunity of family consultants) of that Act apply to the Chief Executive Officer while the Chief Executive Officer is performing the functions of a family consultant.
- (3) The Chief Executive Officer is responsible for administering the functions of family consultants appointed by the Chief Executive Officer.

**93B Chief Executive Officer may delegate powers and functions that relate to family consultants**

- (1) The Chief Executive Officer may, in writing, delegate to a family consultant any of the Chief Executive Officer’s powers, functions and duties in relation to the functions of family consultants mentioned in section 11A of the *Family Law Act 1975*.
- (2) A delegate is, in the exercise of a delegated power, function or duty, subject to the directions of the Chief Executive Officer.

**93C Chief Executive Officer may give directions that relate to family services functions**

The Chief Executive Officer may give directions that relate to:

- (a) a Court officer’s functions as a family consultant; or
- (b) a Court officer’s or staff member’s functions as a family counsellor or family dispute resolution practitioner.



**93D Chief Executive Officer may authorise officer or staff member to act as family counsellor or family dispute resolution practitioner**

- (1) The Chief Executive Officer may authorise an officer or staff member of the Family Court to provide family counselling under *Family Law Act 1975*.
- (2) The Chief Executive Officer may authorise an officer or staff member of the Federal Magistrates Court to provide family dispute resolution under the *Family Law Act 1975*.
- (3) If an officer who is a family consultant also becomes a family counsellor, or family dispute resolution practitioner, because of an authorisation under this section:
  - (a) section 11C of the *Family Law Act 1975* (admissibility of communications with family consultants) does not apply to the officer at any time while the officer is acting as a family counsellor or family dispute resolution practitioner; and
  - (b) the officer must not perform the functions of a family consultant in relation to particular proceedings, if the officer has conducted family counselling or family dispute resolution with a party to those proceedings.

**107 Paragraph 87(1)(f)**

Repeal the paragraph, substitute:

- (f) authorising an officer making an investigation mentioned in paragraph (e) to:
  - (i) take evidence on oath or affirmation; and
  - (ii) receive in evidence a report from a family consultant under section 55A or 62G of the *Family Law Act 1975*; and
  - (iii) receive in evidence a report from a person who has had dealings with a party to a matter under investigation under section 65F, 65L, 65LA, 70NEB or 70NEG of the *Family Law Act 1975*; and
- (fa) enabling the summoning of witnesses before an officer making an investigation mentioned in paragraph (e) for the purposes of giving evidence or producing books or documents; and

**108 Subsection 87(2)**

Repeal the subsection, substitute:

- (2) The Rules of Court may make provision for or in relation to:
- (a) attendance at family counselling by parties to proceedings under the *Family Law Act 1975*; and
  - (b) attendance at family dispute resolution by parties to proceedings under the *Family Law Act 1975*; and
  - (c) the giving of advice and assistance by family consultants to people involved in proceedings under the *Family Law Act 1975*; and
  - (d) the participation by parties to proceedings under the *Family Law Act 1975* in courses, programs and other services that the parties are ordered by the court to participate in; and
  - (e) the use, for the purposes of proceedings under the *Family Law Act 1975*, by the Federal Magistrates Court and officers of the Court in family law and child support proceedings, of reports about the future conduct of the proceedings that have been prepared by persons who dealt with the parties in accordance with Rules of Court made under paragraphs (a), (b), (c) or (d).

**109 At the end of subsection 99(1)**

Add:

- ; (f) such family consultants as are necessary.

**110 Paragraph 102(2)(k)**

Repeal the paragraph, substitute:

- (k) the power to make orders under the following provisions of the *Family Law Act 1975*:
- (i) sections 11F and 11G;
  - (ii) sections 13C and 13D;
  - (iii) subsection 65LA(1);
  - (iv) paragraph 70NEB(1)(a);
- (ka) the power to direct a family consultant to give a report under section 62G of the *Family Law Act 1975*;

**111 After section 111**

Insert:

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### **111A Family consultants**

Family consultants who are officers of the Federal Magistrates Court are to be persons engaged under the *Public Service Act 1999*.

Note: Family consultants who are not officers of the Federal Magistrates Court may be appointed under regulations made under the *Family Law Act 1975*. See paragraph 11B(b) of the *Family Law Act 1975*.

### **112 After subsection 115(1)**

Insert:

(1A) The Chief Executive Officer may engage persons to perform:

(a) family counselling services under the *Family Law Act 1975*;

or

(b) family dispute resolution services under the *Family Law Act 1975*.

### **113 Subsection 115(2)**

After “subsection (1)”, insert “or (1A)”.

## ***Income Tax Assessment Act 1997***

### **113A Subsection 30-70(1) (table item 8.1.1)**

Repeal the item, substitute:

- 8.1.1 a public fund established and maintained by a see section 30-75  
\*non-profit company solely for the purpose  
of providing money to be used in giving or  
providing marriage education under the  
*Marriage Act 1961* to individuals in Australia

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- |       |  |      |
|-------|--|------|
| 8.1.2 | a public fund:   | none |
|       | (a) that is established and maintained by a<br>* non-profit company which receives<br>funding from the Commonwealth to<br>provide family counselling or family<br>dispute resolution within the meaning of<br>the <i>Family Law Act 1975</i> ; and       |      |
|       | (b) that is established and maintained solely<br>for the purpose of providing money to be<br>used in providing family counselling or<br>family dispute resolution within the<br>meaning of the <i>Family Law Act 1975</i> to<br>individuals in Australia |      |

**113B Section 30-75**

Repeal the section, substitute:

**30-75 Marriage education organisations must be approved**

You can deduct a gift that you make to a public fund covered by item 8.1.1 of the table in subsection 30-70(1) only if the company has been approved by the Minister under section 9C of the *Marriage Act 1961*.

***Marriage Act 1961***

**114 Section 9D**

Repeal the section.

**115 Paragraph 16(2A)(a)**

Omit “and child” (wherever occurring).

**116 Paragraph 16(2A)(b)**

Omit “and child”.

**117 Subsection 16(7)**

Omit “*and child*”.

## **Part 4—Transitional matters relating to family counselling and family dispute resolution**

### **118 Definitions**

- (1) Terms used in this Part that are defined in the *Family Law Act 1975* have the same meaning in this Part as they have in that Act.
- (2) In this Part:
  - approved family counselling organisation*** means:
    - (a) an organisation in respect of which an approval is in force under item 120; or
    - (b) an organisation that is taken to be an approved family counselling organisation because of item 123.
  - approved family dispute resolution organisation*** means:
    - (a) an organisation in respect of which an approval is in force under item 125; or
    - (b) an organisation that is taken to be an approved family dispute resolution organisation because of item 128.
  - commencement*** means the time at which Part 3 of this Schedule commences.
  - transition period*** means the period:
    - (a) commencing at commencement; and
    - (b) ending on the day prescribed by regulations made for the purposes of this definition.

### **119 Persons who are taken to be family counsellors during the transition period**

During the transition period, a person who is authorised by an approved family counselling organisation to offer family counselling on behalf of the organisation is taken to be a ***family counsellor*** within the meaning of section 10C of the *Family Law Act 1975*.

### **120 Approval of family counselling organisations**

- (1) During the transition period, the Minister may, by notice in writing to an organisation, approve the organisation as a family counselling organisation if, and only if, the Minister is satisfied that:

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- (a) the organisation is a recipient organisation (see subitem (2));  
or
- (b) there is a recipient organisation in relation to the organisation (see subitem (3)).

**Note:** If an organisation meets the requirements for approval under both this item and item 125, the Minister may approve the organisation as both a family counselling organisation and a family dispute resolution organisation.

- (2) An organisation is a recipient organisation for the purposes of paragraph (1)(a) if it receives, or has been approved to receive, funding under a program or a part of a program designated by the Minister under subitem (4) in order to provide services that include family counselling.
- (3) An organisation is a recipient organisation in relation to another organisation for the purposes of paragraph (1)(b) if:
  - (a) both:
    - (i) the other organisation is a member of the organisation; and
    - (ii) the organisation receives, or has been approved to receive, funding under a program or a part of a program designated by the Minister under subitem (4) in order that the organisation's members may provide services that include family counselling; or
  - (b) both:
    - (i) the organisation acts on behalf of a group of organisations that includes the other organisation; and
    - (ii) the organisation receives, or has been approved to receive, funding under a program or a part of a program designated by the Minister under subitem (4) in order that the organisations on whose behalf it acts may provide services that include family counselling.
- (4) The Minister may, in writing, designate for the purposes of subitem (1):
  - (a) a program; or
  - (b) part of a program;administered by or on behalf of the Commonwealth Government under which money appropriated by the Parliament is provided to organisations for the purposes of making family counselling and family dispute resolution services available.

- (5) An instrument under this item is not a legislative instrument.

### **121 Termination and revocation of approvals**

- (1) An organisation ceases to be approved under item 120 if:
- (a) the organisation; or
  - (b) if the organisation is not the recipient organisation within the meaning of subitem 120(2)—the recipient organisation in relation to the organisation within the meaning of subitem 120(3);
- either:
- (c) ceases to receive; or
  - (d) ceases to be approved to receive;
- funding under a program or part of a program designated by the Minister under subitem 120(4).
- (2) The Minister must revoke the approval of an organisation under item 120 if the organisation requests the revocation.
- (3) The Minister's power to revoke an approval must be exercised by notice in writing to the organisation concerned.

### **122 Minister to publish lists of approved family counselling organisations**

The Minister must publish annually, in such manner as the Minister thinks appropriate, a list of all approved family counselling organisations.

### **123 Approved counselling organisations become approved family counselling organisations**

- (1) If, immediately before commencement, there is in force in respect of an organisation an approval under section 13A of the *Family Law Act 1975*, the organisation is, during the transition period, taken to be approved as a family counselling organisation under item 120 of this Schedule.

Note: An organisation may be approved before commencement under both section 13A and section 13B of the *Family Law Act 1975*. If that is the case, then both this item and item 128 will apply to the organisation.

- (2) Subitem (1) does not prevent:
- (a) the organisation's approval from being terminated; or

(b) the Minister from revoking the organisation's approval;  
under item 121.

### **124 Persons who are taken to be family dispute resolution practitioners during the transition period**

During the transition period, these persons are taken to be *family dispute resolution practitioners* within the meaning of section 10G of the *Family Law Act 1975*:

- (a) a person who is authorised by an approved family dispute resolution organisation to offer family dispute resolution on behalf of the organisation;
- (b) a person, other than a person mentioned in paragraph (a), who:
  - (i) on commencement; or
  - (ii) by the end of the period of 12 months starting on commencement;meets the requirements specified in regulations made for the purposes of this paragraph.

### **125 Approval of family dispute resolution organisations**

- (1) During the transition period, the Minister may, by notice in writing to an organisation, approve the organisation as a family dispute resolution organisation if, and only if, the Minister is satisfied that:
  - (a) the organisation is a recipient organisation (see subitem (2));  
or
  - (b) there is a recipient organisation in relation to the organisation (see subitem (3)).

Note: If an organisation meets the requirements for approval under both this item and item 120, the Minister may approve the organisation as both a family counselling organisation and a family dispute resolution organisation.

- (2) An organisation is a recipient organisation for the purposes of paragraph (1)(a) if it receives, or has been approved to receive, funding under a program or a part of a program designated by the Minister under subitem (4) in order to provide services that include family dispute resolution.
- (3) An organisation is a recipient organisation in relation to another organisation for the purposes of paragraph (1)(b) if:
  - (a) both:



- (i) the other organisation is a member of the organisation;  
and
    - (ii) the organisation receives, or has been approved to receive, funding under a program or a part of a program designated by the Minister under subsection (4) in order that the organisation's members may provide services that include family dispute resolution; or
  - (b) both:
    - (i) the organisation acts on behalf of a group of organisations that includes the other organisation; and
    - (ii) the organisation receives, or has been approved to receive, funding under a program or a part of a program designated by the Minister under subsection (4) in order that the organisations on whose behalf it acts may provide services that include family dispute resolution.
- (4) The Minister may, in writing, designate for the purposes of subitem (1):
- (a) a program; or
  - (b) part of a program;
- administered by or on behalf of the Commonwealth Government under which money appropriated by the Parliament is provided to organisations for the purposes of making family counselling and family dispute resolution services available.
- (5) An instrument under this item is not a legislative instrument.

## **126 Termination and revocation of approvals**

- (1) An organisation ceases to be approved under item 125 if:
- (a) the organisation; or
  - (b) if the organisation is not the recipient organisation within the meaning of subitem 125(2)—the recipient organisation in relation to the organisation within the meaning of subitem 125(3);
- either:
- (c) ceases to receive; or
  - (d) ceases to be approved to receive;
- funding under a program or part of a program designated by the Minister under subitem 125(4).

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- (2) The Minister must revoke the approval of an organisation under item 125 if the organisation requests the revocation.
- (3) The Minister's power to revoke an approval must be exercised by notice in writing to the organisation concerned.

**127 Minister to publish lists of approved family dispute resolution organisations**

The Minister must publish annually, in such manner as the Minister thinks appropriate, a list of all approved family dispute resolution organisations.

**128 Approved mediation organisations become approved family dispute resolution organisations**

- (1) If, immediately before commencement, there is in force in respect of an organisation an approval under section 13B of the *Family Law Act 1975*, the organisation is, on and from commencement, taken to be approved as a family dispute resolution organisation under item 125.

Note: An organisation may be approved before commencement under both section 13A and section 13B of the *Family Law Act 1975*. If that is the case, then both this item and item 123 will apply to the organisation.

- (2) Subitem (1) does not prevent:
  - (a) the organisation's approval from being terminated; or
  - (b) the Minister from revoking the organisation's approval; under item 126.

## **Part 5—Application and transitional provisions relating to other changes to dispute resolution**

### **129 Definition of *commencement***

In this Part:

*commencement* means the time at which Part 3 of this Schedule commences.

### **130 Notices filed under section 15**

If, at commencement, a notice filed under section 15 of the *Family Law Act 1975* as in force at any time before commencement has not been acted on, an appropriate officer of the court in which the notice is filed must arrange for the parties to the marriage to which the notice relates to be interviewed by a family counsellor for the purpose of assisting the parties to reconcile or to improve their relationship with each other or any of their children.

### **131 Arbitration awards registered under section 19D or 19E are taken to be registered under section 13H**

If:

- (a) at any time before commencement, an award in an arbitration had been registered under section 19D or 19E of the *Family Law Act 1975*; and
- (b) the award is still registered immediately before commencement;

the registration of the award continues to have effect after commencement as if it had been done under section 13H of that Act.

### **132 Powers under Division 4 of Part IIIB of the *Family Law Act 1975* may be exercised in relation to section 19D arbitration and private arbitration**

For the purposes of section 13G, 13H, 13J and 13K:

- (a) a reference to section 13E arbitration includes a reference to section 19D arbitration (within the meaning of the *Family Law Act 1975* as in force immediately before commencement); and

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- (b) a reference to relevant property or financial arbitration includes a reference to private arbitration of a dispute (within the meaning of the *Family Law Act 1975* as in force immediately before commencement).

**133 Subsection 44(1B) certificates**

A certificate in relation to the parties to a marriage, signed before commencement by a person mentioned in subparagraph 44(1B)(a)(i) or (ii) of the *Family Law Act 1975* (as in force immediately before commencement), may be filed in relation to an application for a divorce order in relation to the marriage in satisfaction of the requirement in subsection 44(1B) of that Act as amended by this Schedule.

**134 Request for counselling under section 62C or 62CA**

If, at commencement, a notice filed under section 62C or 62CA of the *Family Law Act 1975* has not been acted on, an appropriate officer of the court in which the notice is filed must arrange for the parties to the proceedings to which the notice relates (and the child and any other persons the officer thinks appropriate) to be interviewed by a family counsellor to assess whether counselling is appropriate in all the circumstances, and, if it is:

- (a) to discuss the care, welfare and development of the child; and
- (b) if there are differences between the parties in relation to matters affecting the care, welfare and development of the child, to try to resolve those differences.

**135 Order under subsection 62F(2)**

If, at commencement, an order under subsection 62F(2) of the *Family Law Act 1975* has not yet been complied with, the order is taken to have been complied with if the parties to which the order relate attend a conference with a family counsellor (within the meaning of the *Family Law Act 1975* as amended by this Schedule).

**136 Reports under section 62G**

If, at commencement, a family and child counsellor or welfare officer (within the meaning of the *Family Law Act 1975* as in force immediately before commencement) has been directed to give a report under subsection 62G(2) of that Act and has not yet given that report:

- (a) the person must still provide the report; and

- (b) references in section 62G of that Act (as amended by this Schedule) to a family consultant are taken to be references to the person who provides the report.

### **137 Pre-parenting order counselling for the purposes of section 65F**

If, before commencement, parties to proceedings attended a conference with a family and child counsellor or a welfare officer to discuss the matter to which the proceedings relate, the attendance at that conference is taken to satisfy the requirement in subsection 65F(2) of the *Family Law Act 1975* (as amended by this Schedule) to attend a conference with a family counsellor.

### **138 Supervision etc. of parenting orders**

If:

- (a) under a court order made before commencement under section 65L of the *Family Law Act 1975*, a person is required to do either or both of the following:
- (i) supervise compliance with a parenting order;
  - (ii) give any party to the parenting order such assistance as is reasonably requested by that party in relation to compliance with, and the carrying out of, the parenting order; and
- (b) immediately after commencement, the person is not a family consultant within the meaning of the *Family Law Act 1975* as amended by this Schedule;

then the court may make another order substituting a family consultant for the person.

### **138A Application of amendments of the *Income Tax Assessment Act 1997***

The amendments made by items 113A and 113B of this Schedule apply to gifts made on or after commencement.

### **139 Regulations may prescribe matters relating to this Schedule**

- (1) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application

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provisions) relating to the amendments or repeals made by this Schedule.

- (2) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Schedule to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

## **Schedule 5—Representation of child's interests by independent children's lawyer**

### **Part 1—Amendments**

#### *Family Law Act 1975*

##### **1 Subsection 4(1) (definition of *child representative*)**

Repeal the definition.

##### **2 Subsection 4(1)**

Insert:

*independent children's lawyer* for a child means a lawyer who represents the child's interests in proceedings under an appointment made under a court order under subsection 68L(2).

##### **3 Subsection 4(1)**

Insert:

*lawyer* means a person enrolled as a legal practitioner of:  
(a) a federal court; or  
(b) the Supreme Court of a State or Territory.

##### **4 Section 60C (table item 10)**

Repeal the item, substitute:

- 10     **Division 10—The representation of the child's interests**  
the representation of a child's interests in proceedings by an independent children's lawyer

##### **5 Division 10 of Part VII**

Repeal the Division, substitute:

## **Division 10—Independent representation of child's interests**

### **68L Court order for independent representation of child's interests**

- (1) This section applies to proceedings under this Act in which a child's best interests are, or a child's welfare is, the paramount, or a relevant, consideration.
- (2) If it appears to the court that the child's interests in the proceedings ought to be independently represented by a lawyer, the court:
  - (a) may order that the child's interests in the proceedings are to be independently represented by a lawyer; and
  - (b) may make such other orders as it considers necessary to secure that independent representation of the child's interests.
- (3) However, if the proceedings arise under regulations made for the purposes of section 111B, the court:
  - (a) may order that the child's interests in the proceedings be independently represented by a lawyer only if the court considers there are exceptional circumstances that justify doing so; and
  - (b) must specify those circumstances in making the order.

Note: Section 111B is about the Convention on the Civil Aspects of International Child Abduction.

- (4) A court may make an order for the independent representation of the child's interests in the proceedings by a lawyer:
  - (a) on its own initiative; or
  - (b) on the application of:
    - (i) the child; or
    - (ii) an organisation concerned with the welfare of children; or
    - (iii) any other person.
- (5) Without limiting paragraph (2)(b), the court may make an order under that paragraph for the purpose of allowing the lawyer who is to represent the child's interests to find out what the child's views are on the matters to which the proceedings relate.

Note: A person cannot require a child to express his or her views in relation to any matter, see section 60CE.



- (6) Subsection (5) does not apply if complying with that subsection would be inappropriate because of:
- (a) the child's age or maturity; or
  - (b) some other special circumstance.

## **68LA Role of independent children's lawyer**

### *When section applies*

- (1) This section applies if an independent children's lawyer is appointed for a child in relation to proceedings under this Act.

### *General nature of role of independent children's lawyer*

- (2) The independent children's lawyer must:
- (a) form an independent view, based on the evidence available to the independent children's lawyer, of what is in the best interests of the child; and
  - (b) act in relation to the proceedings in what the independent children's lawyer believes to be the best interests of the child.
- (3) The independent children's lawyer must, if satisfied that the adoption of a particular course of action is in the best interests of the child, make a submission to the court suggesting the adoption of that course of action.
- (4) The independent children's lawyer:
- (a) is not the child's legal representative; and
  - (b) is not obliged to act on the child's instructions in relation to the proceedings.

### *Specific duties of independent children's lawyer*

- (5) The independent children's lawyer must:
- (a) act impartially in dealings with the parties to the proceedings; and
  - (b) ensure that any views expressed by the child in relation to the matters to which the proceedings relate are fully put before the court; and
  - (c) if a report or other document that relates to the child is to be used in the proceedings:

- (i) analyse the report or other document to identify those matters in the report or other document that the independent children's lawyer considers to be the most significant ones for determining what is in the best interests of the child; and
- (ii) ensure that those matters are properly drawn to the court's attention; and
- (d) endeavour to minimise the trauma to the child associated with the proceedings; and
- (e) facilitate an agreed resolution of matters at issue in the proceedings to the extent to which doing so is in the best interests of the child.

*Disclosure of information*

- (6) Subject to subsection (7), the independent children's lawyer:
  - (a) is not under an obligation to disclose to the court;
  - (b) cannot be required to disclose to the court;any information that the child communicates to the independent children's lawyer.
- (7) The independent children's lawyer may disclose to the court any information that the child communicates to the independent children's lawyer if the independent children's lawyer considers the disclosure to be in the best interests of the child.
- (8) Subsection (7) applies even if the disclosure is made against the wishes of the child.

**68M Order that child be made available for examination**

- (1) This section applies if an independent children's lawyer is appointed to independently represent a child's interests in relation to proceedings under this Act.
- (2) The court may, on application by the independent children's lawyer, order a person mentioned in subsection (3) to make the child available, as specified in the order, for an examination to be made for the purpose of preparing a report about the child for use by the independent children's lawyer in connection with the proceedings.

- (3) The order may be directed to:
- (a) a parent of the child; or
  - (b) a person with whom the child is to live under a parenting order; or
  - (c) a person with whom the child is to spend time under a parenting order; or
  - (d) a person with whom the child is to communicate under a parenting order; or
  - (e) a person who has parental responsibility for the child.

**6 Subparagraph 69W(2)(b)(ii)**

Omit "a person representing the child", substitute "an independent children's lawyer representing the child's interests".

**7 Subparagraph 69ZC(3)(b)(ii)**

Omit "a person representing the relevant child", substitute "an independent children's lawyer representing the relevant child's interests".

**8 Subsection 117(3)**

Omit "a child representative", substitute "an independent children's lawyer for a child".

**9 Subsection 117(3)**

Omit "the child representative", substitute "the independent children's lawyer".

**10 Subsection 117(4)**

Omit "a child representative", substitute "an independent children's lawyer for a child".

**11 Subsection 117(4)**

Omit "the child representative", substitute "the independent children's lawyer" (wherever occurring).

**12 Subsection 117(5)**

Omit "a child representative", substitute "an independent children's lawyer".

**13 Subsection 117(5)**

Omit "the child representative", substitute "the independent children's lawyer".

## **Part 2—Application of amendments and saving of appointments**

### **14 Definitions**

In this Part:

*commencement* means the commencement of this Schedule.

*new Act* means the *Family Law Act 1975* as in force after commencement.

*old Act* means the *Family Law Act 1975* as in force immediately before commencement.

### **15 Application of amendments**

The amendments made by this Schedule apply to proceedings initiated under Part VII before, on or after the day on which this Schedule commences.

### **16 Saving of appointments**

- (1) This item applies if:
  - (a) a court made an order under section 68L of the old Act for separate representation of a child; and
  - (b) immediately before commencement, the proceedings in which the order was made have not been concluded.
- (2) The person who was appointed as the child's representative under section 68L of the old Act is taken to be appointed as the independent children's lawyer under section 68L of the new Act.
- (3) The order under section 68L of the old Act for separate representation of the child is taken to be an order under section 68L of the new Act for independent representation of the child's interests.

## Schedule 6—Family violence

### Part 1—Amendments

#### *Family Law Act 1975*

#### 1 Division 11 of Part VII

Repeal the Division, substitute:

### Division 11—Family violence

#### 68N Purposes of this Division

The purposes of this Division are:

- (a) to resolve inconsistencies between:
  - (i) family violence orders; and
  - (ii) certain orders, injunctions and arrangements made under this Act that provide for a child to spend time with a person or require or authorise a person to spend time with a child; and
- (aa) to ensure that orders, injunctions and arrangements of the kind referred to in subparagraph (a)(ii) do not expose people to family violence; and
- (b) to achieve the objects and principles in section 60B.

Note: Other provisions dealing with family violence and family violence orders are section 4 (definitions), paragraphs 60B(1)(b) and 60CC(2)(i) and (j), sections 60CF and 60CG, subsection 60I(9), section 60K, subsection 61DA(2), paragraph 65F(2)(b) and section 65P.

#### 68P Obligations of court making an order or granting an injunction under this Act that is inconsistent with an existing family violence order

- (1) This section applies if:
  - (a) a court:
    - (i) makes a parenting order that provides for a child to spend time with a person, or expressly or impliedly

- requires or authorises a person to spend time with a child; or
- (ii) makes a recovery order (as defined in section 67Q) or any other order under this Act that expressly or impliedly requires or authorises a person to spend time with a child; or
  - (iii) grants an injunction under section 68B or 114 that expressly or impliedly requires or authorises a person to spend time with a child; and
- (b) the order made or injunction granted is inconsistent with an existing family violence order.
- (2) The court must, to the extent to which the order or injunction provides for the child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with the child:
- (a) specify in the order or injunction that it is inconsistent with an existing family violence order; and
  - (b) give a detailed explanation in the order or injunction of how the contact that it provides for is to take place; and
  - (c) explain (or arrange for someone else to explain) the order or injunction to:
    - (i) the applicant and respondent in the proceedings for the order or injunction; and
    - (ii) the person against whom the family violence order is directed (if that person is not the applicant or respondent); and
    - (iii) the person protected by the family violence order (if that person is not the applicant or respondent); and
  - (d) include (or arrange to be included) in the explanation, in language those persons are likely to readily understand:
    - (i) the purpose of the order or injunction; and
    - (ii) the obligations created by the order or injunction, including how the contact that it provides for is to take place; and
    - (iii) the consequences that may follow if a person fails to comply with the order or injunction; and
    - (iv) the court's reasons for making an order or granting an injunction that is inconsistent with a family violence order; and

- (v) the circumstances in which a person may apply for variation or revocation of the order or injunction.
- (3) As soon as practicable after making the order or granting the injunction (and no later than 14 days after making or granting it), the court must give a copy to:
  - (a) the applicant and respondent in the proceedings for the order or injunction; and
  - (b) the person against whom the family violence order is directed (if that person is not the applicant or respondent); and
  - (c) the person protected by the family violence order (if that person is not the applicant or respondent); and
  - (d) the Registrar, Principal Officer or other appropriate officer of the court that last made or varied the family violence order; and
  - (e) the Commissioner or head (however described) of the police force of the State or Territory in which the person protected by the family violence order resides; and
  - (f) a child welfare officer in relation to the State or Territory in which the person protected by the family violence order resides.
- (4) Failure to comply with this section does not affect the validity of the order or injunction.

**68Q Relationship of order or injunction made under this Act with existing inconsistent family violence order**

- (1) To the extent to which:
  - (a) an order or injunction mentioned in paragraph 68P(1)(a) is made or granted that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; and
  - (b) the order or injunction is inconsistent with an existing family violence order;the family violence order is invalid.
- (2) An application for a declaration that the order or injunction is inconsistent with the family violence order may be made, to a court that has jurisdiction under this Part, by:



- (a) the applicant or respondent in the proceedings for the order or injunction mentioned in paragraph 68P(1)(a); or
  - (b) the person against whom the family violence order is directed (if that person is not the applicant or respondent); or
  - (c) the person protected by the family violence order (if that person is not the applicant or respondent).
- (3) The court must hear and determine the application and make such declarations as it considers appropriate.

**68R Power of court making a family violence order to revive, vary, discharge or suspend an existing order, injunction or arrangement under this Act**

*Power*

- (1) In proceedings to make or vary a family violence order, a court of a State or Territory that has jurisdiction in relation to this Part may revive, vary, discharge or suspend:
- (a) a parenting order, to the extent to which it provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with the child; or
  - (b) a recovery order (as defined in section 67Q) or any other order under this Act, to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child; or
  - (c) an injunction granted under section 68B or 114, to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child; or
  - (d) to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child:
    - (i) an undertaking given to, and accepted by, a court exercising jurisdiction under this Act; or
    - (ii) a registered parenting plan within the meaning of subsection 63C(6); or
    - (iii) a recognisance entered into under an order under this Act.
- (2) The court may do so:
- (a) on its own initiative; or

(b) on application by any person.

*Limits on power*

- (3) The court must not do so unless:
- (a) it also makes or varies a family violence order in the proceedings (whether or not by interim order); and
  - (b) if the court proposes to revive, vary, discharge or suspend an order or injunction mentioned in paragraph (1)(a), (b) or (c)—the court has before it material that was not before the court that made that order or injunction.
- (4) The court must not exercise its power under subsection (1) to discharge an order, injunction or arrangement in proceedings to make an interim family violence order or an interim variation of a family violence order.

*Relevant considerations*

- (5) In exercising its power under subsection (1), the court must:
- (a) have regard to the purposes of this Division (stated in section 68N); and
  - (b) have regard to whether contact with both parents is in the best interests of the child concerned; and
  - (c) if varying, discharging or suspending an order or injunction mentioned in paragraph (1)(a), (b) or (c) that, when made or granted, was inconsistent with an existing family violence order—be satisfied that it is appropriate to do so because a person has been exposed, or is likely to be exposed, to family violence as a result of the operation of that order or injunction.

Note: Sections 60CB to 60CG deal with how a court determines a child's best interests.

*Registration of revival, variation, discharge or suspension of orders and other arrangements*

- (6) The regulations may require a copy of the court's decision to revive, vary, discharge or suspend an order, injunction or arrangement to be registered in accordance with the regulations. Failure to comply with the requirement does not affect the validity of the court's decision.

**68S Application of Act and Rules when exercising section 68R power**

- (1) The following provisions do not apply to a court exercising the power under section 68R:
  - (a) section 65C (who may apply for a parenting order);
  - (b) subsection 65F(2) (parenting order not to be made unless parties attend family counselling);
  - (c) section 60CG (court to consider risk of family violence);
  - (d) section 69N (requirement to transfer certain proceedings);
  - (e) any provisions (for example, section 60CA) that would otherwise make the best interests of the child the paramount consideration;  

Note: Even though the best interests of the child are not paramount, they must still be taken into account under paragraph 68R(5)(b).
  - (f) any provisions of this Act or the applicable Rules of Court specified in the regulations.
- (2) If a court is exercising the power under section 68R in proceedings to make an interim family violence order or an interim variation of a family violence order:
  - (a) the court has a discretion about whether to apply paragraph 60CC(3)(a) (about taking into account a child's views etc.); and
  - (b) any provisions of this Act or the applicable Rules of Court specified in the regulations do not apply.
- (3) A court exercising the power under section 68R may, as it thinks appropriate, dispense with any otherwise applicable Rules of Court.

**68T Special provisions relating to proceedings to make an interim (or interim variation of) family violence order**

- (1) If, in proceedings to make an interim family violence order or an interim variation of a family violence order, the court revives, varies or suspends an order, injunction or arrangement under section 68R, that revival, variation or suspension ceases to have effect at the earlier of:
  - (a) the time the interim order stops being in force; and
  - (b) the end of the period of 21 days starting when the interim order was made.

(2) No appeal lies in relation to the revival, variation or suspension.

## Part 2—Application of amendments and savings

### 2 Definitions

In this Part:

**commencement** means the commencement of this Schedule.

**new Act** means the *Family Law Act 1975* as in force after commencement.

**old Act** means the *Family Law Act 1975* as in force immediately before commencement.

### 3 Application of amendments

The amendments made by Part 1 of this Schedule apply to orders made after commencement, whether the application for the order was made before or after that time.

### 4 Saving of regulations

Despite the repeal of a provision of the old Act specified in the following table, regulations that:

- (a) were made for the purposes of that provision of the old Act; and
- (b) were in force immediately before commencement;

continue to have effect on and after commencement as if those regulations had been made for the purposes of the corresponding provision of the new Act that is specified in the table in relation to that provision of the old Act:

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<b>Saving regulations made under provisions of old Act</b>		
<b>Item</b>	<b>provision of old Act</b>	<b>corresponding provision of new Act</b>
1	subparagraph 68T(3)(a)(iii)	paragraph 68S(1)(f)
2	subparagraph 68T(3)(b)(ii)	paragraph 68S(2)(b)
3	subsection 68T(6)	subsection 68R(6)

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## **Schedule 7—Jurisdiction of courts**

### **Part 1—Amendment**

#### *Family Law Act 1975*

##### **1 Section 45A**

Repeal the section.

## **Part 2—Application of amendment**

### **2 Application of amendment**

The amendment made by item 1 of this Schedule applies to proceedings instituted before or after the commencement of that item.

## **Schedule 8—Removal of references to residence and contact**

### **Part 1—Amendments**

#### ***Australian Citizenship Act 1948***

##### **1 Paragraphs 5(2)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) under a parenting order the child is to live with the person (whether or not the person is a parent of the child); or
- (c) under a parenting order the person has parental responsibility for the child's long-term or day-to-day care, welfare and development (whether or not the person is a parent of the child); or

#### ***Australian Citizenship Act 2006***

##### **2 Paragraphs 6(1)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) under a parenting order the child is to live with the person (whether or not the person is a parent of the child); or
- (c) under a parenting order the person has parental responsibility for the child's long-term or day-to-day care, welfare and development (whether or not the person is a parent of the child); or

#### ***Australian Passports Act 2005***

##### **3 Paragraphs 11(5)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) under a parenting order:
  - (i) the child is to live with the person; or
  - (ii) the child is to spend time with the person; or
  - (iii) the person is responsible for the child's long-term or day-to-day care, welfare and development; or



**4 Subsection 11(6)**

Repeal the subsection.

***Child Support (Assessment) Act 1989***

**5 Section 5**

Insert:

*major care* has the meaning given by subsections 8(3) and 8A(5).

**6 Section 5 (definition of *major contact*)**

Repeal the definition.

**7 Section 5 (subparagraph (a)(ii) of the definition of *relevant dependent child*)**

Omit “contact with”, substitute “care of”.

**8 Section 5**

Insert:

*substantial care* has the meaning given by subsections 8(3) and 8A(4).

**9 Section 5 (definition of *substantial contact*)**

Repeal the definition.

**10 Paragraph 7B(1)(b)**

Omit “contact with”, substitute “care of”.

**11 Paragraph 7B(1)(d)**

Omit “contact with”, substitute “care of”.

**12 Paragraph 7B(2)(a)**

Omit “provides care for a child, shares care of a child or has contact with”, substitute “cares for”.

**13 Paragraph 7B(2)(c)**

Omit “providing or sharing such care, or having such contact”, substitute “caring for the child”.

**14 Subsection 7B(2)**

Omit “provide or share such care or have such contact”, substitute “care for the child”.

**15 Subsection 7B(3)**

Omit “provide care for, share care of or have contact with,”, substitute “care for”.

**16 Subparagraph 8(3)(b)(ii)**

Omit “contact with”, substitute “care of”.

Note: The heading to section 8 is altered by omitting “**contact**” and substituting “**care**”.

**17 Paragraph 8(3)(c)**

Omit “*contact* with”, substitute “*care* of”.

**18 Paragraph 8(3)(d)**

Omit “*contact* with”, substitute “*care* of”.

**19 Paragraph 8A(1)(a)**

Omit “the contact between a child and”, substitute “the time a child is to spend with”.

Note: The heading to section 8A is altered by omitting “/contact”.

**20 Paragraph 8A(1)(d)**

Repeal the paragraph, substitute:

(d) as a result of the contravention:

- (i) a person (the *first person*) has more care of the child than the first person would have if the order or parenting plan were not being contravened; and
- (ii) another person (the *second person*) has less care of the child than the second person would have if the order or parenting plan were not being contravened.

**21 Paragraphs 8A(2)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the first person is taken to have care of the child only to the extent (if any) to which the first person would have care of

the child if the court order or parenting plan (as the case may be) were being complied with; and

- (b) the amount of care that the second person has of the child is to be worked out on the basis of the care (if any) that the person actually has of the child; and

**22 Subsection 8A(4)**

Omit “*contact* with”, substitute “*care* of”.

**23 Subsection 8A(5)**

Omit “*contact* with”, substitute “*care* of”.

**24 Subsection 8A(6)**

Omit “contact with”, substitute “care of”.

**25 Paragraph 48(1)(da)**

Omit “with whom the parent has substantial contact”, substitute “of whom the parent has substantial care”.

**26 Paragraph 48(1)(e)**

Omit “with whom a parent has major contact taken to be 0.65, the number attributed to each child with whom a parent has substantial contact”, substitute “of whom a parent has major care taken to be 0.65, the number attributed to each child of whom a parent has substantial care”.

**27 Paragraph 54(1)(b) (definition of *number of children in carer’s care*)**

Omit “with whom a carer has major contact taken to be 0.65, the number attributed to each child with whom a carer has substantial contact”, substitute “of whom a carer has major care taken to be 0.65, the number attributed to each child of whom a carer has substantial care”.

**28 Section 54 (example 2)**

Omit “substantial contact”, substitute “substantial care”.

**29 Paragraph 54A(1)(a)**

Omit “and contact”.

**30 Subparagraph 54A(1)(b)(ii)**

Omit “contact with”, substitute “care of”.

**31 Paragraph 54B(1)(e)**

Omit “with whom the parent has substantial contact”, substitute “of whom the parent has substantial care”.

**32 Subparagraph 54B(1)(f)(i)**

Omit “with whom the carer has major contact”, substitute “of whom the carer has major care”.

**33 Subparagraph 54B(1)(f)(ii)**

Omit “with whom the carer has substantial contact”, substitute “of whom the carer has substantial care”.

**34 Paragraph 98C(2)(b)**

Omit “sub-subparagraph 117(2)(b)(i)(C)”, substitute “subparagraph 117(2)(b)(ib)”.

**35 Subparagraph 117(2)(a)(iv)**

Repeal the subparagraph, substitute:

- (iv) high costs involved in enabling a parent to care for any other child or another person that the parent has a duty to maintain;

**36 Subparagraph 117(2)(b)(i)**

Repeal the subparagraph, substitute:

- (i) because of high costs involved in enabling a parent to care for the child; or
- (ia) because of special needs of the child; or
- (ib) because of high child care costs in relation to the child; or

**37 Subsection 117(3)**

Omit “have contact with”, substitute “care for”.

**38 Subsection 117(3)**

Omit “sub-subparagraph 117(2)(b)(i)(A)”, substitute “subparagraph 117(2)(b)(i)”.

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**39 Subsections 117A(3A) and (3B)**

Omit “sub-subparagraph 117(2)(b)(i)(C)”, substitute “subparagraph 117(2)(b)(ib)”.

***Family Law Act 1975***

**40 Subsection 4(1) (definition of *contact order*)**

Repeal the definition.

**41 Subsection 4(1) (definition of *has*)**

Repeal the definition.

**42 Subsection 4(1) (definition of *made in favour*)**

Repeal the definition, substitute:

*made in favour*, in relation to a parenting order (other than a child maintenance order), has the meaning given by subsection 64B(6).

**43 Subsection 4(1)**

Insert:

*overseas child order* means:

- (a) an order made by a court of a prescribed overseas jurisdiction that:
  - (i) however it is expressed, has the effect of determining the person or persons with whom a child who is under 18 is to live, or that provides for a person or persons to have custody of a child who is under 18; or
  - (ii) however it is expressed, has the effect of providing for a person or persons to spend time with a child who is under 18; or
  - (iii) however it is expressed, has the effect of providing for contact between a child who is under 18 and another person or persons, or that provides for a person or persons to have access to a child who is under 18; or
  - (iv) varies or discharges an order of the kind referred to in subparagraph (i), (ii) or (iii), including an order of that kind made under this Act; or
- (b) an order made for the purposes of the Convention referred to in section 111B by a judicial or administrative authority of a

convention country (within the meaning of the regulations made for the purposes of that section).

**44 Subsection 4(1) (definition of *residence order*)**

Repeal the definition.

**45 Subsection 4(1) (definition of *specific issues order*)**

Repeal the definition.

**46 Subsection 4(1)**

Insert:

*State child order* means an order made under the law of a State:

- (a) that (however it is expressed) has the effect of determining the person or persons with whom a child who is under 18 is to live, or that provides for a person or persons to have custody of a child who is under 18; or
- (b) that (however it is expressed) has the effect of providing for a person or persons to spend time with a child who is under 18; or
- (c) that (however it is expressed) has the effect of providing for contact between a child who is under 18 and another person or persons, or that provides for a person or persons to have access to a child who is under 18.

**47 Subsection 4(1)**

Insert:

*Subdivision C parenting order*, when used in Division 13 of Part VII, means a parenting order to the extent to which it deals with:

- (a) whom a child is to live with; or
- (b) whom a child is to spend time with; or
- (c) who is to be responsible for a child's day-to-day care, welfare and development.

**48 Subsection 26B(1A)**

Repeal the subsection, substitute:

(1A) An *excluded child order* is:

- (a) a parenting order to the extent to which it provides that:
    - (i) a child is to live with a person; or
    - (ii) a child is to spend time with a person; or
    - (iii) a child is to communicate with a person; or
    - (iv) a person is to have parental responsibility for a child; or
  - (b) an order in relation to the welfare of a child;
- other than:
- (c) a parenting order made under paragraph 70NEB(1)(b) or an order made under paragraph 70NFB(2)(c) that has the same effect as such a parenting order; or
  - (d) an order until further order; or
  - (e) an order made in undefended proceedings; or
  - (f) an order made with the consent of all the parties to the proceedings.

#### **49 Subsection 37A(2A)**

Repeal the subsection, substitute:

- (2A) An *excluded child order* is:
- (a) a parenting order to the extent to which it provides that:
    - (i) a child is to live with a person; or
    - (ii) a child is to spend time with a person; or
    - (iii) a child is to communicate with a person; or
    - (iv) a person is to have parental responsibility for a child; or
  - (b) an order in relation to the welfare of a child;
- other than:
- (c) an order until further order; or
  - (d) an order made in undefended proceedings; or
  - (e) an order made with the consent of all the parties to the proceedings.

#### **50 Section 60C (table item 6)**

Omit “, other than child maintenance orders” (first occurring), substitute “(other than child maintenance orders) after attending, if necessary, family dispute resolution (see section 60I)”.

#### **51 Section 60C (table item 6)**

Omit “residence orders, contact orders and specific issues orders”, substitute “parenting orders, other than child maintenance orders”.

**52 Section 60C (table item 11)**

Omit “contact orders etc.”, substitute “parenting orders”.

**53 Section 60C (table item 13A)**

Omit “for contact forgone”, substitute “a person for time that a child did not spend with the person, or for time that a child did not live with the person,”.

**54 Subsection 63C(4)**

Repeal the subsection, substitute:

- (4) Provisions of a parenting plan that deal with matters other than the maintenance of a child are *child welfare provisions*.

**55 Subsection 63C(5)**

Omit “(c)”, substitute “(f)”.

**56 Subsection 63F(3)**

Repeal the subsection, substitute:

- (3) The child welfare provisions have effect, subject to subsections (5) and (6), as if they were provisions of a parenting order.

Note: Provisions of this Act relevant to the child welfare provisions having effect as provided in this subsection include:

- (a) Subdivisions C, D and E of Division 6 of this Part (dealing with obligations created by parenting orders (other than child maintenance orders)); and
- (b) Division 13A of this Part and Part XIII (dealing generally with enforcement of orders and sanctions for contravening orders); and
- (c) subsection 65D(2) (providing for discharge, variation, suspension and revival of parenting orders other than child maintenance orders); and
- (d) other provisions of this Act (including subsection 64B(6)) that refer to parenting orders.

**57 Paragraph 65A(b)**

Repeal the paragraph, substitute:

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- (b) the general obligations created by parenting orders, other than child maintenance orders (Subdivision C); and

### **58 Subsection 65G(1)**

Repeal the subsection, substitute:

- (1) This section applies if:
  - (a) a court proposes to make a parenting order that deals with whom a child is to live with; and
  - (b) under the order, the child would not live with a parent, grandparent or other relative of the child; and
  - (c) the court proposes to make that order with the consent of all the parties to the proceedings.

(1A) This section also applies if:

- (a) a court proposes to make a parenting order that deals with the allocation of parental responsibility for a child; and
- (b) under the order, no parent, grandparent or other relative of the child would be allocated parental responsibility for the child; and
- (c) the court proposes to make that order with the consent of all the parties to the proceedings.

Note: The heading to section 65G is altered by omitting “**residence order or specific issues order**” and substituting “**parenting order about whom a child lives with or the allocation of parental responsibility**”.

### **59 Paragraph 65K(1)(a)**

Repeal the paragraph, substitute:

- (a) a parenting order is in force that provides that a child is to live with one of the child’s parents; and

Note: The heading to section 65K is altered by omitting “**that is or includes residence order**” and substituting “**that deals with whom a child lives with**”.

### **60 Subsection 65K(3)**

Repeal the subsection, substitute:

- (3) The surviving parent, or another person (subject to section 65C), may apply for a parenting order that deals with the person or persons with whom the child is to live.

### **61 Subdivision C of Division 6 of Part VII (heading)**

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Repeal the heading, substitute:

**Subdivision C—General obligations created by certain parenting orders**

**62 Subsection 65M(1)**

Repeal the subsection, substitute:

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order deals with whom the child is to live with.

Note: The heading to section 65M is altered by omitting “**residence order**” and substituting “**parenting order that deals with whom a child lives with**”.

**63 Sections 65N and 65P**

Repeal the sections, substitute:

**65N General obligations created by parenting order that deals with whom a child spends time with**

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order deals with whom the child is to spend time with.
- (2) A person must not:
  - (a) hinder or prevent a person and the child from spending time together in accordance with the order; or
  - (b) interfere with a person and the child benefiting from spending time with each other under the order.

**65NA General obligations created by parenting order that deals with whom a child communicates with**

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order deals with whom the child is to communicate with.
- (2) A person must not:
  - (a) hinder or prevent a person and the child from communicating with each other in accordance with the order; or

- (b) interfere with the communication that a person and the child are supposed to have with each other under the order.

**65P General obligations created by parenting order that allocates parental responsibility**

- (1) This section applies to a parenting order that is in force in relation to a child to the extent to which the order allocates parental responsibility for the child to a person (the *carer*).
- (2) A person must not hinder the carer in, or prevent the carer from, discharging that responsibility.

**64 Paragraphs 65Q(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) a parenting order provides that:
  - (i) a child is to live with a person; or
  - (ii) a child is to spend time with a person; or
  - (iii) a child is to communicate with a person; and
- (b) a court having jurisdiction under this Part is satisfied, on application by the person referred to in paragraph (1)(a), that there are reasonable grounds for believing that a person (the *alleged offender*) has contravened section 65M, 65N or 65NA in relation to the order; and

**65 Subsection 65X(1)**

Repeal the subsection, substitute:

- (1) In this Subdivision:

*parenting order to which this Subdivision applies* means a parenting order to the extent to which it provides, or would provide, that:

- (a) a child is to live with a person; or
- (b) a child is to spend time with a person; or
- (c) a child is to communicate with a person; or
- (d) a person is to have parental responsibility for a child.

**66 Subsection 65Y(1)**

Omit “If a residence order, a contact order or a care order (the *Part VII order*)”, substitute “If a parenting order to which this Subdivision applies”.

Note: The heading to section 65Y is altered by omitting “**residence order, contact order or care order has**” and substituting “**certain parenting orders have**”.

**67 Paragraph 65Y(2)(a)**

Omit “Part VII order”, substitute “order referred to in subsection (1)”.

**68 Paragraph 65Y(2)(b)**

Omit “Part VII order”, substitute “order referred to in subsection (1)”.

**69 Subsection 65Z(1)**

Omit “a residence order, a contact order or a care order”, substitute “a parenting order to which this Subdivision applies”.

Note: The heading to section 65Z is altered by omitting “**residence order, contact order or care order**” and substituting “**certain parenting orders**”.

**70 Paragraph 65ZA(1)(a)**

Repeal the paragraph, substitute:

- (a) a parenting order to which this Subdivision applies is in force; and

Note: The heading to section 65ZA is altered by omitting “**residence order, contact order or care order**” and substituting “**certain parenting orders**”.

**71 Paragraph 65ZA(1)(b)**

Omit “Part VII”.

**72 Subsections 65ZA(3) and (4)**

Omit “Part VII”.

**73 Paragraph 65ZB(1)(a)**

Omit “a residence order, a contact order or a care order”, substitute “a parenting order to which this Subdivision applies”.

Note: The heading to section 65ZB is altered by omitting “**residence order, contact order or care order**” and substituting “**certain parenting orders**”.

**74 Paragraphs 67K(1)(a) to (c)**

Repeal the paragraphs, substitute:

- (a) a person with whom the child is to live under a parenting order; or
- (b) a person with whom the child is to spend time under a parenting order; or
- (c) a person with whom the child is to communicate under a parenting order; or
- (caa) a person who has parental responsibility for the child under a parenting order; or

**75 Subparagraphs 67Q(a)(ii) and (iii)**

Repeal the subparagraphs, substitute:

- (ii) a person with whom the child is to live under a parenting order; or
- (iii) a person with whom the child is to spend time under a parenting order; or
- (iv) a person with whom the child is to communicate under a parenting order; or
- (v) a person who has parental responsibility for the child;

**76 Subparagraphs 67Q(d)(ii) to (iv)**

Repeal the subparagraphs, substitute:

- (ii) a person described in subparagraph (a)(ii), (iii), (iv) or (v); or
- (iii) some other person on behalf of a person described in subparagraph (i) or (ii);

**77 Paragraphs 67T(a) to (c)**

Repeal the paragraphs, substitute:

- (a) a person with whom the child is to live under a parenting order; or
- (b) a person with whom the child is to spend time under a parenting order; or
- (c) a person with whom the child is to communicate under a parenting order; or
- (caa) a person who has parental responsibility for the child under a parenting order; or

**78 Subparagraphs 68B(1)(b)(ii) and (iii)**

Repeal the subparagraphs, substitute:

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- (ii) a person with whom the child is to live under a parenting order; or
- (iii) a person with whom the child is to spend time under a parenting order; or
- (iv) a person with whom the child is to communicate under a parenting order; or
- (v) a person who has parental responsibility for the child; or

**79 Paragraph 69Z(2)(c)**

Repeal the paragraph, substitute:

- (c) a person who, under a parenting order, has responsibility for the child's long-term or day-to-day care, welfare and development.

**80 Paragraph 69ZA(1)(c)**

Repeal the paragraph, substitute:

- (c) a person who, under a parenting order, has responsibility for the child's long-term or day-to-day care, welfare and development.

**81 Subparagraph 69ZH(3)(a)(ii)**

Repeal the subparagraph, substitute:

- (ii) whom the child lives with, whom the child spends time with and other aspects of the care, welfare and development of the child; and

**82 Subsection 70J(1)**

Omit "a residence order, a contact order or a care order", substitute "a Subdivision C parenting order".

**83 Paragraph 70J(1)(a)**

Repeal the paragraph, substitute:

- (a) each person:
  - (i) with whom the child is supposed to live; or
  - (ii) who is to spend time with the child; or
  - (iii) who is to have contact with the child; or
  - (iv) who has rights of custody or access in relation to the child;

under the overseas order consents to the exercise of jurisdiction by the court in the proceedings; or

**84 Subsection 70J(2)**

Omit “a residence order, a contact order or a care order” (wherever occurring), substitute “a Subdivision C parenting order”.

**85 Paragraph 70J(2)(b)**

Omit “the residence order, contact order or care order”, substitute “the Subdivision C parenting order”.

**86 Paragraph 70K(b)**

Omit “a residence order, a contact order or a care order”, substitute “a Subdivision C parenting order”.

Note: The heading to section 70K is altered by omitting “**residence order, contact order or care order**” and substituting “**Subdivision C parenting order**”.

**87 Subsection 70L(1) (paragraph (a) of the definition of *Australian child order*)**

Repeal the paragraph, substitute:

- (a) a Subdivision C parenting order; or

**88 Subsection 70L(1) (paragraph (a) of the definition of *responsible person*)**

Repeal the paragraph, substitute:

- (a) with whom the child is supposed to live under the order; or
- (aa) whom the child is supposed to spend time with under the order; or
- (ab) whom the child is supposed to have contact with under the order; or

**89 Paragraph 70M(1)(a)**

Repeal the paragraph, substitute:

- (a) a court in Australia makes, in relation to a child who is under 18:
  - (i) a parenting order, other than a child maintenance order; or
  - (ii) a State child order; and

**90 Paragraph 70M(3)(a)**

Repeal the paragraph, substitute:

- (a) a person with whom the child is supposed to live under the order; or
- (aa) a person with whom the child is supposed to spend time under the order; or
- (ab) a person with whom the child is supposed to have contact under the order; or

**91 Subsection 70N(1)**

Repeal the subsection, substitute:

- (1) The regulations may make provision for and in relation to the sending to a prescribed overseas jurisdiction of copies of, and documents relating to:
  - (a) a parenting order, other than a child maintenance order; or
  - (b) a State child order;that relates to a child to whom an overseas child order relates.

**92 Paragraphs 79A(1AA)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) a parenting order provides that:
  - (i) the child is to live with the person; or
  - (ii) the person has parental responsibility for the child.

**93 Paragraphs 90K(2)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) a parenting order provides that:
  - (i) the child is to live with the person; or
  - (ii) the person has parental responsibility for the child.

**94 Subparagraph 91(1)(b)(i)**

Repeal the subparagraph, substitute:

- (i) a parenting order, other than a child maintenance order;  
or

**95 Paragraphs 92A(2)(ba) and (bb)**

Repeal the paragraphs, substitute:

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- (ba) a person with whom the child is to live under a parenting order;
- (bb) a person who has parental responsibility for the child under a parenting order;

#### **96 Paragraph 111B(1A)(c)**

Repeal the paragraph, substitute:

- (c) relating to a Central Authority within the meaning of the regulations applying on behalf of another person for a parenting order that deals with the person or persons with whom a child is to spend time or communicate if the outcome of the proceedings is that the child is not to be returned under the Convention.

#### **97 Paragraph 111B(4)(b)**

Repeal the paragraph, substitute:

- (b) subject to any order of a court for the time being in force, a person:
  - (i) with whom a child is to live under a parenting order; or
  - (ii) who has parental responsibility for a child under a parenting order;should be regarded as having rights of custody in respect of the child; and

#### **98 Paragraph 111B(4)(d)**

Repeal the paragraph, substitute:

- (d) subject to any order of a court for the time being in force, a person:
  - (i) with whom a child is to spend time under a parenting order; or
  - (ii) with whom a child is to communicate under a parenting order;should be regarded as having a right of access to the child.

#### **99 Subsection 111B(4) (note)**

Repeal the note, substitute:

- Note: The references in paragraphs (b) and (d) to parenting orders also cover provisions of parenting agreements registered under section 63E (see section 63F, in particular subsection (3)).

**100 Section 111CW**

Repeal the section, substitute:

**111CW Court proceedings dealing with whom a child spends time with**

- (1) A court hearing proceedings under Part VII (Children) or regulations made for the purposes of section 111B dealing with:
  - (a) whom a child is to spend time with; or
  - (b) whom a child is to communicate with;must admit into evidence and consider the findings (if any) of a competent authority of a Convention country on the suitability of a parent as a person for the child to spend time with or communicate with.
- (2) The court may adjourn the proceedings pending the outcome of a request by a parent of the child to a competent authority of a Convention country for a finding on the suitability of the parent as a person for the child to spend time with or communicate with.
- (3) On the application of a parent who is an Australian resident seeking to have, or to continue to have, a child spend time with or communicate with the parent, a court may:
  - (a) admit evidence; and
  - (b) make a finding on the suitability of that parent as a person for the child to spend time with or communicate with; and
  - (c) specify conditions on which the child is to spend time with or communicate with the person.

**101 Paragraph 117A(1)(a)**

Repeal the paragraph, substitute:

- (a) a court has found, for the purposes of Division 13A of Part VII, that a person has, by taking a child away from another person or by refusing or failing to deliver a child to another person, contravened a parenting order to the extent to which the order provides that:
  - (i) a child is to live with a person; or
  - (ii) a child is to spend time with a person; or
  - (iii) a child is to communicate with a person;

***Migration Act 1958***

**102 Subsection 192(8)**

Repeal the subsection, substitute:

- (8) In paragraph (7)(b), ***guardian*** includes a person who is responsible, under a parenting order (within the meaning of the *Family Law Act 1975*), for the detainee's long-term care, welfare and development.

## Part 2—Savings

### 103 Definitions

In this Part:

**commencement** means the commencement of this item.

**new Act** means the *Family Law Act 1975* as in force after commencement.

**old Act** means the *Family Law Act 1975* as in force immediately before commencement.

### 104 Saving of regulations

Despite the repeal of a provision of the old Act specified in the following table, regulations that:

- (a) were made for the purposes of that provision of the old Act; and
- (b) were in force immediately before commencement;

continue to have effect on and after commencement as if those regulations had been made for the purposes of the corresponding provision of the new Act that is specified in the table in relation to that provision of the old Act:

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Saving regulations made under provisions of old Act		
Item	Provision of old Act	Corresponding provision of new Act
1	definition of <i>overseas child order</i> in section 70F	definition of <i>overseas child order</i> in subsection 4(1)
2	subsection 70N(1)	subsection 70N(1)
3	paragraph 111B(1A)(c)	paragraph 111B(1A)(c)

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## **Schedule 9—Relocation of defined terms used in Part VII**

### **Part 1—Amendments**

#### *A New Tax System (Family Assistance) Act 1999*

**1 Subsection 3(1) (paragraph (b) of the definition of *family law order*)**

Omit “section 60D”, subsection “section 4”.

#### *Australian Passports Act 2005*

**2 Subsection 6(2)**

Omit “of section 70F”.

#### *Child Support (Assessment) Act 1989*

**3 Subsection 8A(7) (paragraph (b) of the definition of *court order*)**

Omit “section 60D”, subsection “section 4”.

#### *Child Support (Registration and Collection) Act 1988*

**4 Subsection 4(1) (definition of *child of a marriage*)**

Omit “Part VII of”.

**5 Subsection 4(1) (definition of *step-parent*)**

Omit “Part VII of”.

#### *Family Law Act 1975*

**6 Subsection 4(1)**

Insert:

*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.

**7 Subsection 4(1)**

Insert:

*alleged contravention*, in Subdivision D of Division 6 of Part VII, means the alleged contravention because of which the alleged offender is arrested.

**8 Subsection 4(1)**

Insert:

*alleged offender*, in Subdivision D of Division 6 of Part VII, means the person who is arrested.

**9 Subsection 4(1)**

Insert:

*applied provisions*, when used in Division 13A of Part VII in relation to a community service order made under paragraph 70NFB(2)(a), means the provisions of the laws of a State or Territory (as modified by regulations made under subsection 70NFC(4)), that, because of regulations made under that subsection, apply in relation to the order.

**10 Subsection 4(1)**

Insert:

*appropriate authority*, when used in Part VII in relation to a Commonwealth instrumentality, means a person:

- (a) who in, or in relation to, the instrumentality:
  - (i) is an SES employee or acting SES employee; or
  - (ii) holds an office or position that is at a level equivalent to that of an SES employee; or
- (b) who is authorised in writing by the principal officer of the instrumentality to provide information under Commonwealth information orders.

**11 Subsection 4(1)**

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Insert:

*arresting person* means the person who arrests the alleged offender.

**12 Subsection 4(1)**

Insert:

*artificial conception procedure* includes:

- (a) artificial insemination; and
- (b) the implantation of an embryo in the body of a woman.

**13 Subsection 4(1)**

Insert:

*birth* includes stillbirth.

**14 Subsection 4(1)**

Insert:

*captain*, in relation to an aircraft or vessel, means the person in charge or command of the aircraft or vessel.

**15 Subsection 4(1)**

Insert:

*child*:

- (a) in Part VII, includes an adopted child and a stillborn child; and
- (b) in Subdivision E of Division 6 of that Part, means a person who is under 18 (including a person who is an adopted child).

**16 Subsection 4(1)**

Insert:

*childbirth maintenance period*, in relation to the birth of a child, means the period that begins on the day mentioned in paragraph (a) or (b) and ends 3 months after the child's birth:

- (a) if the mother:
  - (i) works in paid employment; and

- (ii) is advised by a medical practitioner to stop working for medical reasons related to her pregnancy; and
  - (iii) stops working after being so advised and more than 2 months before the child is due to be born;
- the period begins on the day on which she stops working; or
- (b) in any other case—the period begins on the day that is 2 months before the child is due to be born.

**18 Subsection 4(1)**

Insert:

*child maintenance provisions*, in relation to a parenting plan, has the meaning given by subsection 63C(5).

**19 Subsection 4(1)**

Insert:

*child welfare law* means a law of a State or Territory prescribed, or included in a class of laws of a State or Territory prescribed, for the purposes of this definition.

**20 Subsection 4(1)**

Insert:

*child welfare officer*, in relation to a State or Territory, means:

- (a) a person who, because he or she holds, or performs the duties of, a prescribed office of the State or Territory, has responsibilities in relation to a child welfare law of the State or Territory; or
- (b) a person authorised in writing by such a person for the purposes of Part VII.

**21 Subsection 4(1)**

Insert:

*child welfare provisions*, in relation to a parenting plan, has the meaning given by subsection 63C(4).

**22 Subsection 4(1)**

Insert:



*Commonwealth information order* has the meaning given by subsection 67J(2).

**23 Subsection 4(1)**

Insert:

*community service order* has the meaning given by subsection 70NFC(3).

**24 Subsection 4(1)**

Insert:

*contravened* an order, in Division 13A of Part VII, has the meaning given by section 70NAC.

**25 Subsection 4(1)**

Insert:

*de facto relationship* means the relationship between a man and a woman who live with each other as spouses on a genuine domestic basis although not legally married to each other.

**26 Subsection 4(1)**

Insert:

*Department*, in Subdivision C of Division 8 of Part VII, means a Department of State of the Commonwealth.

**27 Subsection 4(1)**

Insert:

*education* includes apprenticeship or vocational training.

**28 Subsection 4(1)**

Insert:

*excluded order* means:

- (a) an interim order; or
- (b) an order made in favour of a person where:
  - (i) the order was made on the application of the person; and

- (ii) notice of making the application was not served on any other person; and
- (iii) no other person appeared at the hearing of the application.

**29 Subsection 4(1)**

Insert:

*family violence order* means an order (including an interim order) made under a prescribed law of a State or Territory to protect a person from family violence.

**30 Subsection 4(1)**

Insert:

*guardian*, when used in Part VII in relation to a child, includes a person who has been granted (whether alone or jointly with another person or other persons) guardianship of the child under the law of the Commonwealth or of a State or Territory.

**31 Subsection 4(1)**

Insert:

*information about the child's location*, in the context of a location order made or to be made by a court in relation to a child, means information about:

- (a) where the child is; or
- (b) where a person, who the court has reasonable cause to believe has the child, is.

**32 Subsection 4(1)**

Insert:

*interests*, when used in Part VII in relation to a child, includes matters related to the care, welfare or development of the child.

**33 Subsection 4(1)**

Insert:

*location order* has the meaning given by subsection 67J(1).

**34 Subsection 4(1)**

Insert:

*medical expenses* includes medical, surgical, dental, diagnostic, hospital, nursing, pharmaceutical and physiotherapy expenses.

**35 Subsection 4(1)**

Insert:

*medical practitioner* means a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.

**36 Subsection 4(1)**

Insert:

*member of the family*, in relation to a person, has, for the purposes of the definition of *step-parent*, paragraphs 60CC(3)(j) and (k) and section 60CF, the meaning given by subsection (1AB) of this section.

**37 Subsection 4(1)**

Insert:

*order under this Act affecting children*, in relation to a court, means:

- (a) a parenting order; or
- (b) an injunction granted by the court:
  - (i) under section 68B; or
  - (ii) under section 114 in so far as the injunction is for the protection of a child; or
- (c) an undertaking given to, and accepted by, the court:
  - (i) that relates to, or to the making of, an order or injunction referred to in paragraph (a) or (b) or a community service order referred to in paragraph (f); or
  - (ii) that relates to a bond referred to in paragraph (g); or
- (d) a subpoena issued under the applicable Rules of Court:
  - (i) that relates to, or to the making of, an order or injunction referred to in paragraph (a) or (b) or a community service order referred to in paragraph (f); or

- (ii) that relates to a bond referred to in paragraph (g);  
being a subpoena issued to a party to the proceedings for the  
order, injunction or bond, as the case may be; or
- (e) a registered parenting plan within the meaning of subsection  
63C(6); or
- (f) a community service order made under paragraph  
70NFB(2)(a); or
- (g) a bond entered into:
  - (i) under a parenting order; or
  - (ii) under paragraph 70NFB(2)(b); or
  - (iii) for the purposes of subsection 70NFG(6);  
and includes an order, injunction, plan or bond that:
- (h) is an order under this Act affecting children made by another  
court because of paragraph (a), (b), (e) or (g); and
- (i) has been registered in the first-mentioned court.

**38 Subsection 4(1)**

Insert:

*parent*, when used in Part VII in relation to a child who has been  
adopted, means an adoptive parent of the child.

**39 Subsection 4(1)**

Insert:

*parentage testing order* has the meaning given by subsection  
69W(1).

**40 Subsection 4(1)**

Insert:

*parentage testing procedure* means a medical procedure  
prescribed, or included in a class of medical procedures prescribed,  
for the purposes of this definition.

**41 Subsection 4(1)**

Insert:

*parental responsibility*, in Part VII, has the meaning given by  
section 61B.

**43 Subsection 4(1)**

Insert:

*pending*, in Subdivision E of Division 6 of Part VII, has a meaning affected by section 65X.

**44 Subsection 4(1)**

Insert:

*prescribed adopting parent*, in relation to a child, means:

- (a) a parent of the child; or
- (b) the spouse of, or a person in a de facto relationship with, a parent of the child; or
- (c) a parent of the child and either his or her spouse or a person in a de facto relationship with the parent.

**45 Subsection 4(1)**

Insert:

*prescribed child welfare authority*, in relation to abuse of a child, means:

- (a) if the child is the subject of proceedings under Part VII in a State or Territory—an officer of the State or Territory who is responsible for the administration of the child welfare laws of the State or Territory, or some other prescribed person; or
- (b) if the child is not the subject of proceedings under Part VII—an officer of the State or Territory in which the child is located or is believed to be located who is responsible for the administration of the child welfare laws of the State or Territory, or some other prescribed person.

**46 Subsection 4(1)**

Insert:

*primary order* means an order under this Act affecting children and includes such order as varied.

**47 Subsection 4(1)**

Insert:

*principal officer*, when used in Subdivision C of Division 8 of Part VII in relation to a Commonwealth instrumentality, means:

- (a) if the regulations declare an office to be the principal office in respect of the instrumentality—the person holding, or performing the duties of, that office; or
- (b) the person who constitutes the instrumentality or who is entitled to preside at any meeting of the instrumentality, or of its governing body, at which the person is present.

**48 Subsection 4(1)**

Insert:

*professional ethics* includes:

- (a) rules of professional conduct; and
- (b) rules of professional etiquette; and
- (c) a code of ethics; and
- (d) standards of professional conduct.

**49 Subsection 4(1)**

Insert:

*reasonable excuse for contravening* an order includes the meanings given by section 70NAE.

**50 Subsection 4(1)**

Insert:

*recovery order* has the meaning given by section 67Q.

**51 Subsection 4(1) (definition of *Registry Manager*)**

Repeal the definition, substitute:

***Registry Manager:***

- (a) except in Subdivision C of Division 8 of Part VII and section 67Z, means:
  - (i) in relation to the Family Court—the Registry Manager of a Registry of the Court; and
  - (ii) in relation to a court other than the Family Court—the principal officer of the court or any other appropriate officer of the court; and

- (b) in Subdivision C of Division 8 of Part VII, means:
- (i) in relation to the Family Court—the Registry Manager of the Registry of the Court; and
  - (ii) in relation to the Family Court of Western Australia—the Principal Registrar, a Registrar or a Deputy Registrar, of the court; and
  - (iii) in relation to any other court—the principal officer of the court.

## **52 Subsection 4(1)**

Insert:

*State*, in Subdivision B of Division 13 of Part VII, includes a Territory.

## **53 Subsection 4(1)**

Insert:

*step-parent*, in relation to a child, means a person who:

- (a) is not a parent of the child; and
- (b) is or has been married to a parent of the child; and
- (c) treats, or at any time during the marriage treated, the child as a member of the family formed with the parent.

## **54 After subsection 4(1)**

Insert:

(1AB) For the purposes of:

- (a) the definitions of *family violence* and *step-parent* in subsection (1); and
- (b) paragraphs 60CC(3)(j) and (k); and
- (c) section 60CF;

a person (the *first person*) is a *member of the family* of another person (the *second person*) if:

- (d) the first person is or has been married to, or in a de facto relationship with, the second person; or
- (e) the first person is or has been a relative of the second person (as defined in subsection (1AC)); or
- (f) an order under this Act described in subparagraph (i) or (ii) is or was (at any time) in force:

- (i) a parenting order (other than a child maintenance order) that relates to a child who is either the first person or the second person and that is in favour of the other of those persons;
  - (ii) an order providing for the first person or the second person to have custody or guardianship of, or a right of access to, the other of those persons; or
  - (g) an order under a law of a State or Territory described in subparagraph (i) or (ii) is or was (at any time) in force:
    - (i) an order determining that the first person or the second person is or was to live with the other of those persons, or is or was to have custody or guardianship of the other of those persons;
    - (ii) an order providing for contact between the first person and the second person, or for the first person or the second person to have a right of access to the other of those persons; or
  - (h) the first person ordinarily or regularly resides or resided with the second person, or with another member of the family of the second person; or
  - (i) the first person is or has been a member of the family of a child of the second person.
- (1AC) For the purposes of subsection (1AB), a *relative* of a person is:
- (a) a father, mother, grandfather, grandmother, step-father or step-mother of the person; or
  - (b) a son, daughter, grandson, grand-daughter, step-son or step-daughter of the person; or
  - (c) a brother, sister, half-brother, half-sister, step-brother or step-sister of the person; or
  - (d) an uncle or aunt of the person; or
  - (e) a nephew or niece of the person; or
  - (f) a cousin of the person; or
  - (g) if the person is or was married—in addition to paragraphs (a) to (f), a person who is or was a relative, of the kind described in any of those paragraphs, of the person's spouse; or
  - (h) if the person is or was in a de facto relationship with another person—in addition to paragraphs (a) to (f), a person who would be a relative of a kind described in any of those



paragraphs if the persons in that de facto relationship were or had been married to each other.

**55 Section 60D**

Repeal the section.

**56 Subsection 65R(1)**

Omit "(1)".

**57 Subsection 65R(2)**

Repeal the subsection.

**58 Section 67H**

Repeal the section.

**59 Section 70B**

Repeal the section.

**60 Section 70F**

Repeal the section.

**61 Subsection 70L(1) (paragraph (b) of the definition of *Australian child order*)**

Omit "as defined in section 70B".

**62 Subsection 92(1A)**

Omit "(within the meaning of Part VII)".

**63 Paragraph 109A(1)(a)**

Omit "(within the meaning of Division 13A of Part VII)".

**64 Subsection 112AP(9) (definition of *order under this Act*)**

Omit "within the meaning of Division 13A of Part VII".

## Part 2—Savings

### 65 Definitions

In this Part:

**commencement** means the commencement of this Schedule.

**new Act** means the *Family Law Act 1975* as in force after commencement.

**old Act** means the *Family Law Act 1975* as in force immediately before commencement.

### 66 Saving of regulations

Despite the repeal of a provision of the old Act specified in the following table, regulations that:

- (a) were made for the purposes of that provision of the old Act; and
- (b) were in force immediately before commencement;

continue to have effect on and after commencement as if those regulations had been made for the purposes of the corresponding provision of the new Act that is specified in the table in relation to that provision of the old Act:

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Saving regulations made under provisions of old Act		
Item	Provision of old Act	Corresponding provision of new Act
1	definition of <i>child welfare law</i> in subsection 60D(1)	definition of <i>child welfare law</i> in subsection 4(1)
2	definition of <i>child welfare officer</i> in subsection 60D(1)	definition of <i>child welfare officer</i> in subsection 4(1)
3	definition of <i>family violence order</i> in subsection 60D(1)	definition of <i>family violence order</i> in subsection 4(1)
4	definition of <i>parentage testing procedure</i> in subsection 60D(1)	definition of <i>parentage testing procedure</i> in subsection 4(1)

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<b>Saving regulations made under provisions of old Act</b>		
<b>Item</b>	<b>Provision of old Act</b>	<b>Corresponding provision of new Act</b>
5	paragraph (a) or (b) of the definition of <i>prescribed child welfare authority</i> in subsection 60D(1)	paragraph (a) or (b) of the definition of <i>prescribed child welfare authority</i> in subsection 4(1)
6	definition of <i>principal officer</i> in section 67H	definition of <i>principal officer</i> in subsection 4(1)

## Schedule 10—Orders of non-judicial officers of State courts of summary jurisdiction

### *Family Law Act 1975*

#### 1 At the end of subsection 39(6)

Add:

Note: Under section 39A of the *Judiciary Act 1903*, the jurisdiction conferred by this subsection on a State court of summary jurisdiction may only be exercised by certain judicial officers of the court.

#### 2 At the end of subsection 69J(1)

Add:

Note: Under section 39A of the *Judiciary Act 1903*, the jurisdiction conferred by this subsection on a State court of summary jurisdiction may only be exercised by certain judicial officers of the court.

#### 3 After Part XIVA

Insert:

## Part XIVB—Orders of non-judicial officers of State courts of summary jurisdiction

### 114MG Definitions

(1) In this Part:

*federal family jurisdiction* means jurisdiction in relation to matters arising under this Act.

*ineffective order* has the meaning given by section 114MH.

*liability* includes a duty or obligation.

*non-judicial officer* of a court of summary jurisdiction of a State means an officer of the court who is not a magistrate, or arbitrator,

of the kind referred to in paragraph 39(2)(d) of the *Judiciary Act 1903*.

*proceedings* includes an initiating application.

*proceedings for the order* in relation to an ineffective order means the proceedings in or in relation to which the order was purportedly made.

*right* includes an interest or status.

- (2) A reference in this Part to an ineffective order of a court of summary jurisdiction is a reference to an ineffective order that a non-judicial officer of that court purported to make.

#### **114MH Meaning of *ineffective order***

- (1) A reference in this Part to an *ineffective order* is a reference to a purported order described in subsection (2). This subsection has effect subject to subsection (3) as it affects the meaning of a reference to an ineffective order in the context of a particular case.
- (2) An order that a non-judicial officer of a court of summary jurisdiction of a State has purported to make is an *ineffective order* if:
- (a) the officer purported to make the order before the commencement of this Part; and
  - (b) the order was made in the exercise, or purported exercise, of the court's federal family jurisdiction.
- (3) If a court, or a non-judicial officer of a court of summary jurisdiction of a State, has purported to affirm, vary, revoke, set aside, reverse, revive or suspend an ineffective order, a reference in this Part to the ineffective order is a reference to the order in the form in which, and to the extent to which, it purports or purported to have effect from time to time.

#### **114MI Rights and liabilities declared in certain cases**

The rights and liabilities of all persons are, by force of this section, declared to be, and always to have been, the same as if each ineffective order of a court of summary jurisdiction had been an

order made by that court, in the exercise of its federal family jurisdiction, in or in relation to the proceedings for the order.

**114MJ Effect of declared rights and liabilities**

- (1) A right or liability conferred, imposed or affected by section 114MI in relation to an ineffective order of a court of summary jurisdiction:

- (a) is exercisable or enforceable; and
- (b) is to be regarded as always having been exercisable or enforceable;

as if it were a right or liability conferred, imposed or affected by an order made by that court, in the exercise of its federal family jurisdiction, in or in relation to the proceedings for the order.

- (2) The rights and liabilities conferred, imposed or affected by section 114MI include (but are not limited to) the right of a person who was a party to the proceeding or purported proceeding in which the ineffective order was made to appeal against that order.
- (3) In this section:

*enforceable* includes able to be dealt with by proceedings under:

- (a) Division 13A of Part VII; or
- (b) Division 2 of Part XIII A;

relating to a contravention of an order.

**114MK Effect of things done or omitted to be done under or in relation to rights and liabilities**

- (1) Any act or thing done or omitted to be done before or after the commencement of this Part under or in relation to a right or liability conferred, imposed or affected by section 114MI in relation to an ineffective order of a court of summary jurisdiction:

- (a) has the same effect, and gives rise to the same consequences, for the purposes of any written or other law; and
- (b) is to be regarded as always having had the same effect, and given rise to the same consequences, for the purposes of any written or other law;

as if it were done or omitted to be done to give effect to, or under the authority of, or in reliance on, an order made by that court, in

the exercise of its federal family jurisdiction, in or in relation to the proceedings for the order.

- (2) Subject to subsection (3), for the purposes of an enforcement law (see subsection (4)), any act or thing done or omitted to be done before or after the commencement of this Part:
  - (a) gives rise to the same consequences; and
  - (b) is to be regarded as always having given rise to the same consequences;as if each ineffective order of a court of summary jurisdiction were an order made by that court, in the exercise of its federal family jurisdiction, in or in relation to the proceedings for the order.
- (3) If, before the commencement of this Part, a court purported to convict a person of an offence against an enforcement law on the basis that an ineffective order was a valid order, nothing in this section is to be taken to validate or confirm that conviction.
- (4) In this section:

***enforcement law*** means a provision of a law of the Commonwealth, other than a law relating to contempt of court, that sets out a consequence for a person if the person:

- (a) contravenes; or
- (b) acts in a specified way while there is in force; an order, or a particular kind of order, made by a court exercising federal family jurisdiction (whether or not the provision also applies to other orders of courts).

#### **114ML Powers of courts in relation to declared rights and liabilities**

- (1) A court may vary, revoke, set aside, revive or suspend a right or liability conferred, imposed or affected by section 114MI in relation to an ineffective order of a court of summary jurisdiction as if it were a right or liability conferred, imposed or affected by an order made by that court of summary jurisdiction, in the exercise of its federal family jurisdiction, in or in relation to the proceedings for the order.
- (2) In addition to its powers under subsection (1), a court (the ***review court***) also has power to make an order achieving any other result that could have been achieved if:

- (a) the ineffective order had been an order made by a court of summary jurisdiction, in the exercise of its federal family jurisdiction, in or in relation to the proceedings for the order; and
- (b) the review court had been considering whether:
  - (i) to vary, revoke, set aside, revive or suspend that order; or
  - (ii) to extend the time for the doing of anything in relation to the proceedings for the order; or
  - (iii) to grant a stay of the proceedings for the order.

### **114MM Proceedings for contempt**

If (whether before, at or after the commencement of this Part) a person has:

- (a) interfered with a right conferred or affected by section 114MI in relation to an ineffective order of a court of summary jurisdiction; or
- (b) failed to satisfy or comply with a liability imposed or affected by section 114MI in relation to an ineffective order of a court of summary jurisdiction;

the interference or failure is, and is taken always to have been, a matter that can be dealt with in the same manner as if the interference or failure had been in relation to a right conferred or affected, or a liability imposed or affected, by a valid judgment of that court.

### **114MN Evidence**

The court record, or a copy of the court record, of an ineffective order may be adduced in evidence to show the existence, nature and extent of each right or liability conferred, imposed or affected by section 114MI.

### **114MO Part does not apply to certain orders**

Nothing in this Part applies to an order declared to be invalid by a court before the commencement of this Part.



### **114MP Jurisdiction of courts**

- (1) Subject to subsection (3):
  - (a) jurisdiction is conferred on the Family Court and the Federal Magistrates Court; and
  - (b) the Family Court of a State is invested with federal jurisdiction;with respect to matters arising under this Part.
- (2) Subject to subsection (3), each court of summary jurisdiction of each State is invested with federal jurisdiction, and jurisdiction is conferred on each court of summary jurisdiction of each Territory, with respect to matters arising under this Part.
- (3) A court has jurisdiction in respect of a matter arising under this Part in relation to an ineffective order that relates to a matter arising under this Act (the *initial matter*) only if the court has jurisdiction in respect of the initial matter. The court's jurisdiction under this Part is subject to the same conditions and limitations as would apply to it in dealing with the initial matter.

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*[Minister's second reading speech made in—  
House of Representatives on 8 December 2005  
Senate on 27 March 2006]*

(196/05)

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