



Family Law Amendment Act 2024

No. 118, 2024

**An Act to amend legislation relating to family law,
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
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No. 118, 2024

An Act to amend legislation relating to family law, and for related purposes

[Assented to 10 December 2024]

The Parliament of Australia enacts:

1 Short title

This Act is the *Family Law Amendment Act 2024*.

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
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column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 December 2024
2. Schedule 1, Part 1, Division 1	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	10 June 2025
3. Schedule 1, Part 1, Division 2	Immediately after the commencement of the provisions covered by table item 2.	10 June 2025
4. Schedule 1, Part 1, Division 3	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	10 June 2025
5. Schedule 1, Parts 2 and 3	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	10 June 2025
6. Schedule 2	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	10 June 2025
7A. Schedule 3, Part 1A	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	10 June 2025
7. Schedule 3, Part 1	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	10 June 2025
8A. Schedule 3, Part 2	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	10 June 2025
8. Schedule 3, Parts 3 and 4	The day after this Act receives the Royal Assent.	11 December 2024
9. Schedule 3, Part 5, Division 1	The day after the end of the period of 6 months beginning on the day this Act	10 June 2025

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	receives the Royal Assent.	
11. Schedule 4, Part 1, Divisions 1 to 3	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	10 June 2025
12. Schedule 4, Part 1, Division 4	Immediately after the commencement of the provisions covered by table item 5.	10 June 2025
13. Schedule 4, Parts 2 and 3	The day after this Act receives the Royal Assent.	11 December 2024
13A. Schedule 4, Part 4	The day after this Act receives the Royal Assent.	11 December 2024
14. Schedule 5	The day after this Act receives the Royal Assent.	11 December 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation 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—Property reforms

Part 1—Property framework

Division 1—Main property framework amendments

Family Law Act 1975

1 Subsection 4(1)

Insert:

companion animal means an animal kept by the parties to a marriage or either of them, or the parties to a de facto relationship or either of them, primarily for the purpose of companionship, but does not include:

- (a) an assistance animal within the meaning of the *Disability Discrimination Act 1992*; or
- (b) an animal kept as part of a business; or
- (c) an animal kept for agricultural purposes; or
- (d) an animal kept for use in laboratory tests or experiments.

2 Paragraphs 4AB(2)(g) and (h)

Repeal the paragraphs, substitute:

- (g) economic or financial abuse; or

3 After subsection 4AB(2)

Insert:

(2A) For the purposes of paragraph (2)(g), examples of behaviour that might constitute economic or financial abuse of a family member include (but are not limited to) the following:

- (a) unreasonably denying the family member the financial autonomy that the family member would otherwise have had, such as by:
 - (i) forcibly controlling the family member's money or assets, including superannuation; or
 - (ii) sabotaging the family member's employment or income or potential employment or income; or

- (iii) forcing the family member to take on a financial or legal liability, or status; or
- (iv) forcibly or without the family member's knowledge, accumulating debt in the family member's name;
- (b) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or the family member's child (including at a time when the family member is entirely or predominantly dependent on the person for financial support);
- (c) coercing a family member (including by use of threats, physical abuse or emotional or psychological abuse):
 - (i) to give or seek money, assets or other items as dowry; or
 - (ii) to do or agree to things in connection with a practice of dowry;
- (d) hiding or falsely denying things done or agreed to by the family member, including hiding or falsely denying the receipt of money, assets or other items, in connection with a practice of dowry.

4 Paragraph 72(1)(a)

Omit "and control".

5 At the end of paragraph 72(1)(a)

Add "or".

6 Before paragraph 75(2)(a)

Insert:

- (aa) the effect of any family violence to which one party has subjected or exposed the other party, including on any of the matters mentioned elsewhere in this subsection; and

7 Paragraph 75(2)(c)

Repeal the paragraph, substitute:

- (c) the extent to which either party has the care of a child of the marriage who has not attained the age of 18 years, including the need of either party to provide appropriate housing for such a child; and

8 Paragraph 75(2)(o)

Repeal the paragraph.

9 At the end of subsection 75(2)

Add:

; and (r) any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

10 Before subsection 79(1)

Insert:

Orders in property settlement proceedings

11 Subsection 79(1)

After “the court may”, insert “, subject to subsection (6),”.

12 At the end of subsection 79(1)

Add:

Note: Subsection (6) relates to property that is a companion animal.

13 Subsections 79(1A) to (1C)

Repeal the subsections.

14 Subsection 79(2)

Omit “shall”, substitute “must”.

15 After subsection 79(2)

Insert:

- (3) In considering what order (if any) should be made under this section in property settlement proceedings, the court:
- (a) is to identify:
 - (i) the existing legal and equitable rights and interests in any property of the parties to the marriage or either of them; and
 - (ii) the existing liabilities of the parties to the marriage or either of them; and

- (b) is to take into account (except for the purpose of making an order with respect to the ownership of property that is a companion animal):
- (i) the considerations set out in subsection (4) (considerations relating to contributions); and
 - (ii) the considerations set out in subsection (5) (considerations relating to current and future circumstances).

Note: See subsections (6) and (7) in relation to orders with respect to property that is a companion animal.

Considerations relating to contributions

16 Subsection 79(4)

Omit “In considering what order (if any) should be made under this section in property settlement proceedings, the court shall take into account:”, substitute “For the purposes of subparagraph (3)(b)(i), the court is to take into account the following considerations, so far as they are relevant:”.

17 Paragraphs 79(4)(a) and (b)

Omit “them; and”, substitute “them;”.

18 Paragraph 79(4)(c)

Omit “parent; and”, substitute “parent;”.

19 After paragraph 79(4)(c)

Insert:

- (ca) the effect of any family violence, to which one party to the marriage has subjected or exposed the other party, on the ability of a party to the marriage to make the kind of contributions referred to in paragraphs (a), (b) and (c);

20 Paragraph 79(4)(d)

Omit “and”.

21 Paragraph 79(4)(e)

Repeal the paragraph.

22 Paragraph 79(4)(f)

Omit “and”.

23 Paragraph 79(4)(g)

Omit “, is to provide, or might be liable to provide in the future,”.

24 After subsection 79(4)

Insert:

Considerations relating to current and future circumstances

- (5) For the purposes of subparagraph (3)(b)(ii), the court is to take into account the following considerations, so far as they are relevant:
- (a) the effect of any family violence, to which one party to the marriage has subjected or exposed the other party, on the current and future circumstances of the other party, including on any of the matters mentioned elsewhere in this subsection;
 - (b) the age and state of health of each of the parties to the marriage;
 - (c) the income, property and financial resources of each of the parties to the marriage and the physical and mental capacity of each of them for appropriate gainful employment;
 - (d) the effect of any material wastage, caused intentionally or recklessly by a party to the marriage, of property or financial resources of either of the parties to the marriage or both of them;
 - (e) any liabilities incurred by either of the parties to the marriage or both of them, including the nature of the liabilities and the circumstances relating to them;
 - (f) the extent to which either party to the marriage has the care of a child of the marriage who has not attained the age of 18 years, including the need of either party to provide appropriate housing for such a child;
 - (g) commitments of each of the parties to the marriage that are necessary to enable the party to support themselves and any child or other person that the party has a duty to maintain;
 - (h) the responsibilities of either party to the marriage to support any other person;

- (i) the eligibility of either party to the marriage for a pension, allowance or benefit under:
 - (i) any law of the Commonwealth, of a State or Territory or of another country; or
 - (ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia;
- (j) if either party to the marriage is eligible for a pension, allowance or benefit as mentioned in paragraph (i)—the rate at which it is being paid to the party;
- (k) if the parties to the marriage have separated or divorced, a standard of living that in all the circumstances is reasonable;
- (l) the extent to which an alteration of the interests of the parties to the marriage in any property would enable a party to undertake education or establish a business or otherwise obtain an adequate income;
- (m) the effect of any proposed order on the ability of a creditor of a party to the marriage to recover the creditor's debt, so far as that effect is relevant;
- (n) the extent to which each party to the marriage has contributed to the income, earning capacity, property and financial resources of the other party;
- (o) the duration of the marriage and the extent to which it has affected the earning capacity of each party to the marriage;
- (p) the need to protect a party to the marriage who wishes to continue that party's role as a parent;
- (q) if either party to the marriage is cohabiting with another person—the financial circumstances relating to the cohabitation;
- (r) the terms of any order or declaration made, or proposed to be made, under Part VIIIAB in relation to:
 - (i) a party to the marriage; or
 - (ii) a person who is a party to a de facto relationship with a party to the marriage; or
 - (iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or

- (iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii);
- (s) any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage is to provide, or might be liable to provide in the future, for a child of the marriage;
- (t) the terms of any financial agreement that is binding on the parties to the marriage;
- (u) the terms of any Part VIIIAB financial agreement that is binding on a party to the marriage;
- (v) any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

Considerations relating to companion animals

- (6) In property settlement proceedings, so far as they are with respect to property that is a companion animal, the court may make an order (including a consent order or an interim order):
 - (a) that only one party to the marriage, or only one person who has been joined as a party to the proceedings, is to have ownership of the companion animal; or
 - (ab) that the companion animal be transferred to another person who has consented to the transfer; or
 - (b) that the companion animal be sold.

The court may not make any other kind of order under this section with respect to the ownership of the companion animal.

Note: For *companion animal*, see subsection 4(1).

- (7) In considering what order (if any) should be made under this section with respect to the ownership of property that is a companion animal, the court is to take into account the following considerations, so far as they are relevant:
 - (a) the circumstances in which the companion animal was acquired;
 - (b) who has ownership or possession of the companion animal;
 - (c) the extent to which each party cared for, and paid for the maintenance of, the companion animal;
 - (d) any family violence to which one party has subjected or exposed the other party;

- (e) any history of actual or threatened cruelty or abuse by a party towards the companion animal;
- (f) any attachment by a party, or a child of the marriage, to the companion animal;
- (g) the demonstrated ability of each party to care for and maintain the companion animal in the future, without support or involvement from the other party;
- (h) any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

79AA Other matters in relation to alteration of property interests

- (1) The court must not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

Enforcement of order after death of party

- (1A) An order made under section 79 in property settlement proceedings may, after the death of a party to the marriage, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

Adjournment of property settlement proceedings

- (2) The court may (subject to subsection (2A)) adjourn property settlement proceedings on the terms and conditions the court considers appropriate, for the period the court considers necessary to enable the parties to the marriage to consider the likely effects (if any) of an order under section 79 on the marriage or the children of the marriage.
- (2A) Subsection (2) does not apply if the parties to the marriage are:
 - (a) parties to concurrent, pending or completed divorce or validity of marriage proceedings; or
 - (b) parties to a marriage who have divorced under the law of an overseas country, if that divorce is recognised as valid in Australia under section 104; or
 - (c) parties to a marriage that has been annulled under the law of an overseas country, if that annulment is recognised as valid in Australia under section 104; or

- (d) parties to a marriage who have been granted a legal separation under the law of an overseas country, if that legal separation is recognised as valid in Australia under section 104.
- (3) Nothing in subsection (2) limits any other power of the court to adjourn property settlement proceedings.
- (4) A party to property settlement proceedings that have been adjourned under subsection (2) may apply to the court for the hearing of the proceedings to be continued if:
 - (a) the period of the adjournment has not expired; and
 - (b) any of the following subparagraphs apply:
 - (i) one or both of the parties to the marriage institutes divorce or validity of marriage proceedings;
 - (ii) the parties to the marriage have divorced under the law of an overseas country and the divorce is recognised as valid in Australia under section 104;
 - (iii) the marriage is annulled under the law of an overseas country and the annulment is recognised as valid in Australia under section 104;
 - (iv) the parties to the marriage are granted a legal separation under the law of an overseas country and the legal separation is recognised as valid in Australia under section 104.

Likely significant change in financial circumstances

25 Subparagraph 90SF(1)(b)(i)

Omit “and control”.

26 Before paragraph 90SF(3)(a)

Insert:

- (aa) the effect of any family violence, to which one party has subjected or exposed the other party, including on any of the matters mentioned elsewhere in this subsection; and

27 Paragraph 90SF(3)(c)

Repeal the paragraph, substitute:

- (c) the extent to which either party has the care of a child of the subject de facto relationship who has not attained the age of 18 years, including the need of either party to provide appropriate housing for such a child; and

28 Paragraph 90SF(3)(k)

Before “de facto”, insert “subject”.

29 Paragraph 90SF(3)(r)

Repeal the paragraph.

30 At the end of subsection 90SF(3)

Add:

- ; and (u) any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

31 Before subsection 90SM(1)

Insert:

Orders in property settlement proceedings

32 Subsection 90SM(1)

After “the court may”, insert “, subject to subsection (6),”.

33 At the end of subsection 90SM(1)

Add:

Note 4: Subsection (6) relates to property that is a companion animal.

34 Subsections 90SM(2) and (3)

Repeal the subsections, substitute:

- (2) The court must not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.
- (3) In considering what order (if any) should be made under this section in property settlement proceedings, the court:
- (a) is to identify:

- (i) the existing legal and equitable rights and interests in any property of the parties to the de facto relationship or either of them; and
 - (ii) the existing liabilities of the parties to the de facto relationship or either of them; and
- (b) is to take into account (except for the purpose of making an order with respect to the ownership of property that is a companion animal):
- (i) the considerations set out in subsection (4) (considerations relating to contributions); and
 - (ii) the considerations set out in subsection (5) (considerations relating to current and future circumstances).

Note: See subsections (6) and (7) in relation to orders with respect to property that is a companion animal.

Considerations relating to contributions

35 Subsection 90SM(4)

Omit “In considering what order (if any) should be made under this section in property settlement proceedings, the court must take into account:”, substitute “For the purposes of subparagraph (3)(b)(i), the court is to take into account the following considerations, so far as they are relevant:”.

36 Paragraphs 90SM(4)(a) and (b)

Omit “them; and”, substitute “them;”.

37 Paragraph 90SM(4)(c)

Omit “parent; and”, substitute “parent;”.

38 After paragraph 90SM(4)(c)

Insert:

- (ca) the effect of any family violence, to which one party to the de facto relationship has subjected or exposed the other party, on the ability of a party to the de facto relationship to make the kind of contributions referred to in paragraphs (a), (b) and (c);

39 Paragraph 90SM(4)(d)

Omit “and”.

40 Paragraph 90SM(4)(e)

Repeal the paragraph.

41 Paragraph 90SM(4)(f)

Omit “and”.

42 Paragraph 90SM(4)(g)

Omit “, is to provide, or might be liable to provide in the future,”.

43 After subsection 90SM(4)

Insert:

Considerations relating to current and future circumstances

- (5) For the purposes of subparagraph (3)(b)(ii), the court is to take into account the following considerations, so far as they are relevant:
- (a) the effect of any family violence, to which one party to the de facto relationship (the *subject de facto relationship*) has subjected or exposed the other party, on the current and future circumstances of the other party, including on any of the matters mentioned elsewhere in this subsection;
 - (b) the age and state of health of each of the parties to the subject de facto relationship;
 - (c) the income, property and financial resources of each of the parties to the subject de facto relationship and the physical and mental capacity of each of them for appropriate gainful employment;
 - (d) the effect of any material wastage, caused intentionally or recklessly by a party to the subject de facto relationship, of property or financial resources of either of the parties to the subject de facto relationship or both of them;
 - (e) any liabilities incurred by either of the parties to the subject de facto relationship or both of them, including the nature of the liabilities and the circumstances relating to them;
 - (f) the extent to which either party to the subject de facto relationship has the care of a child of the de facto relationship

who has not attained the age of 18 years, including the need of either party to provide appropriate housing for such a child;

- (g) commitments of each of the parties to the subject de facto relationship that are necessary to enable the party to support themselves and any child or other person that the party has a duty to maintain;
 - (h) the responsibilities of either party to the subject de facto relationship to support any other person;
 - (i) the eligibility of either party to the subject de facto relationship for a pension, allowance or benefit under:
 - (i) any law of the Commonwealth, of a State or Territory or of another country; or
 - (ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia;
 - (j) if either party to the subject de facto relationship is eligible for a pension, allowance or benefit as mentioned in paragraph (i)—the rate at which it is being paid to the party;
 - (k) a standard of living that in all the circumstances is reasonable;
 - (l) the extent to which an alteration of the interests of the parties to the subject de facto relationship in any property would enable a party to undertake education or establish a business or otherwise obtain an adequate income;
 - (m) the effect of any proposed order on the ability of a creditor of a party to the subject de facto relationship to recover the creditor's debt, so far as that effect is relevant;
 - (n) the extent to which each party to the subject de facto relationship has contributed to the income, earning capacity, property and financial resources of the other party;
 - (o) the duration of the subject de facto relationship and the extent to which it has affected the earning capacity of each party to the subject de facto relationship;
 - (p) the need to protect a party to the de facto relationship who wishes to continue that party's role as a parent;
 - (q) if either party to the subject de facto relationship is cohabiting with another person—the financial circumstances relating to the cohabitation;
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- (r) the terms of any order or declaration made, or proposed to be made, under this Part in relation to:
 - (i) a party to the subject de facto relationship (in relation to another de facto relationship); or
 - (ii) a person who is a party to another de facto relationship with a party to the subject de facto relationship; or
 - (iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or
 - (iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii);
- (s) the terms of any order or declaration made, or proposed to be made, under Part VIII in relation to:
 - (i) a party to the subject de facto relationship; or
 - (ii) a person who is party to a marriage with a party to the subject de facto relationship; or
 - (iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or
 - (iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii);
- (t) any child support under the *Child Support (Assessment) Act 1989* that a party to the subject de facto relationship is to provide, or might be liable to provide in the future, for a child of the subject de facto relationship;
- (u) the terms of any Part VIIIAB financial agreement that is binding on either or both of the parties to the subject de facto relationship;
- (v) the terms of any financial agreement that is binding on a party to the subject de facto relationship;
- (w) any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

Considerations relating to companion animals

- (6) In property settlement proceedings, so far as they are with respect to property that is a companion animal, the court may make an order (including a consent order or an interim order):

- (a) that only one party to the de facto relationship, or only one person who has been joined as a party to the proceedings, is to have ownership of the companion animal; or
- (ab) that the companion animal be transferred to another person who has consented to the transfer; or
- (b) that the companion animal be sold.

The court may not make any other kind of order under this section with respect to the ownership of the companion animal.

Note: For *companion animal*, see subsection 4(1).

- (7) In considering what order (if any) should be made under this section with respect to the ownership of property that is a companion animal, the court is to take into account the following considerations, so far as they are relevant:
 - (a) the circumstances in which the companion animal was acquired;
 - (b) who has ownership or possession of the companion animal;
 - (c) the extent to which each party cared for, and paid for the maintenance of, the companion animal;
 - (d) any family violence to which one party has subjected or exposed the other party;
 - (e) any history of actual or threatened cruelty or abuse by a party towards the companion animal;
 - (f) any attachment by a party, or a child of the de facto relationship, to the companion animal;
 - (g) the demonstrated ability of each party to care for and maintain the companion animal in the future, without support or involvement from the other party;
 - (h) any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

90SMA Other matters in relation to alteration of property interests

- (1) The court must not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

Enforcement of order after death of party

- (2) If a party to the de facto relationship dies after the breakdown of the de facto relationship, an order made under section 90SM in property settlement proceedings may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

Likely significant change in financial circumstances

43A After paragraph 90YZD(4)(c)

Insert:

- (ca) the effect of any family violence, to which one party to the de facto relationship has subjected or exposed the other party, on the ability of a party to the de facto relationship to make the kind of contributions referred to in paragraphs (a), (b) and (c);

44 Subparagraph 90YZD(4)(e)(iii)

Repeal the subparagraph, substitute:

- (iii) the extent to which either party has the care of a child of the subject de facto relationship who has not attained the age of 18 years, including the need of either party to provide appropriate housing for such a child;

44A Subparagraph 90YZD(4)(e)(xi)

Omit “and”.

44B At the end of paragraph 90YZD(4)(e)

Add:

- (xii) the effect of any family violence, to which one party to the subject de facto relationship has subjected or exposed the other party, on the current and future circumstances of the other party, including on any of the matters listed in this paragraph or any of paragraphs (f) to (n);
- (xiii) the effect of any material wastage, caused intentionally or recklessly by a party to the subject de facto relationship, of property or financial resources of either

- of the parties to the subject de facto relationship or both of them;
- (xiv) any liabilities incurred by either of the parties to the subject de facto relationship or both of them, including the nature of the liabilities and the circumstances relating to them; and

Division 2—Consequential property framework amendments

Family Law Act 1975

45 Before subsection 79AA(8)

Insert:

Death of party before property settlement proceedings complete

46 Before subsection 79AA(9)

Insert:

Attendance of parties at conference etc. before orders made

47 Subsection 79AA(9)

Omit “this section”, substitute “section 79”.

48 Before subsection 79AA(10)

Insert:

Creditors etc. entitled to become party to proceedings

49 Subsections 79AA(10) and (10B)

Omit “this section”, substitute “section 79”.

50 Before subsection 79AA(11)

Insert:

Bankruptcy trustee to become party to proceedings on application

51 Paragraphs 79AA(11)(a) and (d)

Omit “this section”, substitute “section 79”.

52 Before subsection 79AA(14)

Insert:

Trustee of insolvency agreement to become party to proceedings on application

53 Paragraphs 79AA(14)(a) and (d)

Omit “this section”, substitute “section 79”.

54 Before subsection 79AA(17)

Insert:

When application is taken to be finally determined for purposes of subsections (11) and (14)

55 Subsection 79AA(17)

Omit “this section”, substitute “section 79”.

56 Subsection 85A(2)

Omit “subsection 79(4)”, substitute “subsections 79(4), (5) and (7)”.

57 Before subsection 90SMA(8)

Insert:

Death of party before property settlement proceedings complete

58 Before subsection 90SMA(9)

Insert:

Attendance of parties at conference etc. before orders made

59 Subsection 90SMA(9)

Omit “this section”, substitute “section 90SM”.

60 Before subsection 90SMA(10)

Insert:

Creditors etc. entitled to become party to proceedings

61 Subsections 90SMA(10), (12) and (13)

Omit “this section”, substitute “section 90SM”.

62 Before subsection 90SMA(14)

Insert:

Bankruptcy trustee to become party to proceedings on application

63 Paragraphs 90SMA(14)(a) and (d)

Omit “this section”, substitute “section 90SM”.

64 Before subsection 90SMA(17)

Insert:

Trustee of insolvency agreement to become party to proceedings on application

65 Paragraphs 90SMA(17)(a) and (d)

Omit “this section”, substitute “section 90SM”.

66 Before subsection 90SMA(20)

Insert:

When application is taken to be finally determined for the purposes of subsections (14) and (17)

67 Subsection 90SMA(20)

Omit “this section”, substitute “section 90SM”.

Division 3—Application of property framework amendments

68 Application provision

The amendments of the *Family Law Act 1975* made by Divisions 1 and 2 of this Part apply in relation to the following proceedings:

- (a) proceedings instituted on or after the day this item commences;
- (b) proceedings instituted before, and not finally determined before, the day this item commences, other than proceedings in respect of which a final hearing has commenced before that day.

Part 2—Principles for conducting property or other non-child-related proceedings

Division 1—Main amendments

Family Law Act 1975

69 Subsection 4(1) (definition of *child-related proceedings*)

Omit “section 69ZM”, substitute “subsection 102ND(6)”.

70 Subsection 4(1)

Insert:

property or other non-child-related proceedings has the meaning given by subsection 102ND(7).

71 Section 60B (note)

Omit “Note”, substitute “Note 1”.

72 At the end of section 60B

Add:

Note 2: Division 4 of Part XI sets out principles for conducting child-related proceedings under this Part. The court must give effect to the principles in performing duties and exercising powers in relation to child-related proceedings or making other decisions about the conduct of child-related proceedings. Division 4 of Part XI also deals with matters relating to evidence in child-related proceedings.

73 Section 60C (table item 12A)

Repeal the item.

74 At the end of section 69A

Add:

Note: Division 4 of Part XI sets out principles for conducting child-related proceedings under this Part. The court must give effect to the principles in performing duties and exercising powers in relation to child-related proceedings or making other decisions about the conduct

of child-related proceedings. Division 4 of Part XI also deals with matters relating to evidence in child-related proceedings.

75 Division 12A of Part VII

Repeal the Division.

76 Part XI (note to Part heading)

Repeal the note.

77 Subsection 102A(5) (note)

Omit “69ZV”, substitute “102NM”.

78 At the end of Part XI

Add:

Division 4—Principles for conducting child-related proceedings and property or other proceedings

Subdivision A—Proceedings to which this Division applies

102ND Proceedings to which this Division applies

- (1) This Division applies to proceedings that are wholly under Part VII.
- (2) This Division also applies to proceedings between parties that are partly under Part VII:
 - (a) to the extent the proceedings are under Part VII; and
 - (b) to the extent the proceedings are not under Part VII if:
 - (i) the parties consent to this Division applying to the proceedings to the extent the proceedings are not under Part VII; or
 - (ii) the court orders that this Division applies to the proceedings to the extent the proceedings are not under Part VII (whether or not the parties consent).
- (3) This Division also applies to proceedings between parties that are not to any extent under Part VII if:

Schedule 1 Property reforms

Part 2 Principles for conducting property or other non-child-related proceedings

- (a) the parties consent to this Division applying to the proceedings; or
 - (b) the court orders that this Division applies to the proceedings (whether or not the parties consent).
- (4) In deciding whether to make an order under subparagraph (2)(b)(ii), the court must have regard to the principles in section 102NE.
- (5) In deciding whether to make an order under paragraph (3)(b), the court must have regard to the principles in section 102NE (other than subsection (3), paragraph (5)(a) and subsection (6) of that section).
- (6) Proceedings to which this Division applies under subsection (1) or (2) are *child-related proceedings*.
- (7) Proceedings to which this Division applies under subsection (3) are *property or other non-child-related proceedings*.
- (8) Consent given for the purposes of subparagraph (2)(b)(i) or paragraph (3)(a) must be:
- (a) free from coercion; and
 - (b) given in the form prescribed by the applicable Rules of Court.
- (9) A party to proceedings may, with the leave of the court, revoke a consent given for the purposes of subparagraph (2)(b)(i) or paragraph (3)(a).

Subdivision B—Principles for conducting child-related proceedings and property or other proceedings

102NE Principles for conducting child-related proceedings and property or other 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 or property or other non-child-related proceedings; and

- (b) in making other decisions about the conduct of child-related proceedings or property or other non-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 that are relevant to the particular proceedings in interpreting this Division.

Note: All the principles are relevant to child-related proceedings. The principles in subsection (3), paragraph (5)(a) and subsection (6) do not apply in relation to property or other non-child-related proceedings.

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 from being subjected to, or exposed to, abuse, neglect or family violence; 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.

102NF This Division also applies to proceedings in Chambers

The following persons, when hearing child-related proceedings or property or other non-child-related proceedings in Chambers, have all of the duties and powers that a court has under this Division:

- (a) in the case of the Federal Circuit and Family Court of Australia (Division 1)—a Judge, the Chief Executive Officer, or a Senior Registrar or Registrar of the Court;
- (b) in the case of the Federal Circuit and Family Court of Australia (Division 2)—a Judge, the Chief Executive Officer, or a Senior Registrar or Registrar of the Court;
- (c) in any other case—a Judge, Registrar or magistrate.

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

102NG 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

102NH General duties

- (1) In giving effect to the relevant principles in section 102NE, the court must:
- (a) ask each party to the proceedings whether the party considers that the party, or another party to the proceedings, has been, or is at risk of being, subjected to family violence; and

- (b) in child-related proceedings—ask each party to the proceedings whether the party considers that the child concerned has been, or is at risk of being, subjected to, or exposed to, abuse, neglect or family violence; and
 - (c) decide which of the issues in the proceedings require full investigation and hearing and which may be disposed of summarily; and
 - (d) decide the order in which the issues are to be decided; and
 - (e) give directions or make orders about the timing of steps that are to be taken in the proceedings; and
 - (f) 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
 - (g) make appropriate use of technology; and
 - (h) if the court considers it appropriate—encourage the parties to use family dispute resolution or, in child-related proceedings, family counselling; and
 - (i) deal with as many aspects of the matter as it can on a single occasion; and
 - (j) deal with the matter, where appropriate, without requiring the parties’ physical attendance at court.
- (2) Subsection (1) does not limit subsection 102NE(1).
- (3) A failure to comply with subsection (1) does not invalidate an order.

102NJ Power to make determinations, findings and orders at any stage of proceedings

- (1) If, at any time after the commencement of child-related proceedings or property or other non-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.

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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 person who exercises a power under subsection (1) in relation to proceedings is not, merely because of having exercised the power, required to be disqualified from a further hearing of the proceedings.

102NK 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, or arrange for a child to attend, appointments with a family consultant. See section 11F.

Subdivision D—Matters relating to evidence

102NL Rules of evidence not to apply unless court decides

- (1) The following provisions of the *Evidence Act 1995* do not apply to child-related proceedings or property or other non-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.

102NM Evidence of children

- (1) This section applies if the court applies the law against hearsay under subsection 102NL(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.

102NN Court's general duties and powers relating to evidence

- (1) In giving effect to the relevant principles in section 102NE, 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 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 102NJ, 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 or property or other non-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).
- (4) In proceedings under Part VII in which the court is required to regard the best interests of the child as the paramount consideration:
- (a) subsection 126K(1) of the *Evidence Act 1995* does not apply in relation to information that would:

- (i) reveal the identity of a journalist's source; or
 - (ii) enable that identity to be discovered;
- if the court considers that it is in the best interests of the child for the information to be disclosed; and
- (b) the court must not direct, under a law of a State or Territory relating to professional confidential relationship privilege specified in the regulations, that evidence not be adduced if the court considers that adducing the evidence would be in the best interests of the child.

79 Application of amendments

The amendments of the *Family Law Act 1975* made by this Division apply in relation to the following proceedings:

- (a) proceedings instituted on or after the day this Division commences;
- (b) proceedings instituted before, and not finally determined before, the day this Division commences, other than proceedings in respect of which a final hearing has commenced before that day.

Division 2—Other amendments

Evidence Act 1995

80 Subsection 190(1) (note)

Repeal the note, substitute:

Note: Matters related to evidence in child-related proceedings (within the meaning of the *Family Law Act 1975*), and property or other non-child-related proceedings (within the meaning of that Act), are dealt with by Division 4 of Part XI of that Act.

Part 3—Duty of disclosure and arbitration

Division 1—Duty of disclosure

Family Law Act 1975

81 Subsection 4(1)

Insert:

financial or property matters:

- (a) of a marriage—has the meaning given by subsection 71B(7);
or
- (b) of a de facto relationship—has the meaning given by
subsection 90RI(7).

82 At the end of section 71A

Add:

- (3) Section 71B has effect regardless of subsection (1) of this section.

83 After section 71A

Insert:

71B Duty of disclosure

Duty of disclosure in proceedings

- (1) Each party to a proceeding relating to financial or property matters of a marriage (other than proceedings on appeal) has a duty to the court and to each other party to give full and frank disclosure, in a timely manner, of all information and documents relevant to:
 - (a) for a party to the marriage—the issues in the proceeding that relate to financial or property matters of the marriage; or
 - (b) for any other party to the proceeding—so much of the party’s financial circumstances as are relevant to the issues in the proceeding that relate to financial or property matters of the marriage.

- (2) The duty under subsection (1) applies from the start of the proceeding and continues until the proceeding is finalised.

Note: Courts have a range of powers that may be exercised to impose consequences when a person fails to comply with their duty of disclosure. For example, a court might do any of the following:

- (a) take the failure into account when making an order under section 79 (alteration of property interests);
 - (b) make any orders with respect to costs or security for costs against the person that the court considers just, having regard to the failure;
 - (c) make any orders with respect to disclosure that the court considers appropriate;
 - (d) if an order made by the court is contravened—impose sanctions under section 112AD;
 - (e) punish the person under section 112AP for contempt;
 - (f) stay or dismiss all or part of the proceedings.
- (3) If a party has a litigation guardian, the duty under subsection (1) is taken to have been complied with if the litigation guardian complies with the duty to the extent they are capable of doing so.
- (4) The duty under subsection (1) does not apply to the respondent to an application that alleges a contravention of a court order or a contempt of court in relation to that application.

Duty of disclosure while preparing for proceedings

- (5) If separated parties to a marriage are preparing for a proceeding relating to financial or property matters of the marriage (other than proceedings on appeal), each party has a duty to the other party to give full and frank disclosure, in a timely manner, of all information and documents relevant to the issues in the proposed proceeding that relate to financial or property matters of the marriage.
- (6) The duty under subsection (5) applies at any time while the party is preparing for the proceeding.

Note: If proceedings are instituted, consequences, as mentioned in the note beneath subsection (2), may apply to a person who has failed to comply with their duty of disclosure under subsection (5).

Financial or property matters of the marriage

- (7) Any of the following matters, so far as they relate to a marriage, are **financial or property matters** of the marriage:
- (a) financial matters;
 - (b) matters that are or might become the subject of proceedings under any of the following provisions of this Act:
 - (i) this Part (orders with respect to spousal maintenance or the property of the parties to the marriage);
 - (ii) section 90K (orders setting aside a financial agreement or a termination agreement);
 - (iii) Part VIIIIB (orders with respect to allocation of superannuation interests);
 - (iv) section 106B (orders with respect to instruments or dispositions to defeat an existing or anticipated order in proceedings under this Act);
 - (c) matters that are or might become the subject of proceedings relating to the distribution, after the breakdown of the marriage, of any vested bankruptcy property in relation to a bankrupt party to the marriage;
 - (d) matters that are or might become the subject of proceedings under any of the following provisions of the *Child Support (Assessment) Act 1989*:
 - (i) section 116 (orders for departure from administrative assessment in special circumstances);
 - (ii) section 123 (orders for provision of child support otherwise than in form of periodic amounts paid to carer);
 - (iii) section 129 (orders modifying orders under section 123A or 124).

Relevant information and documents

- (8) A party's duty to disclose information and documents is a duty to disclose information known to the party and documents that are or have been in the possession or under the control of the party.
- (9) A party's duty to disclose information and documents includes any information or documents prescribed by the applicable Rules of Court for the purposes of the duty.
-

Note: The duty to disclose is not limited to prescribed information and documents. The applicable Rules of Court may also prescribe other matters in relation to the duty of disclosure.

Practitioners' obligation to provide information etc.

- (10) A legal practitioner or family dispute resolution practitioner who engages with a separated party to a marriage who is or might be subject to the duty in subsection (1) or (5) must:
- (a) provide the party with information about:
 - (i) the duties of disclosure under this section and explain the circumstances in which they apply; and
 - (ii) potential consequences of the party not complying with the duties; and
 - (b) encourage the party to take all necessary steps to comply with the duties.

84 After Division 1 of Part VIIIAB

Insert:

Division 1A—Duty of disclosure

90RI Duty of disclosure

Duty of disclosure in proceedings

- (1) Each party to a proceeding relating to financial or property matters of a de facto relationship (other than proceedings on appeal) has a duty to the court and to each other party to give full and frank disclosure, in a timely manner, of all information and documents relevant to:
- (a) for a party to the relationship—the issues in the proceeding that relate to financial or property matters of the relationship; or
 - (b) for any other party to the proceeding—so much of the party's financial circumstances as are relevant to the issues in the proceeding that relate to financial or property matters of the relationship.
- (2) The duty under subsection (1) applies from the start of the proceeding and continues until the proceeding is finalised.

Note: Courts have a range of powers that may be exercised to impose consequences when a person fails to comply with their duty of disclosure. For example, a court might do any of the following:

- (a) take the failure into account when making an order under section 90SM (alteration of property interests);
- (b) make any orders with respect to costs or security for costs against the person that the court considers just, having regard to the failure;
- (c) make any orders with respect to disclosure that the court considers appropriate;
- (d) if an order made by the court is contravened—impose sanctions under section 112AD;
- (e) punish the person under section 112AP for contempt;
- (f) stay or dismiss all or part of the proceedings.

- (3) If a party has a litigation guardian, the duty under subsection (1) is taken to have been complied with if the litigation guardian complies with the duty to the extent they are capable of doing so.
- (4) The duty under subsection (1) does not apply to the respondent to an application that alleges a contravention of a court order or a contempt of court in relation to that application.

Duty of disclosure while preparing for proceedings

- (5) If separated parties to a de facto relationship are preparing for a proceeding relating to financial or property matters of the relationship (other than proceedings on appeal), each party has a duty to the other party to give full and frank disclosure, in a timely manner, of all information and documents relevant to the issues in the proposed proceeding that relate to financial or property matters of the relationship.
- (6) The duty under subsection (5) applies at any time while the party is preparing for the proceeding.

Note: If proceedings are instituted, consequences, as mentioned in the note beneath subsection (2), may apply to a person who has failed to comply with their duty of disclosure under subsection (5).

Financial or property matters of the relationship

- (7) Any of the following matters, so far as they relate to a de facto relationship, are **financial or property matters** of the relationship:
 - (a) financial matters;

- (b) matters that are or might become the subject of proceedings in a de facto financial cause;
- (c) matters that are or might become the subject of proceedings under any of the following provisions of this Act:
 - (i) Division 7 of Part VII (child maintenance orders);
 - (ii) this Part (orders with respect to the maintenance of a party, or the property of the parties, to the relationship), other than Subdivision C of Division 1 (declarations about existence of de facto relationships);
 - (iii) section 90UM (orders setting aside a financial agreement or a termination agreement);
 - (iv) Part VIII B (orders with respect to allocation of superannuation interests);
 - (v) section 106B (orders with respect to instruments or dispositions to defeat an existing or anticipated order in proceedings under this Act);
- (d) matters that are or might become the subject of proceedings under any of the following provisions of the *Child Support (Assessment) Act 1989*:
 - (i) section 116 (orders for departure from administrative assessment in special circumstances);
 - (ii) section 123 (orders for provision of child support otherwise than in form of periodic amounts paid to carer);
 - (iii) section 129 (orders modifying orders under section 123A or 124).

Relevant information and documents

- (8) A party's duty to disclose information and documents is a duty to disclose information known to the party and documents that are or have been in the possession or under the control of the party.
- (9) A party's duty to disclose information and documents includes any information and documents prescribed by the applicable Rules of Court for the purposes of the duty.

Note: The duty to disclose is not limited to prescribed information and documents. The applicable Rules of Court may also prescribe other matters in relation to the duty of disclosure.

Practitioners' obligation to provide information etc.

- (10) A legal practitioner or family dispute resolution practitioner who engages with a separated party to a de facto relationship who is or might be subject to the duty in subsection (1) or (5) must:
- (a) provide the party with information about:
 - (i) the duties of disclosure under this section and explain the circumstances in which they apply; and
 - (ii) potential consequences of the party not complying with the duties; and
 - (b) encourage the party to take all necessary steps to comply with the duties.

85 At the end of section 90SA

Add:

- (4) Section 90RI has effect regardless of subsection (1) of this section.

86 After Division 1 of Part VIIC

Insert:

Division 1A—Duty of disclosure

90YJA Duty of disclosure

Duty of disclosure in proceedings

- (1) Each party to a proceeding under this Part (other than proceedings on appeal) has a duty to the court and to each other party to give full and frank disclosure, in a timely manner, of all information and documents relevant to:
- (a) for a party to the de facto relationship concerned—the issues under this Part in the proceeding; or
 - (b) for any other party to the proceeding—so much of the party's financial circumstances as are relevant to the issues under this Part in the proceeding.
- (2) The duty under subsection (1) applies from the start of the proceeding and continues until the proceeding is finalised.

Note: Courts have a range of powers that may be exercised to impose consequences when a person fails to comply with their duty of disclosure, including powers under the *Family Court Act 1997* (WA) and the Western Australian Rules of Court.

- (3) If a party has a litigation guardian, the duty under subsection (1) is taken to have been complied with if the litigation guardian complies with the duty to the extent they are capable of doing so.
- (4) The duty under subsection (1) does not apply to the respondent to an application that alleges a contravention of a court order or a contempt of court in relation to that application.

Duty of disclosure while preparing for proceedings

- (5) If separated parties to a de facto relationship are preparing for a proceeding to be brought under this Part (other than proceedings on appeal), each party has a duty to the other party to give full and frank disclosure, in a timely manner, of all information and documents relevant to the issues under this Part in the proposed proceeding.
- (6) The duty under subsection (5) applies at any time while the party is preparing for the proceeding.

Note: If proceedings are instituted, consequences, as mentioned in the note beneath subsection (2), may apply to a person who has failed to comply with their duty of disclosure under subsection (5).

Relevant information and documents

- (7) A party's duty to disclose information and documents is a duty to disclose information known to the party and documents that are or have been in the possession or under the control of the party.
- (8) The Western Australian Rules of Court may prescribe information or documents as information or documents to which the duty to disclose applies.

Note: The duty to disclose is not limited to prescribed information and documents. The Western Australian Rules of Court may also prescribe other matters in relation to the duty of disclosure.

Practitioners' obligation to provide information etc.

- (9) A legal practitioner or family dispute resolution practitioner who engages with a separated party to a de facto relationship who is or might be subject to the duty in subsection (1) or (5) must:
- (a) provide the party with information about:
 - (i) the duties of disclosure under this section and explain the circumstances in which they apply; and
 - (ii) potential consequences of the party not complying with the duties; and
 - (b) encourage the party to take all necessary steps to comply with the duties.

87 Application of amendments made by this Division

- (1) Subsections 71B(1), 90RI(1) and 90YJA(1) of the *Family Law Act 1975*, as inserted by this Division, apply in relation to proceedings instituted on or after the day this item commences.
- (2) Subsections 71B(5), 90RI(5) and 90YJA(5) of the *Family Law Act 1975*, as inserted by this Division, apply on and after the day this item commences.

Division 2—Arbitration

Family Law Act 1975

88 Subsection 4(1) (definition of *arbitration*)

Omit “section 10L”, substitute “subsection 10L(1)”.

89 Subsection 4(1)

Insert:

family law arbitration has the meaning given by subsection 10L(2).

90 Subsection 4(1)

Repeal the following definitions:

- (a) definition of *relevant property or financial arbitration*;
- (b) definition of *section 13E arbitration*.

91 Subsection 10L(2)

Repeal the subsection, substitute:

- (2) Arbitration of any of the following is *family law arbitration*, whether ordered by a court under subsection 13E(1) or not:
- (a) proceedings that are referable to arbitration within the meaning of subsection 13E(1A);
 - (b) any part of such proceedings;
 - (c) any matter arising in such proceedings;
 - (d) a dispute about a matter with respect to which such proceedings could be instituted.

92 Section 13E (heading)

Omit “Part VIII proceedings or Part VIIIAB”, substitute “certain”.

93 Subsection 13E(1)

Repeal the subsection, substitute:

- (1) A court exercising jurisdiction in proceedings that are referable to arbitration within the meaning of subsection (1A) may, with the consent of all of the parties to the proceedings, make an order referring the proceedings, or any part of them or any matter arising in them, to an arbitrator for arbitration.
- (1A) The following proceedings are referable to arbitration:
- (a) Part VIII proceedings;
 - (b) Part VIIIA proceedings;
 - (c) Part VIIIAB proceedings;
 - (d) Part VIIIB proceedings;
 - (e) Part VIIIC proceedings;
 - (f) section 106A proceedings;
 - (g) proceedings under section 106B.

94 Section 13F

Repeal the section, substitute:

13F Court may make orders in relation to family law arbitration

- (1) A person who is a party to, or an arbitrator of, family law arbitration may apply to a court that has jurisdiction under this Act for orders under subsection (3) in relation to the arbitration.
- (2) An application under subsection (1) may be made:
 - (a) whether the arbitration was ordered under subsection 13E(1) or not; and
 - (b) at any time before an award is made in the arbitration.
- (3) The court may, on application under subsection (1), make any orders the court considers appropriate:
 - (a) to facilitate the effective conduct of family law arbitration; or
 - (b) if the court is satisfied that a change in circumstances means that it is no longer appropriate for the proceedings or matter to be dealt with by arbitration—to terminate the arbitration.

95 Subsection 13G(1)

Omit “section 13E arbitration or relevant property or financial”, substitute “family law”.

96 Subsection 13H(1)

Repeal the subsection, substitute:

- (1) If a party to an award made in family law arbitration applies to:
 - (a) for family law arbitration ordered under subsection 13E(1)—the court that ordered the arbitration; or
 - (b) for other family law arbitration—a court that has jurisdiction under this Act;the court may register the award.

97 Subsections 13J(1) and 13K(1)

Omit “section 13E arbitration or relevant property or financial”, substitute “family law”.

98 Paragraph 125(1)(bba)

Omit “section 13E arbitration and relevant property or financial”, substitute “family law”.

99 Application of amendments made by this Division

- (1) The amendments of section 13E of the *Family Law Act 1975* made by this Division apply to the making of orders in proceedings after this item commences, whether the proceedings commenced before or after this item commences.
- (2) The other amendments of the *Family Law Act 1975* made by this Division apply to arbitration and awards made in arbitration after this item commences, whether the arbitration commenced before or after this item commences.

Schedule 2—Children's contact services

Family Law Act 1975

1 Subsection 4(1)

Insert:

accountable person has the meaning given by subsection 10KI(2).

CCS business (short for children's contact services business) has the meaning given by section 10KD.

CCS practitioner (short for children's contact services practitioner) has the meaning given by section 10KC.

children's contact services has the meaning given by section 10KB.

entrusted person has the meaning given by section 10KE(2).

safety information has the meaning given by subsection 10KE(3).

2 After paragraph 4(1AB)(aa)

Insert:

(ab) Division 3A of Part II (children's contact services); and

3 Paragraphs 10A(1)(a) and (b)

Omit "persons", substitute "individuals".

4 After paragraph 10A(1)(b)

Insert:

(ba) the accreditation of individuals as CCS practitioners; and

(bb) the accreditation of persons (whether or not individuals) and other entities as CCS businesses; and

5 Paragraph 10A(2)(a)

Omit "persons who seek", substitute "persons and entities seeking".

6 Paragraph 10A(2)(b)

After "a person", insert "or entity".

7 Paragraph 10A(2)(d)

After "the", insert "conditions,".

8 Paragraphs 10A(2)(d), (f) and (g)

After "persons", insert "and entities".

9 Paragraph 10A(2)(h)

Omit "person may have his or her", substitute "person or entity may have their".

10 Paragraphs 10A(2)(j) and (k)

After "persons", insert "and entities".

11 Paragraph 10A(2)(l)

Omit "individuals or other persons", substitute "persons and entities".

12 Paragraph 10A(2)(l)

Omit "person's", substitute "person's or entity's".

13 At the end of subsection 10A(2)

Add:

Note: The Accreditation Rules may make different provision with respect to different matters or classes of matters (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

14 At the end of Division 1 of Part II

Add:

10AA Immunity

No action, suit or proceeding lies against the Commonwealth, or an officer of the Commonwealth, in relation to any act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of a function, power or authority conferred by the Accreditation Rules.

15 After Division 3 of Part II

Insert:

Division 3A—Children's contact services

10KA Simplified outline of this Division

Accreditation Rules may provide for the accreditation of persons and entities as CCS practitioners and CCS businesses (see section 10A).

If they do, then it is an offence for children's contact services (as defined in this Division) to be provided by a person or entity that is not accredited.

Accredited providers of children's contact services must not use or disclose safety information that is obtained in their capacity as accredited providers (with some exceptions). Safety information is generally not admissible in court.

10KB Definition of *children's contact services*

- (1) *Children's contact services* are services, other than services mentioned in subsection (3), that:
- (a) facilitate contact between a child and a member of the child's family with whom the child is not living; and
 - (b) are provided in circumstances where members of the family may not be able to safely manage such contact; and
 - (c) are provided:
 - (i) on a professional basis; or
 - (ii) on a commercial basis; or
 - (iii) by an entity registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act; or
 - (iv) in the course of an undertaking that has a charitable purpose.

- (2) Without limiting paragraph (1)(a), services that facilitate contact may include any of the following:
- (a) supervising the movement of the child between 2 or more members of the child's family;
 - (b) supervising time spent by the child with a member of the child's family (including contact over the phone or internet);
 - (c) providing a space for the child to spend time with a member of the child's family.
- (3) The following services are not children's contact services:
- (a) services provided as a result of intervention by a child welfare officer of a State or Territory;
 - (b) supervision of contact (including contact over the phone or internet) between a child and a member of the child's family who is in a correctional institution (however described);
 - (c) services prescribed by the regulations for the purposes of this paragraph.

10KC Definition of *CCS practitioner*

A *CCS practitioner* is an individual who is accredited as a CCS practitioner under the Accreditation Rules.

Note: The Accreditation Rules may have the effect that an individual who operates as a sole trader providing children's contact services will need to be accredited as both a CCS practitioner and a CCS business.

10KD Definition of *CCS business*

A *CCS business* is a person or other entity that is accredited as a CCS business under the Accreditation Rules.

10KE Confidentiality of certain safety-related information

- (1) A person who is or has been an entrusted person must not use or disclose safety information obtained by the person in their capacity as an entrusted person, unless the use or disclosure is required or authorised by this section.
- (2) The following are *entrusted persons*:
- (a) a CCS practitioner or a CCS business;

- (b) a director or other officer of a CCS business;
 - (c) a person employed or engaged to perform work (whether paid or unpaid) for or on behalf of a CCS business.
- (3) **Safety information** is information that relates to the risks of harm to a child or a member of a child's family, or to the identification and management of such risks, if:
- (a) children's contact services have been, are being, or will be, provided to the child; and
 - (b) the risks are those that may arise in connection with the use, facilitation or provision of the service.
- (4) An entrusted person must disclose safety information if the entrusted person reasonably believes the disclosure is necessary for the purpose of complying with a law of the Commonwealth, a State or a Territory.
- (5) An entrusted person may use safety information for the purposes of performing the person's functions as an entrusted person.
- (6) An entrusted person may disclose safety information to one or more other entrusted persons if:
- (a) each of the entrusted persons is any of the following in relation to a particular CCS business:
 - (i) a director or officer of the CCS business;
 - (ii) employed or engaged to provide children's contact services for, or on behalf of, the CCS business;
 - (iii) employed or engaged to perform other work (whether paid or unpaid) for, or on behalf of, the CCS business; and
 - (b) it is reasonable to disclose the safety information to enable the CCS business to appropriately provide children's contact services in respect of the child.
- (7) An entrusted person may use or disclose safety information that is a communication (including an admission) made by an individual to an entrusted person, if consent to the use or 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 15, 16 or 17 and has the capacity to consent—that person; or
 - (c) if the person who made the communication is a child under 15 or a child to whom paragraph (b) does not apply:
 - (i) each person who has parental responsibility (within the meaning of Part VII) for the child; or
 - (ii) a court.
- (8) An entrusted person may use or disclose safety information if the entrusted person reasonably believes that the use or 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 and it is unreasonable or impractical to obtain consent as mentioned in subsection (7)—assisting the lawyer to properly represent the child's interests.
- (9) An entrusted person may disclose safety information in order to provide information (other than personal information within the meaning of subsection 6(1) of the *Privacy Act 1988*) for research relevant to families.

10KF Admissibility of certain safety-related information

- (1) Safety information is not admissible:
 - (a) in any court (whether or not exercising federal jurisdiction); or

- (b) 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).

Note: For the definition of *safety information*, see subsection 10KE(3).

- (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.

10KG Civil penalty provisions

Civil penalties

- (1) In addition to the matters mentioned in section 10A, the Accreditation Rules may:
 - (a) prescribe civil penalty provisions (the **CCS civil penalty provisions**) in relation to requirements to be complied with by CCS practitioners and CCS businesses; and
 - (b) prescribe penalties for contraventions of the CCS civil penalty provisions that do not exceed:
 - (i) for a body corporate—250 penalty units; or
 - (ii) for any other person—50 penalty units.
- (2) Each CCS civil penalty provision is enforceable under Part 4 of the Regulatory Powers Act.

Authorised applicant

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the CCS civil penalty provisions:
 - (a) the Secretary of the Department;

- (b) the person or persons prescribed by the Accreditation Rules as having responsibility for monitoring compliance with the Rules in relation to CCS practitioners and CCS businesses.
- (4) The Secretary of the Department may, in writing, delegate the Secretary's powers and functions under Part 4 of the Regulatory Powers Act in relation to the CCS civil penalty provisions to an SES employee, or an acting SES employee, in the Department.

Relevant court

- (5) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the CCS civil penalty provisions:
 - (a) the Federal Court of Australia;
 - (b) the Federal Circuit and Family Court of Australia;
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

10KH Strict liability offences—unaccredited provision of children's contact services

Individual providing services who is not a CCS practitioner

- (1) An individual commits an offence if:
 - (a) the individual provides a children's contact service; and
 - (b) the Accreditation Rules provide for accreditation of CCS practitioners; and
 - (c) the individual is not a CCS practitioner.

Penalty: 50 penalty units.

Body corporate providing services that is not a CCS business

- (2) A body corporate commits an offence if:
 - (a) the body corporate provides a children's contact service; and
 - (b) the Accreditation Rules provide for accreditation of CCS businesses; and
 - (c) the body corporate is not a CCS business.

Penalty:

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- (a) for an individual—50 penalty units; or
 - (b) for a body corporate—250 penalty units.

Person providing services through an individual who is not a CCS practitioner

- (3) A person commits an offence if:
 - (a) the person is a CCS business; and
 - (b) an individual provides a children's contact service for or on behalf of the person; and
 - (c) the Accreditation Rules provide for accreditation of CCS practitioners; and
 - (d) the individual is not a CCS practitioner.

Penalty:

- (a) for an individual—50 penalty units; or
 - (b) for a body corporate—250 penalty units.
- (4) Subsection (3) does not apply to a person if, at or before the time the individual provides the children's contact service as mentioned in paragraph (3)(b), the person:
 - (a) considered whether or not the individual was a CCS practitioner; and
 - (b) is under a mistaken but reasonable belief about that matter.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Individual business operator who is not a CCS business

- (5) An individual commits an offence if:
 - (a) the individual controls, directs or organises (whether alone or jointly with other persons) the provision of children's contact services in the individual's own name or under a business name; and
 - (b) the Accreditation Rules provide for accreditation of CCS businesses; and
 - (c) the individual is not a CCS business.

Penalty: 50 penalty units.

Person responsible for non-legal person that is not a CCS business providing services through an individual

- (6) A person commits an offence if:
- (a) an individual provides a children's contact service for or on behalf of an entity that is not a legal person; and
 - (b) the Accreditation Rules provide for accreditation of CCS businesses; and
 - (c) the entity is not a CCS business; and
 - (d) at the time the individual provides the children's contact service, the person is a person who controls, directs or organises (whether alone or jointly with other persons) the provision of children's contact services for or on behalf of the entity.

Penalty:

- (a) for an individual—50 penalty units; or
 - (b) for a body corporate—250 penalty units.
- (7) Subsection (6) does not apply to a person if, at or before the time that the children's contact service is provided as mentioned in paragraph (6)(a), the person:
- (a) considered whether or not the entity was a CCS business; and
 - (b) is under a mistaken but reasonable belief about that matter.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

Person responsible for non-legal person providing services through an individual who is not a CCS practitioner

- (8) A person commits an offence if:
- (a) an individual provides a children's contact service for or on behalf of an entity that is not a legal person; and
 - (b) the entity is a CCS business; and
 - (c) the Accreditation Rules provide for accreditation of CCS practitioners; and
 - (d) the individual is not a CCS practitioner; and
 - (e) at the time the individual provides the children's contact service, the person is a person who controls, directs or organises (whether alone or jointly with other persons) the
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provision of children's contact services for or on behalf of the entity.

Penalty:

- (a) for an individual—50 penalty units; or
 - (b) for a body corporate—250 penalty units.
- (9) Subsection (8) does not apply to a person if, at or before the time that the individual provided the children's contact service as mentioned in paragraph (8)(a), the person:
- (a) considered whether or not the individual was a CCS practitioner; and
 - (b) is under a mistaken but reasonable belief about that matter.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Strict liability

- (10) Strict liability applies to subsections (1), (2), (3), (5), (6) and (8).

Mistake of fact defences

- (11) For the purposes of subsections (4), (7) and (9), a person may be regarded as having considered whether or not the individual was a CCS practitioner, or the entity was a CCS business, (as applicable) if:
- (a) the person had considered on a previous occasion whether that was the case in the circumstances surrounding that occasion; and
 - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

10KI Compliance by entities that are not legal persons

- (1) This section applies if an entity that is not a legal person is accredited as a CCS business.

- (2) Each of the following persons is an **accountable person** for the entity, in relation to a requirement imposed on the entity at a time by the Accreditation Rules:
- (a) if the entity is a partnership—each of the following:
 - (i) each partner in the partnership at the time;
 - (ii) if a partner is a body corporate—each director of the partner at the time;
 - (iii) a person prescribed by the Accreditation Rules;
 - (b) if the entity is a trust—each of the following:
 - (i) the trustee, or each trustee, of the trust, at the time;
 - (ii) if a trustee is a body corporate—each director of the trustee at the time;
 - (iii) a person prescribed by the Accreditation Rules;
 - (c) if the entity is any other kind of entity—each person prescribed by the Accreditation Rules for that kind of entity.
- (3) Any requirement that the Accreditation Rules impose on the entity to do a thing (including a requirement imposed by way of a civil penalty provision) is taken instead to be imposed on each accountable person for the entity, but may be discharged by any one of them.
- (4) Any requirement that the Accreditation Rules impose on the entity not to do a thing (including a requirement imposed by way of a civil penalty provision) is taken instead to be imposed on each accountable person for the entity.
- (5) However, an accountable person is not liable to a civil penalty for contravening a requirement taken to be imposed on the person because of subsection (3) or (4) unless at least one of the following applies:
- (a) complying with the requirement is within the actual or apparent scope of the person's duties in relation to the entity;
 - (b) the person's duties involve controlling, directing or organising (whether alone or jointly with other persons) the provision of children's contact services in the entity's name;
 - (c) the person aided, abetted, counselled or procured the act or omission concerned;

- (d) the person was in any way knowingly concerned in, or party to, the act or omission concerned (whether directly or indirectly and whether by any act or omission of the person).

16 After paragraph 13A(1)(b)

Insert:

- (ba) to give the court the power to require parties to proceedings under this Act to make use of children's contact services provided by CCS businesses; and

17 After paragraph 13C(1)(b)

Insert:

- (ba) that one or more of the parties to the proceedings make use of children's contact services provided by CCS businesses;

18 After subsection 13C(1)

Insert:

- (1A) The court must not make an order under paragraph (1)(c) that parties make use of children's contact services at any time when CCS practitioners and CCS businesses may be accredited under the Accreditation Rules.

19 Subsection 13D(1)

After "family dispute resolution practitioner", insert ", CCS business".

20 After subsection 13D(1)

Insert:

- (1A) A party does not fail to comply with an order of a court to make use of a children's contact service provided by a CCS business if the CCS business refuses to provide the service to the party.
- (1B) If a CCS business refuses to provide a children's contact service to a party, the CCS business must notify the court that they have done so.

21 Subsection 60D(2) (at the end of the definition of *adviser*)

Add:

; or (e) a CCS practitioner.

22 After paragraph 67ZA(1)(e)

Insert:

(ea) a CCS practitioner; or

23 After paragraph 111CV(1A)(f)

Insert:

(fa) a CCS practitioner; and

Schedule 3—Case management and procedure

Part 1A—Removing limitation on application for divorce

Family Law Act 1975

1A Subsections 44(1B) and 44(1C)

Repeal the subsections.

1B Application provision

The amendments of the *Family Law Act 1975* made by this Part apply in relation to the following proceedings:

- (a) proceedings instituted on or after the day this Part commences;
- (b) proceedings instituted before, and not finally determined before, the day this Part commences.

Part 1—Attending family dispute resolution before applying for Part VII order

Family Law Act 1975

1 Subsection 60I(6)

Omit “(12)”, substitute “(14)”.

2 Subsection 60I(7)

Repeal the subsection, substitute:

Requirement to be met before application accepted for filing

- (7) An application for a Part VII order in relation to a child must not be accepted by the court for filing unless:
- (a) the applicant files in the court, together with the application, a certificate given to the applicant by a family dispute resolution practitioner under subsection (8); or
 - (b) after the making of the application, the court grants the applicant an exemption under subsection (8A) from having to file such a certificate.

3 After subsection 60I(8)

Insert:

Exemptions

- (8A) The court may grant the applicant for a Part VII order in relation to a child an exemption from having to file a certificate referred to in paragraph (7)(a).
- (8B) The court may do so only if the court is satisfied that one or more of the grounds in subsection (9) exist.

4 Subsection 60I(9) (heading)

Repeal the heading.

5 Subsection 60I(9)

Omit “Subsection (7) does not apply to an application for a Part VII order in relation to a child if”, substitute “For the purposes of subsection (8B), the grounds for an exemption are”.

6 Subsection 60I(10)

Repeal the subsection.

7 Before subsection 60I(11)

Insert:

Validity of proceedings not affected by failure to meet requirement in relation to application

8 Subsection 60I(11)

Omit “to those proceedings”, substitute “to that application”.

9 Subsection 60I(12)

Repeal the subsection, substitute:

Review of power exercised by delegate

- (12) If a delegate has exercised the power of the court under subsection (8A), a party to the proceedings, or a person who would have been a party to the proceedings if the exemption referred to in that subsection had been granted, may:
- (a) within the time prescribed by the applicable Rules of Court;
or
 - (b) within any further time allowed in accordance with the applicable Rules of Court;
- apply to the court for review of the exercise of the power.
- (13) The court may, on application under subsection (12) or on its own initiative, review an exercise of power by a delegate under subsection (8A), and may make any order or orders it thinks fit in relation to the exercise of that power.
- (14) Subsections 100(1) and (2) and 256(1) and (2) of the *Federal Circuit and Family Court of Australia Act 2021* do not apply in

Schedule 3 Case management and procedure

Part 1 Attending family dispute resolution before applying for Part VII order

relation to the exercise of the power of the court by a delegate under subsection (8A) of this section.

10 Paragraph 60J(1)(a)

Omit “(12)”, substitute “(14)”.

11 Paragraph 60J(1)(b)

Omit “subsection 60I(7) does not apply to the application”, substitute “in relation to the application, the court has granted the applicant an exemption under subsection 60I(8A)”.

12 Application provision

The amendments of the *Family Law Act 1975* made by this Part apply in relation to an application for a Part VII order that is made on or after the day this Part commences.

Part 2—Attendance at divorce proceedings

Family Law Act 1975

13 At the end of paragraph 98A(1)(a)

Add “and”.

14 Paragraph 98A(1)(b)

Repeal the paragraph.

15 Subsection 98A(2A)

After “subsection”, insert “(1) or”.

16 At the end of subsection 98A(2A)

Add:

Note: If there are children of the marriage who are under 18, a divorce order cannot take effect until the court declares under section 55A that it is satisfied that proper arrangements in all the circumstances have been made for the care, welfare and development of the children, or that there are circumstances by reason of which the divorce should take effect regardless (see paragraph 55A(1)(b)).

17 Application of amendments

The amendments of section 98A of the *Family Law Act 1975* made by this Part apply in relation to proceedings for a divorce order:

- (a) that are instituted on or after the day this Part commences; or
- (b) that were instituted before the day this Part commences if the proceedings were not finally determined before that day.

Part 3—Commonwealth information orders

Family Law Act 1975

18 At the end of subsection 67J(2)

Add:

- Note: A Commonwealth information order may:
- (a) require a one-off or periodic searches (see subsection 67N(5)); and
 - (b) require information about violence to children and others in addition to location information (see subsection 67N(9)).

19 Before subsection 67N(2)

Insert:

Requirements for making a Commonwealth information order

20 Subsections 67N(5) to (10)

Repeal the subsections, substitute:

Content of a Commonwealth information order

- (5) A Commonwealth information order may require either:
 - (a) a one-off search for information sought by the order; or
 - (b) periodic searches for the information sought by the order for the period during which the order is in force, which must not exceed 12 months.
- (6) A Commonwealth information order that requires periodic searches for information does not require the records of the Department or Commonwealth instrumentality concerned to be searched more often than once every 3 months unless specifically so ordered by the court.
- (7) Unless a Commonwealth information order specifies otherwise, the order does not require the searching of records that are more than 2 years old on the day the order is made.

- (8) A court may state that a Commonwealth information order only applies to records of a particular kind if the court considers that an unreasonable burden would be placed on the resources of the Department or Commonwealth instrumentality concerned if the order applied to all of its records.
- (9) In addition to requiring information about a child's location, a Commonwealth information order may also require the person to whom the order applies to provide any information, that is in the records of the relevant Department or Commonwealth instrumentality, about actual or threatened violence to any one or more of the following:
- (a) the child;
 - (b) a person who is related to the child within the meaning of subsection 67NA(1);
 - (c) a person who has a connection to the child that the court considers relevant.
- (10) A Commonwealth information order seeking information about actual or threatened violence to a person mentioned in paragraph (9)(c) must specify either the person or the nature of the connection between the person and the child.
- (11) If a Commonwealth information order seeks information about actual or threatened violence to a person mentioned in paragraph (9)(b) or (c), the person to whom the order applies is only required to provide information about the person if they can be identified using the records of the relevant Department or Commonwealth instrumentality.
- (12) A Commonwealth information order seeking information about actual or threatened violence under subsection (9) may specify that such information is to be sought within the following records:
- (a) a particular record, or particular kinds of records;
 - (b) records held in relation to particular individuals;
 - (c) records made within a particular period, or before or after a particular time.

Revocation of a Commonwealth information order

- (13) If a Commonwealth information order requires periodic searches for information, the court must:
- (a) revoke the order before the order ceases to be in force if satisfied that the purpose of the order has been achieved; or
 - (b) if the court receives notice of a child's return under subsection 67Y(2)—consider revoking the order if satisfied that the purpose of the order has been achieved.

Disclosure requirements

- (14) If a person is required to conduct a search under a Commonwealth information order, the person to whom the order applies must provide the information sought by the order:
- (a) if a time is specified by the Court—by that time; or
 - (b) if a time is not specified—as soon as practicable.
- (15) To avoid doubt, if a Commonwealth information order seeks information about actual or threatened violence under subsection (9), the person to whom the order applies must provide any information about actual or threatened violence to the persons specified in paragraphs (9)(a) to (c) that is found in the records of the relevant period, even if no information about the location of the child is found.
- (16) This section applies despite a provision of a law of the Commonwealth or of a State or Territory that prohibits:
- (a) the communication, disclosure or publication of information; or
 - (b) the production of, or the publication of the contents of, a document;
- whether enacted before, at or after the commencement of this section.
- (17) A Commonwealth information order:
- (a) does not override an order of the High Court or a court created by the Parliament under Chapter III of the Constitution; and
 - (b) does not apply in relation to information relevant to proceedings on foot in any such court.

21 After section 67N

Insert:

67NA Persons who are related to a child for the purposes of paragraph 67N(9)(b)

- (1) For the purposes of paragraph 67N(9)(b), the following persons are related to a child:
 - (a) a parent, adoptive parent or step-parent of the child;
 - (b) a grandparent or step-grandparent of the child;
 - (c) a sibling, half-sibling or step-sibling of the child;
 - (d) an uncle or aunt of the child;
 - (e) a niece or nephew of the child;
 - (f) a cousin of the child;
 - (g) any other person biologically related to the child;
 - (h) if the child is in a foster arrangement—a person:
 - (i) who fosters the child; or
 - (ii) who is a spouse, or de facto partner within the meaning of section 60EA, of a person who fosters the child; or
 - (iii) who is an intimate partner (within the meaning of subsection (2)) of a person who fosters the child (whether or not residing with the person); or
 - (iv) who would be related to the child in accordance with paragraph (b), (c), (d), (e), (f) or (g) if a person who fosters the child were the child's parent.
- (2) For the purposes of subparagraph (1)(h)(iii), 2 persons, who are not each other's spouse or de facto partner within the meaning of section 60EA, are intimate partners of each other if they have an intimate relationship (whether or not they live together).
- (3) For the purposes of subsection (2), factors that indicate whether 2 persons have an intimate relationship include (but are not limited to) the following:
 - (a) the extent to which each is personally dependent on the other;
 - (b) the extent to which each is financially dependent on the other (including any arrangements for financial support);
 - (c) the length of the relationship;

- (d) the frequency of contact between each other;
- (e) if there is, or has been, a sexual relationship;
- (f) the extent to which each is involved in, or knows about, the other's personal life;
- (g) the degree of mutual commitment to a shared life;
- (h) if they share care or support for children or other dependents.

22 Application of amendments

The amendments to the *Family Law Act 1975* made by this Part apply in relation to Commonwealth information orders made after the commencement of this Part.

Part 4—Operation of section 69GA

Family Law Act 1975

23 Subsection 47A(7)

Repeal the subsection, substitute:

Decrees made in section 69GA proceedings treated like decrees of courts of summary jurisdiction

- (7) If a court of a State or Territory is prescribed for the purposes of section 69GA, this section applies in relation to a decree of the court made in section 69GA proceedings as if it were a decree of a court of summary jurisdiction of the State or Territory.

24 Section 69GA (heading)

Repeal the heading, substitute:

69GA Jurisdiction of prescribed courts etc.

25 Subsection 69GA(2)

Repeal the subsection, substitute:

Application of Subdivision

- (2) If a court of a State or Territory is prescribed for the purposes of this section, this Subdivision applies in relation to the following proceedings of the court (the *section 69GA proceedings*) as if they were proceedings of a court of summary jurisdiction of the State or Territory:
- (a) if the regulations specify classes of proceedings for the court for the purposes of this section—those classes of proceedings;
 - (b) otherwise—proceedings generally.

Jurisdiction of prescribed State courts

- (2A) Subject to subsection (2), a court of a State prescribed for the purposes of this section is invested with federal jurisdiction in

relation to matters arising under this Part (other than section 60G) in respect of section 69GA proceedings.

Jurisdiction of prescribed Territory courts

- (2B) Subject to section 69K and subsection (2) of this section, jurisdiction is conferred on a court of a Territory prescribed for the purposes of this section in relation to matters arising under this Part (other than section 60G) in respect of section 69GA proceedings.

26 Subsection 69GA(4)

Omit “heard in”, substitute “of”.

27 Subsection 69J(1) (note)

Repeal the note.

28 After subsection 69J(5)

Insert:

- (5A) If a Proclamation in force under subsection (3) specifies a State or Territory in respect of which a court is prescribed for the purposes of section 69GA, subsection (5) applies in relation to any section 69GA proceedings in that court as if they were proceedings under this Part in a court of summary jurisdiction.

29 Subsection 69N(1) (note)

Repeal the note.

Part 5—Protecting sensitive information

Division 1—Main amendments

Family Law Act 1975

30 Subsection 4(1)

Insert:

confidant has the meaning given by section 102BA.

disclosure requirement has the meaning given by subsection 102BD(2).

health service has the meaning given by subsections 102BB(3) and (4).

protected confidence has the meaning given by section 102BA.

protected confider has the meaning given by section 102BA.

31 After Division 1 of Part XI

Insert:

Division 1B—Protecting sensitive information

102BA Definition of *protected confidence*

A *protected confidence* is a communication made:

- (a) in the course of, or in connection with, a relationship in which one person (the *confidant*) is acting in a professional capacity to provide a professional service (see section 102BB) to another person (the *protected confider*); and
- (b) in circumstances in which the confidant is under an obligation not to disclose communications made to them by, or in relation to, the protected confider (whether the obligation is express or inferred from the nature of the relationship).

102BB Definition of *professional service*

- (1) For the purpose of this Division, a *professional service* is any of the following:
 - (a) a health service mentioned in subsection (3) or (4);
 - (b) a specialist service in relation to:
 - (i) sexual assault; or
 - (ii) family violence;
 - (c) any activity prescribed by the regulations for the purpose of this paragraph.
- (2) Despite subsection (1), an activity is not a *professional service* if it is prescribed by the regulations for the purposes of this subsection.
- (3) An activity performed in relation to an individual is a *health service* if the activity is intended or claimed (expressly or otherwise) by the individual or the person performing it:
 - (a) to assess, maintain or improve the individual's health; or
 - (b) where the individual's health cannot be maintained or improved—to manage the individual's health; or
 - (c) to diagnose the individual's illness, disability or injury; or
 - (d) to treat the individual's illness, disability or injury or suspected illness, disability or injury; or
 - (e) to record the individual's health for the purposes of assessing, maintaining, improving or managing the individual's health.
- (4) The dispensing on prescription of a drug or medicinal preparation by a pharmacist is a *health service*.
- (5) To avoid doubt, a reference in this section to an individual's health includes the individual's physical or psychological health.

102BC Direction in relation to adducing evidence

- (1) The court may direct that evidence not be adduced in proceedings under this Act, if the court finds that adducing it would disclose:
 - (a) a protected confidence; or
 - (b) the contents of a document recording or relating to a protected confidence.

- (2) The court may give the direction:
- (a) on its own initiative; or
 - (b) on application by:
 - (i) the confidant; or
 - (ii) a person who is in possession or has control of a document recording or relating to a protected confidence; or
 - (iii) a litigation guardian; or
 - (c) if the protected confider is aged 18 or over—on application by the protected confider; or
 - (d) if the protected confider is a child aged under 18—on application by:
 - (i) a person who has parental responsibility (within the meaning of Part VII) for the child; or
 - (ii) an independent children’s lawyer who represents the interests of the child in the proceedings; or
 - (iii) a person who has care of the child; or
 - (iv) a person who proposes to have parental responsibility for the child.
- (3) Evidence that is not to be adduced in proceedings because of subsection (1) is not admissible in the proceedings.

102BD Direction in relation to complying with disclosure requirement

- (1) The court may direct that a document or part of a document not be produced, or not be inspected, or not be copied, in proceedings under this Act, despite a disclosure requirement (see subsection (2)), if the court finds that compliance with the disclosure requirement would disclose:
- (a) a protected confidence; or
 - (b) the contents of a document recording or relating to a protected confidence.
- (2) Each of the following is a *disclosure requirement*:
- (a) a subpoena to produce a document;

- (b) a requirement under this Act or the applicable Rules of Court that a party to proceedings produce a document or part of a document in the proceedings.
- (3) The court may give the direction:
 - (a) on its own initiative; or
 - (b) on application by:
 - (i) the confidant; or
 - (ii) a person who is in possession or has control of a document recording or relating to a protected confidence; or
 - (iii) a litigation guardian; or
 - (c) if the protected confider is aged 18 or over—on application by the protected confider; or
 - (d) if the protected confider is a child aged under 18—on application by:
 - (i) a person who has parental responsibility (within the meaning of Part VII) for the child; or
 - (ii) an independent children’s lawyer who represents the interests of the child in the proceedings; or
 - (iii) a person who has care of the child; or
 - (iv) a person who proposes to have parental responsibility for the child.
- (4) The person to whom the disclosure requirement applies is not required to comply with it at any time while the court is deciding whether to give the direction.
- (5) The court may order that a document or part of a document be produced to the court to inspect for the purposes of deciding whether to give the direction.
- (6) A document or part of a document to which a direction under this section relates is not admissible in the proceedings.

102BE Grounds and considerations for directions

- (1) The court may give a direction under section 102BC or 102BD in relation to evidence, or a document or part of a document, if the court is satisfied that:

- (a) it is likely that harm would or might be caused (directly or indirectly) to the protected confider, or to a child to whom the proceedings relate, if the evidence were adduced or the document or part produced, inspected or copied; and
 - (b) the nature and extent of the harm outweighs the desirability of adducing the evidence or producing, inspecting or copying the document or part.
- (2) For the purposes of subsection (1), harm may include, but is not limited to, the following:
- (a) physical harm;
 - (b) psychological harm or oppression;
 - (c) mental distress;
 - (d) a detrimental effect on the other party's capacity to care for a child;
 - (e) financial harm.
- (3) If the direction is being made in proceedings under Part VII, the court must regard the best interests of the child as the paramount consideration.
- (4) The court must have regard to the following matters in deciding whether to make the direction:
- (a) in relation to the evidence, or the document or part:
 - (i) its probative value in the proceedings; and
 - (ii) its importance in the proceedings; and
 - (iii) the availability of other evidence or documents, concerning the matters to which the evidence, or the document or part, relates;
 - (b) the likely effect of adducing the evidence, or producing, inspecting or copying the document or part, including the likelihood of harm, and the nature and extent of harm, that would or might be caused:
 - (i) to the protected confider; or
 - (ii) to a child to which the proceedings relate;
 - (c) the means available to the court to limit the harm or extent of the harm likely to be caused if the evidence is adduced or the document or part produced, inspected or copied;

- (d) whether the substance of the evidence, or of the document or part, has already been disclosed by the protected confider or any other person;
 - (e) the public interest in preserving the confidentiality of protected confidences;
 - (f) whether the protected confider opposes the disclosure of the protected confidence or any part of it;
 - (g) whether a lawyer is representing the protected confider in relation to the proceedings;
 - (h) if the protected confider is a child aged under 18—whether any of the following oppose the disclosure of the protected confidence or any part of it:
 - (i) a person who has parental responsibility (within the meaning of Part VII) for the child;
 - (ii) an independent children’s lawyer who represents the interests of the child in the proceedings.
- (5) Subsection (4) does not limit the matters to which the court may have regard in making the direction.
- (6) The court must give reasons for making, or deciding not to make, a direction under this Division.

102BF Consent by protected confider

The court must not give a direction under section 102BC or 102BD if:

- (a) the protected confider is an adult; and
- (b) the protected confider consents to the evidence being adduced or document or part of the document being disclosed; and
- (c) the consent is in writing and witnessed by an independent person who is 18 years of age or over and not party to the proceedings.

32 Application of amendments

The amendments of the *Family Law Act 1975* made by this Part apply after the commencement of this item in relation to the following proceedings (whether the protected confidence was made before or after that commencement):

- (a) proceedings instituted after that commencement;
- (b) proceedings instituted but not finally determined before that commencement, other than proceedings in respect of which a final hearing has commenced before that commencement.

Schedule 4—General provisions

Part 1—Costs orders

Division 1—Amendments

Family Law Act 1975

1 Subsection 4(1)

Insert:

litigation guardian means a person appointed by the court under the applicable Rules of Court to manage and conduct a proceeding for a person who needs a litigation guardian (also known as a litigation supporter, litigation representative, next friend, guardian *ad litem*, case guardian or tutor).

manager of the affairs of a party includes a person who is authorised by or under a Commonwealth, State or Territory law to conduct legal proceedings in the name of, or for, a person who needs a litigation guardian.

2 After Part XIVB

Insert:

Part XIVC—Costs

114UA Definitions

In this Part:

costs order means an order made under subsection 114UB(2).

114UB Costs orders—general

- (1) Subject to subsection (2) of this section, subsection 102QAB(6) and sections 114UD and 114UE, each party to proceedings under this Act is to bear the party's own costs.

- (2) If, in proceedings under this Act, the court is of the opinion that there are circumstances that justify it in doing so, the court may, subject to subsection (3) of this section, sections 114UC and 114UD and the applicable Rules of Court, make any order for costs and security for costs that the court considers just, whether by way of interlocutory order or otherwise.

Note 1: For other provisions about the award of costs by the Federal Circuit and Family Court of Australia (Division 1), see paragraphs 69(4)(d) and (e) of the *Federal Circuit and Family Court of Australia Act 2021*.

Note 2: For other provisions about the award of costs by the Federal Circuit and Family Court of Australia (Division 2), see paragraphs 192(4)(d) and (e) of the *Federal Circuit and Family Court of Australia Act 2021*.

Note 3: See also subsections 96(4) to (6) of this Act.

- (3) In considering what costs order (if any) should be made, the court must have regard to the following:
- (a) the financial circumstances of each party to the proceedings;
 - (b) whether any party to the proceedings is receiving assistance by way of legal aid in respect of the proceedings and, if so, the terms of the grant of the assistance to that party;
 - (c) the conduct of the parties to the proceedings in relation to the proceedings including, without limiting paragraphs (a) and (b), the conduct of the parties in relation to pleadings, particulars, discovery, inspection, directions to answer questions, admissions of facts, production of documents and similar matters;
 - (d) whether the proceedings were necessitated by the failure of a party to the proceedings to comply with previous orders of the court;
 - (e) whether any party to the proceedings has been wholly unsuccessful in the proceedings;
 - (f) whether a party to the proceedings has made an offer in writing to the other party to the proceedings to settle the proceedings and the terms of any such offer;
 - (g) such other matters as the court considers relevant.
- (4) A party to the proceedings may make an application for costs:
- (a) at any stage during the proceedings; or

- (b) within 28 days after the final order in the proceedings is made.
- (5) The court may order that a party is entitled to costs:
 - (a) of a specific amount; or
 - (b) as assessed on a particular basis (for example, party and party, solicitor and client or indemnity); or
 - (c) to be calculated in accordance with the method stated in the order; or
 - (d) for part of the proceedings, or part of an amount assessed in accordance with the applicable Rules of Court.
- (6) If the court makes a costs order but does not specify the method for the calculation of the costs, the costs are to be assessed on a party and party basis.
- (7) Subject to subsection (3), the court may make a costs order in favour of, or against, a party to the proceedings regardless of the degree to which the party has been successful in the proceedings.

114UC Costs of independent children’s lawyer and limitations on costs relating to intervening officer or litigation guardian etc.

- (1) In proceedings in which an independent children’s lawyer for a child has been appointed, the court may make a costs order, whether by way of interlocutory order or otherwise, to the effect that each party to the proceedings bears, in such proportion as the court considers just, the costs of the independent children’s lawyer in relation to the proceedings.
- (2) However, if:
 - (a) a party to the proceedings is receiving assistance by way of legal aid in respect of the proceedings; or
 - (b) the court considers that a party to the proceedings would suffer financial hardship if the party had to bear a proportion of the costs of the independent children’s lawyer;the court must not make a costs order against that party in relation to the costs of the independent children’s lawyer.

- (3) For the purposes of paragraph (2)(a), assistance by way of legal aid does not include assistance provided to a party in accordance with a Commonwealth scheme operating for the purpose of applying the requirements of subsection 102NA(2).

Funding of independent children's lawyer not to affect costs order

- (4) In considering what costs order (if any) should be made under subsection (1) in proceedings in which an independent children's lawyer has been appointed, the court must disregard the fact that the independent children's lawyer is funded under a legal aid scheme or service:
- (a) established under a law of the Commonwealth or of a State or Territory; or
 - (b) approved by the Attorney-General.

Limit on costs orders relating to intervention under section 91B

- (5) If:
- (a) under section 91B, an officer intervenes in proceedings; and
 - (b) the officer acts in good faith in relation to the proceedings;
- the court must not, because of the intervention, make a costs order against the officer, or against an entity (including the Commonwealth or a State or Territory) by or on behalf of whom the officer was engaged or employed.

Limit on costs orders against litigation guardian or manager of affairs of party

- (6) If a person has been appointed as a litigation guardian for a party, or a manager of the affairs of a party, to proceedings, the court must not make a costs order against the person unless the court is satisfied that one or more acts or omissions of the person relating to the proceedings are unreasonable or have delayed the proceedings unreasonably.

114UD Costs in proceedings relating to overseas enforcement and international Conventions

- (1) In proceedings under regulations made for the purposes of Part XIII^{AAA}, the court may only make a costs order (other than orders as to security for costs):
- (a) in favour of a party who has been substantially successful in the proceedings; and
 - (b) against a person or body who holds or held an office or appointment under those regulations and is a party to the proceedings in that capacity.

Note: For another case where the court may also make a costs order, see subsection (3).

- (2) However, a costs order may only be made in respect of a part of the proceedings if, during that part, the party against whom the order is to be made asserted a meaning or operation of this Act or those regulations that the court considers:
- (a) is not reasonable given the terms of the Act or regulations; or
 - (b) is not convenient to give effect to Australia's obligations under the Convention concerned, or to obtain for Australia the benefits of that Convention.
- (3) In proceedings under regulations made for the purposes of section 111B, the court may also make a costs order that is:
- (a) against a party who has wrongfully removed or retained a child, or wrongfully prevented the exercise of rights of access (within the meaning of the Convention referred to in that section) to a child; and
 - (b) in respect of the necessary expenses incurred by the person who made the application, under that Convention, concerning the child.

114UE Security for costs

Despite section 114UB, a court must not make an order for security for costs in a proceeding involving a Convention country that is listed in Schedule 4A to the regulations.

Division 2—Consequential amendments

Family Law Act 1975

3 Subsection 60I(8) (note)

Omit “section 117”, substitute “section 114UB”.

4 Subsection 91B(2) (note)

Omit “subsection 117(2)”, substitute “subsection 114UB(2)”.

5 Subsection 91B(2) (note)

Omit “subsection 117(4A)”, substitute “subsection 114UC(5)”.

6 Sections 117, 117AA and 117AC

Repeal the sections.

7 Subsection 117C(2)

Omit “subsection 117(2)”, substitute “subsection 114UB(2)”.

8 Paragraph 123(1)(o)

After “Attorney-General,”, insert “or a court exercising jurisdiction under this Act,”.

9 Paragraph 123(1)(o)

Omit “guardian *ad litem* for a party”, substitute “litigation guardian for a party, or a manager of the affairs of a party,”.

10 Paragraph 123A(1)(n)

After “Commonwealth,”, insert “or a court exercising jurisdiction under this Act,”.

11 Paragraph 123A(1)(n)

Omit “guardian *ad litem* for a party”, substitute “litigation guardian for a party, or a manager of the affairs of a party,”.

Federal Circuit and Family Court of Australia Act 2021

12 Subsection 214(1) (note 1)

Omit “section 117”, substitute “section 114UB”.

13 Subsection 215(1) (note)

Omit “section 117”, substitute “section 114UB”.

Federal Proceedings (Costs) Act 1981

14 Paragraph 9(1)(b)

Omit “section 117”, substitute “section 114UB”.

Division 3—Transitional provisions

15 Application of amendments relating to costs

The amendments of the *Family Law Act 1975* made by Divisions 1 and 2 of this Part apply in relation to the following proceedings:

- (a) proceedings instituted on or after the day this Division commences;
- (b) proceedings instituted before, and not finally determined before, the day this Division commences, other than proceedings in respect of which a final hearing has commenced before that day.

Division 4—Amendments relating to duty of disclosure

Family Law Act 1975

16 At the end of paragraph 114UB(3)(c)

Add “, and in relation to their duty of disclosure under subsection 71B(1), 90RI(1) or 90YJA(1)”.

17 Application of amendment made by this Division

The amendment of section 114UB of the *Family Law Act 1975* made by this Division applies in relation to proceedings in relation to which subsection 71B(1), 90RI(1) or 90YJA(1) of that Act apply.

Part 2—Court rule making power for Family Court of a State

Family Law Act 1975

18 Subsection 4(1) (after paragraph (b) of the definition of *applicable Rules of Court*)

Insert:

- (ba) in relation to a Family Court of a State—means:
 - (i) if Rules of Court made under section 123A are in force for the purposes of that Court—those Rules of Court; or
 - (ii) if subparagraph (i) does not apply—the standard Rules of Court; and

19 Subsection 4(1) (definition of *standard Rules of Court*)

Omit “this Act”, substitute “section 123”.

20 Subsection 10N(2) (note)

Omit “and 125(1)(bc)”, substitute “, 123A(1)(z) and 125(1)(bc) and (bd)”.

21 Subsection 13J(1) (note)

After “123(1)(sf)”, insert “and section 123A”.

22 Subsection 109A(1)

After “under section 123”, insert “, and the power of Judges of a Family Court of a State under section 123A,”.

23 Subsection 111C(7A)

After “under section 123”, insert “, and the power of Judges of a Family Court of a State under section 123A,”.

24 Section 123 (heading)

Repeal the heading, substitute:

123 Rules of Court—standard Rules of Court

25 Paragraph 123(1)(e)

After “vexatious”, insert “or harmful”.

26 Subsection 123(1) (note)

Omit “and subsection 111C(7A)”, substitute “, subsection 111C(7A) and section 123A”.

27 Subsection 123(1A)

Repeal the subsection, substitute:

(1A) A reference in subsection (1) to a *court exercising jurisdiction under this Act* does not include a reference to:

- (a) the Federal Circuit and Family Court of Australia; or
- (b) if Rules of Court made under section 123A are in force for the purposes of a Family Court of a State—that Court.

Note: A reference to a Family Court of a State is a reference to a court to which section 41 applies (see subsection 4(1A)).

28 After section 123

Insert:

123A Rules of Court—Family Courts of a State

(1) The Judges (however described) of a Family Court of a State (a *State Court*), or a majority of them, may make Rules of Court not inconsistent with this Act, providing for or in relation to the practice and procedure to be followed, subject to subsection 69GA(3), by the State Court when exercising jurisdiction under this Act, and for and in relation to all matters and things incidental to any such practice and procedure, or necessary or convenient to be prescribed for the conduct of any business in the State Court and, in particular:

- (a) providing for and in relation to the attendance of witnesses; and
- (b) providing for and in relation to the manner of service of process of the State Court, and for and in relation to dispensing with such service; and

- (c) providing for and in relation to trial management; and
- (d) providing for and in relation to the prevention or termination of vexatious or harmful proceedings; and
- (e) prescribing the seals and stamps to be used in the State Court; and
- (f) prescribing matters relating to the costs of proceedings (including solicitor and client costs and party and party costs) and the assessment or taxation of those costs; and
- (g) authorising the State Court to refer to an officer of the court for investigation, report and recommendation claims or applications for or relating to any matters before the court; and
- (h) authorising an officer making an investigation mentioned in paragraph (g) 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, 70NBB, 70NBD or 70NBF; and
- (i) enabling the summoning of witnesses before an officer making an investigation mentioned in paragraph (g) for the purposes of giving evidence or producing books or documents; and
- (j) regulating the procedure of the State Court upon receiving a report of an officer who has made an investigation referred to in paragraph (g); and
- (k) providing for and in relation to the procedure of the State Court when exercising its powers under section 112AP to deal with a person for contempt of the court; and
- (l) for the purposes of Division 2 of Part XI, providing for the conditions relating to the use of video links, audio links and other appropriate means of communication; and
- (m) providing for and in relation to the making of an application for a divorce order in relation to a marriage jointly by both parties to the marriage; and

Schedule 4 General provisions

Part 2 Court rule making power for Family Court of a State

- (n) providing for and in relation to the appointment, by the Attorney-General of the Commonwealth, of a guardian *ad litem* for a party to proceedings under this Act; and
- (o) providing for and in relation to:
 - (i) the forfeiture of bonds and recognisances entered into in pursuance of requirements made under this Act; and
 - (ii) the recovery of any money that may be due to the Commonwealth under such bonds and recognisances or from any person who has become a surety under this Act; and
- (p) providing for and in relation to the attachment of moneys payable by the Commonwealth, a State, a Territory or the Administration of a Territory, or by an authority of the Commonwealth, of a State or of a Territory (other than moneys as to which it is provided by any law of the Commonwealth, of a State or of a Territory that they are not liable to attachment); and
- (q) 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 State Court to participate in; and
 - (v) the use, for the purposes of proceedings under this Act, by the State Court and officers of the court, 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
- (r) prescribing the functions and duties of assessors and of family consultants and arbitrators; and

- (s) providing for and in relation to the making of applications under this Act for arbitration and for orders under sections 13E and 13F; and
- (t) prescribing the disputes, proceedings or matters that may or may not be arbitrated under this Act; and
- (u) prescribing the disputes, proceedings or matters in relation to which family consultants may, or must not, perform their functions; and
- (v) 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
- (w) providing for and in relation to:
 - (i) the procedures to be followed by a family counsellor authorised under subsection 281(1) of the *Federal Circuit and Family Court of Australia Act 2021* or engaged under subsection 18ZI(2) of the *Federal Court of Australia Act 1976*; 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
- (x) providing for and in relation to:
 - (i) the procedures to be followed by a family dispute resolution practitioner authorised under subsection 281(2) of the *Federal Circuit and Family Court of Australia Act 2021* or engaged under subsection 18ZI(2) of the *Federal Court of Australia Act 1976*; and
 - (ii) the procedures to be followed by persons attending family dispute resolution with such a practitioner; and

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- (iii) the procedures to be followed when family dispute resolution with such a practitioner ends; and
- (y) 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
- (z) prescribing matters relating to the costs of arbitration by arbitrators, and the assessment or taxation of those costs; and
- (za) prescribing matters relating to the costs of family counselling by family counsellors authorised under subsection 281(1) of the *Federal Circuit and Family Court of Australia Act 2021* or engaged under subsection 18ZI(2) of the *Federal Court of Australia Act 1976*; and
- (zb) prescribing matters relating to the costs of family dispute resolution by family dispute resolution practitioners authorised under subsection 281(2) of the *Federal Circuit and Family Court of Australia Act 2021* or engaged under subsection 18ZI(2) of the *Federal Court of Australia Act 1976*; and
- (zc) providing for and in relation to:
 - (i) the registration of awards under section 13H; and
 - (ii) the time and manner of making applications for review of registered awards under section 13J or for orders setting aside registered awards under section 13K; and
- (zd) providing for and in relation to conciliation conferences; and
- (ze) prescribing matters incidental to the matters specified in the preceding paragraphs; and
- (zf) prescribing penalties not exceeding 50 penalty units, or an amount that is the monetary equivalent, for offences against Rules of Court made under this section for the purposes of the State Court.

Note 1: A reference to a Family Court of a State is a reference to a court to which section 41 applies (see subsection 4(1A)).

Note 2: Penalty unit has the meaning given by section 4AA of the *Crimes Act 1914* (see section 2B of the *Acts Interpretation Act 1901*).

- (2) The *Legislation Act 2003* (other than sections 8, 9, 10 and 16 and Part 4 of Chapter 3 of that Act) applies in relation to rules of court made by Judges of a State Court under this section:
- (a) as if a reference to a legislative instrument (other than in subparagraph 14(1)(a)(ii) and subsection 14(3) of that Act) were a reference to a rule of court; and
 - (b) as if a reference to a rule-maker were a reference to the Chief Judge (however described) acting on behalf of the Judges of that Court; and
 - (c) subject to such further modifications or adaptations as are provided for in regulations made under paragraph 125(1)(baa) of this Act.

29 After paragraph 125(1)(bc)

Insert:

- (bd) prescribing, or providing for or in relation to, anything that may be dealt with in Rules of Court made under paragraph 123A(1)(r), (s), (t), (u), (v), (w), (x), (y), (z), (za) or (zb); and

Child Support (Assessment) Act 1989

30 Subsection 100(1)

Omit “and the related Federal Circuit and Family Court of Australia (Division 2) Rules”, insert “, the related Federal Circuit and Family Court of Australia (Division 2) Rules and any Rules made under section 123A of the *Family Law Act 1975*”.

Child Support (Registration and Collection) Act 1988

31 Subsection 105(1)

Omit “and the related Federal Circuit and Family Court of Australia (Division 2) Rules”, substitute “, the related Federal Circuit and Family Court of Australia (Division 2) Rules and any Rules made under section 123A of the *Family Law Act 1975*”.

32 Continuity of Rules of Court

The amendments made by items 24 to 27 of this Schedule:

- (a) do not affect the continuity of any Rules of Court made for the purposes of section 123 of the *Family Law Act 1975* that are in force immediately before the commencement of this item; and
- (b) to avoid doubt, do not prevent the amendment or repeal of those Rules of Court.

Part 3—Review of approved methods and factors for valuing superannuation interests

Family Law Act 1975

32A Subsection 90XT(3)

Omit “paragraph (2)(a) may provide for the amount”, substitute “subparagraph (1)(a)(i) or paragraph (2)(a) may provide for the amount concerned”.

33 Subsection 90XT(3)

After “the regulations”, insert “(each of these is an *approved method or factor*)”.

34 After subsection 90XT(3)

Insert:

- (3A) If there is an approved method or factor for a superannuation interest in an eligible superannuation plan, the Minister may, in circumstances prescribed by the regulations, give a written direction to the trustee of that plan requiring the trustee, within the period specified in the direction, to do a thing prescribed by the regulations in relation to the approved method or factor.
- (3B) The regulations may prescribe matters in relation to the content of a direction.
- (3C) A direction made under subsection (3A) is not a legislative instrument.
- (3D) A person commits an offence if:
 - (a) the person receives a direction from the Minister under subsection (3A); and
 - (b) the person does not comply with the direction.

Penalty: 50 penalty units.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

34A Subsection 90YY(4)

Omit “paragraph (2)(a) may provide for the amount”, substitute “subparagraph (1)(a)(i) or paragraph (2)(a) may provide for the amount concerned”.

35 Subsection 90YY(4)

After “the regulations”, insert “(each of these is an *approved method or factor*)”.

36 After subsection 90YY(4)

Insert:

- (4A) If there is an approved method or factor for a superannuation interest in an eligible superannuation plan, the Minister may, in circumstances prescribed by the regulations, give a written direction to the trustee of that plan requiring the trustee, within the period specified in the direction, to do a thing prescribed by the regulations in relation to the approved method or factor.
- (4B) The regulations may prescribe matters in relation to the content of a direction.
- (4C) A direction made under subsection (4A) is not a legislative instrument.
- (4D) A person commits an offence if:
 - (a) the person receives a direction from the Minister under subsection (4A); and
 - (b) the person does not comply with the direction.

Note: The penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

Penalty: 50 penalty units.

Part 4—Separation declaration requirements

Family Law Act 1975

37 Subsections 90XP(2A) to (12)

Repeal the subsections, substitute:

Spouses who are parties to a marriage

- (3) If the spouses are parties to a marriage, the declaration must state:
- (a) that the spouses are married, but are separated at the declaration time; or
 - (b) if either or both of the spouses have died—that the spouses were married, but separated at the most recent time when both spouses were alive.
- (4) In subsection (3), *separated* has the same meaning as in section 48 (as affected by sections 49 and 50).

Spouses who are parties to a de facto relationship

- (5) If the spouses are parties to a de facto relationship, the declaration must state:
- (a) that the spouses lived in a de facto relationship, but are separated at the declaration time; or
 - (b) if either or both of the spouses have died—that the spouses lived in a de facto relationship, but were separated at the most recent time when both spouses were alive.

38 Section 90XQ

Repeal the section.

39 Subsections 90YU(3) to (7)

Repeal the subsections, substitute:

- (3) The declaration must state:
- (a) that the parties lived in a de facto relationship, but are separated, at the declaration time; or

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- (b) if either or both of the parties to the de facto relationship have died—that the parties lived in a de facto relationship, but were separated at the most recent time when both parties were alive.

40 Section 90YV

Repeal the section.

Schedule 5—Review of amendments

1 Review of amendments

- (1) The Minister must arrange for the conduct of a review of the operation of the amendments made by this Act. The review is to start as soon as practicable after the third anniversary of the day that Division 1 of Part 1 of Schedule 1 to this Act commences and be completed within 12 months of the day the review starts.
- (2) The Minister must arrange for a report of the review to be prepared.
- (3) The Minister must table copies of the report in each House of the Parliament within 15 sitting days of that House after completion of the report.

*[Minister's second reading speech made in—
House of Representatives on 22 August 2024
Senate on 11 September 2024]*

(99/24)