

2022-2023-2024

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Presented and read a first time

Family Law Amendment Bill (2024)

No. ~~2) 2023~~ , 2024

No. , 2023

(Attorney-General)

**A Bill for an Act to amend legislation relating to
family law, and for related purposes**

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1 **A Bill for an Act to amend legislation relating to**
2 **family law, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Family Law Amendment Act* ~~(No. 2)~~ 2024.

6 **2 Commencement**

7 (1) Each provision of this Act specified in column 1 of the table
8 commences, or is taken to have commenced, in accordance with
9 column 2 of the table. Any other statement in column 2 has effect
10 according to its terms.
11

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.	
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.	
3. Schedule 1, Part 1, Division 2	Immediately after the commencement of the provisions covered by table item 2.	
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.	
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.	
6. Schedule 2	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
7. Schedule 3, Part 1 to 3	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
8. Schedule 3, Part 2, 3 and 4	The day after this Act receives the Royal Assent.	
9. Schedule 4 , Part 5, Division 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. Schedule 4 , item 153, Part 5, Division 2	The later of: (a) immediately after the commencement of the provisions covered by table item 9; and (b) immediately after the commencement of Schedule 5 to the Family Law Amendment Act 2023.	

Family Law Amendment Bill 2024
Submission 19 - Attachment 2
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Clarification of inadmissibility provisions **Part 2**

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur covered by table item 6.	
11. Schedule 4, item 16 <u>Part 1, Divisions 1 to 3</u>	<p>The later of:</p> <p>(a) immediately day after the provisions covered by table item 9; and</p> <p>(b) immediately after end of the commencement period of Division 1 of Part 1 of Schedule 2 to 6 months beginning on the Family Law Amendment day this Act 2023.</p> <p>However, receives the provisions do not commence at all if the event mentioned in paragraph (b) does not occur Royal Assent.</p>	
12. Schedule 4, Part 1, Division 5 <u>4</u>	Immediately after the commencement of the provisions covered by table item 5.	
13. Schedule 4, Part 2, Division 1 and 3 <u>Parts 2, Division 1 and 3</u>	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
14. Schedule 4, Part 2, Division 2 <u>4, Part 2, Division 2</u>	<p>The later of:</p> <p>(a) immediately day after the provisions covered by table item 13; and</p> <p>(b) immediately after the commencement of Division 1 of Part 1 of Schedule 2 to the Family Law Amendment <u>this</u> Act 2023.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur receives the Royal Assent.</p>	
15. Schedule 4, Part 2, Division 3	Immediately after the commencement of the provisions covered by table item 6.	

1
2
3

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.

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

4 **3 Schedules**

5 Legislation that is specified in a Schedule to this Act is amended or
6 repealed as set out in the applicable items in the Schedule
7 concerned, and any other item in a Schedule to this Act has effect
8 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

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Schedule 1 Property reforms
Part 1 Property framework

- 1 (ii) sabotaging the family member’s employment or income
2 or potential employment or income; or
3 (iii) forcing the family member to take on a financial or legal
4 liability, or status; or
5 (iv) forcibly or without the family member’s knowledge,
6 accumulating debt in the family member’s name;
7 (b) unreasonably withholding financial support needed to meet
8 the reasonable living expenses of the family member, or the
9 family member’s child (including at a time when the family
10 member is entirely or predominantly dependent on the person
11 for financial support);
12 (c) coercing a family member (including by use of threats,
13 physical abuse or emotional or psychological abuse):
14 (i) to give or seek money, assets or other items as dowry;
15 or
16 (ii) to do or agree to things in connection with a practice of
17 dowry;
18 (d) hiding or falsely denying things done or agreed to by the
19 family member, including hiding or falsely denying the
20 receipt of money, assets or other items, in connection with a
21 practice of dowry.

22 **4 Paragraph 72(1)(a)**

23 Omit “and control”.

24 **5 At the end of paragraph 72(1)(a)**

25 Add “or”.

26 **6 Before paragraph 75(2)(a)**

27 Insert:

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

31 **7 Paragraph 75(2)(c)**

32 Repeal the paragraph, substitute:

- 33 (c) the extent to which either party has the care of a child of the
34 marriage who has not attained the age of 18 years, including
-

1 the need of either party to provide appropriate housing for
2 such a child; and

3 **8 Paragraph 75(2)(o)**

4 Repeal the paragraph.

5 **9 At the end of subsection 75(2)**

6 Add:

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

9 **10 Before subsection 79(1)**

10 Insert:

11 *Orders in property settlement proceedings*

12 **11 Subsection 79(1)**

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

14 **12 At the end of subsection 79(1)**

15 Add:

16 ²Note: _____ Subsection (6) relates to property that is a companion animal.

17 **13 Subsections 79(1A) to (21C)**

18 Repeal the subsections.

19 **14 Subsection 79(2)**

20 Omit “shall”, substitute: “must”.

21 **15 After subsection 79(2)**

22 Insert:

23 (23) In ~~making orders~~ considering what order (if any) should be made
24 under this section in property settlement proceedings, the court:

25 (a) is to identify:

26 (i) _____ the existing legal and equitable rights and interests in,
27 ~~and liabilities in respect of, any property that is the any~~

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Schedule 1 Property reforms Part 1 Property framework

1 property of the parties to the marriage or either of them;
2 and

3 ~~(ii) the existing liabilities of the parties to the marriage or~~
4 ~~either of them; and~~

5 (b) is to take into account ~~(except for the purpose of making an~~
6 ~~order with respect to the ownership of property that is a~~
7 ~~companion animal);~~

8 ~~(i) the considerations set out in subsection (4)~~
9 ~~(considerations relating to contributions); and~~

10 ~~(c) is to take into account (ii) the considerations set~~
11 ~~out in subsection (5) (considerations relating to current~~
12 ~~and future circumstances); and).~~

13 ~~(d) must not make an order unless satisfied that, in all the~~
14 ~~circumstances, it is just and equitable for the court to make~~
15 ~~the order.~~

16 Note: ~~This subsection does not require the court to do things mentioned in~~
17 ~~paragraphs (2)(a) to (d) in any particular sequence.~~

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

20 *Considerations relating to contributions*

21 ~~3 After paragraph 79(4)(c)~~

22 ~~16 Subsection 79(4)~~

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

28 ~~17 Paragraphs 79(4)(a) and (b)~~

29 ~~Omit “them; and”, substitute “them;”.~~

30 ~~18 Paragraph 79(4)(c)~~

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

1 **19 After paragraph 79(4)(c)**

2 Insert:

3 ~~Insert:~~

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

8 ~~(cb) the effect of any economic or financial abuse to which a party~~
9 ~~to the marriage has been subjected by the other party; and~~

10 ~~(cc) the effect of any wastage, by a party to the marriage, of~~
11 ~~property or financial resources of either of the parties to the~~
12 ~~marriage or both of them; and~~

13 ~~(cd) any debts incurred by either of the parties to the marriage or~~
14 ~~both of them; and~~

15 **420 Paragraph 79(4)(d)**

16 Omit “and”.

17 **21 Paragraph 79(4)(e)**

18 Repeal the paragraph.

19 **522 Paragraph 79(4)(f)**

20 Omit “and”.

21 **23 Paragraph 79(4)(g)**

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

23 **24 After subsection 79(4)**

24 Insert:

25 *Considerations relating to current and future circumstances*

26 (5) For the purposes of ~~paragraph (2)(c)subparagraph (3)(b)(ii)~~, the
27 court is to take into account the following considerations ~~in making~~
28 ~~orders under subsection (1)~~, so far as they are relevant:

29 (a) the effect of any family violence, to which one party to the
30 marriage has subjected or exposed the other party, on the

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Schedule 1 Property reforms
Part 1 Property framework

- 1 current and future circumstances of the other party, including
2 on any of the matters mentioned elsewhere in this subsection;
- 3 (b) the age and state of health of each of the parties to the
4 marriage;
- 5 (c) the income, property and financial resources of each of the
6 parties to the marriage and the physical and mental capacity
7 of each of them for appropriate gainful employment;
- 8 (d) whether the effect of any material wastage, caused
9 intentionally or recklessly by a party to the marriage, of
10 property or financial resources of either of the parties to the
11 marriage or both of them;
- 12 (e) any liabilities incurred by either of the parties to the marriage
13 or both of them, including the nature of the liabilities and the
14 circumstances relating to them;
- 15 (f) the extent to which either party to the marriage has the care
16 ~~or control~~ of a child of the marriage who has not attained the
17 age of 18 years, including the need of either party to provide
18 appropriate housing for such a child;
- 19 (eg) commitments of each of the parties to the marriage that are
20 necessary to enable the party to support themselves and any
21 child or other person that the party has a duty to maintain;
- 22 (fh) the responsibilities of either party to the marriage to support
23 any other person;
- 24 (gi) the eligibility of either party to the marriage for a pension,
25 allowance or benefit under:
- 26 (i) any law of the Commonwealth, of a State or Territory or
27 of another country; or
- 28 (ii) any superannuation fund or scheme, whether the fund or
29 scheme was established, or operates, within or outside
30 Australia;
- 31 (hj) if either party to the marriage is eligible for a pension,
32 allowance or benefit as mentioned in paragraph (gi)—the rate
33 at which it is being paid to the party;
- 34 (ik) if the parties to the marriage have separated or divorced, a
35 standard of living that in all the circumstances is reasonable;
- 36 (jl) the extent to which an alteration of the interests of the parties
37 to the marriage in any property would enable a party to
-

- 1 undertake education or establish a business or otherwise
2 obtain an adequate income;
- 3 ~~(km)~~ the effect of any proposed order on the ability of a creditor of
4 a party to the marriage to recover the creditor's debt, so far as
5 that effect is relevant;
- 6 ~~(kn)~~ the extent to which each party to the marriage has contributed
7 to the income, earning capacity, property and financial
8 resources of the other party;
- 9 ~~(mo)~~ the duration of the marriage and the extent to which it has
10 affected the earning capacity of each party to the marriage;
- 11 ~~(np)~~ the need to protect a party to the marriage who wishes to
12 continue that party's role as a parent;
- 13 ~~(oq)~~ if either party to the marriage is cohabiting with another
14 person—the financial circumstances relating to the
15 cohabitation;
- 16 ~~(p)~~ ~~the terms of any order made, or proposed to be made, under~~
17 ~~section 75 in relation to the maintenance of a party to the~~
18 ~~marriage;~~
- 19 ~~(q)~~ ~~(r)~~ the terms of any order or declaration made, or proposed
20 to be made, under Part VIIIAB in relation to:
21 (i) a party to the marriage; or
22 (ii) a person who is a party to a de facto relationship with a
23 party to the marriage; or
24 (iii) the property of a person covered by subparagraph (i)
25 and of a person covered by subparagraph (ii), or of
26 either of them; or
27 (iv) vested bankruptcy property in relation to a person
28 covered by subparagraph (i) or (ii);
- 29 ~~(rs)~~ any child support under the *Child Support (Assessment) Act*
30 *1989* that a party to the marriage ~~has provided~~, is to provide,
31 or might be liable to provide in the future, for a child of the
32 marriage;
- 33 ~~(s)~~ ~~any fact or circumstance which, in the opinion of the court,~~
34 ~~the justice of the case requires to be taken into account;~~
- 35 (t) the terms of any financial agreement that is binding on the
36 parties to the marriage;
- 37 (u) the terms of any Part VIIIAB financial agreement that is
38 binding on a party to the marriage.;

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Part 1 Property framework

1 (v) any other fact or circumstance which, in the opinion of the
2 court, the justice of the case requires to be taken into account.

3 *Considerations relating to companion animals*

4 (6) In property settlement proceedings, so far as they are with respect
5 to property that is a companion animal, the court may order:

6 (a) that only one party to the marriage, or only one person who
7 has been joined as a party to the proceedings, is to have
8 ownership of the companion animal; or

9 (b) that the companion animal be sold.

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

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

13 (7) In considering what order (if any) should be made under this
14 section with respect to the ownership of property that is a
15 companion animal, the court is to take into account the following
16 considerations, so far as they are relevant:

17 (a) the circumstances in which the companion animal was
18 acquired;

19 (b) who has ownership or possession of the companion animal;

20 (c) the extent to which each party cared for, and paid for the
21 maintenance of, the companion animal;

22 (d) any family violence to which one party has subjected or
23 exposed the other party;

24 (e) any history of actual or threatened cruelty or abuse by a party
25 towards the companion animal;

26 (f) any attachment by a party, or a child of the marriage, to the
27 companion animal;

28 (g) the demonstrated ability of each party to care for and
29 maintain the companion animal in the future, without support
30 or involvement from the other party;

31 (h) any other fact or circumstance which, in the opinion of the
32 court, the justice of the case requires to be taken into account.

1 **79AA Other matters in relation to alteration of property interests**

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

5 *Enforcement of order after death of party*

6 ~~(1A)~~ (1A) An order made under section 79 in property settlement proceedings
7 may, after the death of a party to the marriage, be enforced on
8 behalf of, or against, ~~(as the case may be),~~ the estate of the
9 deceased party.

10 *Adjournment of property settlement proceedings*

11 (2) The court may (subject to subsection (2A)) adjourn property
12 settlement proceedings on the terms and conditions the court
13 considers appropriate, for the period the court considers necessary
14 to enable the parties to the marriage to consider the likely effects
15 (if any) of an order under section 79 on the marriage or the
16 children of the marriage.

17 (2A) Subsection (2) does not apply if the parties to the marriage are:

- 18 (a) parties to concurrent, pending or completed divorce or
19 validity of marriage proceedings; or
20 (b) parties to a marriage who have divorced under the law of an
21 overseas country, if that divorce is recognised as valid in
22 Australia under section 104; or
23 (c) parties to a marriage that has been annulled under the law of
24 an overseas country, if that annulment is recognised as valid
25 in Australia under section 104; or
26 (d) parties to a marriage who have been granted a legal
27 separation under the law of an overseas country, if that legal
28 separation is recognised as valid in Australia under
29 section 104.

30 (3) Nothing in subsection (2) limits any other power of the court to
31 adjourn property settlement proceedings.

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Schedule 1 Property reforms
Part 1 Property framework

- 1 (4) A party to property settlement proceedings that have been
2 adjourned under subsection (2) may apply to the court for the
3 hearing of the proceedings to be continued if:
4 (a) the period of the adjournment has not expired; and
5 (b) any of the following subparagraphs apply:
6 (i) one or both of the parties to the marriage institutes
7 divorce or validity of marriage proceedings;
8 (ii) the parties to the marriage have divorced under the law
9 of an overseas country and the divorce is recognised as
10 valid in Australia under section 104;
11 (iii) the marriage is annulled under the law of an overseas
12 country and the annulment is recognised as valid in
13 Australia under section 104;
14 (iv) the parties to the marriage are granted a legal separation
15 under the law of an overseas country and the legal
16 separation is recognised as valid in Australia under
17 section 104.

18 *Likely significant change in financial circumstances*

19 **25 Subparagraph 90SF(1)(b)(i)**

20 Omit “and control”.

21 **26 Before paragraph 90SF(3)(a)**

22 Insert:

23 (aa) the effect of any family violence, to which one party has
24 subjected or exposed the other party, on the current and
25 future circumstances of the other party, including on any of
26 the matters mentioned elsewhere in this subsection; and

27 **27 Paragraph 90SF(3)(c)**

28 Repeal the paragraph, substitute:

29 (c) the extent to which either party has the care of a child of the
30 subject de facto relationship who has not attained the age of
31 18 years, including the need of either party to provide
32 appropriate housing for such a child; and

1 **28 Paragraph 90SF(3)(k)**

2 Before “de facto”, insert “subject”.

3 **29 Paragraph 90SF(3)(r)**

4 Repeal the paragraph.

5 **30 At the end of subsection 90SF(3)**

6 Add:

7 6; and (u) any other fact or circumstance which, in the opinion of the
8 court, the justice of the case requires to be taken into account.

9 **31 Before subsection 90SM(1)**

10 Insert:

11 *Orders in property settlement proceedings*

12 **32 Subsection 90SM(1)**

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

14 **33 At the end of subsection 90SM(1)**

15 Add:

16 ⁷Note 4: Subsection (6) relates to property that is a companion animal.

17 **34 Subsections 90SM(2) and (3)**

18 Repeal the subsections, substitute:

19 (2) ~~In making orders~~ The court must not make an order under this
20 section, unless it is satisfied that, in all the court circumstances, it
21 is just and equitable to make the order.

22 (3) In considering what order (if any) should be made under this
23 section in property settlement proceedings, the court:

24 (a) is to identify:

25 (i) the existing legal and equitable rights and interests in,
26 and liabilities in respect of, any property that is the any
27 property of the parties to the de facto
28 relationshipsrelationship or either of them; and

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Schedule 1 Property reforms
Part 1 Property framework

- 1 (ii) the existing liabilities of the parties to the de facto
2 relationship or either of them; and
3 (b) is to take into account (except for the purpose of making an
4 order with respect to the ownership of property that is a
5 companion animal):
6 (i) the considerations set out in subsection (4)
7 (considerations relating to contributions); and
8 ~~(e) is to take into account (ii) the considerations set~~
9 ~~out in subsection (5) (considerations relating to current~~
10 ~~and future circumstances); and).~~
11 ~~(d) must not make an order unless satisfied that, in all the~~
12 ~~circumstances, it is just and equitable for the court to make~~
13 ~~the order.~~
14 Note: This subsection does not require the court to do things mentioned in
15 paragraphs (2)(a) to (d) in any particular sequence.
16 Note: See subsections (6) and (7) in relation to orders with respect to
17 property that is a companion animal.

18 *Considerations relating to contributions*

19 **835 Subsection 90SM(4)**

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

25 **36 Paragraphs 90SM(4)(a) and (b)**

26 Omit “them; and”, substitute “them;”.

27 **37 Paragraph 90SM(4)(c)**

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

29 **38 After paragraph 90SM(4)(c)**

30 Insert:

31 ~~Insert:~~

32 (ca) the effect of any family violence, to which one party to the de
33 facto relationship has subjected or exposed the other party,

1 on the ability of a party to the de facto relationship to make
2 the kind of contributions referred to in paragraphs (a), (b) and
3 (c); ~~and~~
4 ~~(cb) the effect of any economic or financial abuse to which a party~~
5 ~~to the de facto relationship has been subjected by the other~~
6 ~~party; and~~
7 ~~(cc) the effect of any wastage, by a party to the de facto~~
8 ~~relationship, of property or financial resources of either of the~~
9 ~~parties to the de facto relationship or both of them; and~~
10 ~~(cd) any debts incurred by either of the parties to the de facto~~
11 ~~relationship or both of them; and~~

12 **939 Paragraph 90SM(4)(d)**

13 Omit “and”.

14 **40 Paragraph 90SM(4)(e)**

15 Repeal the paragraph.

16 **1041 Paragraph 90SM(4)(f)**

17 Omit “and”.

18 **42 Paragraph 90SM(4)(g)**

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

20 **43 After subsection 90SM(4)**

21 ~~Insert:~~

22 Insert:

23 *Considerations relating to current and future circumstances*

24 (5) For the purposes of ~~paragraph (2)(c)~~~~subparagraph (3)(b)(ii)~~, the
25 court is to take into account the following considerations ~~in making~~
26 ~~orders under subsection (1)~~, so far as they are relevant:

27 (a) the effect of any family violence, to which one party to the de
28 facto relationship (the *subject de facto relationship*) has
29 subjected or exposed the other party, on the current and
30 future circumstances of the other party, including on any of
31 the matters mentioned elsewhere in this subsection;

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- (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) ~~whether either 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 or control 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;
 - (eg) 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;
 - (fh) the responsibilities of either party to the subject de facto relationship to support any other person;
 - (gi) 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;
 - (hj) if either party to the subject de facto relationship is eligible for a pension, allowance or benefit as mentioned in paragraph (gi)—the rate at which it is being paid to the party;
 - (ik) a standard of living that in all the circumstances is reasonable;
 - (jl) the extent to which an alteration of the interests of the parties to the subject de facto relationship in any property would
-

- 1 enable a party to undertake education or establish a business
2 or otherwise obtain an adequate income;
- 3 (~~km~~) the effect of any proposed order on the ability of a creditor of
4 a party to the subject de facto relationship to recover the
5 creditor's debt, so far as that effect is relevant;
- 6 (~~kn~~) the extent to which each party to the subject de facto
7 relationship has contributed to the income, earning capacity,
8 property and financial resources of the other party;
- 9 (~~mo~~) the duration of the subject de facto relationship and the extent
10 to which it has affected the earning capacity of each party to
11 the subject de facto relationship;
- 12 (~~np~~) the need to protect a party to the de facto relationship who
13 wishes to continue that party's role as a parent;
- 14 (~~oq~~) if either party to the subject de facto relationship is
15 cohabiting with another person—the financial circumstances
16 relating to the cohabitation;
- 17 ~~(p) the terms of any order made, or proposed to be made, under~~
18 ~~section 90SF in relation to the maintenance of a party to the~~
19 ~~de facto relationship;~~
- 20 ~~(q)~~ (~~r~~) the terms of any order or declaration made, or proposed
21 to be made, under this Part in relation to:
- 22 (i) a party to the subject de facto relationship (in relation to
23 another de facto relationship); or
- 24 (ii) a person who is a party to another de facto relationship
25 with a party to the subject de facto relationship; or
- 26 (iii) the property of a person covered by subparagraph (i)
27 and of a person covered by subparagraph (ii), or of
28 either of them; or
- 29 (iv) vested bankruptcy property in relation to a person
30 covered by subparagraph (i) or (ii);
- 31 (~~rs~~) the terms of any order or declaration made, or proposed to be
32 made, under Part VIII in relation to:
- 33 (i) a party to the subject de facto relationship; or
34 (ii) a person who is party to a marriage with a party to the
35 subject de facto relationship; or
- 36 (iii) the property of a person covered by subparagraph (i)
37 and of a person covered by subparagraph (ii), or of
38 either of them; or

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- 1 (iv) vested bankruptcy property in relation to a person
2 covered by subparagraph (i) or (ii);
3 (st) any child support under the *Child Support (Assessment) Act*
4 *1989* that a party to the subject de facto relationship ~~has~~
5 ~~provided~~, is to provide, or might be liable to provide in the
6 future, for a child of the subject de facto relationship;
7 ~~(t) any fact or circumstance which, in the opinion of the court,~~
8 ~~the justice of the case requires to be taken into account;~~
9 ~~(u) the terms of any financial agreement that is binding on a~~
10 ~~party to the de facto relationship;~~
11 ~~(v) (u) the terms of any Part VIIIAB financial agreement that~~
12 ~~is binding on either or both of the parties to the subject de~~
13 ~~facto relationship;~~
14 ~~(v) the terms of any financial agreement that is binding on a~~
15 ~~party to the subject de facto relationship;~~
16 ~~(w) any other fact or circumstance which, in the opinion of the~~
17 ~~court, the justice of the case requires to be taken into account.~~

18 Considerations relating to companion animals

- 19 ~~(6) In property settlement proceedings, so far as they are with respect~~
20 ~~to property that is a companion animal, the court may order:~~
21 ~~(a) that only one party to the de facto relationship, or only one~~
22 ~~person who has been joined as a party to the proceedings, is~~
23 ~~to have ownership of the companion animal; or~~
24 ~~(b) that the companion animal be sold.~~

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

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

- 28 ~~(7) In considering what order (if any) should be made under this~~
29 ~~section with respect to the ownership of property that is a~~
30 ~~companion animal, the court is to take into account the following~~
31 ~~considerations, so far as they are relevant:~~
32 ~~(a) the circumstances in which the companion animal was~~
33 ~~acquired;~~
34 ~~(b) who has ownership or possession of the companion animal;~~
35 ~~(c) the extent to which each party cared for, and paid for the~~
36 ~~maintenance of, the companion animal;~~

- 1 (d) any family violence to which one party has subjected or
2 exposed the other party;
3 (e) any history of actual or threatened cruelty or abuse by a party
4 towards the companion animal;
5 (f) any attachment by a party, or a child of the de facto
6 relationship, to the companion animal;
7 (g) the demonstrated ability of each party to care for and
8 maintain the companion animal in the future, without support
9 or involvement from the other party;
10 (h) any other fact or circumstance which, in the opinion of the
11 court, the justice of the case requires to be taken into account.

12 **90SMA Other matters in relation to alteration of property interests**

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

16 *Enforcement of order after death of party*

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

21 *Likely significant change in financial circumstances*

22 **44 Subparagraph 90YZD(4)(e)(iii)**

23 Repeal the subparagraph, substitute:

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

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1 **Division 2—Consequential property framework**
2 **amendments**

3 *Family Law Act 1975*

4 **1445** Before subsection ~~79AA(8)~~

5 Insert:

6 *Death of party before property settlement proceedings complete*

7 **1246** Before subsection ~~79AA(9)~~

8 Insert:

9 *Attendance of parties at conference etc. before orders made*

10 ~~47 Attendance of parties at conference etc. before orders made~~

11 **13** Subsection ~~79AA(9)~~

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

13 **1448** Before subsection ~~79AA(10)~~

14 Insert:

15 *Creditors etc. entitled to become party to proceedings*

16 ~~Insert:~~

17 ~~49 Creditors etc. entitled to become party to proceedings~~

18 **15** Subsections ~~79AA(10)~~ and **(10B)**

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

20 **1650** Before subsection ~~79AA(11)~~

21 Insert:

22 *Bankruptcy trustee to become party to proceedings on application*

23 **1751** Paragraphs **79AA(11)(a)** and **(d)**

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

1 **1852** Before subsection ~~79AA~~(14)

2 ~~Insert:~~

3 Insert:

4 *Trustee of insolvency agreement to become party to proceedings*
5 *on application*

6 **1953** Paragraphs 79AA(14)(a) and (d)

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

8 **2054** Before subsection ~~79AA~~(17)

9 Insert:

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

12 **2155** Subsection ~~79AA~~(17)

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

14 **2256** Subsection 85A(2)

15 Omit “subsection 79(4)”, substitute “subsections 79(4), (5) and (57)”.

16 **2357** Before subsection ~~90SMA~~(8)

17 Insert:

18 *Death of party before property settlement proceedings complete*

19 **2458** Before subsection ~~90SMA~~(9)

20 ~~Insert:~~

21 ~~*Attendance of parties at conference etc. before orders made*~~

22 Insert:

23 *Attendance of parties at conference etc. before orders made*

24 **2559** Subsection ~~90SMA~~(9)

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

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Part 1 Property framework

1 **2660** Before subsection ~~90SMA(10)~~

2 ~~Insert:~~

3 ~~*Creditors etc. entitled to become party to proceedings*~~

4 Insert:

5 *Creditors etc. entitled to become party to proceedings*

6 **2761** Subsections ~~90SMA(10), (12) and (13)~~

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

8 **2862** Before subsection ~~90SMA(14)~~

9 Insert:

10 *Bankruptcy trustee to become party to proceedings on application*

11 **2963** Paragraphs ~~90SMA(14)(a) and (d)~~

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

13 **3064** Before subsection ~~90SMA(17)~~

14 Insert:

15 *Trustee of insolvency agreement to become party to proceedings*
16 *on application*

17 **3165** Paragraphs ~~90SMA(17)(a) and (d)~~

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

19 **3266** Before subsection ~~90SMA(20)~~

20 Insert:

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

23 **3367** Subsection ~~90SMA(20)~~

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

1 **Division 3—Application of property framework**
2 **amendments**

3 **3468 Application provision**

4 The amendments of the *Family Law Act 1975* made by Divisions 1 and
5 2 of this Part apply in relation to the following proceedings ~~if~~:

6 (a) ~~for~~ proceedings instituted ~~by an application filed in a court —~~
7 ~~the application is filed~~ on or after the day this Part item
8 commences; ~~or~~

9 (b) ~~in any other case — the application instituting the~~ proceedings
10 ~~is made on or after~~ instituted before, and not finally
11 determined before, the day this Part item commences, other
12 than proceedings in respect of which a final hearing has
13 commenced before that day.

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Schedule 1 Property reforms

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

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

3 **Division 1—Main amendments**

4 *Family Law Act 1975*

5 **35—Subsections69 Subsection 4(1) (definition of *child-related***
6 ***proceedings*)**

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

8 **70 Subsection 4(1)**

9 Insert:

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

12 **71 Section 60B (note)**

13 Omit “Note”, substitute “Note 1”.

14 **72 At the end of section 60B**

15 Add:

16 (Note 2): Division 4 of Part XI sets out principles for conducting child-related
17 proceedings under this Part. The court must give effect to the
18 principles in performing duties and (3)exercising powers in relation to
19 child-related proceedings or making other decisions about the conduct
20 of child-related proceedings. Division 4 of Part XI also deals with
21 matters relating to evidence in child-related proceedings.

22 **73 Section 60C (table item 12A)**

23 Repeal the subsections, substitute: item.

24 **74 At the end of section 69A**

25 Add:

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

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

3 **75 Division 12A of Part VII**

4 Repeal the Division.

5 **76 Part XI (note to Part heading)**

6 Repeal the note.

7 **77 Subsection 102A(5) (note)**

8 Omit “69ZV”, substitute “102NM”.

9 **78 At the end of Part XI**

10 Add:

11 **Division 4—Principles for conducting child-related**
12 **proceedings and property or certain other**
13 **proceedings**

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

15 **102ND Proceedings to which this Division applies**

16 (1) This Division applies to proceedings ~~that are wholly under~~
17 Part VII.

18 (2) This Division also applies to:

19 (a) proceedings between parties that are partly under ~~this~~
20 Part VII; and

21 (b) other proceedings between the parties that involve the court
22 exercising jurisdiction under this Act (including proceedings
23 that arise from the breakdown of the parties’ marital
24 relationship or are a de facto financial cause) if the parties
25 are, or were, parties to proceedings under ~~this Part; VII and;~~

26 Note: (i) the parties consent to this Division 4 of Part XI
27 applies if there are property or other non-child-related
28 applying to the proceedings between the parties and
29 there are no child-related; or

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1 (ii) the court orders that this Division applies to the
2 proceedings ~~between~~(whether or not the parties-
3 consent).

4 ~~36 Subsections 69ZM(5) and (6)~~

5 ~~Repeal the subsections.~~

6 ~~37 At the end of Part XI~~

7 ~~Add:~~

8 ~~**Division 4 Principles for conducting property or other**~~
9 ~~**non-child-related (3) This Division also**~~
10 ~~**applies to proceedings**~~

11 ~~**Subdivision A Proceedings to which this Division applies**~~

12 ~~**102ND Proceedings to which this Division applies**~~

13 ~~(1) This Division applies to proceedings_ between parties if:~~

14 (a) the proceedings involve the court exercising jurisdiction
15 under this Act (including proceedings that arise from the
16 breakdown of the parties' marital relationship or are
17 a de facto financial cause); and

18 (b) there are no child-related proceedings between the parties;
19 and

20 ~~Note: Division 12A of Part VII applies (c) either:~~

21 (i) the parties consent to ~~child-related~~ this Division
22 applying to the proceedings. ~~Child-related proceedings~~
23 may also deal with property and financial matters (see;
24 or

25 (ii) the court orders that this Division applies to the
26 proceedings (whether or not the parties consent).

27 (4) In deciding whether to make an order under
28 subparagraph (2)(b)(ii), the court must have regard to the principles
29 in section 102NE.

30 (5) In deciding whether to make an order under
31 subparagraph (3)(c)(ii), the court must have regard to the principles

- 1 in section 102NE (other than subsection (3),
2 paragraph ~~69ZM(2)(b))-(5)(a) and subsection (6) of that section).~~
- 3 (26) Proceedings to which this Division applies under subsection (1) or
4 (2) are *child-related proceedings*.
- 5 (7) Proceedings to which this Division applies under subsection (3) are
6 *property or other non-child-related proceedings*.
- 7 (8) Consent given for the purposes of subparagraph (2)(b)(i) or
8 (3)(c)(i) must be:
- 9 (a) free from coercion; and
10 (b) given in the form prescribed by the applicable Rules of
11 Court.
- 12 (9) A party to proceedings may, with the leave of the court, revoke a
13 consent given for the purposes of subparagraph (2)(b)(i) or
14 (3)(c)(i).

15 **Subdivision B—Principles for conducting child-related**
16 **proceedings and property or certain other**
17 **non-child-related proceedings**

18 **102NE Principles for conducting child-related proceedings and**
19 **property or certain other ~~non-child-related~~ proceedings**

20 *Application of the principles*

- 21 (1) The court must give effect to the principles in this section:
22 (a) in performing duties and exercising powers (whether under
23 this Division or otherwise) in relation to child-related
24 proceedings or property or other non-child-related
25 proceedings; and
26 (b) in making other decisions about the conduct of child-related
27 proceedings or property or other non-child-related
28 proceedings.
- 29 Failure to do so does not invalidate the proceedings or any order
30 made in them.
- 31 (2) Regard is to be had to the principles that are relevant to the
32 particular proceedings in interpreting this Division.

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

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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 (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 2*~~

~~(4) The second principle is that the proceedings are to be conducted in a way that will safeguard the parties to the proceedings against family violence.~~

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.~~

1 **102NF This Division also applies to proceedings in Chambers**

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

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

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

14 **102NG Powers under this Division may be exercised on court's own**
15 **initiative**

16 The court may exercise a power under this Division:

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

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

22 **102NH General duties**

23 (1) In giving effect to the relevant principles in section 102NE, the
24 court must:

- 25 (a) ask each party to the proceedings whether the party considers
26 that the party, or another party to the proceedings, has been,
27 or is at risk of being, subjected to family violence; and

28 ~~(b) (b) in child-related proceedings—ask each party to the~~
29 ~~proceedings whether the party considers that the child~~
30 ~~concerned has been, or is at risk of being, subjected to, or~~
31 ~~exposed to, abuse, neglect or family violence; and~~

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- 1 _____ (c) decide which of the issues in the proceedings require full
2 investigation and hearing and which may be disposed of
3 summarily; and
- 4 (ed) decide the order in which the issues are to be decided; and
- 5 (de) give directions or make orders about the timing of steps that
6 are to be taken in the proceedings; and
- 7 (ef) in deciding whether a particular step is to be taken, ~~and~~
8 consider whether the likely benefits of taking the step justify
9 the costs of taking it; and
- 10 (fg) make appropriate use of technology; and
- 11 (gh) if the court considers it appropriate—encourage the parties to
12 use family dispute resolution or, in child-related proceedings,
13 family counselling; and
- 14 (hi) deal with as many aspects of the matter as it can on a single
15 occasion; and
- 16 (hj) deal with the matter, where appropriate, without requiring the
17 parties' physical attendance at court.
- 18 (2) Subsection (1) does not limit subsection 102NE(1).
- 19 (3) A failure to comply with subsection (1) does not invalidate an
20 order.

21 **102NJ Power to make determinations, findings and orders at any**
22 **stage of proceedings**

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

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

- 1 (2) Subsection (1) does not prevent the court doing something
2 mentioned in paragraph (1)(a), (b) or (c) at the same time as
3 making final orders.
- 4 (3) To avoid doubt, a person who exercises a power under
5 subsection (1) in relation to proceedings is not, merely because of
6 having exercised the power, required to be disqualified from a
7 further hearing of the proceedings.

8 **102NK Use of family consultants**

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

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

18 Note 2: The court may also order parties to proceedings to attend, or arrange
19 for a child to attend, appointments with a family consultant. See
20 section 11F.

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

22 **~~102NK~~102NL Rules of evidence not to apply unless court decides**

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

30 Note: Section 26 is about the court's control over questioning of
31 witnesses. Section 30 is about interpreters. Section 36 relates to
32 examination of a person without subpoena or other process.
33 Section 41 is about improper questions.

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- 1 (b) Parts 2.2 and 2.3 (which deal with documents and other
2 evidence including demonstrations, experiments and
3 inspections);
- 4 (c) Parts 3.2 to 3.8 (which deal with hearsay, opinion,
5 admissions, evidence of judgments and convictions, tendency
6 and coincidence, credibility and character).
- 7 (2) The court may give such weight (if any) as it thinks fit to evidence
8 admitted as a consequence of a provision of the *Evidence Act 1995*
9 not applying because of subsection (1).
- 10 (3) Despite subsection (1), the court may decide to apply one or more
11 of the provisions of a Division or Part mentioned in that subsection
12 to an issue in the proceedings, if:
- 13 (a) the court is satisfied that the circumstances are exceptional;
14 and
- 15 (b) the court has taken into account (in addition to any other
16 matters the court thinks relevant):
- 17 (i) the importance of the evidence in the proceedings; and
18 (ii) the nature of the subject matter of the proceedings; and
19 (iii) the probative value of the evidence; and
20 (iv) the powers of the court (if any) to adjourn the hearing,
21 to make another order or to give a direction in relation
22 to the evidence.
- 23 (4) If the court decides to apply a provision of a Division or Part
24 mentioned in subsection (1) to an issue in the proceedings, the
25 court may give such weight (if any) as it thinks fit to evidence
26 admitted as a consequence of the provision applying.
- 27 (5) Subsection (1) does not revive the operation of:
- 28 (a) a rule of common law; or
29 (b) a law of a State or a Territory;
- 30 that, but for subsection (1), would have been prevented from
31 operating because of a provision of a Division or Part mentioned in
32 that subsection.

1 **102NM Evidence of children**

2 (1) This section applies if the court applies the law against hearsay
3 under subsection 102NL(2) to child-related proceedings.

4 (2) Evidence of a representation made by a child about a matter that is
5 relevant to the welfare of the child or another child, which would
6 not otherwise be admissible as evidence because of the law against
7 hearsay, is not inadmissible in the proceedings solely because of
8 the law against hearsay.

9 (3) The court may give such weight (if any) as it thinks fit to evidence
10 admitted under subsection (2).

11 (4) This section applies despite any other Act or rule of law.

12 (5) In this section:

13 *child* means a person under 18.

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

17 **102NN Court's general duties and powers relating to evidence**

18 (1) In giving effect to the relevant principles in section 102NE, the
19 court may:

20 (a) give directions or make orders about the matters in relation to
21 which the parties are to present evidence; and

22 (b) give directions or make orders about who is to give evidence
23 in relation to each remaining issue; and

24 (c) give directions or make orders about how particular evidence
25 is to be given; and

26 (d) if the court considers that expert evidence is required—give
27 directions or make orders about:

28 (i) the matters in relation to which an expert is to provide
29 evidence; and

30 (ii) the number of experts who may provide evidence in
31 relation to a matter; and

32 (iii) how an expert is to provide the expert's evidence; and

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- 1 (e) ask questions of, and seek evidence or the production of
2 documents or other things from, parties, witnesses and
3 experts on matters relevant to the proceedings.
- 4 (2) Without limiting subsection (1) or section 102NJ, the court may
5 give directions or make orders:
6 (a) about the use of written submissions; or
7 (b) about the length of written submissions; or
8 (c) limiting the time for oral argument; or
9 (d) limiting the time for the giving of evidence; or
10 (e) that particular evidence is to be given orally; or
11 (f) that particular evidence is to be given by affidavit; or
12 (g) that evidence in relation to a particular matter not be
13 presented by a party; or
14 (h) that evidence of a particular kind not be presented by a party;
15 or
16 (i) limiting, or not allowing, cross-examination of a particular
17 witness; or
18 (j) limiting the number of witnesses who are to give evidence in
19 the proceedings.
- 20 (3) The court may, in child-related proceedings or property or other
21 non-child-related proceedings:
22 (a) receive into evidence the transcript of evidence in any other
23 proceedings before:
24 (i) the court; or
25 (ii) another court; or
26 (iii) a tribunal;
27 and draw any conclusions of fact from that transcript that it
28 thinks proper; and
29 (b) adopt any recommendation, finding, decision or judgment of
30 any court, person or body of a kind mentioned in any of
31 subparagraphs (a)(i) to (iii).
- 32 (4) In proceedings under Part VII in which the court is required to
33 regard the best interests of the child as the paramount
34 consideration:
35 (a) subsection 126K(1) of the Evidence Act 1995 does not apply
36 in relation to information that would:
-

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

10 **79 Application of amendments**

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

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

19 **Division 2—Other amendments**

20 ***Evidence Act 1995***

21 **3880 Subsection 190(1) (note)**

22 Repeal the note, substitute:

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

27 ***Family Law Act 1975***

28 **39 Subsection 4(1)**

29 ~~Insert:~~

30 ~~property or other non-child-related proceedings has the meaning~~
31 ~~given by subsection 102ND(2).~~

~~EXPOSURE DRAFT~~

Schedule 1 Property reforms

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

1 ~~40 Subsection 69ZR(3)~~

2 Omit “disqualify himself or herself”, substitute “be disqualified”.

3 ~~41 Part XI (at the end of the note to Part heading)~~

4 Add “Division 4 of this Part has provisions about procedure and
5 evidence that apply to property or other non-child-related proceedings.”.

6 ~~Division 3 Application provisions~~

7 ~~42 Application of amendments~~

8 The amendments made by Divisions 1 and 2 of this Part apply in
9 relation to proceedings if the application commencing the proceedings
10 is filed at or after this Part commences.

1 **Part 3—Duty of disclosure and arbitration**

2 **Division 1—Duty of disclosure**

3 *Family Law Act 1975*

4 **4381 Subsection 4(1)**

5 Insert:

6 *financial or property matters:*

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

11 **4482 At the end of section 71A**

12 Add:

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

14 **4583 After section 71A**

15 Insert:

16 **71B Duty of disclosure**

17 *Duty of disclosure in proceedings*

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

Schedule 1 Property reforms

Part 3 Duty of disclosure and arbitration

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

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

6 (a) take the failure into account when making an order under
7 section 79 (alteration of property interests);

8 (b) make any orders with respect to costs or security for costs against
9 the person that the court considers just, having regard to the
10 failure;

11 (c) make any orders with respect to disclosure that the court
12 considers appropriate;

13 (d) if an order made by the court is contravened—impose sanctions
14 under section 112AD;

15 (e) punish the person under section 112AP for contempt;

16 (f) stay or dismiss all or part of the proceedings.

17 (3) If a party has a litigation guardian, the duty under subsection (1) is
18 taken to have been complied with if the litigation guardian
19 complies with the duty to the extent they are capable of doing so.

20 (4) The duty under subsection (1) does not apply to the respondent to
21 an application that alleges a contravention of a court order or a
22 contempt of court.

23 *Duty of disclosure while preparing for proceedings*

24 (5) If separated parties to a marriage are preparing for a proceeding
25 relating to financial or property matters of the marriage, (other than
26 proceedings on appeal), each party has a duty to the other party to
27 give full and frank disclosure, in a timely manner, of all
28 information and documents relevant to the issues in the proposed
29 proceeding that relate to financial or property matters of the
30 marriage.

31 (6) The duty under subsection (5) applies at any time while the party is
32 preparing for the proceeding.

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

Financial or property matters of the marriage

- 1
- 2 (7) Any of the following matters, so far as they relate to a marriage,
3 are **financial or property matters** of the marriage:
4 (a) financial matters;
5 (b) matters that are or might become the subject of proceedings
6 under any of the following provisions of this Act:
7 (i) this Part (orders with respect to spousal maintenance or
8 the property of the parties to the marriage);
9 (ii) section 90K (orders setting aside a financial agreement
10 or a termination agreement);
11 (iii) Part VIIIIB (orders with respect to allocation of
12 superannuation interests);
13 (iv) section 106B (orders with respect to instruments or
14 dispositions to defeat an existing or anticipated order in
15 proceedings under this Act);
16 (c) matters that are or might become the subject of proceedings
17 relating to the distribution, after the breakdown of the
18 marriage, of any vested bankruptcy property in relation to a
19 bankrupt party to the marriage;
20 (d) matters that are or might become the subject of proceedings
21 under any of the following provisions of the *Child Support*
22 *(Assessment) Act 1989*:
23 (i) section 116 (orders for departure from administrative
24 assessment in special circumstances);
25 (ii) section 123 (orders for provision of child support
26 otherwise than in form of periodic amounts paid to
27 carer);
28 (iii) section 129 (orders modifying orders under
29 section 123A or 124).

30 *Relevant information and documents*

- 31 (8) A party's duty to disclose information and documents is a duty to
32 disclose information known to the party and documents that are or
33 have been in the possession or under the control of the party.

EXPOSURE DRAFT

Schedule 1 Property reforms

Part 3 Duty of disclosure and arbitration

1 (9) A party's duty to disclose information and documents includes any
2 information or documents prescribed by the applicable Rules of
3 Court for the purposes of the duty.

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

7 *Practitioners' obligation to ~~inform~~provide information etc.*

8 (10) A legal practitioner or family dispute resolution practitioner who
9 engages with a separated party to a marriage who is or might be
10 subject to the duty in subsection (1) or (5) must:

11 (a) ~~inform~~provide the party ~~of~~with information about:

12 (i) the duties of disclosure under this section and explain
13 the circumstances in which they apply; and

14 ~~(b) explain the~~ii potential consequences of the party not
15 complying with the duties; and

16 ~~(e)~~encourage the party to take all necessary steps to comply
17 with the duties.

18 **4684 After Division 1 of Part VIIIAB**

19 Insert:

20 **Division 1A—Duty of disclosure**

21 **90RI Duty of disclosure**

22 *Duty of disclosure in proceedings*

23 (1) Each party to a proceeding relating to financial or property matters
24 of a de facto relationship (other than proceedings on appeal) has a
25 duty to the court and to each other party to give full and frank
26 disclosure, in a timely manner, of all information and documents
27 relevant to:

28 (a) for a party to the relationship—the issues in the proceeding
29 that relate to financial or property matters of the relationship;
30 or

31 (b) for any other party to the proceeding—so much of the party's
32 financial circumstances as are relevant to the issues in the

1 proceeding that relate to ~~property or financial~~ or property
2 matters of the relationship.

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

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

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

19 (3) If a party has a litigation guardian, the duty under subsection (1) is
20 taken to have been complied with if the litigation guardian
21 complies with the duty to the extent they are capable of doing so.

22 (4) The duty under subsection (1) does not apply to the respondent to
23 an application that alleges a contravention of a court order or a
24 contempt of court.

25 *Duty of disclosure while preparing for proceedings*

26 (5) If separated parties to a de facto relationship are preparing for a
27 proceeding relating to financial or property matters of the
28 relationship, (other than proceedings on appeal), each party has a
29 duty to the other party to give full and frank disclosure, in a timely
30 manner, of all information and documents relevant to the issues in
31 the proposed proceeding that relate to financial or property matters
32 of the relationship.

33 (6) The duty under subsection (5) applies at any time while the party is
34 preparing for the proceeding.

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

Schedule 1 Property reforms

Part 3 Duty of disclosure and arbitration

1 *Financial or property matters of the relationship*

- 2 (7) Any of the following matters, so far as they relate to a de facto
3 relationship, are **financial or property matters** of the relationship:
4 (a) financial matters;
5 (b) matters that are or might become the subject of proceedings
6 in a de facto financial cause;
7 (c) matters that are or might become the subject of proceedings
8 under any of the following provisions of this Act:
9 (i) Division 7 of Part VII (child maintenance orders);
10 (ii) this Part (orders with respect to the maintenance of a
11 party, or the property of the parties, to the relationship),
12 other than Subdivision C of Division 1 (declarations
13 about existence of de facto relationships);
14 (iii) section 90UM (orders setting aside a financial
15 agreement or a termination agreement);
16 (iv) Part VIIIB (orders with respect to allocation of
17 superannuation interests);
18 (v) section 106B (orders with respect to instruments or
19 dispositions to defeat an existing or anticipated order in
20 proceedings under this Act);
21 (d) matters that are or might become the subject of proceedings
22 under any of the following provisions of the *Child Support*
23 *(Assessment) Act 1989*:
24 (i) section 116 (orders for departure from administrative
25 assessment in special circumstances);
26 (ii) section 123 (orders for provision of child support
27 otherwise than in form of periodic amounts paid to
28 carer);
29 (iii) section 129 (orders modifying orders under
30 section 123A or 124).

31 *Relevant information and documents*

- 32 (8) A party's duty to disclose information and documents is a duty to
33 disclose information known to the party and documents that are or
34 have been in the possession or under the control of the party.

1 (9) A party's duty to disclose information and documents includes any
2 information and documents prescribed by the applicable Rules of
3 Court for the purposes of the duty.

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

7 *Practitioners' obligation to ~~inform~~provide information etc.*

8 (10) A legal practitioner or family dispute resolution practitioner who
9 engages with a separated party to a de facto relationship who is or
10 might be subject to the duty in subsection (1) or (5) must:

- 11 (a) ~~inform~~provide the party ~~of~~with information about:
12 (i) the duties of disclosure under this section and explain
13 the circumstances in which they apply; and
14 ~~(b) explain the~~ ii potential consequences of the party not
15 complying with the duties; and
16 ~~(e)~~ b encourage the party to take all necessary steps to comply
17 with the duties.

18 **4785 At the end of section 90SA**

19 Add:

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

21 **4886 After Division 1 of Part VIIC**

22 Insert:

23 **Division 1A—Duty of disclosure**

24 **90YJA Duty of disclosure**

25 *Duty of disclosure in proceedings*

26 (1) Each party to a proceeding under this Part ~~(other than proceedings~~
27 ~~on appeal)~~ on appeal has a duty to the court and to each other party to give
28 full and frank disclosure, in a timely manner, of all information and
29 documents relevant to:

- 30 (a) for a party to the de facto relationship concerned—the issues
31 under this Part in the proceeding; or

Schedule 1 Property reforms

Part 3 Duty of disclosure and arbitration

1 (b) for any other party to the proceeding—so much of the party’s
2 financial circumstances as are relevant to the issues under
3 this Part in the proceeding.

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

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

10 (3) If a party has a litigation guardian, the duty under subsection (1) is
11 taken to have been complied with if the litigation guardian
12 complies with the duty to the extent they are capable of doing so.

13 (4) The duty under subsection (1) does not apply to the respondent to
14 an application that alleges a contravention of a court order or a
15 contempt of court.

16 *Duty of disclosure while preparing for proceedings*

17 (5) If separated parties to a de facto relationship are preparing for a
18 proceeding to be brought under this Part, [\(other than proceedings](#)
19 [on appeal\)](#), each party has a duty to the other party to give full and
20 frank disclosure, in a timely manner, of all information and
21 documents relevant to the issues under this Part in the proposed
22 proceeding.

23 (6) The duty under subsection (5) applies at any time while the party is
24 preparing for the proceeding.

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

28 *Relevant information and documents*

29 (7) A party’s duty to disclose information and documents is a duty to
30 disclose information known to the party and documents that are or
31 have been in the possession or under the control of the party.

32 (8) [A party’s The Western Australian Rules of Court may prescribe](#)
33 [information or documents as information or documents to which](#)
34 [the duty to disclose applies.](#)

1 Note: The duty to disclose is not limited to prescribed information and
2 ~~documents includes any information or documents prescribed by~~
3 ~~the Western Australian Rules of Court for the purposes of the duty.~~

4 Note: — The Western Australian Rules of Court may also prescribe other
5 matters in relation to the duty of disclosure.

6 *Practitioners' obligation to ~~inform~~ provide information etc.*

7 (9) A legal practitioner or family dispute resolution practitioner who
8 engages with a separated party to a de facto relationship who is or
9 might be subject to the duty in subsection (1) or (5) must:

10 (a) ~~inform~~ provide the party ~~of with information about:~~

11 (i) the duties of disclosure under this section and explain
12 the circumstances in which they apply; and

13 ~~(b) explain the~~ ii potential consequences of the party not
14 complying with the duties; and

15 ~~(e)~~ b encourage the party to take all necessary steps to comply
16 with the duties.

17 **4987 Application of amendments made by this Division**

18 (1) Subsections ~~71B(1), 90RI(1) and 90YJA(1)~~ of the *Family Law Act*
19 *1975*, as inserted by this Division, apply in relation to proceedings
20 instituted on or after the day this item commences.

21 (2) Subsections ~~71B(5), 90RI(5) and 90YJA(5)~~ of the *Family Law Act*
22 *1975*, as inserted by this Division, apply on and after the day this item
23 commences.

24 **Division 2—Arbitration**

25 *Family Law Act 1975*

26 **5088 Subsection 4(1) (definition of arbitration)**

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

28 **5189 Subsection 4(1)**

29 Insert:

Schedule 1 Property reforms
Part 3 Duty of disclosure and arbitration

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

3 **5290 Subsection 4(1)**

4 Repeal the following definitions:

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

7 **5391 Subsection 10L(2)**

8 Repeal the subsection, substitute:

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

17 **5492 Section 13E (heading)**

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

19 **5593 Subsection 13E(1)**

20 Repeal the subsection, substitute:

- 21 (1) A court exercising jurisdiction in proceedings that are referable to
22 arbitration within the meaning of subsection (1A) may, with the
23 consent of all of the parties to the proceedings, make an order
24 referring the proceedings, or any part of them or any matter arising
25 in them, to an arbitrator for arbitration.
- 26 (1A) The following proceedings are referable to arbitration:
27 (a) Part VIII proceedings;
28 (b) Part VIIIA proceedings;
29 (c) Part VIIIAB proceedings;
30 (d) Part VIIIB proceedings;
31 (e) Part VIIIC proceedings;

- 1 (f) section 106A proceedings;
2 ~~56~~ (g) proceedings under section 106B.

3 **94 Section 13F**

4 Repeal the section, substitute:

5 **13F Court may make orders in relation to family law arbitration**

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

19 **5795 Subsection 13G(1)**

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

22 **5896 Subsection 13H(1)**

23 Repeal the subsection, substitute:

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

Schedule 1 Property reforms

Part 3 Duty of disclosure and arbitration

1 **5997 Subsections 13J(1) and 13K(1)**

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

4 **6098 Paragraph 125(1)(bba)**

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

7 **6199 Application of amendments made by this Division**

8 (1) The amendments of section 13E of the *Family Law Act 1975* made by
9 this Division apply to the making of orders in proceedings after this
10 item commences, whether the proceedings commenced before or after
11 this item commences.

12 (2) The other amendments of the *Family Law Act 1975* made by this
13 Division apply to arbitration and awards made in arbitration after this
14 item commences, whether the arbitration commenced before or after
15 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 intake procedure* (short for children's contact services intake procedure) has the meaning given by subsection ~~10KE(2)~~.~~

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

Schedule 2 Children's contact services

1 **5 Paragraph 10A(2)(a)**

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

3 **6 Paragraph 10A(2)(b)**

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

5 **7 Paragraph 10A(2)(d)**

6 After "the", insert "conditions,".

7 **8 Paragraphs 10A(2)(d), (f) and (g)**

8 After "persons", insert "and entities".

9 **89 Paragraph 10A(2)(h)**

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

12 **910 Paragraphs 10A(2)(j) and (k)**

13 After "persons", insert "and entities".

14 **4011 Paragraph 10A(2)(l)**

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

16 **12 Paragraph 10A(2)(l)**

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

18 **13 At the end of subsection 10A(2)**

19 Add:

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

23 **14 At the end of Division 1 of Part II**

24 Add:

25 **10AA Immunity**

26 No action, suit or proceeding lies against the Commonwealth, or an
27 officer of the Commonwealth, in relation to any act done, or

1 omitted to be done, in good faith in the performance or exercise, or
2 the purported performance or exercise, of a function, power or
3 authority conferred by the Accreditation Rules.

4 **4215 After Division 3 of Part II**

5 Insert:

6 **Division 3A—Children's contact services**

7 **10KA Simplified outline of this Division**

8 Accreditation Rules may provide for the accreditation of persons
9 and entities as CCS practitioners and CCS businesses (see
10 section 10A).
11 If they do, then it is an offence for children's contact services (as
12 defined in this Division) to be provided by a person or entity that is
13 not accredited.
14 Accredited providers of children's contact services must ~~keep~~
15 ~~communications made as part of~~ not use or disclose safety
16 information that is obtained in their ~~intake procedures~~
17 ~~confidential~~ capacity as accredited providers (with some
18 exceptions) ~~and evidence of such communications~~. Safety
19 information is generally not admissible in court.

20 **10KB Definition of *children's contact services***

- 21 (1) *Children's contact services* are services, other than services
22 mentioned in subsection (3), that:
23 (a) facilitate contact between a child and a member of the child's
24 family with whom the child is not living; and
25 (b) are provided in circumstances where members of the family
26 may not be able to safely manage such contact; and
27 (c) are provided:
28 (i) on a professional basis; or
29 (ii) on a commercial basis; or

Schedule 2 Children's contact services

- 1 (iii) by an entity registered under the *Australian Charities*
2 *and Not-for-profits Commission Act 2012* as the type of
3 entity mentioned in column 1 of item 1 of the table in
4 subsection 25-5(5) of that Act; or
5 (iv) in the course of an undertaking that has a charitable
6 purpose.
- 7 (2) Without limiting paragraph (1)(a), services that facilitate contact
8 may include any of the following:
9 (a) supervising the movement of the child between 2 or more
10 members of the child's family;
11 (b) supervising time spent by the child with a member of the
12 child's family (including contact over the phone or internet);
13 (c) providing a space for the child to spend time with a member
14 of the child's family.
- 15 (3) The following services are not children's contact services:
16 (a) services provided as a result of intervention by a child
17 welfare officer of a State or Territory;
18 ~~(b) supervision of contact (including contact over the~~
19 ~~phone or internet) between a child and a member of the~~
20 ~~child's family who is in a correctional institution (however~~
21 ~~described);~~
22 ~~(c) services prescribed by the regulations for the purposes of this~~
23 ~~paragraph.~~

24 **10KC Definition of CCS practitioner**

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

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

30 **10KD Definition of CCS business**

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

1 **10KE Confidentiality of ~~communications in CCS intake~~**
2 **~~procedures~~ certain safety-related information**

3 (1) A person who is or has been ~~any of the following~~ (an entrusted
4 person); ~~must not use or disclose safety information obtained by~~
5 ~~the person in their capacity as an entrusted person, unless the use~~
6 ~~or disclosure is required or authorised by this section.~~

7 ~~(2) The following are *entrusted persons*:~~

8 (a) a CCS practitioner or a CCS business; ~~or~~

9 (b) a director or other officer of a CCS business; ~~or~~

10 (c) a person employed or engaged to perform work (whether
11 paid or unpaid) for or on behalf of a CCS business;

12 ~~must not use or disclose a communication~~ (3) Safety
13 information is information that was made in the course of a CCS
14 intake procedure and obtained in ~~relates to~~ the person's capacity as
15 an entrusted person unless the use or disclosure is required or
16 authorised by this section.

17 ~~(2) A *CCS intake procedure* is any interview, questionnaire or other~~
18 ~~procedure that is conducted:~~

19 ~~(a) with risks of harm to a child or with one or more members a~~
20 ~~member of a child's family, or both; and to the identification and~~
21 ~~management of such risks, if:~~

22 ~~(b) by an entrusted person;~~

23 ~~for the purposes of understanding the family's needs in preparation for~~
24 ~~providing (a) children's contact services in respect~~
25 ~~of have been, are being, or will be, provided to the child; and~~

26 ~~(3) (b) the risks are those that may arise in connection~~
27 ~~with the use, facilitation or provision of the service.~~

28 ~~(4) An entrusted person must disclose a *communications safety*~~
29 ~~*information* if the entrusted person reasonably believes the~~
30 ~~disclosure is necessary for the purpose of complying with a law of~~
31 ~~the Commonwealth, a State or a Territory.~~

32 (45) An entrusted person may use a *communications safety information*
33 for the purposes of performing the person's functions as an
34 entrusted person.

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Schedule 2 Children's contact services

- 1 (56) An entrusted person may disclose ~~a communications~~safety
2 information to ~~another one or more other~~ entrusted ~~person~~persons
3 if:
- 4 (a) ~~both each of the~~ entrusted persons ~~are directors or officers~~
5 ~~of,~~ is any of the following in relation to a particular CCS
6 business:
- 7 (i) a director or officer of the CCS business;
8 (ii) employed or engaged to provide children's contact
9 services ~~or for, or on behalf of, the CCS business;~~
10 (iii) employed or engaged to perform other work (whether
11 paid or unpaid) for, or on behalf of, a particular the CCS
12 business; and
- 13 (b) it is reasonable to disclose the ~~communications~~safety
14 information to enable the CCS business to appropriately
15 provide children's contact services in respect of the child.
- 16 (67) An entrusted person may use or disclose safety information that is
17 a communication (including an admission) made by an individual
18 to an entrusted person, if consent to the use or disclosure is given
19 by:
- 20 (a) if the person who made the communication is 18 or over—
21 that person; or
- 22 (b) if the person who made the communication is 15, 16 or 17
23 and has the capacity to consent—that person; or
- 24 (c) if the person who made the communication is a child under
25 15 or a child to whom paragraph (b) does not apply:
- 26 (i) each person who has parental responsibility (within the
27 meaning of Part VII) for the child; or
- 28 (ii) a court.
- 29 (78) An entrusted person may use or disclose ~~a communications~~safety
30 information if the entrusted person reasonably believes that the use
31 or disclosure is necessary for the purpose of:
- 32 (a) protecting a child from the risk of harm (whether physical or
33 psychological); or
- 34 (b) preventing or lessening a serious and imminent threat to the
35 life or health of a person; or

- 1 (c) reporting the commission, or preventing the likely
2 commission, of an offence involving violence or a threat of
3 violence to a person; or
4 (d) preventing or lessening a serious and imminent threat to the
5 property of a person; or
6 (e) reporting the commission, or preventing the likely
7 commission, of an offence involving intentional damage to
8 property of a person or a threat of damage to property; or
9 (f) if a lawyer independently represents a child's interests under
10 an order under section 68L and it is unreasonable or
11 impractical to obtain consent as mentioned in
12 subsection (57)—assisting the lawyer to properly represent
13 the child's interests.

14 (89) An entrusted person may disclose ~~a communication safety~~
15 ~~information~~ in order to provide information (other than personal
16 information within the meaning of ~~sections subsection~~ 6(1) of the
17 *Privacy Act 1988*) for research relevant to families.

18 ~~(9) In this section:~~

19 ~~communication includes admission.~~

20 **10KF Admissibility of ~~communications in CCS intake~~**
21 **~~procedures~~ certain safety-related information**

22 ~~(1) Evidence of anything said, or any admission made, in the course of~~
23 ~~a CCS intake procedure (1) Safety information is not~~
24 ~~admissible:~~

- 25 (a) in any court (whether or not exercising federal jurisdiction);
26 or
27 (b) in any proceedings before a person authorised to hear
28 evidence (whether the person is authorised by a law of the
29 Commonwealth, a State or a Territory, or by the consent of
30 the parties).

31 Note: For the definition of ~~CCS intake procedures~~ safety information, see
32 subsection ~~10KE(23)~~.

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

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- 1 (a) an admission by an adult that indicates that a child under 18
2 has been abused or is at risk of abuse; or
3 (b) a disclosure by a child under 18 that indicates that the child
4 has been abused or is at risk of abuse;
5 unless, in the opinion of the court, there is sufficient evidence of
6 the admission or disclosure available to the court from other
7 sources.

8 **10KG Civil penalty provisions**

9 *Civil penalties*

- 10 (1) In addition to the matters mentioned in section 10A, the
11 Accreditation Rules may:
12 (a) prescribe civil penalty provisions (the **CCS civil penalty**
13 **provisions**) in relation to requirements to be complied with
14 by CCS practitioners and CCS businesses; and
15 (b) prescribe penalties for contraventions of the CCS civil
16 penalty provisions that do not exceed:
17 (i) for a body corporate—~~50250~~ penalty units; or
18 (ii) for any other person—~~1050~~ penalty units.
- 19 (2) Each CCS civil penalty provision is enforceable under Part 4 of the
20 Regulatory Powers Act.

21 *Authorised applicant*

- 22 (3) For the purposes of Part 4 of the Regulatory Powers Act, each of
23 the following persons is an authorised applicant in relation to the
24 CCS civil penalty provisions:
25 (a) the Secretary of the Department;
26 (b) the person or persons prescribed by the Accreditation Rules
27 as having responsibility for monitoring compliance with the
28 Rules in relation to CCS practitioners and CCS businesses.
- 29 (4) The Secretary of the Department may, in writing, delegate the
30 Secretary's powers and functions under Part 4 of the Regulatory
31 Powers Act in relation to the CCS civil penalty provisions to an
32 SES employee, or an acting SES employee, in the Department.

1 *Relevant court*

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

9 **10KH Strict liability offences—unaccredited provision of children's**
10 **contact services**

11 *Individual providing services who is not a CCS practitioner*

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

17 Penalty: ~~2050~~ penalty units.

18 *Body corporate providing services that is not a CCS business*

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

24 Penalty:

- 25 (a) for an individual—~~2050~~ penalty units; or
26 (b) for a body corporate—~~100250~~ penalty units.

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

- 29 (3) A person commits an offence if:
30 (a) the person is a CCS business; and

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- 1 (b) an individual provides a children's contact service for or on
2 behalf of the person; and
3 (c) the Accreditation Rules provide for accreditation of CCS
4 practitioners; and
5 (d) the individual is not a CCS practitioner.

6 Penalty:

- 7 (a) for an individual—~~2050~~ penalty units; or
8 (b) for a body corporate—~~100250~~ penalty units.

9 (4) Subsection (3) does not apply to a person if, at or before the time
10 the individual provides the children's contact service as mentioned
11 in paragraph (3)(b), the person:

- 12 (a) considered whether or not the individual was a CCS
13 practitioner; and
14 (b) is under a mistaken but reasonable belief about that matter.

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

17 *Individual business operator who is not a CCS business*

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

26 Penalty: ~~2050~~ penalty units.

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

- 29 (6) A person commits an offence if:
30 (a) an individual provides a children's contact service for or on
31 behalf of an entity that is not a legal person; and
32 (b) the Accreditation Rules provide for accreditation of CCS
33 businesses; and
-

- 1 (c) the entity is not a CCS business; and
2 (d) at the time the individual provides the children's contact
3 service, the person is a person who controls, directs or
4 organises (whether alone or jointly with other persons) the
5 provision of children's contact services for or on behalf of
6 the entity.

7 Penalty:

- 8 (a) for an individual—~~2050~~ 2050 penalty units; or
9 (b) for a body corporate—~~100250~~ 100250 penalty units.

10 (7) Subsection (6) does not apply to a person if, at or before the time
11 that the children's contact service is provided as mentioned in
12 paragraph (6)(a), the person:

- 13 (a) considered whether or not the entity was a CCS business; and
14 (b) is under a mistaken but reasonable belief about that matter.

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

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

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

31 Penalty:

- 32 (a) for an individual—~~2050~~ 2050 penalty units; or
33 (b) for a body corporate—~~100250~~ 100250 penalty units.

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- 1 (9) Subsection (8) does not apply to a person if, at or before the time
2 that the individual provided the children's contact service as
3 mentioned in paragraph (8)(a), the person:
4 (a) considered whether or not the individual was a CCS
5 practitioner; and
6 (b) is under a mistaken but reasonable belief about that matter.

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

9 *Strict liability*

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

11 *Mistake of fact defences*

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

23 **10KI Compliance by entities that are not legal persons**

- 24 (1) This section applies if an entity that is not a legal person is
25 accredited as a CCS business.
26 (2) Each of the following persons is an **accountable person** for the
27 entity, in relation to a requirement imposed on the entity at a time
28 by the Accreditation Rules:
29 (a) if the entity is a partnership—each of the following:
30 (i) each partner in the partnership at the time;
31 (ii) if a partner is a body corporate—each director of the
32 partner at the time;
33 (iii) a person prescribed by the Accreditation Rules;

-
- 1 (b) if the entity is a trust—each of the following:
2 (i) the trustee, or each trustee, of the trust, at the time;
3 (ii) if a trustee is a body corporate—each director of the
4 trustee at the time;
5 (iii) a person prescribed by the Accreditation Rules;
6 (c) if the entity is any other kind of entity—each person
7 prescribed by the Accreditation Rules for that kind of entity.
- 8 (3) Any requirement that the Accreditation Rules impose on the entity
9 to do a thing (including a requirement imposed by way of a civil
10 penalty provision) is taken instead to be imposed on each
11 accountable person for the entity, but may be discharged by any
12 one of them.
- 13 (4) Any requirement that the Accreditation Rules impose on the entity
14 not to do a thing (including a requirement imposed by way of a
15 civil penalty provision) is taken instead to be imposed on each
16 accountable person for the entity.
- 17 (5) However, an accountable person is not liable to a civil penalty for
18 contravening a requirement taken to be imposed on the person
19 because of subsection (3) or (4) unless at least one of the following
20 applies:
21 (a) complying with the requirement is within the actual or
22 apparent scope of the person's duties in relation to the entity;
23 (b) the person's duties involve controlling, directing or
24 organising (whether alone or jointly with other persons) the
25 provision of children's contact services in the entity's name;
26 (c) the person aided, abetted, counselled or procured the act or
27 omission concerned;
28 (d) the person was in any way knowingly concerned in, or party
29 to, the act or omission concerned (whether directly or
30 indirectly and whether by any act or omission of the person).

31 **4316** After paragraph 13A(1)(b)

32 Insert:

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

Schedule 2 Children's contact services

1 **4417** After paragraph 13C(1)(b)

2 Insert:

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

5 **4518** After subsection 13C(1)

6 Insert:

7 (1A) The court must not make an order under paragraph (1)(c) that
8 parties make use of children's contact services at any time when
9 CCS practitioners and CCS businesses may be accredited under the
10 Accreditation Rules.

11 **4619** Subsection 13D(1)

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

13 **4720** After subsection 13D(1)

14 Insert:

15 (1A) A party does not fail to comply with an order of a court to make
16 use of a children's contact service provided by a CCS business if
17 the CCS business refuses to provide the service to the party.

18 (1B) If a CCS business refuses to provide a children's contact service to
19 a party, the CCS business (~~as the case requires~~) must notify the
20 court that they have done so.

21 **4821** Subsection 60D(2) (at the end of the definition of
22 **adviser**)

23 Add:

24 ; or (e) a CCS practitioner.

25 **4922** After paragraph 67ZA(1)(e)

26 Insert:

27 (ea) a CCS practitioner; or

28 **2023** After paragraph 111CV(1A)(f)

29 Insert:

30 (fa) a CCS practitioner; and

1 **Schedule 3—Case management and**
2 **procedure**

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

5 *Family Law Act 1975*

6 **1 Subsection 60I(6)**

7 Omit “(12)”, substitute “(14)”.

8 **2 Subsection 60I(7)**

9 Repeal the subsection, substitute:

10 *Requirement to be met before application accepted for filing*

11 (7) An application for a Part VII order in relation to a child must not
12 be accepted by the court for filing unless:

13 (a) the applicant files in the court, together with the application,
14 a certificate given to the applicant by a family dispute
15 resolution practitioner under subsection (8); or

16 (b) after the making of the application, the court grants the
17 applicant an exemption under subsection (8A) from having to
18 file such a certificate.

19 **23 After subsection 60I(8)**

20 Insert:

21 *Exemptions*

22 (8A) The court may grant the applicant for a Part VII order in relation to
23 a child an exemption from having to file a certificate referred to in
24 paragraph (7)(a).

25 (8B) The court may do so only if the court is satisfied that one or more
26 of the grounds in subsection (9) exist.

Schedule 3 Case management and procedure

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

1 **34 Subsection 60I(9) (heading)**

2 Repeal the heading.

3 **45 Subsection 60I(9)**

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

7 **56 Subsection 60I(10) (heading)**

8 Repeal the ~~heading, substitute:subsection.~~

9 **Referral~~7~~ Before subsection 60I(11)**

10 Insert:

11 *Validity of proceedings not affected by failure to family dispute*
12 *resolution when exemption applies*

13 **6 Paragraph 60I(10)(c)**

14 ~~meet requirement~~ Repeal the paragraph, substitute:

15 *—(c)— in relation to the application, the court has granted the*
16 *person an exemption under subsection (8A);*

17 **78 Subsection 60I(11)**

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

19 **89 Subsection 60I(12)**

20 Repeal the subsection, substitute:

21 *Review of power exercised by delegate*

22 (12) If a delegate has exercised the power of the court under
23 subsection (8A), a party to the proceedings, or a person who would
24 have been a party to the proceedings if the exemption referred to in
25 that subsection had been granted, may:

26 (a) within the time prescribed by the applicable Rules of Court;

27 or

28 (b) within any further time allowed in accordance with the
29 applicable Rules of Court;

- 1 apply to the court for review of the exercise of the power.
- 2 (13) The court may, on application under subsection (12) or on its own
3 initiative, review an exercise of power by a delegate under
4 subsection (8A), and may make any order or orders it thinks fit in
5 relation to the exercise of that power.
- 6 (14) Subsections 100(1) and (2) and 256(1) and (2) of the *Federal*
7 *Circuit and Family Court of Australia Act 2021* do not apply in
8 relation to the exercise of the power of the court by a delegate
9 under subsection (8A) of this section.

10 **10 Paragraph 60J(1)(a)**

11 Omit “(12)”, substitute “(14)”.

12 **11 Paragraph 60J(1)(b)**

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

16 **912 Application provision**

17 The amendments of the *Family Law Act 1975* made by this Part apply
18 in relation to an application for a Part VII order, ~~where the application~~
19 that is made on or after the ~~commencement of day~~ this
20 ~~item~~ Part commences.

Schedule 3 Case management and procedure
Part 2 Attendance at divorce proceedings

1 **Part 2—Attendance at divorce proceedings**

2 *Family Law Act 1975*

3 **4013 At the end of paragraph 98A(1)(a)**

4 Add “and”.

5 **4114 Paragraph 98A(1)(b)**

6 Repeal the paragraph.

7 **4215 Subsection 98A(2A)**

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

9 **4316 At the end of subsection 98A(2A)**

10 Add:

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

17 **4417 Application of amendments**

18 The amendments of section 98A of the *Family Law Act 1975* made by
19 this Part apply in relation to ~~an application proceedings~~ for a divorce
20 order ~~made after the commencement of this item:~~

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

1 **Part 3—Commonwealth information orders**

2 *Family Law Act 1975*

3 ~~15 Subsection 4(1)18~~

4 ~~Insert:~~

5 ~~*intimate partner* has the meaning given by subsection 67NA(2).~~

6 **46 At the end of subsection 67J(2)**

7 Add:

8 Note: A Commonwealth information order may:

- 9 (a) require a one-off or periodic searches; ~~(see subsection 67N(5));~~
10 and
11 (b) require ~~searches in relation to~~ information about violence to
12 children and others in addition to location information. ~~(see~~
13 ~~subsection 67N(9)).~~

14 **4719 Before subsection 67N(2)**

15 Insert:

16 *Requirements for making a Commonwealth information order*

17 **4820 Subsections 67N(5) to (10)**

18 Repeal the subsections, substitute:

19 *Content of a Commonwealth information order*

- 20 (5) A Commonwealth information order may require either:
21 (a) a one-off search for information sought by the order; or
22 (b) periodic searches for the information sought by the order for
23 the period during which the order is in force, which must not
24 exceed 12 months.
- 25 (6) A Commonwealth information order that requires periodic
26 searches for information does not require the records of the
27 Department or Commonwealth instrumentality concerned to be
28 searched more often than once every 3 months unless specifically
29 so ordered by the court.

EXPOSURE DRAFT

Schedule 3 Case management and procedure
Part 3 Commonwealth information orders

1 ~~(7)~~ (7) Unless a Commonwealth information order specifies otherwise,
2 the order does not require the searching of records that are more
3 than 2 years old on the day the order is made.

4 (8) A court may state that a Commonwealth information order only
5 applies to records of a particular kind if the court considers that an
6 unreasonable burden would be placed on the resources of the
7 Department or Commonwealth instrumentality concerned if the
8 order applied to all of its records.

9 ~~(8)~~ (9) ~~If the court makes~~ In addition to requiring information
10 about a child's location, a Commonwealth information order, ~~the~~
11 ~~court~~ may also ~~order~~ require the person to whom the order applies
12 to provide any information, that is in the records of the relevant
13 Department or Commonwealth instrumentality, about actual or
14 threatened violence to any one or more of the following:

- 15 (a) the child ~~concerned~~; ~~or~~;
16 (b) a person who is related to the child within the meaning of
17 subsection 67NA(1); ~~or~~
18 (c) a person who has a connection to the child that the court
19 considers relevant.

20 (10) A Commonwealth information order seeking information about
21 actual or threatened violence to a person mentioned in
22 paragraph (9)(c) must specify either the person or the nature of
23 the connection between the person and the child.

24 (11) If a Commonwealth information order seeks information about
25 actual or threatened violence to a person mentioned in
26 paragraph (9)(b) or (c), the person to whom the order applies is
27 only required to provide information about the person if they can
28 be identified using the records of the relevant Department or
29 Commonwealth instrumentality.

30 (12) A Commonwealth information order seeking information about
31 actual or threatened violence under subsection (9) may specify
32 that such information is to be sought within the following records:

- 33 (a) a particular record, or particular kinds of records;
34 (b) records held in relation to particular individuals;
35 (c) records made within a particular period, or before or after a
36 particular time.
-

1 *Revocation of a Commonwealth information order*

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

9 *Disclosure requirements*

- 10 ~~(14)~~ If a person is required to conduct a search under a Commonwealth
11 information order, the person to whom the order applies must
12 provide the information sought by the order ~~as soon as practicable;~~
13 ~~(a) if a time is specified by the Court—by that time; or~~
14 ~~(b) if a time is not specified—as soon as practicable.~~
15 ~~(15)~~ To avoid doubt, if a Commonwealth information order seeks
16 information about actual or threatened violence under
17 subsection ~~(89)~~, the person to whom the order applies must provide
18 any information about actual or threatened violence to the persons
19 specified in paragraphs ~~(89)~~(a) to (c) that is found in the records of
20 the relevant period, even if no information about the location of the
21 child is found.
22 ~~(16)~~ This section applies despite a provision of a law of the
23 Commonwealth or of a State or Territory that prohibits:
24 (a) the communication, disclosure or publication of information;
25 or
26 (b) the production of, or the publication of the contents of, a
27 document;
28 whether enacted before, at or after the commencement of this
29 section.

- 30 ~~19~~ ~~(17)~~ A Commonwealth information order:
31 ~~(a) does not override an order of the High Court or a court~~
32 ~~created by the Parliament under Chapter III of the~~
33 ~~Constitution; and~~

Schedule 3 Case management and procedure
Part 3 Commonwealth information orders

1 (b) does not apply in relation to information relevant to
2 proceedings on foot in any such court.

3 **21 After section 67N**

4 Insert:

5 **67NA Persons who are related to a child for the purposes of**
6 **paragraph 67N(89)(b)**

7 (1) For the purposes of paragraph 67N(89)(b), the following persons
8 are related to a child:

- 9 (a) a parent, adoptive parent or step-parent of the child;
10 (b) a grandparent or step-grandparent of the child;
11 (c) a sibling, half-sibling or step-sibling of the child;
12 (d) an uncle or aunt of the child;
13 (e) a niece or nephew of the child;
14 (f) a cousin of the child;
15 (g) any other person biologically related to the child;
16 (h) if the child is in a foster arrangement—a person:
17 (i) who fosters the child; or
18 (ii) who is a spouse, or de facto partner within the meaning
19 of section 60EA, of a person who fosters the child; or
20 (iii) who is an intimate partner (seewithin the meaning of
21 subsection (2)) of a person who fosters the child
22 (whether or not residing with the person); or
23 (iv) who would be related to the child in accordance with
24 paragraph (b), (c), (d), (e), (f) or (g) if a person who
25 fosters the child were the child's parent.

26 ~~(2) Two~~ (2) For the purposes of subparagraph (1)(h)(iii), 2
27 persons, who are not each other's spouse or de facto partner within
28 the meaning of section 60EA, are intimate partners of each other if
29 they have an intimate relationship (whether or not they live
30 together).

31 ~~(3) Factors~~ (3) For the purposes of subsection (2), factors that
32 indicate whether 2 persons have an intimate relationship include
33 (but are not limited to) the following:
34 (a) the extent to which each is personally dependent on the other;

-
- 1 (b) the extent to which each is financially dependent on the other
2 (including any arrangements for financial support);
3 (c) the length of the relationship;
4 (d) the frequency of contact between each other;
5 (e) if there is, or has been, a sexual relationship;
6 (f) the extent to which each is involved in, or knows about, the
7 other's personal life;
8 (g) the degree of mutual commitment to a shared life;
9 (h) if they share care or support for children or other dependents.

10 **2022 Application of amendments**

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

1 **Part 4—Operation of section 69GA**

2 *Family Law Act 1975*

3 **2123 Subsection 47A(7)**

4 Repeal the subsection, substitute:

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

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

11 **2224 Section 69GA (heading)**

12 Repeal the heading, substitute:

13 **69GA Jurisdiction of prescribed courts etc.**

14 **2325 Subsection 69GA(2)**

15 Repeal the subsection, substitute:

16 *Application of Subdivision*

- 17 (2) If a court of a State or Territory is prescribed for the purposes of
18 this section, this Subdivision applies in relation to the following
19 proceedings of the court (the *section 69GA proceedings*) as if they
20 were proceedings of a court of summary jurisdiction of the State or
21 Territory:

- 22 (a) if the regulations specify classes of proceedings for the court
23 for the purposes of this section—those classes of
24 proceedings;
25 (b) otherwise—proceedings generally.

26 *Jurisdiction of prescribed State courts*

- 27 (2A) Subject to subsection (2), a court of a State prescribed for the
28 purposes of this section is invested with federal jurisdiction in

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

3 *Jurisdiction of prescribed Territory courts*

4 (2B) Subject to section 69K and subsection (2) of this section,
5 jurisdiction is conferred on a court of a Territory prescribed for the
6 purposes of this section in relation to matters arising under this Part
7 (other than section 60G) in respect of section 69GA proceedings.

8 **2426 Subsection 69GA(4)**

9 Omit “heard in”, substitute “of”.

10 **2527 Subsection 69J(1) (note)**

11 Repeal the note.

12 **2628 After subsection 69J(5)**

13 Insert:

14 (5A) If a Proclamation in force under subsection (3) specifies a State or
15 Territory in respect of which a court is prescribed for the purposes
16 of section 69GA, subsection (5) applies in relation to any
17 section 69GA proceedings in that court as if they were proceedings
18 under this Part in a court of summary jurisdiction.

19 **2729 Subsection 69N(1) (note)**

20 Repeal the note.

Schedule 3 Case management and procedure
Part 5 Protecting sensitive information

1 **Part 5—Protecting sensitive information**

2 **Division 1—Main amendments**

3 **Family Law Act 1975**

4 **30 Subsection 4(1)**

5 Insert:

6 *confidant* has the meaning given by section 102BA.

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

9 *health service* has the meaning given by subsections 102BB(3) and
10 (4).

11 *protected confidence* has the meaning given by section 102BA.

12 *protected confider* has the meaning given by section 102BA.

13 **31 After Division 1 of Part XI**

14 Insert:

15 **Division 1B—Protecting sensitive information**

16 **102BA Definition of protected confidence**

17 A *protected confidence* is a communication made by one person to
18 another person:

19 (a) in the course of a relationship in which one of the persons
20 (the *confidant*) is acting in a professional capacity to provide
21 a professional service (see section 102BB) to the other
22 person (the *protected confider*); and

23 (b) in circumstances in which the confidant is under an
24 obligation not to disclose communications made to them by
25 the protected confider (whether the obligation is express or
26 inferred from the nature of the relationship).

1 **102BB Definition of professional service**

2 (1) For the purpose of this Division, a **professional service** is any of
3 the following:

4 (a) a health service mentioned in subsection (3) or (4);

5 (b) a specialist service in relation to:

6 (i) sexual assault; or

7 (ii) family violence;

8 (c) any activity prescribed by the regulations for the purpose of
9 this paragraph.

10 (2) Despite subsection (1), an activity is not a **professional service** if it
11 is prescribed by the regulations for the purposes of this subsection.

12 (3) An activity performed in relation to an individual is a **health**
13 **service** if the activity is intended or claimed (expressly or
14 otherwise) by the individual or the person performing it:

15 (a) to assess, maintain or improve the individual's health; or

16 (b) where the individual's health cannot be maintained or
17 improved—to manage the individual's health; or

18 (c) to diagnose the individual's illness, disability or injury; or

19 (d) to treat the individual's illness, disability or injury or
20 suspected illness, disability or injury; or

21 (e) to record the individual's health for the purposes of
22 assessing, maintaining, improving or managing the
23 individual's health.

24 (4) The dispensing on prescription of a drug or medicinal preparation
25 by a pharmacist is a **health service**.

26 (5) To avoid doubt, a reference in this section to an individual's health
27 includes the individual's physical or psychological health.

28 **102BC Direction in relation to adducing evidence**

29 (1) The court may direct that evidence not be adduced in proceedings
30 under this Act, if the court finds that adducing it would disclose:

31 (a) a protected confidence; or

32 (b) the contents of a document recording or relating to a
33 protected confidence.

EXPOSURE DRAFT

Schedule 3 Case management and procedure
Part 5 Protecting sensitive information

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

22 **102BD Direction in relation to complying with disclosure**
23 **requirement**

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

EXPOSURE DRAFT

Case management and procedure **Schedule 3**
~~Clarification of inadmissibility provisions Part 2~~
Protecting sensitive information **Part 5**

1 (b) a requirement under this Act or the applicable Rules of Court
2 that a party to proceedings produce a document or part of a
3 document in the proceedings.

4 (3) The court may give the direction:

5 (a) on its own initiative; or

6 (b) on application by:

7 (i) the confidant; or

8 (ii) a person who is in possession or has control of a
9 document recording or relating to a protected
10 confidence; or

11 (iii) a litigation guardian; or

12 (c) if the protected confider is aged 18 or over—on application
13 by the protected confider; or

14 (d) if the protected confider is a child aged under 18—on
15 application by:

16 (i) a person who has parental responsibility (within the
17 meaning of Part VII) for the child; or

18 (ii) an independent children’s lawyer who represents the
19 interests of the child in the proceedings; or

20 (iii) a person who has care of the child; or

21 (iv) a person who proposes to have parental responsibility
22 for the child.

23 (4) The person to whom the disclosure requirement applies is not
24 required to comply with it at any time while the court is deciding
25 whether to give the direction.

26 (5) The court may order that a document or part of a document be
27 produced to the court to inspect for the purposes of deciding
28 whether to give the direction.

29 (6) A document or part of a document to which a direction under this
30 section relates is not admissible in the proceedings.

31 **102BE Grounds and considerations for directions**

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

EXPOSURE DRAFT

Schedule 3 Case management and procedure
Part 5 Protecting sensitive information

- 1 (a) it is likely that harm would or might be caused (directly or
2 indirectly) to the protected confider, or to a child to whom
3 the proceedings relate, if the evidence were adduced or the
4 document or part produced, inspected or copied; and
5 (b) the nature and extent of the harm outweighs the desirability
6 of adducing the evidence or producing, inspecting or copying
7 the document or part.
- 8 (2) For the purposes of subsection (1), harm may include, but is not
9 limited to, the following:
- 10 (a) physical harm;
11 (b) psychological harm or oppression;
12 (c) mental distress;
13 (d) a detrimental effect on the other party’s capacity to care for a
14 child;
15 (e) financial harm.
- 16 (3) If the direction is being made in proceedings under Part VII, the
17 court must regard the best interests of the child as the paramount
18 consideration.
- 19 (4) The court must have regard to the following matters in deciding
20 whether to make the direction:
- 21 (a) in relation to the evidence, or the document or part:
22 (i) its probative value in the proceedings; and
23 (ii) its importance in the proceedings; and
24 (iii) the availability of other evidence or documents,
25 concerning the matters to which the evidence, or the
26 document or part, relates;
27 (b) the likely effect of adducing the evidence, or producing,
28 inspecting or copying the document or part, including the
29 likelihood of harm, and the nature and extent of harm, that
30 would or might be caused:
31 (i) to the protected confider; or
32 (ii) to a child to which the proceedings relate;
33 (c) the means available to the court to limit the harm or extent of
34 the harm likely to be caused if the evidence is adduced or the
35 document or part produced, inspected or copied;
-

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

21 **102BF Consent by protected confider**

- 22 The court must not give a direction under section 102BC or 102BD
23 if:
24 (a) the protected confider is an adult; and
25 (b) the protected confider consents to the evidence being
26 adduced or document being disclosed; and
27 (c) the consent is in writing and witnessed by an independent
28 person who is 18 years of age or over and not party to the
29 proceedings.

30 **102BG Relationship with inadmissibility provisions**

- 31 Section 102BC does not apply in relation to evidence to which any
32 of the following provisions apply:

EXPOSURE DRAFT

Schedule 3 Case management and procedure
Part 5 Protecting sensitive information

- 1 (a) section 10E (admissibility of communications in family
2 counselling and in referrals from family counselling);
3 (b) section 10J (admissibility of communications in family
4 dispute resolution and in referrals from family dispute
5 resolution);
6 (c) section 10V (admissibility of family safety risk screening
7 information etc.).

32 Application of amendments

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

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

Division 2—Contingent amendment

Family Law Act 1975

33 After paragraph 102BF(b)

- 20 Insert:
21 (ba) section 10KF (admissibility of certain safety-related
22 information);

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 ~~Before~~After Part ~~XV~~XIVB

Insert:

Part XIVC—Costs

114UA Definitions

In this Part:

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

~~*means tested legal aid* means a grant of assistance:~~

~~(a) that is made:~~

~~(i) by a State or Territory legal aid commission, being an authority established by or under a law of the State or~~

EXPOSURE DRAFT

Schedule 4 General provisions

Part 1 Costs orders

- 1 Territory for the purpose of providing legal assistance;
2 or
3 ~~(ii) under a legal aid scheme or service established under a~~
4 ~~Commonwealth, State or Territory law; or~~
5 ~~(iii) by a community organisation established by or under a~~
6 ~~Commonwealth, State or Territory law for the purpose~~
7 ~~of providing legal assistance to socially or economically~~
8 ~~disadvantaged individuals; or~~
9 ~~(iv) by an entity prescribed by the regulations; and~~
10 ~~(b) that is subject to the application of a means test for eligibility.~~

11 Note: ~~The organisations mentioned in subparagraph (a)(iii) may include, for~~
12 ~~example, community legal centres and Aboriginal and Torres Strait~~
13 ~~Islander Legal Services.~~

14 **114UB Court's power to make costs Costs orders—general**

15 (1) Subject to subsection (2) of this section,
16 ~~subsections 45A~~subsection 102QAB(6) and ~~70NFB(1) and~~
17 ~~sections 114UD and 114UE and 114UF~~, each party to proceedings
18 under this Act is to bear the party's own costs.

19 (2) If, in proceedings under this Act, the court is of the opinion that
20 there are circumstances that justify it in doing so, the court may,
21 subject to subsection (3) of this section, sections 114UC, and
22 ~~114UD and 114UE~~ and the applicable Rules of Court, make any
23 order for costs and security for costs that the court considers just,
24 whether by way of interlocutory order or otherwise.

25 Note 1: For other provisions about the award of costs by the Federal Circuit
26 and Family Court of Australia (Division 1), see paragraphs 69(4)(d)
27 and (e) of the *Federal Circuit and Family Court of Australia Act*
28 *2021*.

29 Note 2: For other provisions about the award of costs by the Federal Circuit
30 and Family Court of Australia (Division 2), see paragraphs 192(4)(d)
31 and (e) of the *Federal Circuit and Family Court of Australia Act*
32 *2021*.

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

34 (3) In considering what costs order (if any) should be made, the court
35 must have regard to the following:

36 (a) the financial circumstances of each party to the proceedings;

- 1 (b) whether any party to the proceedings ~~has received~~ **is receiving**
2 assistance by way of ~~means-tested~~ legal aid in respect of the
3 proceedings and, if so, the terms of the grant of the assistance
4 to that party;
- 5 (c) the conduct of the parties to the proceedings in relation to the
6 proceedings including, without limiting paragraphs (a) and
7 (b), the conduct of the parties in relation to pleadings,
8 particulars, discovery, inspection, directions to answer
9 questions, admissions of facts, production of documents and
10 similar matters;
- 11 (d) whether the proceedings were necessitated by the failure of a
12 party to the proceedings to comply with previous orders of
13 the court;
- 14 (e) whether any party to the proceedings has been wholly
15 unsuccessful in the proceedings;
- 16 (f) whether a party to the proceedings has made an offer in
17 writing to the other party to the proceedings to settle the
18 proceedings and the terms of any such offer;
- 19 (g) such other matters as the court considers relevant.
- 20 (4) ~~The court~~ **A party to the proceedings** may make ~~an application for~~
21 ~~costs order~~ **an application for**
22 (a) at any stage during the proceedings; or
23 (b) within 28 days after the final order in the proceedings is
24 made.
- 25 (5) The court may make a costs order in respect of:
26 (a) the proceedings as a whole; or
27 (b) any issues that are ordered to be tried separately.
- 28 (6) The court may order that a party is entitled to costs:
29 (a) of a specific amount; or
30 (b) as assessed on a particular basis (for example, party and
31 party, solicitor and client or indemnity); or
32 (c) to be calculated in accordance with the method stated in the
33 order; or
34 (d) for part of the proceedings, or part of an amount assessed in
35 accordance with the applicable Rules of Court.

EXPOSURE DRAFT

Schedule 4 General provisions Part 1 Costs orders

- 1 (7) If the court makes a costs order but does not specify the method for
2 the calculation of the costs, the costs are to be assessed on a party
3 and party basis.
- 4 (8) The court may make a costs order in favour of, or against, a party
5 to the proceedings regardless of the degree to which the party has
6 been successful in the proceedings.
- 7 (9) If a person (a non-party) was not a party to the proceedings, but
8 was involved in the proceedings and has an interest in the
9 proceedings, the court may make either or both any of the following
10 orders:
11 (a) a costs order that the person non-party is to bear the
12 person's non-party's own costs;
13 (b) a costs order requiring the person specified party to the
14 proceedings to pay the non-party's costs;
15 (c) a costs order requiring the non-party to pay the costs of a
16 specified party to the proceedings.

114UC ~~Costs order against lawyer~~

- 18 ~~(1) The court may make a costs order against a lawyer if the lawyer, or~~
19 ~~an employee or agent of the lawyer, has caused costs to be incurred~~
20 ~~by a party or another person, or to be thrown away, because of:~~
21 ~~(a) improper or unreasonable conduct; or~~
22 ~~(b) undue delay or default.~~
- 23 ~~(2) A lawyer may be in default if a hearing of proceedings may not~~
24 ~~proceed conveniently because the lawyer has unreasonably failed:~~
25 ~~(a) to attend, or send another person to attend, the hearing; or~~
26 ~~(b) to file, lodge or deliver a document as required; or~~
27 ~~(c) to prepare any proper evidence or information; or~~
28 ~~(d) to do any other act necessary for the hearing to proceed.~~
- 29 ~~(3) The court may make a costs order against a lawyer:~~
30 ~~(a) on the initiative of the court; or~~
31 ~~(b) on application by a party to the proceedings or by another~~
32 ~~person who has incurred the costs or costs thrown away.~~

1 **114UD** **Costs of independent children’s lawyer and limitations on**
2 **costs relating to intervening officer or litigation guardian**
3 **etc.**

4 (1) In proceedings in which an independent children’s lawyer for a
5 child has been appointed, the court may make a costs order,
6 whether by way of interlocutory order or otherwise, to the effect
7 that each party to the proceedings bears, in such proportion as the
8 court considers just, the costs of the independent children’s lawyer
9 in relation to the proceedings.

10 (2) However, if:

11 (a) a party to the proceedings ~~has received~~ is receiving assistance
12 by way of ~~means tested~~ legal aid in respect of the
13 proceedings; or

14 (b) the court considers that a party to the proceedings would
15 suffer financial hardship if the party had to bear a proportion
16 of the costs of the independent children’s lawyer;

17 the court must not make a costs order against that party in relation
18 to the costs of the independent children’s lawyer.

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

23 *Funding of independent children’s lawyer not to affect costs order*

24 (34) In considering what costs order (if any) should be made under
25 subsection (1) in proceedings in which an independent children’s
26 lawyer has been appointed, the court must disregard the fact that
27 the independent children’s lawyer is funded under a legal aid
28 scheme or service:

29 (a) ~~established under a legal aid scheme or service mentioned in~~
30 ~~subparagraph (a)(ii) law of the definition Commonwealth or~~
31 ~~of means tested legal aid in section 114UA; or~~

32 ~~(b) by a State or Territory legal aid commission, a community~~
33 ~~organisation, or an entity, mentioned in subparagraph (a)(i);~~
34 ~~(a)(iii) or (a)(iv) of the definition of means tested legal aid in~~
35 ~~section 114UA.; or~~

Schedule 4 General provisions
Part 1 Costs orders

1 (b) approved by the Attorney-General.

2 *Limit on costs orders relating to intervention under section 91B*

3 (45) If:

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

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

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

18 **114UE114UD Costs in proceedings relating to overseas enforcement**
19 **and international Conventions**

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

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

- 30 (2) However, a costs order may only be made in respect of a part of
31 the proceedings if, during that part, the party against whom the
32 order is to be made asserted a meaning or operation of this Act or
33 those regulations that the court considers:
-

- 1 (a) is not reasonable given the terms of the Act or regulations; or
2 (b) is not convenient to give effect to Australia’s obligations
3 under the Convention concerned, or to obtain for Australia
4 the benefits of that Convention.
- 5 (3) In proceedings under regulations made for the purposes of
6 section 111B, the court may also make a costs order that is:
7 (a) against a party who has wrongfully removed or retained a
8 child, or wrongfully prevented the exercise of rights of access
9 (within the meaning of the Convention referred to in that
10 section) to a child; and
11 (b) in respect of the necessary expenses incurred by the person
12 who made the application, under that Convention, concerning
13 the child.

14 ~~114UF~~**114UE** **Security for costs**

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

18 **Division 2—Consequential amendments**

19 *Family Law Act 1975*

20 **3 Subsection 60I(8) (note)**

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

22 **4 Subsection 91B(2) (note)**

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

24 **5 Subsection 91B(2) (note)**

25 Omit “subsection 117(4A)”, substitute
26 “subsection ~~114UD(4)~~**114UC(5)**”.

27 **6 Sections 117, 117AA and 117AC**

28 Repeal the sections.

Schedule 4 General provisions
Part 1 Costs orders

1 **7 Subsection 117C(2)**

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

3 **8 Paragraph 123(1)(o)**

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

6 **9 Paragraph 123(1)(o)**

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

9 **10 Paragraph 123A(1)(n)**

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

12 **11 Paragraph 123A(1)(n)**

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

15 ***Federal Circuit and Family Court of Australia Act 2021***

16 **4012 Subsection ~~68(3)214(1)~~ (note 1)**

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

18 **~~11~~ Subsection ~~214(1)~~ (note ~~1~~)**

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

20 **4213 Subsection 215(1) (note)**

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

22 ***Federal Proceedings (Costs) Act 1981***

23 **4314 Paragraph 9(1)(b)**

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

1 **Division 3—Transitional provisions**

2 **4415 Application of amendments relating to costs**

3 The amendments ~~of the *Family Law Act 1975*~~ made by Divisions 1 and
4 2 of this Part apply in relation to the following proceedings:

5 (a) proceedings instituted ~~before or after the commencement~~
6 ~~of day this Part that were~~ Division commences;

7 (b) proceedings instituted before, and not finally determined
8 before that commencement; and, the day this Division
9 commences, other than proceedings in respect of which a
10 final hearing has commenced before that day.

11 ~~(b) proceedings instituted after the commencement of this Part.~~

12 **Division 4—Contingent amendments for Family Law**
13 **Amendment Act 2023**

14 ~~*Family Law Act 1975*~~

15 ~~**15 Subsection 114UB(1)**~~

16 ~~Omit “45A(6)”, substitute “102QAB(6)”.~~

17 ~~**16 Subsection 114UB(1)**~~

18 ~~Omit “70NFB(1)”, substitute “70NBE(1)”.~~

19 **Division 5—Amendments relating to duty of disclosure**

20 ~~*Family Law Act 1975*~~

21 ~~**4716 At the end of paragraph 114UB(3)(c)**~~

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

24 ~~**4817 Application of amendment made by this Division**~~

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

~~EXPOSURE DRAFT~~

Schedule 4 General provisions

Part 2 Clarification Court rule making power for Family Court of inadmissibility provisions

1 **Part 2—~~Clarification~~ Court rule making power for**
2 **~~Family Court~~ of inadmissibility provisions**

3 **~~Division 1—Main amendments~~**

4 **~~Family Law Act 1975~~**

5 **~~19 Subsection 4(1) (at the end of the definition of court)~~**

6 ~~Add:~~

7 Note: ~~The definition of *court* in this subsection does not apply in~~
8 ~~sections 10E, 10J, 10V, 56, 67ZB and 70NEF.~~

9 **~~20 Paragraph 10E(1)(c)~~**

10 ~~Omit “(whether or not exercising federal jurisdiction)”.~~

11 **~~21 At the end of section 10E~~**

12 ~~Add:~~

13 ~~(5) For the purpose of this section, *court*:~~

1 ~~_____ (a) _____ includes any court of the~~
2 ~~Commonwealth, a State or a Territory,~~
3 ~~whether exercising jurisdiction under this~~
4 ~~Act or any other law of the Commonwealth,~~
5 ~~a State or a Territory; but~~
6 ~~_____ (b) does not include a coronial inquiry or inquest.~~

7 **22 Paragraph 10J(1)(c)**

8 Omit “(whether or not exercising federal jurisdiction)”.

9 **23 At the end of section 10J**

10 ~~Add:~~

11 ~~_____ (5) For the purpose of this section, *court*:~~
12 ~~_____ (a) includes any court of the Commonwealth, a State or a~~
13 ~~Territory, whether exercising jurisdiction under this Act or~~
14 ~~any other law of the Commonwealth, a State or a Territory;~~
15 ~~but~~
16 ~~_____ (b) does not include a coronial inquiry or inquest.~~

17 **24 Paragraphs 10V(1)(a) and (3)(a)**

18 Omit “(whether or not exercising federal jurisdiction)”.

19 **25 At the end of section 10V**

20 ~~Add:~~

21 *Meaning of court*

22 ~~_____ (6) For the purpose of this section, *court*:~~
23 ~~_____ (a) includes any court of the Commonwealth, a State or a~~
24 ~~Territory, whether exercising jurisdiction under this Act or~~
25 ~~any other law of the Commonwealth, a State or a Territory;~~
26 ~~but~~
27 ~~_____ (b) does not include a coronial inquiry or inquest.~~

EXPOSURE DRAFT

Schedule 4 General provisions
Part 2 a State

1 **26 ~~Subsection 56(3)~~**

2 Omit “whether exercising federal jurisdiction or not”, substitute
3 “whether exercising jurisdiction under this Act or any other law of the
4 Commonwealth, a State or a Territory”.

5 **27 ~~Subsection 67ZB(5)~~**

6 Repeal the subsection, substitute:

7 ~~————— (5) In this section, *court*:~~

8 ~~————— (a) includes any court of the Commonwealth, a State or a
9 Territory, whether exercising jurisdiction under this Act or
10 any other law of the Commonwealth, a State or a Territory;
11 but~~

12 ~~————— (b) does not include a coronial inquiry or inquest.~~

13 **28 ~~Paragraph 70NEF(1)(a)~~**

14 Omit “(whether exercising federal jurisdiction or not)”.

15 **29 ~~At the end of section 70NEF~~**

16 ~~Add:~~

17 ~~————— (3) For the purpose of this section, *court*:~~

18 ~~————— (a) includes any court of the Commonwealth, a State or a
19 Territory, whether exercising jurisdiction under this Act or
20 any other law of the Commonwealth, a State or a Territory;
21 but~~

22 ~~————— (b) does not include a coronial inquiry or inquest.~~

23 **30 ~~Application of amendments~~**

24 The amendments of sections 10E, 10J, 10V, 56, 67ZB and 70NEF of
25 the *Family Law Act 1975* made by this Division apply in relation to
26 proceedings that commence after the commencement of this item.

1 **Division 2—Contingent amendments for Family Law**
2 **Amendment Act 2023**

3 ***Family Law Act 1975***

4 **3118 Subsection 4(1) (note to after paragraph (b) of the**
5 **definition of *court* applicable Rules of Court)**

6 Before “10V”, insert “10PA,”.

7 32Insert:

8 (ba) in relation to a Family Court of a State—means:

- 9 (i) if Rules of Court made under section 123A are in force
10 for the purposes of that Court—those Rules of Court; or
11 (ii) if subparagraph (i) does not apply—the standard Rules
12 of Court; and

13 **19 Subsection 4(1) (note to definition of *court* standard Rules**
14 **of Court)**

15 Omit “, 67ZB and 70NEF “this Act”, substitute “and 67ZB section 123”.

16 **3320 Subsection 10N(2) (note)**

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

19 **21 Subsection 13J(1) (note)**

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

21 **22 Subsection 109A(1)**

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

24 **23 Subsection 111C(7A)**

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

27 **24 Section 123 (heading)**

28 Repeal the heading, substitute:

Schedule 4 General provisions
Part 2 a State

1 **123 Rules of Court—standard Rules of Court**

2 **25 Paragraph 40PA123(1)(ae)**

3 After “vexatious”, insert “or harmful”.

4 **26 Subsection 123(1) (note)**

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

7 **27 Subsection 123(1A)**

8 Repeal the subsection, substitute:

9 (1A) A reference in subsection (1) to a *court exercising federal*
10 *jurisdiction* or *under this Act* does not” include a reference to:

11 **34 At the end of section 10PA**

12 (a) ~~Add:~~

13 (3) For the purpose Federal Circuit and Family Court of
14 Australia; or

15 (b) if Rules of this Court made under section, ~~court:~~ 123A are in
16 force for the purposes of a Family Court of a State—that
17 Court.

18 (a) ~~includes any~~ Note: A reference to a Family Court of a
19 State is a reference to a court to which section 41 applies (see
20 subsection 4(1A)).

21 **28 After section 123**

22 Insert:

23 **123A Rules of Court—Family Courts of a State**

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

EXPOSURE DRAFT

General provisions **Schedule 4**

~~Clarification of inadmissibility provisions **Part 2**~~

a State **Part 2**

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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

EXPOSURE DRAFT

Schedule 4 General provisions
Part 2 a State

- 1 (l) for the purposes of Division 2 of Part XI, providing for the
2 conditions relating to the use of video links, audio links and
3 other appropriate means of communication; and
4 (m) providing for and in relation to the making of an application
5 for a divorce order in relation to a marriage jointly by both
6 parties to the marriage; and
7 (n) providing for and in relation to the appointment, by the
8 Attorney-General of the Commonwealth, a State or of a
9 guardian *ad litem* for a party to proceedings under this Act;
10 and
11 (o) providing for and in relation to:
12 (i) the forfeiture of bonds and recognisances entered into in
13 pursuance of requirements made under this Act; and
14 (ii) the recovery of any money that may be due to the
15 Commonwealth under such bonds and recognisances or
16 from any person who has become a surety under this
17 Act; and
18 (p) providing for and in relation to the attachment of moneys
19 payable by the Commonwealth, a State, a Territory, whether
20 exercising jurisdiction under this Act or any other or the
21 Administration of a Territory, or by an authority of the
22 Commonwealth, of a State or of a Territory (other than
23 moneys as to which it is provided by any law of the
24 Commonwealth, of a State or of a Territory; but that they are
25 not liable to attachment); and
26 (b) does not include a coronial inquiry or inquest.
27 ~~35 Application of~~ (q) providing for and in relation to:
28 (i) the attendance at family counselling by parties to
29 proceedings under this Act; and
30 (ii) the attendance at family dispute resolution by parties to
31 proceedings under this Act; and
32 (iii) the giving of advice and assistance by family
33 consultants to people involved in proceedings under this
34 Act; and
35 (iv) the participation by parties to proceedings under this
36 Act in courses, programs and other services (other than
37 those mentioned in subparagraph (i), (ii) or (iii)) that the
38 parties are ordered by the State Court to participate in;
39 and

EXPOSURE DRAFT

General provisions **Schedule 4**

~~Clarification of inadmissibility provisions **Part 2**~~

a State **Part 2**

- 1 (v) the use, for the purposes of proceedings under this Act,
2 by the State Court and officers of the court, of reports
3 about the future conduct of the proceedings that have
4 been prepared by persons who dealt with the parties in
5 accordance with Rules of Court made under
6 subparagraphs (i), (ii), (iii) or (iv); and
- 7 (r) prescribing the functions and duties of assessors and of
8 family consultants and arbitrators; and
- 9 (s) providing for and in relation to the making of applications
10 under this Act for arbitration and for orders under
11 sections 13E and 13F; and
- 12 (t) prescribing the disputes, proceedings or matters that may or
13 may not be arbitrated under this Act; and
- 14 (u) prescribing the disputes, proceedings or matters in relation to
15 which family consultants may, or must not, perform their
16 functions; and
- 17 (v) providing for and in relation to:
- 18 (i) the functions to be performed by family consultants; and
19 (ii) the procedures to be followed in performing those
20 functions; and
21 (iii) the procedures to be followed by persons involved in
22 proceedings in relation to which a family consultant is
23 performing functions; and
- 24 (iv) the procedures to be followed when a family consultant
25 ceases performing functions in relation to a dispute,
26 proceeding or matter; and
- 27 (w) providing for and in relation to:
- 28 (i) the procedures to be followed by a family counsellor
29 authorised under subsection 281(1) of the *Federal*
30 *Circuit and Family Court of Australia Act 2021* or
31 engaged under subsection 18ZI(2) of the *Federal Court*
32 *of Australia Act 1976*; and
- 33 (ii) the procedures to be followed by persons attending
34 family counselling with such a counsellor; and
- 35 (iii) the procedures to be followed when family counselling
36 with such a counsellor ends; and
- 37 (x) providing for and in relation to:

EXPOSURE DRAFT

Schedule 4 General provisions
Part 2 a State

- 1 (i) the procedures to be followed by a family dispute
2 resolution practitioner authorised under
3 subsection 281(2) of the *Federal Circuit and Family*
4 *Court of Australia Act 2021* or engaged under
5 subsection 18ZI(2) of the *Federal Court of Australia*
6 *Act 1976*; and
- 7 (ii) the procedures to be followed by persons attending
8 family dispute resolution with such a practitioner; and
- 9 (iii) the procedures to be followed when family dispute
10 resolution with such a practitioner ends; and
- 11 (y) providing for and in relation to:
- 12 (i) the procedures to be followed by an arbitrator in relation
13 to a dispute, proceeding or matter under this Act; and
- 14 (ii) the attendance by persons at conferences conducted by
15 arbitrators for the purpose of arbitrating a dispute,
16 proceeding or matter under this Act; and
- 17 (iii) the procedure to be followed when arbitration ends,
18 both where it has resulted in an agreement or award and
19 where it has not; and
- 20 (z) prescribing matters relating to the costs of arbitration by
21 arbitrators, and the assessment or taxation of those costs; and
- 22 (za) prescribing matters relating to the costs of family counselling
23 by family counsellors authorised under subsection 281(1) of
24 the *Federal Circuit and Family Court of Australia Act 2021*
25 or engaged under subsection 18ZI(2) of the *Federal Court of*
26 *Australia Act 1976*; and
- 27 (zb) prescribing matters relating to the costs of family dispute
28 resolution by family dispute resolution practitioners
29 authorised under subsection 281(2) of the *Federal Circuit*
30 *and Family Court of Australia Act 2021* or engaged under
31 subsection 18ZI(2) of the *Federal Court of Australia Act*
32 *1976*; and
- 33 (zc) providing for and in relation to:
- 34 (i) the registration of awards under section 13H; and
- 35 (ii) the time and manner of making applications for review
36 of registered awards under section 13J or for orders
37 setting aside registered awards under section 13K; and
- 38 (zd) providing for and in relation to conciliation conferences; and

- 1 (ze) prescribing matters incidental to the matters specified in the
2 preceding paragraphs; and
3 (zf) prescribing penalties not exceeding 50 penalty units, or an
4 amount that is the monetary equivalent, for offences against
5 Rules of Court made under this section for the purposes of
6 the State Court.

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

9 Note 2: Penalty unit has the meaning given by section 4AA of the *Crimes Act*
10 1914 (see section 2B of the *Acts Interpretation Act 1901*).

11 (2) The *Legislation Act 2003* (other than sections 8, 9, 10 and 16 and
12 Part 4 of Chapter 3 of that Act) applies in relation to rules of court
13 made by Judges of a State Court under this section:

14 (a) as if a reference to a legislative instrument (other than in
15 subparagraph 14(1)(a)(ii) and subsection 14(3) of that Act)
16 were a reference to a rule of court; and

17 (b) as if a reference to a rule-maker were a reference to the Chief
18 Judge (however described) acting on behalf of the Judges of
19 that Court; and

20 (c) subject to such further modifications or adaptations as are
21 provided for in regulations made under
22 paragraph 125(1)(baa) of this Act.

23 **29 After paragraph 125(1)(bc)**

24 Insert:

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

29 **Child Support (Assessment) Act 1989**

30 **30 Subsection 100(1)**

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

~~EXPOSURE DRAFT~~

Schedule 4 General provisions
Part 2 a State

1 **Child Support (Registration and Collection) Act 1988**

2 **31 Subsection 105(1)**

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

7 **32 Continuity of Rules of Court**

8 The amendments made by items 24 to 27 of this Schedule:
9 The amendments(a) do not affect the continuity of any Rules of Court made
10 for the purposes of section 10PA.123 of the *Family Law Act*
11 1975 made by this Division apply in relation to proceedings
12 that commence after are in force immediately before the
13 commencement of this item; and

14 **Division 3—Amendments relating to children’s contact**
15 **services**

16 (b) to avoid doubt, do not prevent the amendment or repeal of
17 those Rules of Court.

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

3 ***Family Law Act 1975***

4 **3633 Subsection 4(1) (note to the definition of court)**~~90XT(3)~~

5 After “~~10J,~~”,the regulations”, insert “10KF,”.

6 **37 Paragraph 10KF(1)(a)**

7 Omit “(whether or not exercising federal jurisdiction)”.

8 **38 At the end of section 10KF**

9 “~~(each~~Add:

10 ~~— (3) For the purpose of this section, *court*:~~

11 ~~(a) — includes any court of the Commonwealth, a State~~these is an
12 approved method or a Territory, ~~whether exercising jurisdiction under~~
13 ~~this Act or any other law of the Commonwealth, a State or a Territory;~~
14 ~~but~~factor)”.

15 **34 After subsection 90XT(3)**

16 Insert:

17 (3A) If there is an approved method or factor for a superannuation
18 interest in an eligible superannuation plan, the Minister may, in
19 circumstances prescribed by the regulations, give a written
20 direction to the trustee of that plan requiring the trustee, within the
21 period specified in the direction, to do a thing prescribed by the
22 regulations in relation to the approved method or factor.

23 (3B) The regulations may prescribe matters in relation to the content of
24 a direction.

25 (3C) A direction made under subsection (3A) is not a legislative
26 instrument.

27 (3D) A person commits an offence if:

28 (a) the person receives a direction from the Minister under
29 subsection (3A); and

EXPOSURE DRAFT

Schedule 4 General provisions

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

1 (b) the person does not include a coronial inquiry comply with
2 the direction.

3 Penalty: 50 penalty units.

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

6 **35 Subsection 90YY(4)**

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

9 **36 After subsection 90YY(4)**

10 Insert:

11 (4A) If there is an approved method or factor for a superannuation
12 interest in an eligible superannuation plan, the Minister may, in
13 circumstances prescribed by the regulations, give a written
14 direction to the trustee of that plan requiring the trustee, within the
15 period specified in the direction, to do a thing prescribed by the
16 regulations in relation to the approved method or factor.

17 (4B) The regulations may prescribe matters in relation to the content of
18 a direction.

19 (4C) A direction made under subsection (4A) is not a legislative
20 instrument.

21 (4D) A person commits an offence if:

22 (a) the person receives a direction from the Minister under
23 subsection (4A); and

24 (b) the person does not comply with the direction.

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

27 Penalty: 50 penalty units.

Schedule 5—Review of amendments

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1 Review of amendments

4 (1) The Minister must arrange for the conduct of a review of the operation
5 of the amendments made by this Act. The review is to start as soon as
6 practicable after the third anniversary of the day that Division 1 of
7 Part 1 of Schedule 1 to this Act commences and be completed within 12
8 months of the day the review starts.

9 (2) The Minister must arrange for a report of the review to be prepared.

10 (3) The Minister must table copies of the report in each House of the
11 Parliament within 15 sitting days of that House after completion of the
12 report.