



Family Law Reform (Consequential Amendments) Act 1995

No. 140 of 1995

**An Act to make consequential amendments because of the
enactment of amendments of the *Family Law Act 1975*, and
for other purposes**

[Assented to 12 December 1995]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Family Law Reform (Consequential
Amendments) Act 1995*.

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Commencement

2.(1) Subject to subsections (2), (3), (4) and (5), this Act commences on the day on which it receives the Royal Assent.

(2) The amendments made by Parts 1, 2, 3, 4, 6, 8, 9 and 10 of Schedule 1 commence on the commencement of section 31 of the *Family Law Reform Act 1995*.

(3) The amendment made by Part 5 of Schedule 1 commences on the commencement of section 54 of the *Family Law Reform Act 1995*.

(4) The amendments made by Part 7 of Schedule 1 commence on the commencement of section 5 of the *Family Law Reform Act 1995*.

(5) Schedule 2 commences 14 days after the day on which this Act receives the Royal Assent.

Schedules

3. The Acts specified in the Schedules are amended in accordance with the applicable items in the Schedules.

SCHEDULE 1

Section 3

CONSEQUENTIAL AMENDMENTS OF ACTS

**PART 1—AMENDMENT OF THE AUSTRALIAN CITIZENSHIP
ACT 1948**

1. Subsection 5(1) (definition of “responsible parent”):

Omit the definition, substitute:

“ ‘responsible parent’ has the meaning given by subsection (2);”.

2. After subsection 5(1):

Insert:

“(2) For the purposes of this Act, a person is a ‘responsible parent’ in relation to a child if:

- (a) the person is a parent of the child except where, because of orders made under the *Family Law Act 1975*, the person no longer has any parental responsibility for the child; or
- (b) the person (whether or not a parent of the child) has a residence order in relation to the child; or
- (c) the person (whether or not a parent of the child) has a specific issues order in relation to the child under which the person is responsible for the child’s long-term or day-to-day care, welfare and development; or
- (d) the person (whether or not a parent of the child) has guardianship or custody of the child, jointly or otherwise, under a law in force in a foreign country or a law of the Commonwealth, a State or a Territory, whether because of adoption, operation of law, an order of a court or otherwise.

“(2A) Expressions used in paragraphs (2)(a), (b) and (c) have the same meaning as in the *Family Law Act 1975*.”.

**PART 2—AMENDMENT OF THE CHILD SUPPORT
(ASSESSMENT) ACT 1989**

Division 1—Miscellaneous consequential amendments

3. Section 5 (paragraph (b) of the definition of “parent”):

Omit “60B”, substitute “60H”.

4. Section 5 (subparagraph (a)(ii) of the definition of “relevant dependent child”):

Omit “access to”, substitute “contact with”.

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SCHEDULE 1—continued

5. Section 5 (definitions of “custodian entitled to child support”, “eligible custodian”, “major access”, “shared custody child” and “substantial access”):

Omit the definitions.

6. Section 5:

Insert:

“ ‘**carer entitled to child support**’ has the meaning given by section 31 or, in relation to a case in which the liability to pay the child support concerned arose because of the acceptance by the Registrar of a child support agreement, the meaning given by section 93;

‘**eligible carer**’, in relation to a child, means:

- (a) a person who is the sole or principal provider of ongoing daily care for the child; or
- (b) a person who has major contact with the child; or
- (c) a person who shares ongoing daily care of the child substantially equally with another person; or
- (d) a person who has substantial contact with the child;

‘**major contact**’ has the meaning given by subsection 8(3);

‘**shared care child**’ means a child of whom each of the parents is an eligible carer because he or she shares ongoing daily care of the child substantially equally with the other parent;

‘**substantial contact**’ has the meaning given by subsection 8(3);”.

7. Paragraph 8(3)(c):

Omit “**major access to**”, substitute “ ‘**major contact**’ with”.

Note: The heading to section 8 is altered by omitting “**substantial access**” and substituting “**major and substantial contact**”.

8. Paragraph 8(3)(d):

Omit “**substantial access to**”, substitute “ ‘**substantial contact**’ with”.

9. Subsection 22(1):

Omit “in the custody of, or under the guardianship, care and control or supervision of,”, substitute “under the care (however described) of”.

10. Subsection 25(2):

Omit “**joint custodians**”, substitute “**joint carers**”.

11. Subsection 25(4):

Omit “under the guardianship of, in the custody of, or care and control of,”, substitute “under the care (however described) of”.

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12. Paragraph 31(1)(a):

Omit “custodian entitled to child support”, substitute “ ‘**carer entitled to child support**’ ”.

13. Paragraph 31(1)(b):

Omit “liable parent”, substitute “ ‘**liable parent**’ ”.

14. Heading to Subdivision D of Division 2 of Part 5:

Omit “*Custodial*”, substitute “*Carer*”.

15. Section 43:

Omit “entitled custodian”, substitute “entitled carer”.

16. Paragraph 48(b):

Omit “Custodial”, substitute “Carer”.

17. Paragraph 48(da):

Omit “to whom the parent has substantial access”, substitute “with whom the parent has substantial contact”.

18. Paragraph 48(e):

Omit “to whom a parent has major access”, substitute “with whom a parent has major contact”.

19. Paragraph 48(e):

Omit “to whom a parent has substantial access”, substitute “with whom a parent has substantial contact”.

20. Heading to Subdivision G of Division 2 of Part 5:

Omit “*custodians*”, substitute “*carers*”.

21. Paragraph 54(1)(b):

Omit the paragraph, substitute:

“(b) the child support percentage of the liable parent in relation to the carer entitled to child support is to be taken to be the child support percentage that would, apart from this section but subject to paragraph (c), be applicable in relation to the liable parent multiplied by the factor calculated using the formula:

$$\frac{\text{number of children in carer's care}}{\text{total number of children}}$$

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where:

‘number of children in carer’s care’ is the number of children in relation to whom the liable parent is a liable parent in relation to the carer entitled to child support (with the number attributed to each child with whom a carer has major contact taken to be 0.65, the number attributed to each child with whom a carer has substantial contact taken to be 0.35 and the number attributed to each shared care child of the liable parent and the carer entitled to child support taken to be 0.5);

‘total number of children’ is the number of children in relation to whom the liable parent is a liable parent in relation to all of the carers entitled to child support (with the number attributed to each shared care child of the liable parent taken to be 0.5); and”.

22. Section 81:

Add at the end:

“Note: A parenting plan under the *Family Law Act 1975* may, subject to the requirements of this Division, be a child support agreement.”.

23. Paragraph 84(7)(a):

Omit “child agreement”, substitute “parenting plan”.

24. Paragraph 93(1)(d):

Omit “custodian entitled to child support”, substitute “ ‘carer entitled to child support’ ”.

25. Paragraph 93(1)(e):

Omit “liable parent”, substitute “ ‘liable parent’ ”.

26. Subparagraph 117(2)(a)(iv):

Omit “access to”, substitute “contact with”.

27. Sub-subparagraph 117(2)(b)(i)(A):

Omit “access to”, substitute “contact with”.

28. Subsection 117(3):

Omit “access to”, substitute “contact with”.

29. Heading to Division 5 of Part 7:

Omit “custodian”, substitute “carer”.

30. Subsection 150(9):

Omit “64A(9)”, substitute “67M(6)”.

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SCHEDULE 1—continued

***Division 2—Consequential amendments of the words “custodian”,
“custodians”, “custodian’s” and “custody”***

31. Amendment of references to “custodian”:

Omit “custodian” (wherever occurring, unless otherwise indicated) from the following provisions, substitute “carer”:

section 5 (paragraph (b) of the definition of “child support income amount” and definition of “disregarded income amount”)

subsection 12(2)

subsection 12(4)

subsection 17(1)

paragraph 25(1)(a)

subsection 25(4)

paragraph 31(1)(c)

paragraph 31(1)(d)

subsection 31(2)

section 43 (other than the reference amended by item 14 of this Schedule)

subsection 44(2)

paragraph 46(1)(b)

paragraph 47(1)(b)

paragraph 48(c)

paragraph 50(b)

paragraph 52(2)(d)

paragraph 54(1)(a)

the examples at the end of section 54

paragraph 56(4)(a)

paragraph 56(4)(b)

paragraph 57(8)(a)

paragraph 57(8)(b)

section 59 (paragraph (a) of the definition of “income amount order”)

subsection 66(1)

subsection 67(1)

subparagraph 74(1)(b)(i)

paragraph 75(3)(c)

subsection 76(1)

paragraph 76(2)(e)

paragraph 76(2)(j)

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subsection 76(3)
section 77
section 79
subsection 80(1)
paragraph 93(1)(e)
paragraph 93(1)(f)
subparagraph 93(1)(g)(ii)
subsection 93(2)
subsection 93(3)
paragraph 95(3)(a)
subsection 98B(1)
subsection 98B(2)
sub-subparagraph 98C(1)(b)(ii)(A)
paragraph 98D(1)(d)
paragraph 98D(1)(e)
subsection 98K(2)
subsection 110(1)
subsection 110(4)
subsection 112(1)
subsection 112(2)
paragraph 115(a)
paragraph 115(c)
subsection 116(2)
subsection 116(3)
sub-subparagraph 117(1)(b)(ii)(A)
subparagraph 117(2)(c)(ii)
subsection 117(4)
paragraph 117(5)(b)
subparagraph 117(7)(b)(ii)
subsection 117(8)
paragraph 118(1)(d)
paragraph 118(1)(e)
paragraph 118(4)(b)
subsection 119(1)
subsection 119(2)
section 122

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subsection 123(1)
subsection 123(2)
subsection 123(3)
subsection 123(4)
subsection 124(1)
subsection 124(2)
subsection 124(3)
subsection 125(1)
paragraph 125(2)(a)
subsection 125(5)
paragraph 126(2)(b)
paragraph 127(3)(a)
paragraph 128(1)(b)
subsection 128(2)
paragraph 128(3)(b)
paragraph 128(3)(c)
subsection 128(4)
paragraph 129(2)(a)
paragraph 129(3)(a)
subsection 129(5)
subsection 129(8)
subsection 131(2)
subsection 131(3)
subsection 142(1)
subsection 151(1)
subsection 151(4).

Note: The headings to sections 124 and 151 are altered by omitting “custodian” and substituting “carer”.

32. Amendment of references to “custodians”:

Omit “custodians” (wherever occurring, unless otherwise indicated) from the following provisions, substitute “carers”:

subsection 25(3)
paragraph 47(1)(a)
paragraph 52(2)(a)
section 53
subsection 54(1) (other than paragraph (1)(b))

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the Table at the end of paragraph 54(1)(c)
the examples at the end of section 54
subsection 67(3)
paragraph 76(2)(h).

33. Amendment of references to “custodian’s”:

Omit “custodian’s” (wherever occurring) from the following provisions, substitute “carer’s”:

subsection 44(1)
section 45
subsection 46(1).

Notes: 1. The heading to section 44 is altered by omitting “custodian’s” (wherever occurring) and substituting “carer’s”.

2. The headings to sections 45 and 46 are altered by omitting “Custodian’s” and substituting “Carer’s”.

34. Amendment of references to “custody”:

Omit “custody” (wherever occurring) from the following provisions, substitute “care”:

paragraph 48(d)
paragraph 48(e)
the examples at the end of section 54
paragraph 76(2)(b).

**PART 3—AMENDMENT OF THE CHILD SUPPORT
(REGISTRATION AND COLLECTION) ACT 1988**

35. Paragraph 3(1)(b):

Omit “non-custodial”.

36. Subsection 4(1) (definition of “maintenance agreement”):

Add at the end:

“Note: A parenting plan under the *Family Law Act 1975* which deals with the maintenance of a child will come within this definition (see in particular section 63C of that Act).”.

37. Subsection 16(9):

Omit “64A(9)”, substitute “67M(6)”.

38. Subparagraph 19(2)(b)(iv):

Omit “66K”, substitute “66Q”.

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**PART 4—AMENDMENT OF THE CHILDCARE REBATE
ACT 1993**

39. Paragraph 10(a):

Omit the paragraph, substitute:

“(a) is legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of a child; and”.

40. Paragraph 10(b):

Omit “and control”.

41. Paragraph 11(1)(a):

Omit the paragraph, substitute:

“(a) the other person is legally responsible (whether alone or jointly with a third person) for the day-to-day care, welfare and development of the child, and the child is in the other person’s care; or”.

42. Subparagraph 11(1)(b)(ii):

Omit “and control”.

**PART 5—AMENDMENT OF THE COMMONWEALTH LEGAL
AID ACT 1977**

43. Subsection 32(3):

Omit all the words after “*Re-establishment and Employment Act 1945*”.

**PART 6—AMENDMENT OF THE JURISDICTION OF COURTS
(CROSS-VESTING) ACT 1987**

44. Subsection 3(1) (paragraph (ab) of the definition of “special federal matter”):

Omit “60AA”, substitute “60G”.

PART 7—AMENDMENT OF THE MARRIAGE ACT 1961

45. Subsection 9D(1):

Omit “A marriage counselling organization for the time being approved under section 12”, substitute “An approved counselling organisation as defined in subsection 12(1)”.

Note: The heading to section 9D is altered by omitting “marriage counselling organizations” and substituting “counselling organisations”.

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46. Subsection 9D(2):

Add at the end “These conditions count as conditions of the organisation’s approval for the purposes of section 13D of the *Family Law Act 1975* (this section deals with revocation of approvals)”.

47. Subsection 16(2A):

Omit “marriage counsellor” (wherever occurring), substitute “family and child counsellor”.

48. Subsection 16(7):

Omit “marriage counsellor”, substitute “family and child counsellor”.

PART 8—AMENDMENT OF THE MIGRATION ACT 1958

49. Section 192:

Add at the end:

“(8) In paragraph (7)(b), ‘guardian’ includes a person who has a specific issues order, within the meaning of the *Family Law Act 1975*, in relation to the detainee under which the person is responsible for the detainee’s long-term care, welfare and development.”.

PART 9—AMENDMENT OF THE PASSPORTS ACT 1938

50. Subsection 5(5):

Omit “custody order within the meaning of Part VII”, substitute “child order as defined in section 70F”.

51. Subsection 5(5):

Omit “68”, substitute “70G”.

52. Paragraph 7A(2)(a):

Omit “, under a law of the Commonwealth or of a State or Territory, is entitled to custody or guardianship of, or access to,”, substitute “has caring responsibility (as defined in subsection (8)) for”.

53. Sub-subparagraph 7A(2)(c)(ii)(B):

Omit “, under a law of the Commonwealth or of a State or Territory, is entitled to custody or guardianship of, or access to,”, substitute “has caring responsibility (as defined in subsection (8)) for”.

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54. Section 7A:

Add at the end:

“(8) For the purposes of this section, a person has ‘caring responsibility’ for a prescribed minor if:

- (a) the person is a parent of the minor except where, because of orders made under the *Family Law Act 1975*, the person no longer has any parental responsibility for the minor; or
- (b) the person has a residence order in relation to the minor; or
- (c) the person has a specific issues order in relation to the minor under which the person is responsible for the minor’s long-term or day-to-day care, welfare and development; or
- (d) the person has a contact order in relation to the minor; or
- (e) the person is entitled to guardianship or custody of, or access to, the minor under a law of the Commonwealth or of a State or a Territory.

“(9) Expressions used in paragraphs (8)(a), (b), (c) and (d) have the same meaning as in the *Family Law Act 1975*.”.

**PART 10—AMENDMENT OF THE SOCIAL SECURITY ACT
1991**

55. Paragraph 5(2)(a):

Omit the paragraph, substitute:

“(a) the adult is legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of the young person, and the young person is in the adult’s care; or”.

56. Subparagraph 5(2)(b)(ii):

Omit “and control”.

57. Paragraph 250(1)(c):

Omit “the young person”, substitute “any of the following subparagraphs applies”.

58. Subparagraph 250(1)(c)(i):

Before “is” insert “the young person”.

59. After subparagraph 250(1)(c)(i):

Insert:

“(ia) the adult has a specific issues order, within the meaning of the *Family Law Act 1975*, in relation to the young person under which the adult is responsible for the day-to-day care, welfare and development of the young person; or”.

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60. Subparagraph 250(1)(c)(ii):

Before “is” insert “the young person”.

61. Subparagraph 250(1)(c)(iii):

Before “was” insert “the young person”.

62. Subparagraph 250(1)(c)(iv):

Before “has” insert “the young person”.

63. Subparagraph 250(1)(c)(iv):

Omit “and control” (wherever occurring).

64. Subsection 250(1) (Note):

After “Note” insert “1”.

65. Subsection 250(1):

Add at the end (after Note 1):

“Note 2: If a parenting plan which includes provisions dealing with the day-to-day care, welfare and development of a young person is registered in a court under the *Family Law Act 1975*, the provisions have effect as if they were a specific issues order made by the court under that Act. (See in particular subsection 63E(3) of the *Family Law Act 1975*.)”.

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SCHEDULE 2

Section 3

AMENDMENT OF THE EVIDENCE ACT 1995

1. Subsection 4(5):

Omit “The provisions of this Act”, substitute “Subject to subsection (5A), the provisions of this Act”.

2. After subsection 4(5):

Insert:

“(5A) Despite subsection (5), this Act applies in relation to an appeal to the Family Court of Australia from a court of summary jurisdiction of a State or Territory exercising jurisdiction under the *Family Law Act 1975*.”.

3. Subsection 4(6) (Note):

Omit “Subsections (5) and (6)”, substitute “Subsections (5), (5A) and (6)”.

[*Minister's second reading speech made in—*
Senate on 29 March 1995
House of Representatives on 28 November 1995]