



# **Family Law Amendment (Family Violence and Other Measures) Act 2018**

**No. 97, 2018**

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

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Family Law Amendment (Family Violence and Other Measures) Act 2018

No. 97, 2018

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

[Assented to 31 August 2018]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Family Law Amendment (Family Violence and Other Measures) Act 2018*.

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No. 97, 2018

*Family Law Amendment (Family Violence and Other Measures) Act*  
2018

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## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	31 August 2018
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	1 September 2018
3. Schedule 1, Part 2	The day after this Act receives the Royal Assent.	1 September 2018
5. Schedule 1, Part 3	The day after this Act receives the Royal Assent.	1 September 2018

Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Family Law Act 1975**

### **Part 1—Family law matters to be resolved by State and Territory courts**

#### *Family Law Act 1975*

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

Insert:

*section 69GA proceedings* has the meaning given by subsection 69GA(2).

##### **2 Subsection 28(2)**

Repeal the subsection, substitute:

- (2) The jurisdiction of the Court in an appeal from the following court may be exercised by one Judge or by a Full Court:
- (a) a court of summary jurisdiction;
  - (b) if the appeal is from a decision in section 69GA proceedings—the court that made the decision.

##### **3 Subsection 46(1)**

Omit “in relation to property of a total value exceeding \$20,000”, substitute “in a State or Territory, in relation to property of a total value exceeding the amount referred to in section 46A,”.

##### **4 After section 46**

Insert:

##### **46A Prescribing value of property for the purposes of section 46**

- (1) For the purposes of subsection 46(1), the amount is:
- (a) \$20,000; or

- (b) if a higher amount is prescribed by regulations for the State or Territory in which the court of summary jurisdiction referred to in that subsection is located—that higher amount.
- (2) Without limiting subsection (1), a higher amount may be prescribed by referring to the jurisdiction conferred on a court of summary jurisdiction under a law of the State or Territory, as in force from time to time.

*Consultation with State and Territories*

- (3) Before the Governor-General makes regulations for the purposes of subsection (1) in relation to a particular State or Territory, the Minister must be satisfied that the Minister with responsibility for courts in that State or Territory has been consulted.
- (4) Subsection (3) does not limit section 17 of the *Legislation Act 2003* (rule-makers should consult before making legislative instrument).

## **5 Application of amendments**

The amendments of section 46 of the *Family Law Act 1975* made by this Part, and section 46A of that Act as inserted by this Part, apply in relation to proceedings instituted after the commencement of this Part.

## **6 After section 69G**

Insert:

### **69GA Operation of this Subdivision in relation to prescribed courts**

- (1) This section applies if, for the purposes of this section, the regulations prescribe one or more courts (whether in relation to proceedings generally or specified classes of proceedings).

*Prescribed State and Territory courts*

- (2) This Subdivision applies in relation to proceedings (the **section 69GA proceedings**) that are:
  - (a) heard in a court prescribed for the purposes of subsection (1); and
  - (b) if the regulations specify classes of proceedings in relation to the court—proceedings in that class;



in the same way as this Subdivision would apply if those proceedings were heard in a court of summary jurisdiction.

*Applicable rules of court*

- (3) The regulations may prescribe the Rules of Court, as in force from time to time, that are to apply in relation to section 69GA proceedings. Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, the rules of court prescribed may relate to a particular court or courts generally.
- (4) The Rules of Court made under section 123, as in force from time to time, apply in relation to section 69GA proceedings heard in a particular court if:
  - (a) the regulations do not prescribe rules of court in relation to that court; or
  - (b) both of the following apply:
    - (i) the rules of court prescribed by the regulations in relation to that court do not deal with a matter arising in the proceedings;
    - (ii) the Rules of Court made under section 123 deal with that matter.

*Consultation with State and Territories*

- (5) Before the Governor-General makes regulations for the purposes of subsection (1) or (3) in relation to a particular court or courts in a State or Territory, the Minister must be satisfied that the Minister with responsibility for courts in that State or Territory has been consulted.
- (6) Subsection (5) does not limit section 17 of the *Legislation Act 2003* (rule-makers should consult before making legislative instrument).

## **7 Application of amendments**

Section 69GA of the *Family Law Act 1975*, as inserted by this Part, applies to decisions made after the commencement of this Part, whether the proceedings in which the decision was made were instituted before or after that commencement.

## 8 Subsection 69J(1) (note)

Repeal the note, substitute:

Note: This section may apply to proceedings heard in a court prescribed by the regulations for the purposes of section 69GA in the same way as this section would apply if those proceedings were heard in a court of summary jurisdiction.

## 9 At the end of subsection 69N(1)

Add:

Note: This section may apply to proceedings heard in a court prescribed by the regulations for the purposes of section 69GA in the same way as this section would apply if those proceedings were heard in a court of summary jurisdiction.

## 10 At the end of Division 12 of Part VII

Add:

### **Subdivision G—Short form reasons for decisions relating to interim parenting orders**

#### **69ZL Short form reasons for decisions relating to interim parenting orders**

- (1) A court may give reasons in short form for a decision it makes in relation to an interim parenting order.
- (2) Subsection (1) does not otherwise affect the obligation of a court to give reasons for a decision it makes in relation to any matter arising under this Act.

## 11 At the end of section 96

Add:

*Section 69GA proceedings treated like proceedings in courts of summary jurisdiction*

- (7) This section applies to section 69GA proceedings in the same way as this section would apply if the proceedings were heard in a court of summary jurisdiction.
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## **12 Application of amendments**

Subsection 96(7) of the *Family Law Act 1975*, as inserted by this Part, applies to decisions made after the commencement of this Part, whether the proceedings in which the decision was made were instituted before or after that commencement.

## **13 Subsection 123(1)**

After “followed in the Family Court and”, insert “, subject to subsection 69GA(3),”.

## Part 2—Strengthening the powers of the courts to protect victims of family violence

### *Family Law Act 1975*

#### 14 After section 45

Insert:

#### 45A Summary decrees

*No reasonable prospect of successfully defending proceedings*

- (1) The court may make a decree for one party against another in relation to the whole or any part of proceedings if:
  - (a) the first party is prosecuting the proceedings or that part of the proceedings; and
  - (b) the court is satisfied that the other party has no reasonable prospect of successfully defending the proceedings or that part of the proceedings.

*No reasonable prospect of successfully prosecuting proceedings*

- (2) The court may make a decree for one party against another in relation to the whole or any part of a proceedings if:
  - (a) the first party is defending the proceedings or that part of the proceedings; and
  - (b) the court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceedings or that part of the proceedings.

*When there is no reasonable prospect of success*

- (3) For the purposes of this section, a defence or proceedings or part of proceedings need not be:
  - (a) hopeless; or
  - (b) bound to fail;to have no reasonable prospect of success.

*Proceedings that are frivolous, vexatious or an abuse of process*

- (4) The court may dismiss all or part of proceedings at any stage if it is satisfied that the proceedings or part is frivolous, vexatious or an abuse of process.
- (5) To avoid doubt, proceedings or a part of proceedings are not frivolous, vexatious or an abuse of process merely because an application relating to the proceedings or the part is made and later withdrawn.

*Costs*

- (6) If the court makes a decree, or dismisses all or part of proceedings, under this section, the court may make such order as to costs as the court considers just.

*Action by court on its own initiative or on application*

- (7) The court may take action under this section on its own initiative or on application by a party to the proceedings.

*This section does not limit other powers*

- (8) This section does not limit any powers that the court has apart from this section.

Note: Part XIB also gives courts powers relating to vexatious proceedings.

## **15 Application of amendments**

Section 45A of the *Family Law Act 1975*, as inserted by this Part, applies to proceedings instituted before or after the commencement of this Part.

## **16 At the end of subsection 60CC(1)**

Add:

Note: Section 68P also limits the effect of this section on a court making decisions under that section about limiting, or not providing, an explanation to a child of an order or injunction that is inconsistent with a family violence order.

### **17 After subsection 68P(2)**

Insert:

- (2A) Subparagraph (2)(c)(iii) does not apply to a child if the court is satisfied that it is in the child's best interests not to receive an explanation of the order or injunction.
- (2B) Paragraph (2)(d) does not require inclusion of a matter in an explanation given to a child if the court is satisfied that it is in the child's best interests for the matter not to be included in the explanation.
- (2C) In determining whether it is satisfied as described in subsection (2A) or (2B), the court:
  - (a) must have regard to all or any of the matters set out in subsection 60CC(2); and
  - (b) despite section 60CC, may have regard to all or any of the matters set out in subsection 60CC(3).

### **18 Subsection 68T(1)**

Omit "earlier", substitute "earliest".

### **19 Paragraph 68T(1)(b)**

Repeal the paragraph, substitute:

- (b) the time specified in the interim order as the time at which the revival, variation or suspension ceases to have effect; and
- (c) the time the order, injunction or arrangement is affected by an order (however described) made by a court, under section 68R or otherwise, after the revival, variation or suspension.

### **20 Application of amendments**

The amendments of section 68T of the *Family Law Act 1975* made by this Part apply in relation to revivals, variations and suspensions of orders, injunctions and arrangements if the revivals, variations and suspensions are made under section 68R of that Act after the commencement of this Part.

## **21 Section 102QA (note)**

Repeal the note, substitute:

Note: For example, subsection 45A(4) allows a court to dismiss proceedings if it is satisfied that they are vexatious.

## **22 Subsection 117(1)**

Omit “subsection 70NFB(1) and sections 117AA, 117AC and 118”, substitute “subsections 45A(6) and 70NFB(1) and sections 117AA and 117AC”.

## **23 Section 118**

Repeal the section.

## **24 Application of amendments**

- (1) The repeal of section 118 of the *Family Law Act 1975* by this Part applies to proceedings instituted before or after the commencement of this Part.
- (2) However, to avoid doubt, that repeal does not affect any action taken under that section before the repeal of that section.

## ***Federal Circuit Court of Australia Act 1999***

## **25 At the end of section 17A**

Add:

- (5) This section does not apply if the Federal Circuit Court of Australia is exercising jurisdiction under the *Family Law Act 1975*.

Note: For the power of the Federal Circuit Court of Australia to give summary judgment if the Court is exercising jurisdiction under the *Family Law Act 1975*, see section 45A of that Act.

## Part 3—Other amendments

### *Family Law Act 1975*

#### **30 Subsection 114(2)**

Repeal the subsection.

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*[Minister's second reading speech made in—  
Senate on 6 December 2017  
House of Representatives on 21 August 2018]*

(267/17)

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