



Family Law Amendment (Risk Screening Protections) Act 2020

No. 98, 2020

An Act to amend the *Family Law Act 1975*, 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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No. 98, 2020

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

[Assented to 20 November 2020]

The Parliament of Australia enacts:

1 Short title

This Act is the *Family Law Amendment (Risk Screening Protections) Act 2020*.

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.

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.	20 November 2020
2. Schedule 1, Part 1	The seventh day after this Act receives the Royal Assent.	27 November 2020
3. Schedule 1, Part 2	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of the <i>Federal Circuit and Family Court of Australia Act 2020</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendments

Part 1—Main amendments

Family Law Act 1975

1 Subsection 4(1)

Insert:

family safety risk screening information has the meaning given by section 10S.

family safety risk screening person has the meaning given by section 10R.

family safety risk screening process has the meaning given by section 10T.

2 After Part II

Insert:

Part IIA—Family safety risk screening

Division 1—Preliminary

10Q Simplified outline of this Part

This Part prevents the disclosure, and admission into evidence, of information that is in connection with a family safety risk screening process carried out by the Family Court of Australia or Federal Circuit Court of Australia in relation to a party to proceedings under this Act.

The process is carried out for the purpose of identifying any persons at risk of family violence in order to determine the urgency and priority of the proceedings.

10R Definition of *family safety risk screening person*

A *family safety risk screening person* is:

- (a) an officer or staff member of:
 - (i) the Family Court of Australia; or
 - (ii) the Federal Circuit Court of Australia; or
- (b) a family counsellor; or
- (c) a contractor engaged on behalf of a court referred to in paragraph (a); or
- (d) an officer, employee or subcontractor of a contractor referred to in paragraph (c).

10S Definition of *family safety risk screening information*

(1) *Family safety risk screening information* is:

- (a) information obtained (whether orally or in writing) or generated, or a document obtained or created, by a family safety risk screening person in connection with a family safety risk screening process; or
 - (b) information about whether or not a party to proceedings under this Act participated in a family safety risk screening process.
- (2) Without limiting subsection (1), *family safety risk screening information* includes reports prepared, recommendations made or referrals created by a family safety risk screening person as a result of the information referred to in subsection (1).

10T Definition of *family safety risk screening process*

- (1) A *family safety risk screening process* is a process carried out, or attempted to be carried out, by a family safety risk screening person:
- (a) in connection with proceedings under this Act; and
 - (b) in relation to a party to those proceedings;
- for the purpose, or for purposes that include the purpose, of identifying one or more of the following:
- (c) any persons who are at risk of being subjected to family violence;

- (d) any children who are at risk of being subjected to, or exposed to, abuse, neglect or family violence;
 - (e) any risks to the safety of persons;
- in order to determine the urgency and priority of the proceedings and assist in case management.

Process must involve use of risk screening tool

- (2) The process carried out, or attempted to be carried out, must involve the use of a risk screening tool determined under subsection (3).
- (3) The Chief Executive Officer may, by notifiable instrument, determine a risk screening tool for the purposes of subsection (2).

Process may also involve risk assessment

- (4) Without limiting subsection (1), the process referred to in that subsection may also involve a risk assessment conducted by a family counsellor in connection with this Part.

Division 2—Protection of family safety risk screening information

10U Confidentiality of family safety risk screening information

- (1) A family safety risk screening person must not disclose family safety risk screening information, unless the disclosure is required or authorised by this section.
- (2) A family safety risk screening person must disclose family safety risk screening information if that person reasonably believes the disclosure is necessary for the purpose of complying with a law of the Commonwealth, a State or a Territory.
- (3) A family safety risk screening person may disclose family safety risk screening information to a party to the proceedings concerned if that information:
 - (a) was provided by, or generated or created from information provided by, that party; and
 - (b) relates to that party.

- (4) A family safety risk screening person may disclose family safety risk screening information if consent to the disclosure is given by:
- (a) if:
 - (i) the information was provided by, or generated or created from information provided by, a party to the proceedings concerned; and
 - (ii) the information relates to that party; and
 - (iii) that party is 18 or over;
that party; or
 - (b) if:
 - (i) the information was provided by, or generated or created from information provided by, a party to the proceedings concerned; and
 - (ii) the information relates to that party; and
 - (iii) that party is a child under 18;
a court.
- (5) A family safety risk screening person may disclose family safety risk screening information to another family safety risk screening person for the purposes of that other person's responsibilities or duties in connection with this Part.
- (6) A family safety risk screening person may disclose family safety risk screening information if that person reasonably believes that the disclosure is necessary for the purpose of:
- (a) protecting a child from the risk of harm (whether physical or psychological); or
 - (b) preventing or lessening a serious and imminent threat to the life or health of a person; or
 - (c) reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person; or
 - (d) preventing or lessening a serious and imminent threat to the property of a person; or
 - (e) reporting the commission, or preventing the likely commission, of an offence involving intentional damage to property, or a threat of damage to property, of a person; or
 - (f) if a lawyer independently represents a child's interests under an order under section 68L—assisting the lawyer to do so properly.

- (7) A family safety risk screening person may disclose family safety risk screening information in order to provide information (other than personal information within the meaning of section 6 of the *Privacy Act 1988*) for research relevant to families.
- (8) Evidence that would be inadmissible because of section 10V is not admissible merely because this section requires or authorises its disclosure.

Note: This means that a family safety risk screening person's evidence is inadmissible in court, even if subsection (2), (3), (4), (5), (6) or (7) requires or authorises the person to disclose it in other circumstances.

10V Admissibility of family safety risk screening information etc.

Family safety risk screening information

- (1) Family safety risk screening information is not admissible:
- (a) in any court (whether or not exercising federal jurisdiction);
or
 - (b) in any proceedings before a person authorised to hear evidence (whether the person is authorised by a law of the Commonwealth, a State or a Territory, or by the consent of the parties).
- (2) Subsection (1) does not apply to family safety risk screening information that indicates that a child under 18 has been abused or is at risk of abuse, unless, in the opinion of the court, there is sufficient evidence of the information available to the court from other sources.

Evidence of things said or admissions made in company of professionals

- (3) Evidence of anything said, or any admission made, by or in the company of a person (the **professional**) to whom a family safety risk screening person refers a party to the proceedings concerned (the **referred party**) for medical or other professional services, while that professional is providing such services to the referred party, is not admissible:
- (a) in any court (whether or not exercising federal jurisdiction);
or

- (b) in any proceedings before a person authorised to hear evidence (whether the person is authorised by a law of the Commonwealth, a State or a Territory, or by the consent of the parties).
- (4) Subsection (3) does not apply to a thing said or an admission made by the referred party (including a child under 18) indicating that a child under 18 has been abused or is at risk of abuse, unless, in the opinion of the court, there is sufficient evidence of the thing said, or the admission made, available to the court from other sources.

Professional to be informed of effect of section

- (5) A family safety risk screening person who refers a party to a professional (within the meaning of subsection (3)) must inform the professional of the effect of this section.

10W Immunity of family safety risk screening persons

A family safety risk screening person has, in performing that person's functions as a family safety risk screening person, the same protection and immunity as a Judge of the Family Court has in performing the functions of a Judge.

3 Application provisions

- (1) Section 10U of the *Family Law Act 1975*, as inserted by this Schedule, applies in relation to the disclosure of family safety risk screening information on or after the commencement of this item, whether that information was obtained, generated or created before, on or after that commencement.
- (2) Subsection 10V(1) of the *Family Law Act 1975*, as inserted by this Schedule, applies in relation to the admissibility, on or after the commencement of this item, in any proceedings of family safety risk screening information, whether:
 - (a) that information was obtained, generated or created before, on or after that commencement; and
 - (b) those proceedings were instituted on or after that commencement or were pending immediately before that commencement.

Schedule 1 Amendments
Part 1 Main amendments

- (3) Subsection 10V(3) of the *Family Law Act 1975*, as inserted by this Schedule, applies in relation to the admissibility, on or after the commencement of this item, in any proceedings of a thing said or an admission made, whether:
- (a) the thing was said or the admission was made before, on or after that commencement; and
 - (b) those proceedings were instituted on or after that commencement or were pending immediately before that commencement.
- (4) Section 10W of the *Family Law Act 1975*, as inserted by this Schedule, applies in relation to the performance of functions of a family safety risk screening person on or after the commencement of this item.

Part 2—Contingent amendments

Family Law Act 1975

4 Section 10Q

Omit “Family Court of Australia or Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia (Division 1) or Federal Circuit and Family Court of Australia (Division 2)”.

5 Subparagraphs 10R(a)(i) and (ii)

Repeal the subparagraphs, substitute:

- (i) the Federal Circuit and Family Court of Australia (Division 1); or
- (ii) the Federal Circuit and Family Court of Australia (Division 2); or

6 Section 10W

Omit “Family Court”, substitute “Federal Circuit and Family Court of Australia (Division 1)”.

*[Minister’s second reading speech made in—
Senate on 26 August 2020
House of Representatives on 9 November 2020]*

(91/20)
