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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Family Law Legislation Amendment
(Family Violence and Other Measures)
Bill 2011**

No. , 2011

(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 may be cited as the *Family Law Legislation Amendment*
6 *(Family Violence and Other Measures) Act 2011*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provision(s)	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	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2, items 1 and 2	The 28th day after this Act receives the Royal Assent.	
4. Schedule 2, items 3 to 29	The day this Act receives the Royal Assent.	
5. Schedule 2, item 30	The 28th day after this Act receives the Royal Assent.	
6. Schedule 2, Part 2	The day this Act receives the Royal Assent.	

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

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

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

1 **Schedule 1—Amendments relating to family**
2 **violence**

3 **Part 1—Amendments**

4 *Family Law Act 1975*

5 **1 Subsection 4(1) (definition of *abuse*)**

6 Repeal the definition, substitute:

7 *abuse*, in relation to a child, means:

- 8 (a) an assault, including a sexual assault, of the child; or
9 (b) a person (the *first person*) involving the child in a sexual
10 activity with the first person or another person in which the
11 child is used, directly or indirectly, as a sexual object by the
12 first person or the other person, and where there is unequal
13 power in the relationship between the child and the first
14 person; or
15 (c) causing the child to suffer serious psychological harm,
16 including (but not limited to) when that harm is caused by the
17 child being subjected to, or exposed to, family violence; or
18 (d) serious neglect of the child.

19 **2 Subsection 4(1)**

20 Insert:

21 *exposed* to family violence, in relation to a child, has the meaning
22 given by subsection 4AB(3).

23 **3 Subsection 4(1) (definition of *family violence*)**

24 Repeal the definition, substitute:

25 *family violence* has the meaning given by subsection 4AB(1).

26 **4 Subsection 4(1) (definition of *member of the family*)**

27 Repeal the definition, substitute:

28 *member of the family* has the meaning given by subsection (1AB).

Schedule 1 Amendments relating to family violence

Part 1 Amendments

1 Note: The definition in subsection (1AB) applies for the purposes of the
2 provisions specified in that subsection.

3 **5 Subsection 4(1) (paragraph (a) of the definition of *Registry***
4 ***Manager*)**

5 Omit “section 67Z”, substitute “sections 67Z and 67ZBA”.

6 **6 Paragraph 4(1AB)(a)**

7 Repeal the paragraph, substitute:

8 (a) the definition of *step-parent* in subsection (1); and

9 (aa) section 4AB; and

10 **7 Paragraph 4(1AB)(c)**

11 Omit “section 60CF”, substitute “sections 60CF, 60CH and 60CI”.

12 **8 After section 4AA**

13 Insert:

14 **4AB Definition of *family violence* etc.**

15 (1) For the purposes of this Act, *family violence* means violent,
16 threatening or other behaviour by a person that coerces or controls
17 a member of the person’s family (the *family member*), or causes
18 the family member to be fearful.

19 (2) Examples of behaviour that may constitute family violence include
20 (but are not limited to):

21 (a) an assault; or

22 (b) a sexual assault or other sexually abusive behaviour; or

23 (c) stalking; or

24 (d) repeated derogatory taunts; or

25 (e) intentionally damaging or destroying property; or

26 (f) intentionally causing death or injury to an animal; or

27 (g) unreasonably denying the family member the financial
28 autonomy that he or she would otherwise have had; or

29 (h) unreasonably withholding financial support needed to meet
30 the reasonable living expenses of the family member, or his
31 or her child, at a time when the family member is entirely or
32 predominantly dependent on the person for financial support;
33 or

- 1 (i) preventing the family member from making or keeping
2 connections with his or her family, friends or culture; or
3 (j) unlawfully depriving the family member, or any member of
4 the family member's family, of his or her liberty.
- 5 (3) For the purposes of this Act, a child is **exposed** to family violence
6 if the child sees or hears family violence or otherwise experiences
7 the effects of family violence.
- 8 (4) Examples of situations that may constitute a child being exposed to
9 family violence include (but are not limited to) the child:
- 10 (a) overhearing threats of death or personal injury by a member
11 of the child's family towards another member of the child's
12 family; or
13 (b) seeing or hearing an assault of a member of the child's family
14 by another member of the child's family; or
15 (c) comforting or providing assistance to a member of the child's
16 family who has been assaulted by another member of the
17 child's family; or
18 (d) cleaning up a site after a member of the child's family has
19 intentionally damaged property of another member of the
20 child's family; or
21 (e) being present when police or ambulance officers attend an
22 incident involving the assault of a member of the child's
23 family by another member of the child's family.

24 **9 Subsection 12E(3) (note)**

25 Repeal the note, substitute:

26 Note: For other obligations of legal practitioners in relation to Part VII
27 matters, see sections 60D and 63DA.

28 **10 Subsection 12G(1) (note)**

29 Repeal the note, substitute:

30 Note: For other obligations of family counsellors and family dispute
31 resolution practitioners in relation to Part VII matters, see
32 sections 60D and 63DA. Those sections do not apply to arbitrators.

33 **11 Paragraph 43(1)(ca)**

34 Omit "safety", substitute "protection".

1 **12 After paragraph 60A(a)**

2 Insert:

- 3 (aa) provisions dealing with the best interests of the child in court
4 proceedings (Subdivision BA); and
5 (ab) provisions dealing with an adviser's obligations in relation to
6 the best interests of the child (Subdivision BB); and

7 **13 At the end of section 60B**

8 Add:

- 9 (4) An additional object of this Part is to give effect to the Convention
10 on the Rights of the Child done at New York on 20 November
11 1989.

12 Note: The text of the Convention is set out in Australian Treaty Series 1991
13 No. 4 ([1991] ATS 4). In 2011, the text of a Convention in the
14 Australian Treaty Series was accessible through the Australian
15 Treaties Library on the AustLII website (www.austlii.edu.au).

16 **14 Section 60C (cell at table item 1, column headed**
17 **“Divisions and coverage”)**

18 After:

- 19 • object of Part and principles underlying it, and outline of Part
20 insert:
21 • best interests of the child: court proceedings
22 • best interests of the child: adviser's obligations

23 **15 Section 60C (cell at table item 8, column headed**
24 **“Divisions and coverage”)**

25 Omit:

- 26 • reporting of allegations of child abuse
27 substitute:
28 • reporting of allegations of child abuse and family violence

29 **16 Subdivision BA of Division 1 of Part VII (heading)**

30 Repeal the heading, substitute:

31 **Subdivision BA—Best interests of the child: court proceedings**

32 **17 After subsection 60CC(2)**

1 Insert:

2 (2A) If there is any inconsistency in applying the considerations set out
3 in subsection (2), the court is to give greater weight to the
4 consideration set out in paragraph (2)(b).

5 **18 Paragraph 60CC(3)(c)**

6 Repeal the paragraph, substitute:

7 (c) the extent to which each of the child's parents has taken, or
8 failed to take, the opportunity:

9 (i) to participate in making decisions about major
10 long-term issues in relation to the child; and

11 (ii) to spend time with the child; and

12 (iii) to communicate with the child;

13 (ca) the extent to which each of the child's parents has fulfilled,
14 or failed to fulfil, the parent's obligations to maintain the
15 child;

16 **19 Paragraph 60CC(3)(k)**

17 Repeal the paragraph, substitute:

18 (k) any family violence order that applies to the child or a
19 member of the child's family;

20 **20 Subsections 60CC(4) and (4A)**

21 Repeal the subsections.

22 **21 At the end of Subdivision BA of Division 1 of Part VII**

23 Add:

24 **60CH Informing court of care arrangements under child welfare**
25 **laws**

26 (1) If a party to the proceedings is aware that the child, or another
27 child who is a member of the child's family, is under the care
28 (however described) of a person under a child welfare law, that
29 party must inform the court of the matter.

- 1 (2) If a person who is not a party to the proceedings is aware that the
2 child, or another child who is a member of the child's family, is
3 under the care (however described) of a person under a child
4 welfare law, that person may inform the court of the matter.
- 5 (3) Failure to inform the court of the matter does not affect the validity
6 of any order made by the court. However, this subsection does not
7 limit the operation of section 69ZK (child welfare laws not
8 affected).

9 **60CI Informing court of notifications to, and investigations by,**
10 **prescribed State or Territory agencies**

- 11 (1) If:
- 12 (a) a party to the proceedings is aware that the child, or another
13 child who is a member of the child's family, is or has been
14 the subject of:
- 15 (i) a notification or report (however described) to a
16 prescribed State or Territory agency; or
17 (ii) an investigation, inquiry or assessment (however
18 described) by a prescribed State or Territory agency;
19 and
- 20 (b) the notification, report, investigation, inquiry or assessment
21 relates to abuse, or an allegation, suspicion or risk of abuse;
22 that party must inform the court of the matter.
- 23 (2) If:
- 24 (a) a person who is not a party to the proceedings is aware that
25 the child, or another child who is a member of the child's
26 family, is or has been the subject of:
- 27 (i) a notification or report (however described) to a
28 prescribed State or Territory agency; or
29 (ii) an investigation, inquiry or assessment (however
30 described) by a prescribed State or Territory agency;
31 and
- 32 (b) the notification, report, investigation, inquiry or assessment
33 relates to abuse, or an allegation, suspicion or risk of abuse;
34 that person may inform the court of the matter.
- 35 (3) Failure to inform the court of the matter does not affect the validity
36 of any order made by the court.
-

1 (4) In this section:

2 *prescribed State or Territory agency* means an agency that is a
3 prescribed State or Territory agency for the purpose of
4 section 69ZW.

5 **22 After Subdivision BA of Division 1 of Part VII**

6 Insert:

7 **Subdivision BB—Best interests of the child: adviser’s**
8 **obligations**

9 **60D Adviser’s obligations in relation to best interests of the child**

10 (1) If an adviser gives advice or assistance to a person about matters
11 concerning a child and this Part, the adviser must:

- 12 (a) inform the person that the person should regard the best
13 interests of the child as the paramount consideration; and
14 (b) encourage the person to act on the basis that the child’s best
15 interests are best met:
- 16 (i) by the child having a meaningful relationship with both
17 of the child’s parents; and
 - 18 (ii) by the child being protected from physical or
19 psychological harm from being subjected to, or exposed
20 to, abuse, neglect or family violence; and
 - 21 (iii) if there is any inconsistency in applying the
22 considerations set out in subparagraphs (i) and (ii)—by
23 giving greater weight to the consideration set out in
24 subparagraph (ii).

25 (2) In this section:

26 *adviser* means a person who is:

- 27 (a) a legal practitioner; or
28 (b) a family counsellor; or
29 (c) a family dispute resolution practitioner; or
30 (d) a family consultant.

31 **23 Section 60K**

32 Repeal the section.

1 **24 Before subsection 63DA(1)**

2 Insert:

3 (1A) The obligations of an adviser under this section are in addition to
4 the adviser's obligations under section 60D.

5 Note: Section 60D deals with an adviser's obligations in relation to the best
6 interests of the child.

7 **25 Paragraph 63DA(2)(c)**

8 Repeal the paragraph.

9 **26 Subsection 65DAA(5) (note 1)**

10 Repeal the note.

11 **27 Subsection 65DAA(5) (note 2)**

12 Omit "Note 2:", substitute "Note:".

13 **28 Paragraph 67A(c)**

14 Repeal the paragraph, substitute:

15 (c) the reporting of allegations of child abuse and family
16 violence (Subdivision D); and

17 **29 Subdivision D of Division 8 of Part VII (heading)**

18 Repeal the heading, substitute:

19 **Subdivision D—Allegations of child abuse and family violence**

20 **30 Subsection 67Z(1)**

21 Omit "a party to", substitute "an interested person in".

22 Note: The heading the section 67Z is altered by omitting "**party to proceedings**" and
23 substituting "**interested person**".

24 **31 Subsection 67Z(2)**

25 Omit "party", substitute "interested person".

26 **32 Subsection 67Z(4)**

27 Insert:

28 *interested person* in proceedings under this Act, means:

- 1 (a) a party to the proceedings; or
2 (b) an independent children's lawyer who represents the interests
3 of a child in the proceedings; or
4 (c) any other person prescribed by the regulations for the
5 purposes of this paragraph.

6 **33 At the end of subsection 67ZA(3)**

7 Add:

- 8 Note: The obligation under subsection (2) to notify a prescribed child
9 welfare authority of a suspicion that a child has been abused or is at
10 risk of being abused must be complied with, regardless of whether this
11 subsection also applies to the same situation.

12 **34 At the end of Subdivision D of Division 8 of Part VII**

13 Add:

14 **67ZBA Where interested person makes allegation of family violence**

- 15 (1) This section applies if an interested person in proceedings for an
16 order under this Part in relation to a child alleges, as a
17 consideration that is relevant to whether the court should make or
18 refuse to make the order, that:
19 (a) there has been family violence by one of the parties to the
20 proceedings; or
21 (b) there is a risk of family violence by one of the parties to the
22 proceedings.
- 23 (2) The interested person must file a notice in the prescribed form in
24 the court hearing the proceedings, and serve a true copy of the
25 notice upon the party referred to in paragraph (1)(a) or (b).
- 26 (3) If the alleged family violence (or risk of family violence) is abuse
27 of a child (or a risk of abuse of a child):
28 (a) the interested person making the allegation must either file
29 and serve a notice under subsection (2) of this section or
30 under subsection 67Z(2) (but does not have to file and serve a
31 notice under both those subsections); and
32 (b) if the notice is filed under subsection (2) of this section, the
33 Registry Manager must deal with the notice as if it had been
34 filed under subsection 67Z(2).

Schedule 1 Amendments relating to family violence

Part 1 Amendments

1 Note: If an allegation of abuse of a child (or a risk of abuse of a child)
2 relates to a person who is not a party to the proceedings, the notice
3 must be filed in the court and served on the person in accordance with
4 subsection 67Z(2).

5 (4) In this section:

6 *interested person* in proceedings for an order under this Part in
7 relation to a child, means:

- 8 (a) a party to the proceedings; or
9 (b) an independent children's lawyer who represents the interests
10 of the child in the proceedings; or
11 (c) any other person prescribed by the regulations for the
12 purposes of this paragraph.

13 *prescribed form* means the form prescribed by the applicable Rules
14 of Court.

15 *Registry Manager* has the same meaning as in section 67Z.

16 **67ZBB Court to take prompt action in relation to allegations of**
17 **child abuse or family violence**

18 (1) This section applies if:

- 19 (a) a notice is filed under subsection 67Z(2) or 67ZBA(2) in
20 proceedings for an order under this Part in relation to a child;
21 and
22 (b) the notice alleges, as a consideration that is relevant to
23 whether the court should make or refuse to make the order,
24 that:
25 (i) there has been abuse of the child by one of the parties to
26 the proceedings; or
27 (ii) there would be a risk of abuse of the child if there were
28 to be a delay in the proceedings; or
29 (iii) there has been family violence by one of the parties to
30 the proceedings; or
31 (iv) there is a risk of family violence by one of the parties to
32 the proceedings.

33 (2) The court must:

- 34 (a) consider what interim or procedural orders (if any) should be
35 made:

- 1 (i) to enable appropriate evidence about the allegation to be
2 obtained as expeditiously as possible; and
3 (ii) to protect the child or any of the parties to the
4 proceedings; and
5 (b) make such orders of that kind as the court considers
6 appropriate; and
7 (c) deal with the issues raised by the allegation as expeditiously
8 as possible.
- 9 (3) The court must take the action required by paragraphs (2)(a) and
10 (b):
11 (a) as soon as practicable after the notice is filed; and
12 (b) if it is appropriate having regard to the circumstances of the
13 case—within 8 weeks after the notice is filed.
- 14 (4) Without limiting subparagraph (2)(a)(i), the court must consider
15 whether orders should be made under section 69ZW to obtain
16 documents or information from State and Territory agencies in
17 relation to the allegation.
- 18 (5) Without limiting subparagraph (2)(a)(ii), the court must consider
19 whether orders should be made, or an injunction granted, under
20 section 68B.
- 21 (6) A failure to comply with a provision of this section does not affect
22 the validity of any order made in the proceedings for the order.

23 **35 Section 68N (note)**

24 Repeal the note.

25 **36 Subsection 69ZH(2)**

26 Omit “Subdivision BA”, substitute “Subdivisions BA and BB”.

27 **37 Paragraph 69ZN(5)(a)**

28 Repeal the paragraph, substitute:

- 29 (a) the child concerned from being subjected to, or exposed to,
30 abuse, neglect or family violence; and

31 **38 Before paragraph 69ZQ(1)(a)**

32 Insert:

Schedule 1 Amendments relating to family violence

Part 1 Amendments

- 1 (aa) ask each party to the proceedings:
2 (i) whether the party considers that the child concerned has
3 been, or is at risk of being, subjected to, or exposed to,
4 abuse, neglect or family violence; and
5 (ii) whether the party considers that he or she, or another
6 party to the proceedings, has been, or is at risk of being,
7 subjected to family violence; and

8 **39 At the end of subsection 91B(2)**

9 Add:

10 Note: If an officer intervenes in proceedings and acts in good faith in
11 relation to the proceedings, an order for costs, or for security for costs,
12 cannot be made under subsection 117(2) against the officer: see
13 subsection 117(4A).

14 **40 Subsection 117(1)**

15 Omit “117AB,”.

16 **41 Subsection 117(2)**

17 Omit “and (5)”, substitute “, (4A) and (5)”.

18 **42 After subsection 117(4)**

19 Insert:

20 (4A) If:

- 21 (a) under section 91B, an officer intervenes in proceedings; and
22 (b) the officer acts in good faith in relation to the proceedings;
23 the court must not, because of the intervention, make an order
24 under subsection (2) of this section against the officer, or against
25 an entity (including the Commonwealth or a State or Territory) by
26 or on behalf of whom the officer was engaged or employed.

27 **43 Section 117AB**

28 Repeal the section.
29

1 **Part 2—Application and transitional provisions**

2 **44 Definitions**

3 In this Part:

4 *commencement* means the commencement of this Schedule.

5 *old Act* means the *Family Law Act 1975* as in force immediately before
6 commencement.

7 **45 Amendments that apply to proceedings instituted on or**
8 **after commencement**

9 Subject to item 47, the amendments made by items 1 to 8, 11, 13, 17 to
10 21, 30 to 34, 37, 38 and 40 to 43 of this Schedule apply in relation to
11 proceedings whether instituted before, on or after commencement.

12 **46 Section 60K of old Act to continue to apply to certain**
13 **documents**

14 Despite the repeal of section 60K of the old Act by item 23 of this
15 Schedule, that section continues to apply in relation to a document that
16 was, before commencement, filed in a court in accordance with
17 subsection 60K(1) of the old Act.

18 **47 Amendments do not affect existing orders etc. or**
19 **constitute changed circumstances**

20 (1) The amendments made by this Schedule do not affect an order made
21 under the old Act before commencement, or a certificate given under
22 subsection 60I(8) of the old Act before commencement.

23 (2) The amendments made by this Schedule are taken not to constitute
24 changed circumstances that would justify making an order to discharge
25 or vary, or to suspend or revive the operation of, some or all of a
26 parenting order that was made before commencement.

27 Note: For the need for changed circumstances, see *Rice and Asplund* (1979) FLC 90-725.

28 **48 Transitional, application and savings—regulations**

29 (1) The Governor-General may make regulations dealing with matters of a
30 transitional, application or savings nature relating to the amendments
31 made by this Schedule.

Schedule 1 Amendments relating to family violence

Part 2 Application and transitional provisions

- 1 (2) Regulations made for the purposes of subitem (1) have effect despite
2 anything else in this Part.
3

1 **Schedule 2—Other amendments**

2 **Part 1—Amendments**

3 ***Bankruptcy Act 1966***

4 **1 Paragraph 35A(3)(f)**

5 Omit “the Rules of Court made under that Act.”.

6 **2 At the end of subsection 35A(3)**

7 Add:

8 Note: Rules of Court made under the *Family Law Act 1975* (rather than
9 Rules of Court made under the *Federal Court of Australia Act 1976*)
10 apply in relation to proceedings transferred to the Family Court under
11 this section.

12 ***Family Law Act 1975***

13 **3 Subsection 11F(1)**

14 Repeal the subsection, substitute:

15 (1) A court exercising jurisdiction in proceedings under this Act may
16 make either or both of the following kinds of order:

17 (a) an order directing one or more parties to the proceedings to
18 attend an appointment (or a series of appointments) with a
19 family consultant;

20 (b) an order directing one or more parties to the proceedings to
21 arrange for a child to attend an appointment (or a series of
22 appointments) with a family consultant.

23 Note: Before exercising this power, the court must consider seeking the
24 advice of a family consultant about the services appropriate to the
25 parties’ needs (see section 11E).

26 Note: The heading to section 11F is altered by inserting “, or arrange for child to attend,”
27 after “attend”.

28 **4 Subsection 11G(2)**

29 Repeal the subsection, substitute:

30 (1A) If:

Schedule 2 Other amendments

Part 1 Amendments

- 1 (a) a person fails to comply with an order under section 11F that
2 he or she arrange for a child to attend an appointment with a
3 family consultant; or
4 (b) a child fails to attend an appointment with a family
5 consultant as arranged in compliance with an order under
6 section 11F;
7 the consultant must report the failure to the court.
- 8 (2) On receiving a report under subsection (1) or (1A), the court may
9 make any further orders it considers appropriate.

10 **5 Subsection 13C(1) (note 2)**

11 After “attend”, insert “, or arrange for a child to attend,”.

12 **6 Subsection 24(1)**

13 Omit “the senior Judge Administrator”, substitute “the next senior
14 Judge”.

15 **7 At the end of subsection 37A(1)**

16 Add:

17 Note: For how this section applies in relation to powers of the Court under
18 certain provisions, see section 37AA.

19 **8 After section 37A**

20 Insert:

21 **37AA Delegation to Registrars of powers exercisable by court as**
22 **constituted in a particular way**

- 23 (1) Without limiting subsection 37A(1), the powers that may be
24 delegated to a Registrar under that subsection include:
25 (a) the powers of the Court, constituted in any way mentioned in
26 subsection 94(2D), to hear and determine applications to
27 which that subsection applies; and
28 (b) the powers of the Court, constituted in any way mentioned in
29 subsection 94AAA(10), to hear and determine applications to
30 which that subsection applies.
- 31 (2) If Rules of Court under subsection 37A(1) delegate powers
32 referred to in paragraph (1)(a) or (b) of this section to a Registrar,

1 those Rules may specify modifications of section 37A that are to
2 have effect in relation to the exercise by a Registrar of the
3 delegated powers.

4 (3) In this section:

5 *Registrar* has the same meaning as in section 37A.

6 **9 Subsection 55(5) (definition of *appeal*)**

7 Repeal the definition, substitute:

8 *appeal*, in relation to a divorce order, means:

9 (a) an appeal, or an application for leave to appeal, against:

10 (i) the divorce order; or

11 (ii) an order under section 55A in relation to the
12 proceedings in which the divorce order was made; or

13 (b) an intervention, or an application for a re-hearing, relating to:

14 (i) the divorce order; or

15 (ii) an order under section 55A in relation to the
16 proceedings in which the divorce order was made; or

17 (c) an application under section 57 or 58 for rescission of the
18 divorce order, or an appeal or application for leave to appeal
19 arising out of such an application; or

20 (d) a review by the Family Court of Australia of the making, by a
21 Registrar or a Judicial Registrar of that Court, of:

22 (i) the divorce order; or

23 (ii) an order under section 55A in relation to the
24 proceedings in which the divorce order was made; or

25 (iii) an order determining an application under section 57 or
26 58 for rescission of the divorce order; or

27 (e) a review by the Federal Magistrates Court of the making, by
28 a Registrar of that Court, of:

29 (i) the divorce order; or

30 (ii) an order under section 55A in relation to the
31 proceedings in which the divorce order was made; or

32 (iii) an order determining an application under section 57 or
33 58 for rescission of the divorce order; or

34 (f) a review by the Family Court of Western Australia of the
35 making, by the Principal Registrar, a Registrar, or a Deputy
36 Registrar, of that Court of:

- 1 (i) the divorce order; or
2 (ii) an order under section 55A in relation to the
3 proceedings in which the divorce order was made; or
4 (iii) an order determining an application under section 57 or
5 58 for rescission of the divorce order.

6 **10 At the end of section 60A**

- 7 Add:
8 ; and (d) provisions about the use of family dispute resolution before
9 applying for an order under this Part (Subdivision E).

10 **11 Section 60C (cell at table item 1, column headed**
11 **“Divisions and coverage”)**

- 12 After:
13 • how this Act applies to certain children
14 insert:
15 • family dispute resolution

16 **12 Section 60C (cell at table item 7, column headed**
17 **“Divisions and coverage”)**

- 18 After:
19 • other aspects of courts’ powers in relation to child maintenance orders
20 insert:
21 • varying the maintenance of certain children

22 **13 Section 60C (at the end of the cell at table item 7, column**
23 **headed “Divisions and coverage”)**

- 24 Add:
25 • recovery of amounts paid under maintenance orders

26 **14 Section 60C (cell at table item 12A, column headed**
27 **“Divisions and coverage”)**

- 28 Repeal the cell, substitute:
29

Division 12A—Principles for conducting child-related proceedings

- principles for conducting proceedings under this Part and certain other incidental proceedings
- duties and powers of the court related to giving effect to the principles
- matters relating to evidence

1 **15 Subsection 62G(5)**

2 Omit “that a party to proceedings, or the child, attend”, substitute “that
3 one or more parties to the proceedings attend, or arrange for the child to
4 attend.”.

5 **16 Subsection 62G(6)**

6 Repeal the subsection, substitute:

7 (6) If:

8 (a) a person fails to comply with an order or direction under
9 subsection (5); or

10 (b) a child fails to attend an appointment with a family
11 consultant as arranged in compliance with an order or
12 direction under subsection (5);

13 the family consultant must report the failure to the court.

14 **17 At the end of subsection 64B(1)**

15 Add:

16 However, a declaration or order under Subdivision E of
17 Division 12 is not a *parenting order*.

18 **18 At the end of section 66A**

19 Add:

20 ; and (f) deals with the recovery of amounts paid under maintenance
21 orders (Subdivision G).

22 **19 At the end of paragraph 68LA(6)(a)**

23 Add “and”.

24 **20 Subsection 69N(4)**

25 Omit “62F(2)”, substitute “13C(1)”.

1 **21 Section 69ZS (note 2)**

2 After “attend”, insert “, or arrange for a child to attend,”.

3 **22 Section 69ZU**

4 Repeal the section.

5 **23 Before paragraph 70NAF(3)(a)**

6 Insert:

7 (aa) paragraph 70NEB(1)(da); or

8 (ab) paragraph 70NECA(3)(a); or

9 **24 After paragraph 70NEB(1)(d)**

10 Insert:

11 (da) if the person who committed the current contravention fails,
12 without reasonable excuse, to enter into a bond as required by
13 an order under paragraph (d)—impose a fine not exceeding
14 10 penalty units on the person;

15 **25 After section 70NEC**

16 Insert:

17 **70NECA Procedure for enforcing bonds**

18 (1) If a court has made an order under paragraph 70NEB(1)(d)
19 requiring a person to enter into a bond in accordance with
20 section 70NEC, the following provisions have effect.

21 (2) If the court (whether or not constituted by the judge, Federal
22 Magistrate or magistrate who required the bond to be entered into
23 in accordance with section 70NEC) is satisfied that the person has,
24 without reasonable excuse, failed to comply with the bond, the
25 court may take action under subsection (3).

26 (3) The court may:

27 (a) without prejudice to the continuance of the bond entered into
28 in accordance with section 70NEC, impose a fine not
29 exceeding 10 penalty units on the person; or

30 (b) revoke the bond entered into in accordance with
31 section 70NEC and, subject to subsection (4), deal with the
32 person, for the contravention in respect of which the bond

- 1 was entered into, in any manner in which the person could
2 have been dealt with for the contravention if:
3 (i) the bond had not been entered into; and
4 (ii) the person was before the court under section 70NEB in
5 respect of the contravention.
- 6 (4) In dealing with the person as mentioned in paragraph (3)(b), the
7 court must, in addition to any other matters that it considers should
8 be taken into account, take into account:
9 (a) the fact that the bond was entered into; and
10 (b) anything done pursuant to the bond; and
11 (c) any fine imposed, and any other order made, for or in respect
12 of the contravention.

13 **26 Subsection 70NFF(2)**

14 After “judge”, insert “, Federal Magistrate”.

15 **27 Section 96AA**

16 Repeal the section, substitute:

17 **96AA Appeal may be dismissed if no reasonable prospect of success**

- 18 (1) If:
19 (a) an appeal has been instituted in a court under this Part; and
20 (b) having regard to the grounds of appeal as disclosed in the
21 notice of appeal, it appears to the court that the appeal has no
22 reasonable prospect of success (whether generally or in
23 relation to a particular ground of appeal);
24 the court may, at any time, order that the proceedings on the appeal
25 be dismissed (either generally or in relation to that ground).
- 26 (2) This section does not limit any powers that the court has apart from
27 this section.

28 **28 After section 98**

29 Insert:

1 **98AA Oaths and affirmations**

- 2 (1) A Judge of the Family Court may require and administer all
3 necessary oaths and affirmations for the purposes of the Family
4 Court.
- 5 (2) A Judge of the Family Court may cause to be administered all
6 necessary oaths and affirmations for the purposes of the Family
7 Court. For this purpose, the Family Court may, either orally or in
8 writing, authorise any person (whether in or outside Australia) to
9 administer oaths and affirmations.
- 10 (3) The Chief Executive Officer may, in writing, authorise:
11 (a) a Registrar of the Family Court; or
12 (b) a staff member of the Family Court;
13 to administer oaths and affirmations for the purposes of the Family
14 Court.

15 **98AB Swearing of affidavits etc.**

- 16 (1) An affidavit to be used in a proceeding in the Family Court may be
17 sworn or affirmed in Australia before:
18 (a) a Judge of the Family Court; or
19 (b) a Registrar of the Family Court; or
20 (c) a justice of the peace; or
21 (d) a commissioner for affidavits; or
22 (e) a commissioner for declarations; or
23 (f) a person who is authorised to administer oaths or affirmations
24 for the purposes of:
25 (i) the Family Court; or
26 (ii) the High Court; or
27 (iii) the Federal Court of Australia; or
28 (iv) the Supreme Court of a State or Territory; or
29 (v) the Federal Magistrates Court; or
30 (g) a person before whom affidavits can be sworn or affirmed
31 under the *Evidence Act 1995*.
- 32 (2) An affidavit to be used in a proceeding in the Family Court may be
33 sworn or affirmed at a place outside Australia before:

- 1 (a) an Australian Diplomatic Officer or an Australian Consular
2 Officer, as defined by the *Consular Fees Act 1955*, who is
3 exercising his or her function in that place; or
4 (b) an employee of the Commonwealth who is:
5 (i) authorised under paragraph 3(c) of the *Consular Fees*
6 *Act 1955*; and
7 (ii) exercising his or her function in that place; or
8 (c) an employee of the Australian Trade Commission who is:
9 (i) authorised under paragraph 3(d) of the *Consular Fees*
10 *Act 1955*; and
11 (ii) exercising his or her function in that place; or
12 (d) a notary public who is exercising his or her function in that
13 place; or
14 (e) a person who is:
15 (i) qualified to administer an oath or affirmation in that
16 place; and
17 (ii) certified by a person mentioned in any of
18 paragraphs (a), (b), (c) and (d), or by the superior court
19 of that place, to be so qualified.
- 20 (3) An affidavit sworn or affirmed outside Australia otherwise than
21 before a person referred to in subsection (2) may be used in a
22 proceeding in the Family Court in circumstances provided by the
23 standard Rules of Court.

24 **29 Subsection 112AH(2)**

25 After “judge”, insert “, Federal Magistrate”.

26 **30 After paragraph 123(1)(ba)**

27 Insert:

- 28 (bb) providing for and in relation to proceedings transferred to the
29 Family Court under section 35A of the *Bankruptcy Act 1966*;
30 and
31

1 **Part 2—Application and transitional provisions**

2 **31 Application of amendments made by items 1, 2 and 30**

3 The amendments made by items 1, 2 and 30 of this Schedule apply in
4 relation to proceedings transferred to the Family Court whether before,
5 on or after the commencement of those items.

6 **32 Saving of orders and directions under subsections 11F(1)
7 and 62G(5)**

8 An order or direction under subsection 11F(1) or 62G(5) of the *Family*
9 *Law Act 1975* as in force immediately before the commencement of
10 items 3 and 15 of this Schedule, or an application for such an order or
11 direction, has effect after that commencement as if it were an order or
12 direction, or an application for an order or direction, under that
13 subsection of that Act as in force after that commencement.

14 **33 Application of amendment made by item 9**

15 (1) Subject to subitem (2), the amendment made by item 9 of this Schedule
16 applies in relation to appeals, applications, interventions or reviews
17 referred to in the definition of *appeal* as substituted by that item,
18 whether instituted before, on or after the commencement of that item.

19 (2) The amendment made by that item does not affect a divorce order that
20 has taken effect before the commencement of that item.

21 **34 Application of amendment made by item 17**

22 The amendment made by item 17 of this Schedule applies in relation to
23 declarations or orders under Subdivision E of Division 12 of Part VII of
24 the *Family Law Act 1975*, whether made before, on or after the
25 commencement of that item.

26 **35 Application of amendment made by item 22**

27 The amendment made by item 22 of this Schedule applies in relation to
28 a court, after the commencement of that item, taking an opinion
29 expressed by a family consultant into account, whether that opinion was
30 expressed before, on or after that commencement.

31 **36 Application of amendments made by items 24, 25 and 26**

- 1 (1) The amendment made by item 24 of this Schedule applies in relation to
2 orders requiring persons to enter into bonds, whether made before, on or
3 after the commencement of that item.
- 4 (2) The amendment made by item 25 of this Schedule applies in relation to
5 bonds entered into whether before, on or after the commencement of
6 that item.
- 7 (3) The amendment made by item 26 of this Schedule applies in relation to
8 community service orders or orders requiring persons to enter into
9 bonds, whether made before, on or after the commencement of that
10 item.

11 **37 Application of amendment made by item 27**

- 12 (1) Subject to subitem (2), the amendment made by item 27 of this
13 Schedule applies in relation to appeals whether instituted before, on or
14 after the commencement of that item.
- 15 (2) The amendment made by that item does not affect the dismissal or stay
16 of proceedings on an appeal before the commencement of that item.

17 **38 Application of amendment made by item 29**

- 18 The amendment made by item 29 of this Schedule applies in relation to
19 sentences imposed, or orders made, whether before, on or after the
20 commencement of that item.