

EXPOSURE DRAFT

2022-2023

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Family Law Amendment Bill (No. 2) 2023

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.

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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, Parts 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 4	The day after this Act receives the Royal Assent.	
9. Schedule 4, Part 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 15	The later of: (a) immediately after the provisions covered by table item 9; and (b) immediately after the commencement of Schedule 5 to the <i>Family Law Amendment Act 2023</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b)	

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Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	does not occur.	
11. Schedule 4, item 16	The later of: (a) immediately after the provisions covered by table item 9; and (b) immediately after the commencement of Division 1 of Part 1 of Schedule 2 to the <i>Family Law Amendment Act 2023</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
12. Schedule 4, Part 1, Division 5	Immediately after the commencement of the provisions covered by table item 5.	
13. Schedule 4, Part 2, Division 1	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	The later of: (a) immediately after the provisions covered by table item 13; and (b) immediately after the commencement of Division 1 of Part 1 of Schedule 2 to the <i>Family Law Amendment Act 2023</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
15. Schedule 4, Part 2, Division 3	Immediately after the commencement of the provisions covered by table item 6.	

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.

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1 **3 Schedules**

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3 repealed as set out in the applicable items in the Schedule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

1 Schedule 1—Property reforms

2 Part 1—Property framework

3 Division 1—Main property framework amendments

4 *Family Law Act 1975*

5 **1 Before subsection 79(1)**

6 Insert:

7 *Orders in property settlement proceedings*

8 **2 Subsections 79(1A) to (2)**

9 Repeal the subsections, substitute:

10 (2) In making orders under this section, the court:

- 11 (a) is to identify the existing legal and equitable rights and
12 interests in, and liabilities in respect of, any property that is
13 the property of the parties to the marriage or either of them;
14 and
15 (b) is to take into account the considerations set out in
16 subsection (4) (considerations relating to contributions); and
17 (c) is to take into account the considerations set out in
18 subsection (5) (considerations relating to current and future
19 circumstances); and
20 (d) must not make an order unless satisfied that, in all the
21 circumstances, it is just and equitable for the court to make
22 the order.

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

25 *Considerations relating to contributions*

26 **3 After paragraph 79(4)(c)**

27 Insert:

- 28 (ca) the effect of any family violence, to which one party to the
29 marriage has subjected the other party, on the ability of a
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Schedule 1 Property reforms

Part 1 Property framework

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

10 **4 Paragraph 79(4)(e)**

11 Repeal the paragraph.

12 **5 After subsection 79(4)**

13 Insert:

14 *Considerations relating to current and future circumstances*

- 15 (5) For the purposes of paragraph (2)(c), the court is to take into
16 account the following considerations in making orders under
17 subsection (1), so far as they are relevant:
18 (a) the effect of any family violence, to which one party to the
19 marriage has subjected the other party, on the current and
20 future circumstances of the other party, including on any of
21 the matters mentioned elsewhere in this subsection;
22 (b) the age and state of health of each of the parties to the
23 marriage;
24 (c) the income, property and financial resources of each of the
25 parties to the marriage and the physical and mental capacity
26 of each of them for appropriate gainful employment;
27 (d) whether either party to the marriage has the care or control of
28 a child of the marriage who has not attained the age of 18
29 years;
30 (e) commitments of each of the parties to the marriage that are
31 necessary to enable the party to support themselves and any
32 child or other person that the party has a duty to maintain;
33 (f) the responsibilities of either party to the marriage to support
34 any other person;

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Property reforms **Schedule 1**
Property framework **Part 1**

- 1 (g) the eligibility of either party to the marriage for a pension,
2 allowance or benefit under:
- 3 (i) any law of the Commonwealth, of a State or Territory or
4 of another country; or
- 5 (ii) any superannuation fund or scheme, whether the fund or
6 scheme was established, or operates, within or outside
7 Australia;
- 8 (h) if either party to the marriage is eligible for a pension,
9 allowance or benefit as mentioned in paragraph (g)—the rate
10 at which it is being paid to the party;
- 11 (i) if the parties to the marriage have separated or divorced, a
12 standard of living that in all the circumstances is reasonable;
- 13 (j) the extent to which an alteration of the interests of the parties
14 to the marriage in any property would enable a party to
15 undertake education or establish a business or otherwise
16 obtain an adequate income;
- 17 (k) the effect of any proposed order on the ability of a creditor of
18 a party to the marriage to recover the creditor's debt, so far as
19 that effect is relevant;
- 20 (l) the extent to which each party to the marriage has contributed
21 to the income, earning capacity, property and financial
22 resources of the other party;
- 23 (m) the duration of the marriage and the extent to which it has
24 affected the earning capacity of each party to the marriage;
- 25 (n) the need to protect a party to the marriage who wishes to
26 continue that party's role as a parent;
- 27 (o) if either party to the marriage is cohabiting with another
28 person—the financial circumstances relating to the
29 cohabitation;
- 30 (p) the terms of any order made, or proposed to be made, under
31 section 75 in relation to the maintenance of a party to the
32 marriage;
- 33 (q) the terms of any order or declaration made, or proposed to be
34 made, under Part VIIIAB in relation to:
- 35 (i) a party to the marriage; or
36 (ii) a person who is a party to a de facto relationship with a
37 party to the marriage; or
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Schedule 1 Property reforms

Part 1 Property framework

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

16 **79AA Other matters in relation to alteration of property interests**

17 *Enforcement of order after death of party*

- 18 (1) An order made under section 79 in property settlement proceedings
19 may, after the death of a party to the marriage, be enforced on
20 behalf of, or against, (as the case may be) the estate of the deceased
21 party.

22 *Adjournment of property settlement proceedings*

- 23 (2) The court may (subject to subsection (2A)) adjourn property
24 settlement proceedings on the terms and conditions the court
25 considers appropriate, for the period the court considers necessary
26 to enable the parties to the marriage to consider the likely effects
27 (if any) of an order under section 79 on the marriage or the
28 children of the marriage.
- 29 (2A) Subsection (2) does not apply if the parties to the marriage are:
30 (a) parties to concurrent, pending or completed divorce or
31 validity of marriage proceedings; or
32 (b) parties to a marriage who have divorced under the law of an
33 overseas country, if that divorce is recognised as valid in
34 Australia under section 104; or

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Property reforms **Schedule 1**
Property framework **Part 1**

- 1 (c) parties to a marriage that has been annulled under the law of
2 an overseas country, if that annulment is recognised as valid
3 in Australia under section 104; or
4 (d) parties to a marriage who have been granted a legal
5 separation under the law of an overseas country, if that legal
6 separation is recognised as valid in Australia under
7 section 104.
- 8 (3) Nothing in subsection (2) limits any other power of the court to
9 adjourn property settlement proceedings.
- 10 (4) A party to property settlement proceedings that have been
11 adjourned under subsection (2) may apply to the court for the
12 hearing of the proceedings to be continued if:
13 (a) the period of the adjournment has not expired; and
14 (b) any of the following subparagraphs apply:
15 (i) one or both of the parties to the marriage institutes
16 divorce or validity of marriage proceedings;
17 (ii) the parties to the marriage have divorced under the law
18 of an overseas country and the divorce is recognised as
19 valid in Australia under section 104;
20 (iii) the marriage is annulled under the law of an overseas
21 country and the annulment is recognised as valid in
22 Australia under section 104;
23 (iv) the parties to the marriage are granted a legal separation
24 under the law of an overseas country and the legal
25 separation is recognised as valid in Australia under
26 section 104.

27 *Likely significant change in financial circumstances*

28 **6 Before subsection 90SM(1)**

29 Insert:

30 *Orders in property settlement proceedings*

31 **7 Subsections 90SM(2) and (3)**

32 Repeal the subsections, substitute:

- 33 (2) In making orders under this section, the court:
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Schedule 1 Property reforms

Part 1 Property framework

- 1 (a) is to identify the existing legal and equitable rights and
2 interests in, and liabilities in respect of, any property that is
3 the property of the parties to the de facto relationships or
4 either of them; and
5 (b) is to take into account the considerations set out in
6 subsection (4) (considerations relating to contributions); and
7 (c) is to take into account the considerations set out in
8 subsection (5) (considerations relating to current and future
9 circumstances); and
10 (d) must not make an order unless satisfied that, in all the
11 circumstances, it is just and equitable for the court to make
12 the order.

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

15 *Considerations relating to contributions*

16 **8 After paragraph 90SM(4)(c)**

17 Insert:

- 18 (ca) the effect of any family violence, to which one party to the de
19 facto relationship has subjected the other party, on the ability
20 of a party to the de facto relationship to make the kind of
21 contributions referred to in paragraphs (a), (b) and (c); and
22 (cb) the effect of any economic or financial abuse to which a party
23 to the de facto relationship has been subjected by the other
24 party; and
25 (cc) the effect of any wastage, by a party to the de facto
26 relationship, of property or financial resources of either of the
27 parties to the de facto relationship or both of them; and
28 (cd) any debts incurred by either of the parties to the de facto
29 relationship or both of them; and

30 **9 Paragraph 90SM(4)(e)**

31 Repeal the paragraph.

32 **10 After subsection 90SM(4)**

33 Insert:

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Property reforms **Schedule 1**
Property framework **Part 1**

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Considerations relating to current and future circumstances

- (5) For the purposes of paragraph (2)(c), the court is to take into account the following considerations in making orders under subsection (1), so far as they are relevant:
- (a) the effect of any family violence, to which one party to the de facto relationship has subjected the other party, on the current and future circumstances of the other party, including on any of the matters mentioned elsewhere in this subsection;
 - (b) the age and state of health of each of the parties to the de facto relationship;
 - (c) the income, property and financial resources of each of the parties to the de facto relationship and the physical and mental capacity of each of them for appropriate gainful employment;
 - (d) whether either party to the 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;
 - (e) commitments of each of the parties to the 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;
 - (f) the responsibilities of either party to the de facto relationship to support any other person;
 - (g) the eligibility of either party to the 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;
 - (h) if either party to the de facto relationship is eligible for a pension, allowance or benefit as mentioned in paragraph (g)—the rate at which it is being paid to the party;
 - (i) a standard of living that in all the circumstances is reasonable;
 - (j) the extent to which an alteration of the interests of the parties to the de facto relationship in any property would enable a

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Schedule 1 Property reforms

Part 1 Property framework

- 1 party to undertake education or establish a business or
2 otherwise obtain an adequate income;
- 3 (k) the effect of any proposed order on the ability of a creditor of
4 a party to the de facto relationship to recover the creditor's
5 debt, so far as that effect is relevant;
- 6 (l) the extent to which each party to the de facto relationship has
7 contributed to the income, earning capacity, property and
8 financial resources of the other party;
- 9 (m) the duration of the de facto relationship and the extent to
10 which it has affected the earning capacity of each party to the
11 de facto relationship;
- 12 (n) the need to protect a party to the de facto relationship who
13 wishes to continue that party's role as a parent;
- 14 (o) if either party to the de facto relationship is cohabiting with
15 another person—the financial circumstances relating to the
16 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) the terms of any order or declaration made, or proposed to be
21 made, under this Part in relation to:
- 22 (i) a party to the de facto relationship (in relation to another
23 de facto relationship); or
- 24 (ii) a person who is a party to another de facto relationship
25 with a party to the 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 (r) 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 de facto relationship; or
- 34 (ii) a person who is party to a marriage with a party to the
35 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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Property reforms **Schedule 1**
Property framework **Part 1**

- 1 (iv) vested bankruptcy property in relation to a person
2 covered by subparagraph (i) or (ii);
3 (s) any child support under the *Child Support (Assessment) Act*
4 *1989* that a party to the de facto relationship has provided, is
5 to provide, or might be liable to provide in the future, for a
6 child of the 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) the terms of any Part VIIIAB financial agreement that is
12 binding on either or both of the parties to the de facto
13 relationship.

14 **90SMA Other matters in relation to alteration of property interests**

15 *Enforcement of order after death of party*

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

20 *Likely significant change in financial circumstances*

21 **Division 2—Consequential property framework** 22 **amendments**

23 *Family Law Act 1975*

24 **11 Before subsection 79AA(8)**

25 Insert:

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Schedule 1 Property reforms
Part 1 Property framework

1 *Death of party before property settlement proceedings complete*

2 **12 Before subsection 79AA(9)**

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

4 **13 Subsection 79AA(9)**

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

6 **14 Before subsection 79AA(10)**

7 Insert:

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

9 **15 Subsections 79AA(10) and (10B)**

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

11 **16 Before subsection 79AA(11)**

12 Insert:

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

14 **17 Paragraphs 79AA(11)(a) and (d)**

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

16 **18 Before subsection 79AA(14)**

17 Insert:

18 *Trustee of insolvency agreement to become party to proceedings*
19 *on application*

20 **19 Paragraphs 79AA(14)(a) and (d)**

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

22 **20 Before subsection 79AA(17)**

23 Insert:

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Property reforms **Schedule 1**
Property framework **Part 1**

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

3 **21 Subsection 79AA(17)**

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

5 **22 Subsection 85A(2)**

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

7 **23 Before subsection 90SMA(8)**

8 Insert:

9 *Death of party before property settlement proceedings complete*

10 **24 Before subsection 90SMA(9)**

11 Insert:

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

13 **25 Subsection 90SMA(9)**

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

15 **26 Before subsection 90SMA(10)**

16 Insert:

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

18 **27 Subsections 90SMA(10), (12) and (13)**

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

20 **28 Before subsection 90SMA(14)**

21 Insert:

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

23 **29 Paragraphs 90SMA(14)(a) and (d)**

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

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Schedule 1 Property reforms

Part 1 Property framework

1 **30 Before subsection 90SMA(17)**

2 Insert:

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

5 **31 Paragraphs 90SMA(17)(a) and (d)**

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

7 **32 Before subsection 90SMA(20)**

8 Insert:

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

11 **33 Subsection 90SMA(20)**

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

13 **Division 3—Application of property framework**
14 **amendments**

15 **34 Application provision**

16 The amendments made by this Part apply in relation to proceedings if:

- 17 (a) for proceedings instituted by an application filed in a court—
18 the application is filed on or after the day this
19 Part commences; or
20 (b) in any other case—the application instituting the proceedings
21 is made on or after the day this Part commences.

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Property reforms **Schedule 1**
Principles for conducting property or other non-child-related proceedings **Part 2**

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 Subsections 69ZM(2) and (3)**

6 Repeal the subsections, substitute:

7 (2) This Division also applies to:

8 (a) proceedings between parties that are partly under this Part;
9 and

10 (b) other proceedings between the parties that involve the court
11 exercising jurisdiction under this Act (including proceedings
12 that arise from the breakdown of the parties' marital
13 relationship or are a de facto financial cause) if the parties
14 are, or were, parties to proceedings under this Part.

15 Note: Division 4 of Part XI applies if there are property or other non-child
16 related proceedings between the parties and there are no child-related
17 proceedings between the parties.

18 **36 Subsections 69ZM(5) and (6)**

19 Repeal the subsections.

20 **37 At the end of Part XI**

21 Add:

22 **Division 4—Principles for conducting property or other**
23 **non-child-related proceedings**

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

25 **102ND Proceedings to which this Division applies**

26 (1) This Division applies to proceedings between parties if:

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Schedule 1 Property reforms

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

- 1 (a) the proceedings involve the court exercising jurisdiction
2 under this Act (including proceedings that arise from the
3 breakdown of the parties' marital relationship or are
4 a de facto financial cause); and
5 (b) there are no child-related proceedings between the parties.
- 6 Note: Division 12A of Part VII applies to child-related proceedings.
7 Child-related proceedings may also deal with property and financial
8 matters (see paragraph 69ZM(2)(b)).
- 9 (2) Proceedings to which this Division applies are *property or other*
10 *non-child-related proceedings*.

Subdivision B—Principles for conducting property or other non-child-related proceedings

102NE Principles for conducting property or other non-child-related proceedings

Application of the principles

- 16 (1) The court must give effect to the principles in this section:
17 (a) in performing duties and exercising powers (whether under
18 this Division or otherwise) in relation to property or other
19 non-child-related proceedings; and
20 (b) in making other decisions about the conduct of property or
21 other non-child-related proceedings.
22 Failure to do so does not invalidate the proceedings or any order
23 made in them.

- 24 (2) Regard is to be had to the principles in interpreting this Division.

Principle 1

- 26 (3) The first principle is that the court is to actively direct, control and
27 manage the conduct of the proceedings.

Principle 2

- 28 (4) The second principle is that the proceedings are to be conducted in
29 a way that will safeguard the parties to the proceedings against
30 family violence.
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1 *Principle 3*

2 (5) The third principle is that the proceedings are to be conducted
3 without undue delay and with as little formality, and legal
4 technicality and form, as possible.

5 **102NF This Division also applies to proceedings in Chambers**

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

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

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

18 **102NG Powers under this Division may be exercised on court's own**
19 **initiative**

20 The court may exercise a power under this Division:

- 21 (a) on the court's own initiative; or
22 (b) at the request of one or more of the parties to the
23 proceedings.

24 **Subdivision C—Duties and powers related to giving effect to**
25 **the principles**

26 **102NH General duties**

- 27 (1) In giving effect to the principles in section 102NE, the court must:
28 (a) ask each party to the proceedings whether the party considers
29 that the party, or another party to the proceedings, has been,
30 or is at risk of being, subjected to family violence; and

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

20 **102NJ Power to make determinations, findings and orders at any** 21 **stage of proceedings**

- 22 (1) If, at any time after the commencement of property or other
23 non-child-related proceedings and before making final orders, the
24 court considers that it may assist in the determination of the dispute
25 between the parties, the court may do any or all of the following:
26 (a) make a finding of fact in relation to the proceedings;
27 (b) determine a matter arising out of the proceedings;
28 (c) make an order in relation to an issue arising out of the
29 proceedings.
- 30 Note: For example, the court may choose to use this power if the court
31 considers that making a finding of fact at a particular point in the
32 proceedings will help to focus the proceedings.
- 33 (2) Subsection (1) does not prevent the court doing something
34 mentioned in paragraph (1)(a), (b) or (c) at the same time as
35 making final orders.
-

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- 1 (3) To avoid doubt, a person who exercises a power under
2 subsection (1) in relation to proceedings is not, merely because of
3 having exercised the power, required to be disqualified from a
4 further hearing of the proceedings.

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

6 **102NK Rules of evidence not to apply unless court decides**

- 7 (1) The following provisions of the *Evidence Act 1995* do not apply to
8 property or other non-child-related proceedings:
9 (a) Divisions 3, 4 and 5 of Part 2.1 (which deal with general
10 rules about giving evidence, examination in chief,
11 re-examination and cross-examination), other than
12 sections 26, 30, 36 and 41;
13 Note: Section 26 is about the court's control over questioning of
14 witnesses. Section 30 is about interpreters. Section 36 relates to
15 examination of a person without subpoena or other process.
16 Section 41 is about improper questions.
17 (b) Parts 2.2 and 2.3 (which deal with documents and other
18 evidence including demonstrations, experiments and
19 inspections);
20 (c) Parts 3.2 to 3.8 (which deal with hearsay, opinion,
21 admissions, evidence of judgments and convictions, tendency
22 and coincidence, credibility and character).
- 23 (2) The court may give such weight (if any) as it thinks fit to evidence
24 admitted as a consequence of a provision of the *Evidence Act 1995*
25 not applying because of subsection (1).
- 26 (3) Despite subsection (1), the court may decide to apply one or more
27 of the provisions of a Division or Part mentioned in that subsection
28 to an issue in the proceedings, if:
29 (a) the court is satisfied that the circumstances are exceptional;
30 and
31 (b) the court has taken into account (in addition to any other
32 matters the court thinks relevant):
33 (i) the importance of the evidence in the proceedings; and
34 (ii) the nature of the subject matter of the proceedings; and
35 (iii) the probative value of the evidence; and

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- 1 (iv) the powers of the court (if any) to adjourn the hearing,
2 to make another order or to give a direction in relation
3 to the evidence.
- 4 (4) If the court decides to apply a provision of a Division or Part
5 mentioned in subsection (1) to an issue in the proceedings, the
6 court may give such weight (if any) as it thinks fit to evidence
7 admitted as a consequence of the provision applying.
- 8 (5) Subsection (1) does not revive the operation of:
9 (a) a rule of common law; or
10 (b) a law of a State or a Territory;
11 that, but for subsection (1), would have been prevented from
12 operating because of a provision of a Division or Part mentioned in
13 that subsection.

14 **102NL Court's general duties and powers relating to evidence**

- 15 (1) In giving effect to the principles in section 102NE, the court may:
16 (a) give directions or make orders about the matters in relation to
17 which the parties are to present evidence; and
18 (b) give directions or make orders about who is to give evidence
19 in relation to each remaining issue; and
20 (c) give directions or make orders about how particular evidence
21 is to be given; and
22 (d) if the court considers that expert evidence is required—give
23 directions or make orders about:
24 (i) the matters in relation to which an expert is to provide
25 evidence; and
26 (ii) the number of experts who may provide evidence in
27 relation to a matter; and
28 (iii) how an expert is to provide the expert's evidence; and
29 (e) ask questions of, and seek evidence or the production of
30 documents or other things from, parties, witnesses and
31 experts on matters relevant to the proceedings.
- 32 (2) Without limiting subsection (1) or section 102NJ, the court may
33 give directions or make orders:
34 (a) about the use of written submissions; or

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- 1 (b) about the length of written submissions; or
2 (c) limiting the time for oral argument; or
3 (d) limiting the time for the giving of evidence; or
4 (e) that particular evidence is to be given orally; or
5 (f) that particular evidence is to be given by affidavit; or
6 (g) that evidence in relation to a particular matter not be
7 presented by a party; or
8 (h) that evidence of a particular kind not be presented by a party;
9 or
10 (i) limiting, or not allowing, cross-examination of a particular
11 witness; or
12 (j) limiting the number of witnesses who are to give evidence in
13 the proceedings.
- 14 (3) The court may, in property or other non-child-related proceedings:
15 (a) receive into evidence the transcript of evidence in any other
16 proceedings before:
17 (i) the court; or
18 (ii) another court; or
19 (iii) a tribunal;
20 and draw any conclusions of fact from that transcript that it
21 thinks proper; and
22 (b) adopt any recommendation, finding, decision or judgment of
23 any court, person or body of a kind mentioned in any of
24 subparagraphs (a)(i) to (iii).

25 **Division 2—Other amendments**

26 *Evidence Act 1995*

27 **38 Subsection 190(1) (note)**

28 Repeal the note, substitute:

29 Note: Matters related to evidence in child-related proceedings (within the
30 meaning of the *Family Law Act 1975*), and property or other
31 non-child-related proceedings (within the meaning of that Act), are
32 dealt with by that Act.

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Schedule 1 Property reforms

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

1 ***Family Law Act 1975***

2 **39 Subsection 4(1)**

3 Insert:

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

6 **40 Subsection 69ZR(3)**

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

8 **41 Part XI (at the end of the note to Part heading)**

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

11 **Division 3—Application provisions**

12 **42 Application of amendments**

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

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Property reforms **Schedule 1**
Duty of disclosure and arbitration **Part 3**

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

2 **Division 1—Duty of disclosure**

3 *Family Law Act 1975*

4 **43 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 **44 At the end of section 71A**

12 Add:

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

14 **45 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 has a duty to the court and to each other party to give
20 full and frank disclosure, in a timely manner, of all information and
21 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 matters of the
27 marriage.

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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.

Duty of disclosure while preparing for proceedings

- 23
- 24 (5) If separated parties to a marriage are preparing for a proceeding
25 relating to financial or property matters of the marriage, each party
26 has a duty to the other party to give full and frank disclosure, in a
27 timely manner, of all information and documents relevant to the
28 issues in the proposed proceeding that relate to financial or
29 property matters of the marriage.
- 30 (6) The duty under subsection (5) applies at any time while the party is
31 preparing for the proceeding.
- 32 Note: If proceedings are instituted, consequences as mentioned in the note
33 beneath subsection (2) may apply to a person who has failed to
34 comply with their duty of disclosure under subsection (5).

Financial or property matters of the marriage

- 35
- 36 (7) Any of the following matters, so far as they relate to a marriage,
37 are ***financial or property matters*** of the marriage:
-

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Property reforms **Schedule 1**
Duty of disclosure and arbitration **Part 3**

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

27 *Relevant information and documents*

- 28 (8) A party's duty to disclose information and documents is a duty to
- 29 disclose information known to the party and documents that are or
- 30 have been in the possession or under the control of the party.
- 31 (9) A party's duty to disclose information and documents includes any
- 32 information or documents prescribed by the applicable Rules of
- 33 Court for the purposes of the duty.

34 Note: The applicable Rules of Court may also prescribe other matters in

35 relation to the duty of disclosure.

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Schedule 1 Property reforms

Part 3 Duty of disclosure and arbitration

1

Practitioners' obligation to inform

2

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

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4

5

(a) inform the party of the duties of disclosure under this section and explain the circumstances in which they apply; and

6

7

(b) explain the potential consequences of the party not complying with the duties; and

8

9

(c) encourage the party to take all necessary steps to comply with the duties.

10

11

46 After Division 1 of Part VIIIAB

12

Insert:

13

Division 1A—Duty of disclosure

14

90RI Duty of disclosure

15

Duty of disclosure in proceedings

16

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

17

18

19

20

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

21

22

23

(b) for any other party to the proceeding—so much of the party's financial circumstances as are relevant to the issues in the proceeding that relate to property or financial matters of the relationship.

24

25

26

27

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

28

29

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

30

31

32

(a) take the failure into account when making an order under section 90SM (alteration of property interests);

33

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- 1 (b) make any orders with respect to costs or security for costs against
2 the person that the court considers just, having regard to the
3 failure;
4 (c) make any orders with respect to disclosure that the court
5 considers appropriate;
6 (d) if an order made by the court is contravened—impose sanctions
7 under section 112AD;
8 (e) punish the person under section 112AP for contempt;
9 (f) stay or dismiss all or part of the proceedings.

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.

Duty of disclosure while preparing for proceedings

16
17 (5) If separated parties to a de facto relationship are preparing for a
18 proceeding relating to financial or property matters of the
19 relationship, each party has a duty to the other party to give full
20 and frank disclosure, in a timely manner, of all information and
21 documents relevant to the issues in the proposed proceeding that
22 relate to financial or property matters of the relationship.

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).

Financial or property matters of the relationship

28
29 (7) Any of the following matters, so far as they relate to a de facto
30 relationship, are ***financial or property matters*** of the relationship:

- 31 (a) financial matters;
32 (b) matters that are or might become the subject of proceedings
33 in a de facto financial cause;
34 (c) matters that are or might become the subject of proceedings
35 under any of the following provisions of this Act:
36 (i) Division 7 of Part VII (child maintenance orders);
-

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Schedule 1 Property reforms

Part 3 Duty of disclosure and arbitration

- 1 (ii) this Part (orders with respect to the maintenance of a
2 party, or the property of the parties, to the relationship);
3 (iii) section 90UM (orders setting aside a financial
4 agreement or a termination agreement);
5 (iv) Part VIIIB (orders with respect to allocation of
6 superannuation interests);
7 (v) section 106B (orders with respect to instruments or
8 dispositions to defeat an existing or anticipated order in
9 proceedings under this Act);
10 (d) matters that are or might become the subject of proceedings
11 under any of the following provisions of the *Child Support*
12 *(Assessment) Act 1989*:
13 (i) section 116 (orders for departure from administrative
14 assessment in special circumstances);
15 (ii) section 123 (orders for provision of child support
16 otherwise than in form of periodic amounts paid to
17 carer);
18 (iii) section 129 (orders modifying orders under
19 section 123A or 124).

20 *Relevant information and documents*

- 21 (8) A party's duty to disclose information and documents is a duty to
22 disclose information known to the party and documents that are or
23 have been in the possession or under the control of the party.
24 (9) A party's duty to disclose information and documents includes any
25 information and documents prescribed by the applicable Rules of
26 Court for the purposes of the duty.

27 Note: The applicable Rules of Court may also prescribe other matters in
28 relation to the duty of disclosure.

29 *Practitioners' obligation to inform*

- 30 (10) A legal practitioner or family dispute resolution practitioner who
31 engages with a separated party to a de facto relationship who is or
32 might be subject to the duty in subsection (1) or (5) must:
33 (a) inform the party of the duties of disclosure under this section
34 and explain the circumstances in which they apply; and

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Property reforms **Schedule 1**
Duty of disclosure and arbitration **Part 3**

- 1 (b) explain the potential consequences of the party not
2 complying with the duties; and
3 (c) encourage the party to take all necessary steps to comply
4 with the duties.

5 **47 At the end of section 90SA**

6 Add:

- 7 (4) Section 90RI has effect regardless of subsection (1) of this section.

8 **48 After Division 1 of Part VIIC**

9 Insert:

10 **Division 1A—Duty of disclosure**

11 **90YJA Duty of disclosure**

12 *Duty of disclosure in proceedings*

- 13 (1) Each party to a proceeding under this Part has a duty to the court
14 and to each other party to give full and frank disclosure, in a timely
15 manner, of all information and documents relevant to:
16 (a) for a party to the de facto relationship concerned—the issues
17 under this Part in the proceeding; or
18 (b) for any other party to the proceeding—so much of the party's
19 financial circumstances as are relevant to the issues under
20 this Part in the proceeding.

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

23 Note: Courts have a range of powers that may be exercised to impose
24 consequences when a person fails to comply with their duty of
25 disclosure, including powers under the Western Australian Rules of
26 Court.

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

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Schedule 1 Property reforms

Part 3 Duty of disclosure and arbitration

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

4 *Duty of disclosure while preparing for proceedings*

- 5 (5) If separated parties to a de facto relationship are preparing for a
6 proceeding to be brought under this Part, each party has a duty to
7 the other party to give full and frank disclosure, in a timely
8 manner, of all information and documents relevant to the issues
9 under this Part in the proposed proceeding.

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

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

15 *Relevant information and documents*

- 16 (7) A party's duty to disclose information and documents is a duty to
17 disclose information known to the party and documents that are or
18 have been in the possession or under the control of the party.

- 19 (8) A party's duty to disclose information and documents includes any
20 information or documents prescribed by the Western Australian
21 Rules of Court for the purposes of the duty.

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

24 *Practitioners' obligation to inform*

- 25 (9) A legal practitioner or family dispute resolution practitioner who
26 engages with a separated party to a de facto relationship who is or
27 might be subject to the duty in subsection (1) or (5) must:
28 (a) inform the party of the duties of disclosure under this section
29 and explain the circumstances in which they apply; and
30 (b) explain the potential consequences of the party not
31 complying with the duties; and
32 (c) encourage the party to take all necessary steps to comply
33 with the duties.

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Property reforms **Schedule 1**
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49 Application of amendments made by this Division

- (1) Subsections 71B(1), 90RI(1) and 90YJA(1) of the *Family Law Act 1975*, as inserted by this Division, apply in relation to proceedings instituted on or after the day this item commences.
- (2) Subsections 71B(5), 90RI(5) and 90YJA(5) of the *Family Law Act 1975*, as inserted by this Division, apply on and after the day this item commences.

Division 2—Arbitration

Family Law Act 1975

50 Subsection 4(1) (definition of *arbitration*)

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

51 Subsection 4(1)

Insert:

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

52 Subsection 4(1)

Repeal the following definitions:

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

53 Subsection 10L(2)

Repeal the subsection, substitute:

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

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Schedule 1 Property reforms

Part 3 Duty of disclosure and arbitration

1 **54 Section 13E (heading)**

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

3 **55 Subsection 13E(1)**

4 Repeal the subsection, substitute:

5 (1) A court exercising jurisdiction in proceedings that are referable to
6 arbitration within the meaning of subsection (1A) may, with the
7 consent of all of the parties to the proceedings, make an order
8 referring the proceedings, or any part of them or any matter arising
9 in them, to an arbitrator for arbitration.

10 (1A) The following proceedings are referable to arbitration:

- 11 (a) Part VIII proceedings;
12 (b) Part VIIIA proceedings;
13 (c) Part VIIIAB proceedings;
14 (d) Part VIIIB proceedings;
15 (e) Part VIIC proceedings;
16 (f) section 106A proceedings.

17 **56 Section 13F**

18 Repeal the section, substitute:

19 **13F Court may make orders in relation to family law arbitration**

20 (1) A person who is a party to, or an arbitrator of, family law
21 arbitration may apply to a court that has jurisdiction under this Act
22 for orders under subsection (3) in relation to the arbitration.

23 (2) An application under subsection (1) may be made:

- 24 (a) whether the arbitration was ordered under subsection 13E(1)
25 or not; and
26 (b) at any time before an award is made in the arbitration.

27 (3) The court may, on application under subsection (1), make any
28 orders the court considers appropriate:

- 29 (a) to facilitate the effective conduct of family law arbitration; or

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Duty of disclosure and arbitration **Part 3**

- 1 (b) if the court is satisfied that a change in circumstances means
2 that it is no longer appropriate for the proceedings or matter
3 to be dealt with by arbitration—to terminate the arbitration.

4 **57 Subsection 13G(1)**

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

7 **58 Subsection 13H(1)**

8 Repeal the subsection, substitute:

- 9 (1) If a party to an award made in family law arbitration applies to:
10 (a) for family law arbitration ordered under subsection 13E(1)—
11 the court that ordered the arbitration; or
12 (b) for other family law arbitration—a court that has jurisdiction
13 under this Act;
14 the court may register the award.

15 **59 Subsections 13J(1) and 13K(1)**

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

18 **60 Paragraph 125(1)(bba)**

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

21 **61 Application of amendments made by this Division**

- 22 (1) The amendments of section 13E of the *Family Law Act 1975* made by
23 this Division apply to the making of orders in proceedings after this
24 item commences, whether the proceedings commenced before or after
25 this item commences.
- 26 (2) The other amendments of the *Family Law Act 1975* made by this
27 Division apply to arbitration and awards made in arbitration after this
28 item commences, whether the arbitration commenced before or after
29 this item commences.

EXPOSURE DRAFT

Schedule 2 Children's contact services

1 **Schedule 2—Children's contact services**
2

3 *Family Law Act 1975*

4 **1 Subsection 4(1)**

5 Insert:

6 *accountable person* has the meaning given by subsection 10KI(2).

7 *CCS business* (short for children's contact services business) has
8 the meaning given by section 10KD.

9 *CCS intake procedure* (short for children's contact services intake
10 procedure) has the meaning given by subsection 10KE(2).

11 *CCS practitioner* (short for children's contact services practitioner)
12 has the meaning given by section 10KC.

13 *children's contact services* has the meaning given by section
14 10KB.

15 **2 After paragraph 4(1AB)(aa)**

16 Insert:

17 (ab) Division 3A of Part II (children's contact services); and

18 **3 Paragraphs 10A(1)(a) and (b)**

19 Omit "persons", substitute "individuals".

20 **4 After paragraph 10A(1)(b)**

21 Insert:

22 (ba) the accreditation of individuals as CCS practitioners; and

23 (bb) the accreditation of persons (whether or not individuals) and
24 other entities as CCS businesses; and

25 **5 Paragraph 10A(2)(a)**

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

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Children's contact services **Schedule 2**

1 **6 Paragraph 10A(2)(b)**

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

3 **7 Paragraphs 10A(2)(d), (f) and (g)**

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

5 **8 Paragraph 10A(2)(h)**

6 Omit "person may have his or her", substitute "person or entity may
7 have their".

8 **9 Paragraphs 10A(2)(j) and (k)**

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

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

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

12 **11 At the end of Division 1 of Part II**

13 Add:

14 **10AA Immunity**

15 No action, suit or proceeding lies against the Commonwealth, or an
16 officer of the Commonwealth, in relation to any act done, or
17 omitted to be done, in good faith in the performance or exercise, or
18 the purported performance or exercise, of a function, power or
19 authority conferred by the Accreditation Rules.

20 **12 After Division 3 of Part II**

21 Insert:

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

23 **10KA Simplified outline of this Division**

24

Accreditation Rules may provide for the accreditation of persons 25 and entities as CCS practitioners and CCS businesses (see 26 section 10A).
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EXPOSURE DRAFT

Schedule 2 Children's contact services

1 If they do, then it is an offence for children's contact services (as
2 defined in this Division) to be provided by a person or entity that is
3 not accredited.

4 Accredited providers of children's contact services must keep
5 communications made as part of their intake procedures
6 confidential (with some exceptions) and evidence of such
7 communications is generally not admissible in court.

8 **10KB Definition of *children's contact services***

- 9 (1) ***Children's contact services*** are services, other than services
10 mentioned in subsection (3), that:
- 11 (a) facilitate contact between a child and a member of the child's
12 family with whom the child is not living; and
 - 13 (b) are provided in circumstances where members of the family
14 may not be able to safely manage such contact; and
 - 15 (c) are provided:
 - 16 (i) on a professional basis; or
 - 17 (ii) on a commercial basis; or
 - 18 (iii) by an entity registered under the *Australian Charities*
19 *and Not-for-profits Commission Act 2012* as the type of
20 entity mentioned in column 1 of item 1 of the table in
21 subsection 25-5(5) of that Act; or
 - 22 (iv) in the course of an undertaking that has a charitable
23 purpose.
- 24 (2) Without limiting paragraph (1)(a), services that facilitate contact
25 may include any of the following:
- 26 (a) supervising the movement of the child between 2 or more
27 members of the child's family;
 - 28 (b) supervising time spent by the child with a member of the
29 child's family (including contact over the phone or internet);
 - 30 (c) providing a space for the child to spend time with a member
31 of the child's family.
- 32 (3) The following services are not children's contact services:
- 33 (a) services provided as a result of intervention by a child
34 welfare officer of a State or Territory;

1 (b) services prescribed by the regulations for the purposes of this
2 paragraph.

3 **10KC Definition of *CCS practitioner***

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

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

9 **10KD Definition of *CCS business***

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

12 **10KE Confidentiality of communications in CCS intake procedures**

13 (1) A person who is or has been any of the following (an *entrusted*
14 *person*):

- 15 (a) a CCS practitioner or a CCS business; or
16 (b) a director or other officer of a CCS business; or
17 (c) employed or engaged to perform work (whether paid or
18 unpaid) for or on behalf of a CCS business;

19 must not use or disclose a communication that was made in the
20 course of a CCS intake procedure and obtained in the person's
21 capacity as an entrusted person unless the use or disclosure is
22 required or authorised by this section.

23 (2) A *CCS intake procedure* is any interview, questionnaire or other
24 procedure that is conducted:

- 25 (a) with a child or with one or more members of a child's family,
26 or both; and
27 (b) by an entrusted person;

28 for the purposes of understanding the family's needs in preparation
29 for providing children's contact services in respect of the child.

30 (3) An entrusted person must disclose a communication if the
31 entrusted person reasonably believes the disclosure is necessary for

EXPOSURE DRAFT

Schedule 2 Children's contact services

- 1 the purpose of complying with a law of the Commonwealth, a State
2 or a Territory.
- 3 (4) An entrusted person may use a communication for the purposes of
4 performing the person's functions as an entrusted person.
- 5 (5) An entrusted person may disclose a communication to another
6 entrusted person if:
- 7 (a) both entrusted persons are directors or officers of, or
8 employed or engaged to provide children's contact services
9 or perform other work (whether paid or unpaid) for or on
10 behalf of, a particular CCS business; and
- 11 (b) it is reasonable to disclose the communication to enable the
12 CCS business to appropriately provide children's contact
13 services in respect of the child.
- 14 (6) An entrusted person may use or disclose a communication if
15 consent to the use or disclosure is given by:
- 16 (a) if the person who made the communication is 18 or over—
17 that person; or
- 18 (b) if the person who made the communication is 15, 16 or 17
19 and has the capacity to consent—that person; or
- 20 (c) if the person who made the communication is a child under
21 15 or a child to whom paragraph (b) does not apply:
- 22 (i) each person who has parental responsibility (within the
23 meaning of Part VII) for the child; or
- 24 (ii) a court.
- 25 (7) An entrusted person may use or disclose a communication if the
26 entrusted person reasonably believes that the use or disclosure is
27 necessary for the purpose of:
- 28 (a) protecting a child from the risk of harm (whether physical or
29 psychological); or
- 30 (b) preventing or lessening a serious and imminent threat to the
31 life or health of a person; or
- 32 (c) reporting the commission, or preventing the likely
33 commission, of an offence involving violence or a threat of
34 violence to a person; or
- 35 (d) preventing or lessening a serious and imminent threat to the
36 property of a person; or
-

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Children's contact services **Schedule 2**

- 1 (e) reporting the commission, or preventing the likely
2 commission, of an offence involving intentional damage to
3 property of a person or a threat of damage to property; or
4 (f) if a lawyer independently represents a child's interests under
5 an order under section 68L and it is unreasonable or
6 impractical to obtain consent as mentioned in
7 subsection (5)—assisting the lawyer to properly represent the
8 child's interests.
- 9 (8) An entrusted person may disclose a communication in order to
10 provide information (other than personal information within the
11 meaning of section 6 of the *Privacy Act 1988*) for research relevant
12 to families.
- 13 (9) In this section:
14 *communication* includes admission.

15 **10KF Admissibility of communications in CCS intake procedures**

- 16 (1) Evidence of anything said, or any admission made, in the course of
17 a CCS intake procedure is not admissible:
18 (a) in any court (whether or not exercising federal jurisdiction);
19 or
20 (b) in any proceedings before a person authorised to hear
21 evidence (whether the person is authorised by a law of the
22 Commonwealth, a State or a Territory, or by the consent of
23 the parties).
- 24 Note: For the definition of *CCS intake procedure*, see subsection 10KE(2).
- 25 (2) Subsection (1) does not apply to:
26 (a) an admission by an adult that indicates that a child under 18
27 has been abused or is at risk of abuse; or
28 (b) a disclosure by a child under 18 that indicates that the child
29 has been abused or is at risk of abuse;
30 unless, in the opinion of the court, there is sufficient evidence of
31 the admission or disclosure available to the court from other
32 sources.

EXPOSURE DRAFT

Schedule 2 Children's contact services

1 **10KG Civil penalty provisions**

2 *Civil penalties*

- 3 (1) In addition to the matters mentioned in section 10A, the
4 Accreditation Rules may:
- 5 (a) prescribe civil penalty provisions (the *CCS civil penalty*
6 *provisions*) in relation to requirements to be complied with
7 by CCS practitioners and CCS businesses; and
- 8 (b) prescribe penalties for contraventions of the CCS civil
9 penalty provisions that do not exceed:
- 10 (i) for a body corporate—50 penalty units; or
11 (ii) for any other person—10 penalty units.
- 12 (2) Each CCS civil penalty provision is enforceable under Part 4 of the
13 Regulatory Powers Act.

14 *Authorised applicant*

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

26 *Relevant court*

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

EXPOSURE DRAFT

1 **10KH Strict liability offences—unaccredited provision of children's**
2 **contact services**

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

- 4 (1) An individual commits an offence if:
5 (a) the individual provides a children's contact service; and
6 (b) the Accreditation Rules provide for accreditation of CCS
7 practitioners; and
8 (c) the individual is not a CCS practitioner.

9 Penalty: 20 penalty units.

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

- 11 (2) A body corporate commits an offence if:
12 (a) the body corporate provides a children's contact service; and
13 (b) the Accreditation Rules provide for accreditation of CCS
14 businesses; and
15 (c) the body corporate is not a CCS business.

16 Penalty:

- 17 (a) for an individual—20 penalty units; or
18 (b) for a body corporate—100 penalty units.

19 *Person providing services through an individual who is not a CCS*
20 *practitioner*

- 21 (3) A person commits an offence if:
22 (a) the person is a CCS business; and
23 (b) an individual provides a children's contact service for or on
24 behalf of the person; and
25 (c) the Accreditation Rules provide for accreditation of CCS
26 practitioners; and
27 (d) the individual is not a CCS practitioner.

28 Penalty:

- 29 (a) for an individual—20 penalty units; or
30 (b) for a body corporate—100 penalty units.

EXPOSURE DRAFT

Schedule 2 Children's contact services

1 (4) Subsection (3) does not apply to a person if, at or before the time
2 the individual provides the children's contact service as mentioned
3 in paragraph (3)(b), 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 subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

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

10 (5) An individual commits an offence if:

- 11 (a) the individual controls, directs or organises (whether alone or
12 jointly with other persons) the provision of children's contact
13 services in the individual's own name or under a business
14 name; and
15 (b) the Accreditation Rules provide for accreditation of CCS
16 businesses; and
17 (c) the individual is not a CCS business.

18 Penalty: 20 penalty units.

19 (6) 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 Accreditation Rules provide for accreditation of CCS
23 businesses; and
24 (c) the entity is not a CCS business; and
25 (d) at the time the individual provides the children's contact
26 service, the person is a person who controls, directs or
27 organises (whether alone or jointly with other persons) the
28 provision of children's contact services for or on behalf of
29 the entity.

30 Penalty:

- 31 (a) for an individual—20 penalty units; or
32 (b) for a body corporate—100 penalty units.

EXPOSURE DRAFT

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

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

8 *Person responsible for non legal person providing services*
9 *through an individual who is not a CCS practitioner*

- 10 (8) A person commits an offence if:
11 (a) an individual provides a children's contact service for or on
12 behalf of an entity that is not a legal person; and
13 (b) the entity is a CCS business; and
14 (c) the Accreditation Rules provide for accreditation of CCS
15 practitioners; and
16 (d) the individual is not a CCS practitioner; and
17 (e) at the time the children's contact service is provided, the
18 person is a person who controls, directs or organises (whether
19 alone or jointly with other persons) the provision of
20 children's contact services for or on behalf of the entity.

21 Penalty:

- 22 (a) for an individual—20 penalty units; or
23 (b) for a body corporate—100 penalty units.

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

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

32 *Strict liability*

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

EXPOSURE DRAFT

Schedule 2 Children's contact services

1

Mistake of fact defences

2

(11) For the purposes of subsections (4), (7) and (9), a person may be regarded as having considered whether or not the individual was a CCS practitioner, or the entity was a CCS business, (as applicable) if:

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(a) the person had considered on a previous occasion whether that was the case in the circumstances surrounding that occasion; and

(b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

13

10KI Compliance by entities that are not legal persons

14

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(1) This section applies if an entity that is not a legal person is accredited as a CCS business.

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(2) Each of the following persons is an *accountable person* for the entity, in relation to a requirement imposed on the entity at a time by the Accreditation Rules:

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(a) if the entity is a partnership—each of the following:

(i) each partner in the partnership at the time;

(ii) if a partner is a body corporate—each director of the partner at the time;

(iii) a person prescribed by the Accreditation Rules;

(b) if the entity is a trust—each of the following:

(i) the trustee, or each trustee, of the trust, at the time;

(ii) if a trustee is a body corporate—each director of the trustee at the time;

(iii) a person prescribed by the Accreditation Rules;

(c) if the entity is any other kind of entity—each person prescribed by the Accreditation Rules for that kind of entity.

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(3) Any requirement that the Accreditation Rules impose on the entity to do a thing (including a requirement imposed by way of a civil penalty provision) is taken instead to be imposed on each accountable person for the entity, but may be discharged by any one of them.

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Children's contact services **Schedule 2**

- 1 (4) Any requirement that the Accreditation Rules impose on the entity
2 not to do a thing (including a requirement imposed by way of a
3 civil penalty provision) is taken instead to be imposed on each
4 accountable person for the entity.
- 5 (5) However, an accountable person is not liable to a civil penalty for
6 contravening a requirement taken to be imposed on the person
7 because of subsection (3) or (4) unless at least one of the following
8 applies:
- 9 (a) complying with the requirement is within the actual or
10 apparent scope of the person's duties in relation to the entity;
- 11 (b) the person's duties involve controlling, directing or
12 organising (whether alone or jointly with other persons) the
13 provision of children's contact services in the entity's name;
- 14 (c) the person aided, abetted, counselled or procured the act or
15 omission concerned;
- 16 (d) the person was in any way knowingly concerned in, or party
17 to, the act or omission concerned (whether directly or
18 indirectly and whether by any act or omission of the person).

19 **13 After paragraph 13A(1)(b)**

20 Insert:

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

24 **14 After paragraph 13C(1)(b)**

25 Insert:

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

28 **15 After subsection 13C(1)**

29 Insert:

- 30 (1A) The court must not make an order under paragraph (1)(c) that
31 parties make use of children's contact services at any time when
32 CCS practitioners and CCS businesses may be accredited under the
33 Accreditation Rules.

EXPOSURE DRAFT

Schedule 2 Children's contact services

1 **16 Subsection 13D(1)**

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

3 **17 After subsection 13D(1)**

4 Insert:

5 (1A) A party does not fail to comply with an order of a court to make
6 use of a children's contact service provided by a CCS business if
7 the CCS business refuses to provide the service to the party.

8 (1B) If a CCS business refuses to provide a children's contact service to
9 a party, the CCS business (as the case requires) must notify the
10 court that they have done so.

11 **18 Subsection 60D(2) (at the end of the definition of *adviser*)**

12 Add:

13 ; or (e) a CCS practitioner.

14 **19 After paragraph 67ZA(1)(e)**

15 Insert:

16 (ea) a CCS practitioner; or

17 **20 After paragraph 111CV(1A)(f)**

18 Insert:

19 (fa) a CCS practitioner; and

EXPOSURE DRAFT

Case management and procedure **Schedule 3**
Attending family dispute resolution before applying for Part VII order **Part 1**

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(7)**

7 Repeal the subsection, substitute:

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

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

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

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

17 **2 After subsection 60I(8)**

18 Insert:

19 *Exemptions*

20 (8A) The court may grant the applicant for a Part VII order in relation to
21 a child an exemption from having to file a certificate referred to in
22 paragraph (7)(a).

23 (8B) The court may do so only if the court is satisfied that one or more
24 of the grounds in subsection (9) exist.

25 **3 Subsection 60I(9) (heading)**

26 Repeal the heading.

EXPOSURE DRAFT

Schedule 3 Case management and procedure

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

1 **4 Subsection 60I(9)**

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

5 **5 Subsection 60I(10) (heading)**

6 Repeal the heading, substitute:

7 *Referral to family dispute resolution when exemption applies*

8 **6 Paragraph 60I(10)(c)**

9 Repeal the paragraph, substitute:

10 (c) in relation to the application, the court has granted the person
11 an exemption under subsection (8A);

12 **7 Subsection 60I(11)**

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

14 **8 Paragraph 60J(1)(b)**

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

18 **9 Application provision**

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

EXPOSURE DRAFT

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

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

2 *Family Law Act 1975*

3 **10 At the end of paragraph 98A(1)(a)**

4 Add “and”.

5 **11 Paragraph 98A(1)(b)**

6 Repeal the paragraph.

7 **12 Subsection 98A(2A)**

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

9 **13 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 **14 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 for a divorce order made
20 after the commencement of this item.

EXPOSURE DRAFT

Schedule 3 Case management and procedure

Part 3 Commonwealth information orders

1 **Part 3—Commonwealth information orders**

2 *Family Law Act 1975*

3 **15 Subsection 4(1)**

4 Insert:

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

6 **16 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; and
10 (b) require searches in relation to information about violence to
11 children and others in addition to location information.

12 **17 Before subsection 67N(2)**

13 Insert:

14 *Requirements for making a Commonwealth information order*

15 **18 Subsections 67N(5) to (10)**

16 Repeal the subsections, substitute:

17 *Content of a Commonwealth information order*

18 (5) A Commonwealth information order may require either:

- 19 (a) a one-off search for information sought by the order; or
20 (b) periodic searches for the information sought by the order for
21 the period during which the order is in force, which must not
22 exceed 12 months.

23 (6) A Commonwealth information order that requires periodic
24 searches for information does not require the records of the
25 Department or Commonwealth instrumentality concerned to be
26 searched more often than once every 3 months unless specifically
27 so ordered by the court.

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- 1 (7) A court may state that a Commonwealth information order only
2 applies to records of a particular kind if the court considers that an
3 unreasonable burden would be placed on the resources of the
4 Department or Commonwealth instrumentality concerned if the
5 order applied to all of its records.
- 6 (8) If the court makes a Commonwealth information order, the court
7 may also order the person to whom the order applies to provide any
8 information, that is in the records of the relevant Department or
9 Commonwealth instrumentality, about actual or threatened
10 violence to:
11 (a) the child concerned; or
12 (b) a person who is related to the child within the meaning of
13 subsection 67NA(1); or
14 (c) a person who has a connection to the child that the court
15 considers relevant.
- 16 (9) A Commonwealth information order seeking information about
17 actual or threatened violence to a person mentioned in
18 paragraph (8)(c) must specify either the person or the nature of the
19 connection between the person and the child.
- 20 (10) If a Commonwealth information order seeks information about
21 actual or threatened violence to a person mentioned in
22 paragraph (8)(b) or (c), the person to whom the order applies is
23 only required to provide information about the person if they can
24 be identified using the records of the relevant Department or
25 Commonwealth instrumentality.
- 26 (11) A Commonwealth information order seeking information about
27 actual or threatened violence under subsection (8) may specify that
28 such information is to be sought within the following records:
29 (a) a particular record, or particular kinds of records;
30 (b) records held in relation to particular individuals;
31 (c) records made within a particular period, or before or after a
32 particular time.
- 33 *Revocation of a Commonwealth information order*
- 34 (12) If a Commonwealth information order requires periodic searches
35 for information, the court must:
-

EXPOSURE DRAFT

Schedule 3 Case management and procedure

Part 3 Commonwealth information orders

- 1 (a) revoke the order before the order ceases to be in force if
2 satisfied that the purpose of the order has been achieved; or
3 (b) if the court receives notice of a child's return under
4 subsection 67Y(2)—consider revoking the order if satisfied
5 that the purpose of the order has been achieved.

6 *Disclosure requirements*

- 7 (13) If a person is required to conduct a search under a Commonwealth
8 information order, the person to whom the order applies must
9 provide the information sought by the order as soon as practicable.
- 10 (14) To avoid doubt, if a Commonwealth information order seeks
11 information about actual or threatened violence under
12 subsection (8), the person to whom the order applies must provide
13 any information about actual or threatened violence to the persons
14 specified in paragraphs (8)(a) to (c) that is found in the records of
15 the relevant period, even if no information about the location of the
16 child is found.
- 17 (15) This section applies despite a provision of a law of the
18 Commonwealth or of a State or Territory that prohibits:
19 (a) the communication, disclosure or publication of information;
20 or
21 (b) the production of, or the publication of the contents of, a
22 document;
23 whether enacted before, at or after the commencement of this
24 section.

25 **19 After section 67N**

26 Insert:

27 **67NA Persons who are related to a child for the purposes of** 28 **paragraph 67N(8)(b)**

- 29 (1) For the purposes of paragraph 67N(8)(b), the following persons are
30 related to a child:
31 (a) a parent, adoptive parent or step-parent of the child;
32 (b) a grandparent or step-grandparent of the child;
33 (c) a sibling, half-sibling or step-sibling of the child;

EXPOSURE DRAFT

Case management and procedure **Schedule 3**
Commonwealth information orders **Part 3**

- 1 (d) an uncle or aunt of the child;
2 (e) a niece or nephew of the child;
3 (f) a cousin of the child;
4 (g) any other person biologically related to the child;
5 (h) if the child is in a foster arrangement—a person:
6 (i) who fosters the child; or
7 (ii) who is a spouse, or de facto partner within the meaning
8 of section 60EA, of a person who fosters the child; or
9 (iii) who is an intimate partner (see subsection (2)) of a
10 person who fosters the child (whether or not residing
11 with the person); or
12 (iv) who would be related to the child in accordance with
13 paragraph (b), (c), (d), (e), (f) or (g) if a person who
14 fosters the child were the child's parent.
- 15 (2) Two persons, who are not each other's spouse or de facto partner
16 within the meaning of section 60EA, are *intimate partners* of each
17 other if they have an intimate relationship (whether or not they live
18 together).
- 19 (3) Factors that indicate whether 2 persons have an intimate
20 relationship include (but are not limited to) the following:
21 (a) the extent to which each is personally dependent on the other;
22 (b) the extent to which each is financially dependent on the other
23 (including any arrangements for financial support);
24 (c) the length of the relationship;
25 (d) the frequency of contact between each other;
26 (e) if there is, or has been, a sexual relationship;
27 (f) the extent to which each is involved in, or knows about, the
28 other's personal life;
29 (g) the degree of mutual commitment to a shared life;
30 (h) if they share care or support for children or other dependents.

31 **20 Application of amendments**

32 The amendments to the *Family Law Act 1975* made by this Part
33 apply in relation to Commonwealth information orders made after
34 the commencement of this Part.

EXPOSURE DRAFT

Schedule 3 Case management and procedure

Part 4 Operation of section 69GA

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

2 *Family Law Act 1975*

3 **21 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 **22 Section 69GA (heading)**

12 Repeal the heading, substitute:

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

14 **23 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.

EXPOSURE DRAFT

Case management and procedure **Schedule 3**
Operation of section 69GA **Part 4**

1 *Jurisdiction of prescribed State courts*

2 (2A) Subject to subsection (2), a court of a State prescribed for the
3 purposes of this section is invested with federal jurisdiction in
4 relation to matters arising under this Part (other than section 60G)
5 in respect of section 69GA proceedings.

6 *Jurisdiction of prescribed Territory courts*

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

11 **24 Subsection 69GA(4)**

12 Omit “heard in”, substitute “of”.

13 **25 Subsection 69J(1) (note)**

14 Repeal the note.

15 **26 After subsection 69J(5)**

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

21 **27 Subsection 69N(1) (note)**

22 Repeal the note.

EXPOSURE DRAFT

Schedule 4 General provisions

Part 1 Costs orders

1 **Schedule 4—General provisions**

2 **Part 1—Costs orders**

3 **Division 1—Amendments**

4 *Family Law Act 1975*

5 **1 Subsection 4(1)**

6 Insert:

7 *litigation guardian* means a person appointed by the court under
8 the applicable Rules of Court to manage and conduct a proceeding
9 for a person who needs a litigation guardian (also known as a next
10 friend, guardian *ad litem*, case guardian or tutor).

11 *manager of the affairs of a party* includes a person who is
12 authorised by or under a Commonwealth, State or Territory law to
13 conduct legal proceedings in the name of, or for, a person who
14 needs a litigation guardian.

15 **2 Before Part XV**

16 Insert:

17 **Part XIVC—Costs**

18

19 **114UA Definitions**

20 In this Part:

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

22 *means-tested legal aid* means a grant of assistance:

23 (a) that is made:

24 (i) by a State or Territory legal aid commission, being an
25 authority established by or under a law of the State or
26 Territory for the purpose of providing legal assistance;
27 or

EXPOSURE DRAFT

General provisions **Schedule 4**
Costs orders **Part 1**

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

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

12 **114UB Court's power to make costs orders**

- 13 (1) Subject to subsection (2) of this section, subsections 45A(6) and
14 70NFB(1) and sections 114UE and 114UF, each party to
15 proceedings under this Act is to bear the party's own costs.
- 16 (2) If, in proceedings under this Act, the court is of the opinion that
17 there are circumstances that justify it in doing so, the court may,
18 subject to subsection (3) of this section, sections 114UC, 114UD
19 and 114UE and the applicable Rules of Court, make any order for
20 costs and security for costs that the court considers just, whether by
21 way of interlocutory order or otherwise.

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

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

- 30 (3) In considering what costs order (if any) should be made, the court
31 must have regard to the following:
32 (a) the financial circumstances of each party to the proceedings;
33 (b) whether any party to the proceedings has received assistance
34 by way of means-tested legal aid in respect of the
35 proceedings and, if so, the terms of the grant of the assistance
36 to that party;

EXPOSURE DRAFT

Schedule 4 General provisions

Part 1 Costs orders

- 1 (c) the conduct of the parties to the proceedings in relation to the
2 proceedings including, without limiting paragraphs (a) and
3 (b), the conduct of the parties in relation to pleadings,
4 particulars, discovery, inspection, directions to answer
5 questions, admissions of facts, production of documents and
6 similar matters;
- 7 (d) whether the proceedings were necessitated by the failure of a
8 party to the proceedings to comply with previous orders of
9 the court;
- 10 (e) whether any party to the proceedings has been wholly
11 unsuccessful in the proceedings;
- 12 (f) whether a party to the proceedings has made an offer in
13 writing to the other party to the proceedings to settle the
14 proceedings and the terms of any such offer;
- 15 (g) such other matters as the court considers relevant.
- 16 (4) The court may make a costs order:
- 17 (a) at any stage during the proceedings; or
18 (b) within 28 days after the final order in the proceedings is
19 made.
- 20 (5) The court may make a costs order in respect of:
- 21 (a) the proceedings as a whole; or
22 (b) any issues that are ordered to be tried separately.
- 23 (6) The court may order that a party is entitled to costs:
- 24 (a) of a specific amount; or
25 (b) as assessed on a particular basis (for example, party and
26 party, solicitor and client or indemnity); or
27 (c) to be calculated in accordance with the method stated in the
28 order; or
29 (d) for part of the proceedings, or part of an amount assessed in
30 accordance with the applicable Rules of Court.
- 31 (7) If the court makes a costs order but does not specify the method for
32 the calculation of the costs, the costs are to be assessed on a party
33 and party basis.

EXPOSURE DRAFT

General provisions **Schedule 4**
Costs orders **Part 1**

- 1 (8) The court may make a costs order in favour of, or against, a party
2 to the proceedings regardless of the degree to which the party has
3 been successful in the proceedings.
- 4 (9) If a person was not a party to the proceedings, but was involved in
5 the proceedings and has an interest in the proceedings, the court
6 may make either or both of the following:
7 (a) a costs order that the person is to bear the person's own costs;
8 (b) a costs order requiring the person to pay the costs of a
9 specified party to the proceedings.

10 **114UC Costs order against lawyer**

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

26 **114UD Costs of independent children's lawyer and limitations on** 27 **costs relating to intervening officer or litigation guardian** 28 **etc.**

- 29 (1) In proceedings in which an independent children's lawyer for a
30 child has been appointed, the court may make a costs order,
31 whether by way of interlocutory order or otherwise, to the effect
32 that each party to the proceedings bears, in such proportion as the

EXPOSURE DRAFT

Schedule 4 General provisions

Part 1 Costs orders

1 court considers just, the costs of the independent children's lawyer
2 in relation to the proceedings.

3 (2) However, if:

4 (a) a party to the proceedings has received assistance by way of
5 means-tested legal aid in respect of the proceedings; or

6 (b) the court considers that a party to the proceedings would
7 suffer financial hardship if the party had to bear a proportion
8 of the costs of the independent children's lawyer;

9 the court must not make a costs order against that party in relation
10 to the costs of the independent children's lawyer.

11 *Funding of independent children's lawyer not to affect costs order*

12 (3) In considering what costs order (if any) should be made in
13 proceedings in which an independent children's lawyer has been
14 appointed, the court must disregard the fact that the independent
15 children's lawyer is funded:

16 (a) under a legal aid scheme or service mentioned in
17 subparagraph (a)(ii) of the definition of *means-tested legal*
18 *aid* in section 114UA; or

19 (b) by a State or Territory legal aid commission, a community
20 organisation, or an entity, mentioned in subparagraph (a)(i),
21 (a)(iii) or (a)(iv) of the definition of *means-tested legal aid* in
22 section 114UA.

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

24 (4) If:

25 (a) under section 91B, an officer intervenes in proceedings; and

26 (b) the officer acts in good faith in relation to the proceedings;

27 the court must not, because of the intervention, make a costs order
28 against the officer, or against an entity (including the
29 Commonwealth or a State or Territory) by or on behalf of whom
30 the officer was engaged or employed.

31 *Limit on costs orders against litigation guardian or manager of*
32 *affairs of party*

33 (5) If a person has been appointed as a litigation guardian for a party,
34 or a manager of the affairs of a party, to proceedings, the court

1 must not make a costs order against the person unless the court is
2 satisfied that one or more acts or omissions of the person relating
3 to the proceedings are unreasonable or have delayed the
4 proceedings unreasonably.

5 **114UE Costs in proceedings relating to overseas enforcement and**
6 **international Conventions**

- 7 (1) In proceedings under regulations made for the purposes of
8 Part XIII^{AAA}, the court may only make a costs order (other than
9 orders as to security for costs):
- 10 (a) in favour of a party who has been substantially successful in
11 the proceedings; and
- 12 (b) against a person or body who holds or held an office or
13 appointment under those regulations and is a party to the
14 proceedings in that capacity.
- 15 Note: For another case where the court may also make a costs order, see
16 subsection (3).
- 17 (2) However, a costs order may only be made in respect of a part of
18 the proceedings if, during that part, the party against whom the
19 order is to be made asserted a meaning or operation of this Act or
20 those regulations that the court considers:
- 21 (a) is not reasonable given the terms of the Act or regulations; or
22 (b) is not convenient to give effect to Australia's obligations
23 under the Convention concerned, or to obtain for Australia
24 the benefits of that Convention.
- 25 (3) In proceedings under regulations made for the purposes of
26 section 111^B, the court may also make a costs order that is:
- 27 (a) against a party who has wrongfully removed or retained a
28 child, or wrongfully prevented the exercise of rights of access
29 (within the meaning of the Convention referred to in that
30 section) to a child; and
- 31 (b) in respect of the necessary expenses incurred by the person
32 who made the application, under that Convention, concerning
33 the child.

EXPOSURE DRAFT

Schedule 4 General provisions

Part 1 Costs orders

1 **114UF Security for costs**

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

5 **Division 2—Consequential amendments**

6 ***Family Law Act 1975***

7 **3 Subsection 60I(8) (note)**

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

9 **4 Subsection 91B(2) (note)**

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

11 **5 Subsection 91B(2) (note)**

12 Omit “subsection 117(4A)”, substitute “subsection 114UD(4)”.

13 **6 Sections 117, 117AA and 117AC**

14 Repeal the sections.

15 **7 Subsection 117C(2)**

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

17 **8 Paragraph 123(1)(o)**

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

20 **9 Paragraph 123(1)(o)**

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

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

24 **10 Subsection 68(3) (note)**

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

EXPOSURE DRAFT

General provisions **Schedule 4**
Costs orders **Part 1**

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

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

3 **12 Subsection 215(1) (note)**

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

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

6 **13 Paragraph 9(1)(b)**

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

8 **Division 3—Transitional provisions**

9 **14 Application of amendments relating to costs**

10 The amendments made by Divisions 1 and 2 of this Part apply in
11 relation to:

- 12 (a) proceedings instituted before the commencement of this Part
13 that were not finally determined before that commencement;
14 and
15 (b) proceedings instituted after the commencement of this Part.

16 **Division 4—Contingent amendments for Family Law**
17 **Amendment Act 2023**

18 ***Family Law Act 1975***

19 **15 Subsection 114UB(1)**

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

21 **16 Subsection 114UB(1)**

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

EXPOSURE DRAFT

Schedule 4 General provisions

Part 1 Costs orders

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

2 *Family Law Act 1975*

3 **17 At the end of paragraph 114UB(3)(c)**

4 Add “, and in relation to their duty of disclosure under subsection
5 71B(1), 90RI(1) or 90YJA(1)”.

6 **18 Application of amendment made by this Division**

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

EXPOSURE DRAFT

General provisions **Schedule 4**
Clarification of inadmissibility provisions **Part 2**

1 **Part 2—Clarification of inadmissibility provisions**

2 **Division 1—Main amendments**

3 *Family Law Act 1975*

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

5 Add:

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

8 **20 Paragraph 10E(1)(c)**

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

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

11 Add:

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

13 (a) includes any court of the Commonwealth, a State or a
14 Territory, whether exercising jurisdiction under this Act or
15 any other law of the Commonwealth, a State or a Territory;
16 but

17 (b) does not include a coronial inquiry or inquest.

18 **22 Paragraph 10J(1)(c)**

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

20 **23 At the end of section 10J**

21 Add:

22 (5) 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 Clarification of inadmissibility provisions

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

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

3 **25 At the end of section 10V**

4 Add:

5 *Meaning of court*

6 (6) For the purpose of this section, *court*:

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

11 (b) does not include a coronial inquiry or inquest.

12 **26 Subsection 56(3)**

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

16 **27 Subsection 67ZB(5)**

17 Repeal the subsection, substitute:

18 (5) In this section, *court*:

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

23 (b) does not include a coronial inquiry or inquest.

24 **28 Paragraph 70NEF(1)(a)**

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

26 **29 At the end of section 70NEF**

27 Add:

28 (3) For the purpose of this section, *court*:

29 (a) includes any court of the Commonwealth, a State or a
30 Territory, whether exercising jurisdiction under this Act or

EXPOSURE DRAFT

General provisions **Schedule 4**
Clarification of inadmissibility provisions **Part 2**

- 1 any other law of the Commonwealth, a State or a Territory;
2 but
3 (b) does not include a coronial inquiry or inquest.

4 **30 Application of amendments**

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

8 **Division 2—Contingent amendments for Family Law** 9 **Amendment Act 2023**

10 *Family Law Act 1975*

11 **31 Subsection 4(1) (note to definition of *court*)**

12 Before “10V”, insert “10PA,”.

13 **32 Subsection 4(1) (note to definition of *court*)**

14 Omit “, 67ZB and 70NEF”, substitute “and 67ZB”.

15 **33 Paragraph 10PA(1)(a)**

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

17 **34 At the end of section 10PA**

18 Add:

19 (3) For the purpose of this section, *court*:

- 20 (a) includes any court of the Commonwealth, a State or a
21 Territory, whether exercising jurisdiction under this Act or
22 any other law of the Commonwealth, a State or a Territory;
23 but
24 (b) does not include a coronial inquiry or inquest.

25 **35 Application of amendments**

26 The amendments of section 10PA of the *Family Law Act 1975* made by
27 this Division apply in relation to proceedings that commence after the
28 commencement of this item.

EXPOSURE DRAFT

Schedule 4 General provisions

Part 2 Clarification of inadmissibility provisions

1 **Division 3—Amendments relating to children’s contact**
2 **services**

3 *Family Law Act 1975*

4 **36 Subsection 4(1) (note to the definition of *court*)**

5 After “10J,”, 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 Add:

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

11 (a) includes any court of the Commonwealth, a State or a
12 Territory, whether exercising jurisdiction under this Act or
13 any other law of the Commonwealth, a State or a Territory;
14 but

15 (b) does not include a coronial inquiry or inquest.