

# EXPOSURE DRAFT

2022-2023

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT
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## **Family Law Amendment Bill 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 2023*.

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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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2, Part 1, Division 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
4. Schedule 2, Part 1, Division 2	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of the provisions covered by table item 3.	
5. Schedule 2, Part 2, Division 1	The day after this Act receives the Royal Assent.	
6. Schedule 2, Part 2, Division 2	Immediately after the commencement of the provisions covered by table item 3.	
7. Schedule 3	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
8. Schedule 4	A single day to be fixed by Proclamation. However, if the provisions do not commence	

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
9. Schedule 5	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
10. Schedule 6	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
11. Schedule 7	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
12. Schedule 8	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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—Parenting framework**

2 **Part 1—Best interests of children**

3 *Family Law Act 1975*

4 **1 Paragraph 4(1AB)(b)**

5 Repeal the paragraph.

6 **2 Paragraph 60A(a)**

7 Omit “and the principles underlying it.”.

8 **3 Subdivision B of Division 1 of Part VII (heading)**

9 Omit “, principles”.

10 **4 Section 60B**

11 Repeal the section, substitute:

12 **60B Objects of Part**

13 The objects of this Part are:

- 14 (a) to ensure that the best interests of children are met; and  
15 (b) to give effect to the Convention on the Rights of the Child  
16 done at New York on 20 November 1989.

17 Note: The text of the Convention is set out in Australian Treaty Series 1991  
18 No. 4 ([1991] ATS 4). In 2023, the text of a Convention in the  
19 Australian Treaty Series was accessible through the Australian  
20 Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

21 **5 Section 60C (table item 1, column headed “Divisions and  
22 coverage”)**

23 Omit “principles underlying it, and”.

24 **6 Section 60CC**

25 Repeal the section, substitute:



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## Schedule 1 Parenting framework

### Part 1 Best interests of children

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1 **60CC How a court determines what is in a child's best interests**

2 *Determining child's best interests*

- 3 (1) Subject to subsection (4), in determining what is in the child's best  
4 interests, the court must:  
5 (a) consider the matters set out in subsection (2); and  
6 (b) if the child is an Aboriginal or Torres Strait Islander child—  
7 consider the matters set out in subsection (3).

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

12 *General considerations*

- 13 (2) For the purposes of paragraph (1)(a), the court must consider the  
14 following matters:  
15 (a) what arrangements would best promote the safety (including  
16 safety from family violence, abuse, neglect, or other harm)  
17 of:  
18 (i) the child; and  
19 (ii) each person who has parental responsibility for the child  
20 (the *carer*);  
21 (b) any views expressed by the child;  
22 (c) the developmental, psychological and emotional needs of the  
23 child;  
24 (d) the capacity of each proposed carer to provide for the child's  
25 developmental, psychological and emotional needs, having  
26 regard to the carer's ability and willingness to seek support to  
27 assist them with caring;  
28 (e) the benefit to the child of being able to maintain a  
29 relationship with both of the child's parents, and other people  
30 who are significant to the child, where it is safe to do so;  
31 (f) anything else that is relevant to the particular circumstances  
32 of the child.

# EXPOSURE DRAFT

Parenting framework **Schedule 1**  
Best interests of children **Part 1**

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1 *Additional considerations—right to enjoy Aboriginal or Torres*  
2 *Strait Islander culture*

- 3 (3) For the purposes of paragraph (1)(b), the court must consider the  
4 following matters:  
5 (a) the child’s right to enjoy the child’s Aboriginal or Torres  
6 Strait Islander culture, by having the opportunity to connect  
7 with, and maintain their connection with, their family,  
8 community, culture, country and language;  
9 (b) the likely impact any proposed parenting order under this  
10 Part will have on that right.

11 *Consent orders*

- 12 (4) If the court is considering whether to make an order with the  
13 consent of all the parties to the proceedings, the court may, but is  
14 not required to, have regard to all or any of the matters set out in  
15 subsection (2) or (3).

## 16 **7 Subsection 60CD(1)**

17 Omit “60CC(3)(a)”, substitute “60CC(2)(b)”.

## 18 **8 Paragraph 60D(1)(b)**

19 Repeal the paragraph, substitute:

- 20 (b) encourage the person to act in the child’s best interests by  
21 applying the considerations set out in subsections 60CC(2)  
22 and (3).

## 23 **9 Paragraph 68N(b)**

24 Omit “and principles”.

## 25 **10 Subsection 68P(2C)**

26 Repeal the subsection, substitute:

- 27 (2C) In determining whether it is satisfied as described in  
28 subsection (2A) or (2B), the court must have regard to:  
29 (a) the considerations set out in subsection 60CC(2); and  
30 (b) if the child is an Aboriginal or Torres Strait Islander child—  
31 the considerations set out in subsection 60CC(3).

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Schedule 1 Parenting framework

Part 1 Best interests of children

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1 **11 Paragraph 68S(2)(a)**

2 Omit “60CC(3)(a) (about taking into account a child’s views etc.)”,  
3 substitute “60CC(2)(b) (about taking into account a child’s views)”.

4 **12 Application of amendments**

5 The amendments of the *Family Law Act 1975* made by this Part apply  
6 in relation to proceedings that commence after the commencement of  
7 this item.

# EXPOSURE DRAFT

Parenting framework **Schedule 1**  
Parental responsibility **Part 2**

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1 **Part 2—Parental responsibility**

2 *Family Law Act 1975*

3 **13 Subsection 61C(1) (note 2)**

4 Repeal the note.

5 **14 Sections 61DA and 61DB**

6 Repeal the sections.

7 **15 At the end of section 61F**

8 Add:

9 Note: The expression *Aboriginal or Torres Strait Islander culture* is  
10 defined in subsection 4(1).

11 **16 At the end of subsection 63C(2B)**

12 Add:

13 Note: For the definition of *major long-term issues*, see subsection 4(1).

14 **17 Paragraphs 63DA(2)(a) and (b)**

15 Repeal the paragraphs.

16 **18 Subsections 63DA(3) and (4)**

17 Repeal the subsections.

18 **19 At the end of subsection 64B(3)**

19 Add:

20 Note: For the definition of *major long-term issues*, see subsection 4(1).

21 **20 Subsection 65D(1)**

22 Omit “sections 61DA (presumption of equal shared parental  
23 responsibility when making parenting orders) and”, substitute “section”.

24 **21 Subsection 65D(2)**

25 Omit “61DA (presumption of equal shared parental responsibility when  
26 making parenting orders) and”.

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# EXPOSURE DRAFT

Schedule 1 Parenting framework

Part 2 Parental responsibility

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1 **22 Section 65DAA**

2 Repeal the section.

3 **23 Application of amendments**

4 The amendments of the *Family Law Act 1975* made by this Part apply  
5 in relation to proceedings that commence after the commencement of  
6 this item.

1 **Part 3—Child-related proceedings**

2 *Family Law Act 1975*

3 **24 After section 65D**

4 Insert:

5 **65DAAA Reconsideration of final parenting orders**

- 6 (1) If a final parenting order is in force in relation to a child, a court  
7 must not reconsider the final parenting order unless:
- 8 (a) the court has considered whether there has been a significant  
9 change of circumstances since the final parenting order was  
10 made; and
- 11 (b) the court is satisfied that, in all the circumstances (and taking  
12 into account whether there has been a significant change of  
13 circumstances since the final parenting order was made), it is  
14 in the best interests of the child for the final parenting order  
15 to be reconsidered.
- 16 (2) For the purposes of determining whether the court is satisfied as  
17 mentioned in paragraph (1)(b), and without limiting section 60CC,  
18 the court may have regard to any matters that the court considers  
19 relevant, including the following:
- 20 (a) the reasons for the final parenting order and the material on  
21 which it was based;
- 22 (b) whether there is any new material available that was not  
23 available to the court that made the final parenting order;
- 24 (c) the likelihood that, if the final parenting order is  
25 reconsidered, the court will make a new parenting order that  
26 affects the operation of the final parenting order in a  
27 significant way (whether by varying, discharging or  
28 suspending the final parenting order, in whole or in part, or in  
29 some other way);
- 30 (d) any potential benefit, or detriment, to the child that might  
31 result from reconsidering the final parenting order.

# EXPOSURE DRAFT

Schedule 1 Parenting framework

Part 3 Child-related proceedings

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1                   (3) The failure of a court to comply with subsection (1) does not affect  
2                   the validity of any order made by the court.

3                   **25 Application provision**

4                   The amendment made by this Schedule applies in relation to final  
5                   parenting orders whether the orders came into force before, or come  
6                   into force on or after, the commencement of this Schedule.

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Enforcement of child-related orders **Schedule 2**  
Enforcement of child-related orders **Part 1**

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1 **Schedule 2—Enforcement of child-related**  
2 **orders**

3 **Part 1—Enforcement of child-related orders**

4 **Division 1—Main amendments**

5 ***Child Support (Assessment) Act 1989***

6 **1 Subsection 100(2)**

7 Omit “Division 13A of Part VII (Consequences of failure to comply  
8 with orders, and other obligations, that affect children)”, substitute  
9 “Division 13A of Part VII (Orders in proceedings relating to  
10 contraventions of child-related orders)”.

11 ***Family Law Act 1975***

12 **2 Subsection 4(1) (definitions of *alleged contravention* and**  
13 ***alleged offender*)**

14 Omit “in Subdivision D of Division 6 of Part VII”, substitute “in  
15 Subdivision B of Division 14 of Part VII”.

16 **3 Subsection 4(1) (definition of *applied provisions*)**

17 Repeal the definition.

18 **4 Subsection 4(1)**

19 Insert:

20 *child-related order*: see subsection 70NBA(2).

21 **5 Subsection 4(1) (definition of *community service order*)**

22 Repeal the definition.

23 **6 Subsection 4(1)**

24 Insert:

25 *contravene* a child-related order: see section 70NAC.



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Schedule 2 Enforcement of child-related orders

Part 1 Enforcement of child-related orders

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1 **7 Subsection 4(1)**

2 Repeal the following definitions:

- 3 (a) definition of *contravened*;  
4 (b) definition of *order under this Act affecting children*;  
5 (c) definition of *primary order*.

6 **8 Subsection 4(1)**

7 Insert:

8 *reasonable excuse* for contravening a child-related order has a  
9 meaning affected by section 70NAD.

10 **9 Subsection 4(1) (definition of *reasonable excuse for***  
11 ***contravening*)**

12 Repeal the definition.

13 **10 At the end of Part II**

14 Add:

15 **Division 5—Post-separation parenting programs**

16 **10PA Admissibility of communications in post-separation parenting**  
17 **programs**

- 18 (1) Evidence of anything said, or of any admission made, by a person  
19 attending a post-separation parenting program is not admissible:  
20 (a) in any court; or  
21 (b) in any proceedings before a person authorised by a law of the  
22 Commonwealth, of a State or of a Territory, or by the  
23 consent of the parties, to hear evidence.
- 24 (2) Subsection (1) does not apply to the following:  
25 (a) an admission by an adult that indicates that a child under 18  
26 has been abused or is at risk of abuse;  
27 (b) a disclosure by a child under 18 that indicates that the child  
28 has been abused or is at risk of abuse;

# EXPOSURE DRAFT

Enforcement of child-related orders **Schedule 2**  
Enforcement of child-related orders **Part 1**

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1 unless, in the opinion of the court, there is sufficient evidence of  
2 the admission or disclosure available to the court from other  
3 sources.

4 Note: A court may make an order directing a person to attend a  
5 post-separation parenting program under subsection 65LA(1) or  
6 70NBD(1).

- 7 (3) For the purpose of this section, *court*:
- 8 (a) includes any court of the Commonwealth, a State or a  
9 Territory, whether exercising jurisdiction under this Act or  
10 any other law of the Commonwealth, a State or a Territory;  
11 but  
12 (b) does not include a coronial inquiry or inquest.

## 13 **11 Section 60C (table item 6)**

14 Repeal the item, substitute:

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- 6 **Division 6—Parenting orders other than child maintenance orders**
- applying for and making parenting orders (other than child maintenance orders) after attending, if necessary, family dispute resolution (see section 60I)
  - measures to promote the exercise of parental responsibility
  - obligations under parenting orders, other than child maintenance orders, relating to taking or sending children from Australia

## 16 **12 Section 60C (table item 13A)**

17 Repeal the item, substitute:

18

- 13A **Division 13A—Orders in proceedings relating to contraventions of child-related orders**
- orders that the court may make in proceedings where it is alleged that a person has contravened a child-related order (including parenting orders)

## 19 **13 Section 60C (table item 14)**

20 Repeal the item, substitute:

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## Schedule 2 Enforcement of child-related orders

### Part 1 Enforcement of child-related orders

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14            **Division 14—Miscellaneous**

- dealing with people who have been arrested and miscellaneous matters relating to children

2            **14 Subsection 63F(3) (paragraph (a) of the note)**

3                    Omit “Subdivisions C, D and E”, substitute “Subdivision E”.

4            **15 Paragraphs 65A(1)(b) and (c)**

5                    Repeal the paragraphs.

6            **16 Subsection 65D(3)**

7                    Repeal the subsection (not including the note).

8            **17 Subsection 65D(3) (notes 1 and 2)**

9                    Omit “or for the proceedings under Subdivision E of Division 13A of  
10                    Part VII, or both,”.

11           **18 Subdivisions C and D of Division 6 of Part VII**

12                    Repeal the Subdivisions.

13           **19 Section 67Q (note 1)**

14                    Omit “Subdivision D of Division 6”, substitute “Subdivision B of  
15                    Part 14”.

16           **20 Subsections 69ZH(2) and (4)**

17                    Omit “Subdivisions C, D and E”, substitute “Subdivision E”.

18           **21 Division 13A of Part VII**

19                    Repeal the Division, substitute:

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Enforcement of child-related orders **Schedule 2**  
Enforcement of child-related orders **Part 1**

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1 **Division 13A—Orders in proceedings relating to**  
2 **contraventions of child-related orders**

3 **Subdivision A—Preliminary**

4 **70NAA Simplified outline**

5 This Division sets out orders that a court may (or must in certain  
6 circumstances with respect to costs orders) make if an issue arises  
7 in the proceedings about whether a person (the *respondent*) has  
8 contravened a child-related order.

9 The court may, at any stage of proceedings (and without having to  
10 make a finding about the contravention), make any of the  
11 following orders:

- 12 (a) a make-up time parenting order;  
13 (b) an order varying or suspending a parenting order;  
14 (c) an order requiring the respondent and any other party to  
15 the proceedings to attend a post-separation parenting  
16 program;  
17 (d) a costs order.

18 If the court finds that the respondent contravened the child-related  
19 order without having a reasonable excuse, the court may make any  
20 of the following orders (having regard to the seriousness of the  
21 contravention):

- 22 (a) an order requiring the respondent to enter into a bond;  
23 (b) an order imposing a fine on the respondent for failing to  
24 enter into a bond;  
25 (c) an order requiring the respondent to compensate another  
26 person for certain costs incurred as a result of the  
27 contravention.

28 If the court is satisfied beyond reasonable doubt that the respondent  
29 contravened the child-related order without having a reasonable  
30 excuse, the court may also make any of the following orders  
31 (having regard to the seriousness of the contravention):

- 32 (a) an order imposing a fine on the respondent;

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## Schedule 2 Enforcement of child-related orders

### Part 1 Enforcement of child-related orders

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- (b) an order imposing a sentence of imprisonment on the respondent.

This Division also sets out ancillary matters relating to terms of imprisonment, the enforcement of bonds and other miscellaneous matters.

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#### **70NAB Objects**

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The principal objects of this Division are to meet the best interests of children to which child-related orders relate by:

- (a) supporting parties to child-related orders to comply with those orders; and
- (b) resolving difficulties associated with child-related orders that are parenting orders which have contributed to non-compliance with such orders (including by varying or making further orders); and
- (c) deterring non-compliance with child-related orders; and
- (d) upholding the authority of the court by enforcing compliance with child-related orders where the court considers this necessary and appropriate; and
- (e) providing for the imposition of appropriate sanctions on a person who seriously or repeatedly contravenes child-related orders without having a reasonable excuse.

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#### **70NAC Meaning of *contravene* a child-related order**

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- (1) A person *contravenes* a child-related order only if:
  - (a) the person is a person (other than a child) to whom the order applies and:
    - (i) the person intentionally fails to comply with the order; or
    - (ii) the person makes no reasonable attempt to comply with the order; or
  - (b) the person is not a person to whom the order applies, and the person is not a child, but:
    - (i) the person intentionally prevents compliance with the order by a person to whom the order applies; or

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Enforcement of child-related orders **Schedule 2**  
Enforcement of child-related orders **Part 1**

- 1 (ii) the person aids or abets a contravention of the order by  
2 a person to whom the order applies.

3 Note: A child-related order that is a parenting order may be subject to a later  
4 parenting plan: see section 64D. This means that conduct that would  
5 otherwise contravene such an order may not constitute a contravention  
6 because of the terms of a later parenting plan.

- 7 (2) Without limiting subsection (1), the following table sets out  
8 circumstances in which a person *contravenes* a child-related order.  
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## Circumstances in which a person *contravenes* a child-related order

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Item	The order deals with ...	and, contrary to the order, the person intentionally ...
1	whom a child is to live with	removes the child from the care of another person, or refuses or fails to deliver or return the child to another person.
2	whom a child is to spend time with	hinders or prevents another person from spending time with the child.
3	whom a child is to communicate with	hinders or prevents another person from communicating with the child.
4	the allocation of parental responsibility for a child to another person (the <i>carer</i> )	hinders or prevents the carer from discharging that responsibility.

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11 **70NAD Meaning of *reasonable excuse* for contravening a**  
12 **child-related order**

13 *Where person did not understand obligations*

- 14 (1) A person has a ***reasonable excuse*** for contravening a child-related  
15 order if:  
16 (a) the person contravened the order because at the time of the  
17 contravention the person did not understand the obligations  
18 imposed by the order; and  
19 (b) the court considers that the person ought to be excused in  
20 respect of the contravention.

# EXPOSURE DRAFT

## Schedule 2 Enforcement of child-related orders

### Part 1 Enforcement of child-related orders

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- 1 (2) If the court decides that a person has a reasonable excuse under  
2 subsection (1) for contravening a child-related order, the court  
3 must explain to the person, in language likely to be readily  
4 understood by the person:  
5 (a) the obligations imposed on the person by the order; and  
6 (b) the consequences that may follow if the person contravenes  
7 the order again.

8 *Protection of health or safety of a person*

- 9 (3) A person has a **reasonable excuse** for contravening a child-related  
10 order if:  
11 (a) the person contravened the order because the person  
12 reasonably believed that the person's actions constituting the  
13 contravention were necessary to protect the health or safety  
14 of the person, a child or any other person; and  
15 (b) the period of the contravention was not longer than necessary  
16 to protect the health or safety of the person, child or other  
17 person.

18 *Section does not limit circumstances of a reasonable excuse*

- 19 (4) This section does not limit the circumstances in which a person  
20 may have a reasonable excuse for contravening a child-related  
21 order.

### 22 **70NAE Standard of proof**

23 The standard of proof to be applied in determining matters in  
24 proceedings under this Division (other than paragraph  
25 70NBF(1)(d)) is proof on the balance of probabilities.

26 Note: The court may make an order under paragraph 70NBF(1)(d) in  
27 relation to a person only if the court is satisfied beyond reasonable  
28 doubt that the person contravened the child-related order.

# EXPOSURE DRAFT

Enforcement of child-related orders **Schedule 2**  
Enforcement of child-related orders **Part 1**

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1 **Subdivision B—Orders relating to contraventions of**  
2 **child-related orders**

3 **70NBA Court may make orders in proceedings relating to**  
4 **contravention of child-related orders**

- 5 (1) This Division sets out orders that a court exercising jurisdiction in  
6 proceedings under this Act may (or must in certain circumstances)  
7 make if an issue arises in the proceedings about whether a person  
8 (the *respondent*) has contravened a child-related order.

9 Note: The court does not need to find that the respondent contravened a  
10 child-related order to make certain orders under this Division. For  
11 example, the court may make the following orders at any stage of the  
12 proceedings:

- 13 (a) a make-up time parenting order under section 70NBB;  
14 (b) an order varying or suspending a parenting order under section  
15 70NBC;  
16 (c) an order requiring the respondent and any other party to the  
17 proceedings to attend a post-separation parenting program under  
18 section 70NBD;  
19 (d) a costs order under section 70NBE.

- 20 (2) Each of the following is a *child-related order*:

- 21 (a) a parenting order;  
22 (b) an injunction granted by the court:  
23 (i) under section 68B; or  
24 (ii) under section 114 in so far as the injunction is for the  
25 protection of a child;  
26 (c) a bond entered into:  
27 (i) under a parenting order; or  
28 (ii) under paragraph 70NBF(1)(a); or  
29 (iii) for the purposes of subsection 70NCC(3);  
30 (d) an undertaking given to, and accepted by, the court that  
31 relates to, or to the making of, an order, injunction or bond  
32 referred to in any of paragraphs (a) to (c);  
33 (e) a subpoena issued under the applicable Rules of Court that:  
34 (i) relates to, or to the making of, an order, injunction or  
35 bond referred to in any of paragraphs (a) to (c); and  
36 (ii) is issued to a party to the proceedings for the order,  
37 injunction or bond, as the case may be.
-



# EXPOSURE DRAFT

## Schedule 2 Enforcement of child-related orders

### Part 1 Enforcement of child-related orders

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1        **70NBB Make-up time parenting orders**

- 2                (1) If a child does not spend time with a person as required by a  
3                        child-related order as a result of the alleged contravention  
4                        mentioned in subsection 70NBA(1), then, in lieu of that time, the  
5                        court may make a parenting order (a *make-up time parenting*  
6                        *order*) that the child spend time with the person.

7                        Note 1:     Parenting orders are made under Division 6.

8                        Note 2:     The court may also make an order requiring the respondent to  
9                        compensate another person for reasonable expenses incurred as a  
10                        result of a child not spending time with that other person: see  
11                        paragraph 70NBF(1)(c).

- 12                (2) The court may make a make-up time parenting order at any stage  
13                        of the proceedings.

- 14                (3) To avoid doubt, the amount of time specified in the make-up time  
15                        parenting order may be different from the amount of time that the  
16                        child did not spend with the person as a result of the alleged  
17                        contravention.

18        **70NBC Variation and suspension of child-related orders that are**  
19                        **parenting orders**

20                        *Variation of child-related orders that are parenting orders*

- 21                (1) The court may, at any stage of the proceedings, vary a child-related  
22                        order that is a parenting order.
- 23                (2) Subsection (1) does not limit the circumstances in which a court  
24                        having jurisdiction under this Act may vary a child-related order  
25                        that is a parenting order.

26                        *Suspension of child-related orders that are parenting orders*

- 27                (3) The court may, at any stage of the proceedings, suspend for a  
28                        specified period of time the operation of, or part of the operation  
29                        of, a child-related order that is a parenting order.

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Enforcement of child-related orders **Schedule 2**  
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1 **70NBD Post-separation parenting programs**

2 *Post-separation parenting program orders*

- 3 (1) The court may, at any stage of the proceedings, make an order  
4 requiring the respondent and, if appropriate, one or more other  
5 parties to the proceedings, to attend a post-separation parenting  
6 program or other specified program.

7 Note 1: Before making an order under this section, the court must consider  
8 seeking the advice of a family consultant about the services  
9 appropriate to the party's needs (see section 11E).

10 Note 2: Things said, or admission made by, a person in a post-separation  
11 parenting program are generally not admissible in a court: see  
12 section 10PA.

13 *Duty of principal executive officer to notify program provider*

- 14 (2) The principal executive officer of the court must advise the  
15 provider of the program of the making of an order under  
16 subsection (1) as soon as reasonably practicable after the order is  
17 made.

18 *Unsuitability to attend program or failure to attend program*

- 19 (3) The provider of the program must inform the court, and any other  
20 party to the proceedings, if:  
21 (a) the provider considers that a person ordered to attend the  
22 program is unsuitable to attend the program; or  
23 (b) a person ordered to attend the program fails to attend the  
24 entire program, or any part of it.
- 25 (4) The court may make any order (other than an order under  
26 paragraph 70NBF(1)(d)) that it considers appropriate if a person  
27 ordered to attend a program is considered as being unsuitable to  
28 attend the program, or fails to attend any part of the program.
- 29 (5) If the court has found that the respondent has contravened the  
30 child-related order without having a reasonable excuse, then the  
31 court must take into account the seriousness of that contravention  
32 when making an order under subsection (4).

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## Schedule 2 Enforcement of child-related orders

### Part 1 Enforcement of child-related orders

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1       **70NBE Costs orders**

2                               *Costs order against complainant—unsubstantiated allegations of*  
3                               *contraventions*

- 4               (1) The court may make an order (a **costs order**) that a person (the  
5               **complainant**) pay some or all of the costs of one or more of the  
6               other parties, including the respondent, if:
- 7                       (a) the complainant alleged that the respondent contravened a  
8                       child-related order; and
- 9                       (b) either:
- 10                           (i) the court does not find that the respondent contravened  
11                           the child-related order; or
- 12                           (ii) the court finds that the respondent had a reasonable  
13                           excuse for contravening the child-related order.
- 14               (2) The court must consider making the costs order if:
- 15                       (a) the complainant has previously alleged, in proceedings under  
16                       this Act or any other Act, that the respondent contravened the  
17                       child-related order mentioned in subsection (1) or any other  
18                       child-related order; and
- 19                       (b) as a result of the most recent allegation, the court before  
20                       which those proceedings were brought:
- 21                           (i) did not find that the respondent contravened the  
22                           child-related order mentioned in paragraph (a); or
- 23                           (ii) found that the respondent had contravened the  
24                           child-related order mentioned in paragraph (a), but did  
25                           not make an order under this Division in relation to the  
26                           contravention.
- 27               (3) The court must not make the costs order if:
- 28                       (a) the court finds that the respondent had a reasonable excuse  
29                       for contravening the child-related order; and
- 30                       (b) the court has made, or will make, a make-up time parenting  
31                       order under section 70NBB in respect of the contravention.

# EXPOSURE DRAFT

Enforcement of child-related orders **Schedule 2**  
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1 *Costs order against respondent—contraventions without*  
2 *reasonable excuse*

- 3 (4) The court must make an order (a **costs order**) that the respondent  
4 pay some or all of the costs of any other party to the proceedings if  
5 the court finds that the respondent contravened the child-related  
6 order without having a reasonable excuse, unless the court is  
7 satisfied that it is not appropriate to do so in the circumstances.

8 **70NBF Orders where contravention established without reasonable**  
9 **excuse**

10 *Orders for contraventions without reasonable excuse*

- 11 (1) If the court finds that the respondent has contravened a  
12 child-related order without having a reasonable excuse, the court  
13 may make any of the following orders:
- 14 (a) an order requiring the respondent to enter into a bond in  
15 accordance with section 70NCA;
  - 16 (b) if an order is made under paragraph (a), and the respondent  
17 fails, without having a reasonable excuse, to enter into the  
18 bond—an order imposing a fine not exceeding 10 penalty  
19 units on the respondent;
  - 20 (c) where the contravention resulted in a child not spending time  
21 with, or living with, a person (the **affected person**) for a  
22 period—an order requiring the respondent to compensate the  
23 affected person for some or all of any expenses the affected  
24 person reasonably incurred as a result of the contravention;
  - 25 (d) where the court is satisfied beyond reasonable doubt that the  
26 respondent contravened the order:
    - 27 (i) an order imposing a fine not exceeding 60 penalty units;
    - 28 (ii) an order imposing a term of imprisonment.

29 Note 1: The court must also make a costs order against the respondent under  
30 subsection 70NBE(4), unless the court is satisfied that it is not  
31 appropriate in the circumstances to make the order.

32 Note 2: For subparagraph (d)(ii), see subsection (4), subsection 70NCC(2) and  
33 section 70NCE for limits on how and when the court may impose a  
34 term of imprisonment on the respondent.

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## Schedule 2 Enforcement of child-related orders

### Part 1 Enforcement of child-related orders

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1

#### *Matters to be considered by the court*

2

- (2) In making an order mentioned in subsection (1), the court must have regard to:

3

4

- (a) the likely effects of making the order on any child, or any other person; and

5

6

- (b) the seriousness of the contravention.

7

- (3) Without limiting the matters the court may take into account, the following matters must be taken into account by the court when having regard to the seriousness of the contravention:

8

9

10

- (a) whether a court has previously found that the respondent has contravened a child-related order without having a reasonable excuse;

11

12

13

- (b) whether the respondent behaved in a way that showed a serious disregard of the respondent's obligations under the child-related order mentioned in subsection (1);

14

15

16

- (c) the behaviour of any person with whom the child is to live or spend time under the child-related order mentioned in subsection (1).

17

18

19

- (4) The court may sentence the respondent to imprisonment under subparagraph (1)(d)(ii) only if the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention in any other way under subsection (1).

20

21

22

23

24

### **Subdivision C—Further provisions relating to bonds and imprisonment**

25

26

#### **70NCA Matters relating to bonds**

27

- (1) This section sets out requirements relating to bonds that the court may require the respondent to enter into under paragraph 70NBF(1)(a).

28

29

30

#### *Matters dealt with in bonds*

31

- (2) A bond is to be for a specified period of up to 2 years.

32

- (3) A bond may be:
-

# EXPOSURE DRAFT

Enforcement of child-related orders **Schedule 2**  
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- 1 (a) with or without surety; and  
2 (b) with or without security.
- 3 (4) The conditions that may be imposed on the respondent by a bond  
4 include (without limitation) conditions that require the respondent:  
5 (a) to attend a post-separation parenting program; or  
6 (b) to attend an appointment (or a series of appointments) with a  
7 family consultant; or  
8 (c) to attend family counselling; or  
9 (d) to attend family dispute resolution; or  
10 (e) to be of good behaviour.

11 *Duty to explain bond*

- 12 (5) Before requiring the respondent to enter into a bond, the court must  
13 explain to the respondent, in language likely to be readily  
14 understood by the respondent:  
15 (a) the purpose and effect of the proposed requirement; and  
16 (b) the consequences that may follow if the respondent:  
17 (i) fails to enter into the bond; or  
18 (ii) having entered into the bond—fails to act in accordance  
19 with the bond.

20 **70NCB Procedure for enforcing bonds**

- 21 (1) This section applies if:  
22 (a) the court finds that the respondent has contravened a  
23 child-related order without having a reasonable excuse; and  
24 (b) the respondent has entered into a bond in accordance with an  
25 order made under paragraph 70NBF(1)(a); and  
26 (c) the respondent fails, without having a reasonable excuse, to  
27 comply with the bond.
- 28 (2) The court may:  
29 (a) without prejudice to the continuance of the bond, impose a  
30 fine not exceeding 10 penalty units on the respondent; or  
31 (b) revoke the bond and deal with the respondent in any manner  
32 in which the respondent could have been dealt with for the  
33 contravention of the child-related order if:

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## Schedule 2 Enforcement of child-related orders

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- 1 (i) the bond had not been entered into; and  
2 (ii) the respondent was before the court under this Division  
3 in respect of the contravention of the child-related order.
- 4 (3) Without limiting the matters the court may take into account, the  
5 court must take into account the following matters when acting  
6 under subsection (2):  
7 (a) the fact that the bond was entered into;  
8 (b) anything done pursuant to the bond;  
9 (c) any fine imposed, and any other order made, for or in respect  
10 of the contravention of the child-related order.

#### 11 **70NCC Matters relating to imprisonment**

- 12 (1) This section applies if a sentence of imprisonment is imposed on  
13 the respondent under subparagraph 70NBF(1)(d)(ii).

#### 14 *Limits on sentences of imprisonment*

- 15 (2) The sentence of imprisonment must be expressed to be:  
16 (a) for a specified period of no more than 12 months; or  
17 (b) for a period ending at the earlier of:  
18 (i) the time when the respondent complies with the  
19 child-related order concerned; or  
20 (ii) the time when the respondent has been imprisoned  
21 under the sentence for 12 months, or such lesser period  
22 as is specified by the court ordering the sentence.

#### 23 *Good behaviour bonds*

- 24 (3) When sentencing the respondent to imprisonment, the court may  
25 direct that, after serving a specified part of the term of  
26 imprisonment, the respondent be released upon the respondent  
27 entering into a bond (with or without surety or security) that the  
28 respondent will be of good behaviour for a specified period of up  
29 to 2 years.

#### 30 *Statement of reasons*

- 31 (4) The court that sentences the respondent to imprisonment must:
-

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- 1 (a) state the reasons why it is satisfied as mentioned in  
2 subsection 70NBF(4); and  
3 (b) cause those reasons to be entered in the records of the court.
- 4 Note: Subsection 70NBF(4) provides that the respondent may be sentenced  
5 to imprisonment only if the court is satisfied that it would not be  
6 appropriate for the court to deal with the contravention in any other  
7 way under subsection 70NBF(1).
- 8 (5) The failure of the court to comply with subsection (4) does not  
9 invalidate a sentence.

## 10 **70NCD Powers of court in relation to imprisoned person**

### 11 *Release of imprisoned respondent*

- 12 (1) The court that has sentenced the respondent to imprisonment may  
13 order the release of the respondent if it is satisfied that the  
14 respondent will, if released, comply with the court's orders.

### 15 *Suspension of sentence*

- 16 (2) The court that sentences the respondent to imprisonment may:  
17 (a) suspend the sentence upon the terms and conditions  
18 determined by the court; and  
19 (b) terminate such a suspension.

## 20 **70NCE Rules relating to child maintenance orders and child** 21 **support**

### 22 *Sentences of imprisonment for contravention of child maintenance* 23 *orders*

- 24 (1) The court must not make an order imposing a sentence of  
25 imprisonment on the respondent under  
26 subparagraph 70NBF(1)(d)(ii), in respect of a contravention of a  
27 child maintenance order made under this Act, unless the court is  
28 satisfied that the contravention was intentional or fraudulent.
- 29 (2) To avoid doubt, the serving by the respondent of a period of  
30 imprisonment imposed under subparagraph 70NBF(1)(d)(ii) for



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1 failure to make a payment under a child maintenance order does  
2 not affect the respondent's liability to make the payment.

3 *Court must not imprison respondent for contravention of child*  
4 *support assessments etc.*

- 5 (3) The court must not make an order imposing a sentence of  
6 imprisonment on the respondent under  
7 subparagraph 70NBF(1)(d)(ii) in respect of:
- 8 (a) a contravention of an administrative assessment of child  
9 support made under the *Child Support (Assessment) Act*  
10 *1989*; or
  - 11 (b) a breach of a child support agreement made under that Act;  
12 or
  - 13 (c) a contravention of an order made by a court under Division 4  
14 of Part 7 of that Act for a departure from such an assessment  
15 (including such an order that contains matters mentioned in  
16 section 141 of that Act).

#### 17 **Subdivision D—Miscellaneous**

#### 18 **70NDA Court may issue warrant for arrest of alleged offender**

- 19 (1) The court may issue a warrant authorising a person to whom it is  
20 addressed to arrest the respondent if:
- 21 (a) a child-related order that is a parenting order provides that a  
22 child is to live with, spend time with or communicate with a  
23 person (the *complainant*); and
  - 24 (b) the court is satisfied that there are reasonable grounds for  
25 believing that the respondent has contravened the order on  
26 any of the grounds mentioned in any of items 1 to 3 of the  
27 table in subsection 70NAC(2); and
  - 28 (c) the issue of the warrant is necessary to ensure that the  
29 respondent will attend before the court to be dealt with under  
30 this Division for the alleged contravention.
- 31 (2) A warrant stops being in force on the date specified in the warrant  
32 (which must be no more than 6 months after the issue of the  
33 warrant).

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1 **70NDB Relationship between Division and prosecutions for offences**  
2 **under other laws**

- 3 (1) This section applies if:  
4 (a) an act or omission by the respondent:  
5 (i) constitutes an alleged contravention of a child-related  
6 order; and  
7 (ii) also constitutes an alleged offence under any law; and  
8 (b) the respondent is prosecuted in respect of the offence.
- 9 (2) The court must:  
10 (a) dismiss proceedings in relation to the alleged contravention  
11 of the child-related order; or  
12 (b) adjourn those proceedings until the prosecution has been  
13 completed.
- 14 (3) Nothing in this Division renders a person liable to be punished  
15 twice in respect of the same act or omission.

16 **70NDC Division does not limit operation of section 105**

17 Nothing in this Division limits the operation of section 105 (which  
18 deals with enforcement generally).

19 **22 Division 14 of Part VII (after the heading)**

20 Insert:

21 **Subdivision A—What this Division does**

22 **23 Section 70P**

23 Omit “deals with”, substitute “is about dealing with people who have  
24 been arrested and”.

25 **24 After section 70P**

26 Insert:

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1       **Subdivision B—Dealing with people who have been arrested**

2       **70PA Situation to which Subdivision applies**

3               This Subdivision applies if a person:

- 4               (a) is arrested under a warrant issued under  
5                       subsection 70NDA(1) (warrants for arrest of persons alleged  
6                       to have contravened a child-related order); or  
7               (b) is arrested without warrant under a recovery order.

8       **70PB Arrested person to be brought before a court**

9               (1) The arresting person must:

- 10               (a) ensure that the alleged offender is brought before a court  
11                       having jurisdiction under this Part before the end of the  
12                       holding period applicable under subsection (4); and  
13               (b) take all reasonable steps to ensure that, before the alleged  
14                       offender is brought before a court, the person who applied for  
15                       the warrant or recovery order is aware:  
16                       (i) that the alleged offender has been arrested; and  
17                       (ii) of the court before which the alleged offender is to be  
18                       brought.

19               (2) The alleged offender must not be released before the end of the  
20                       holding period except under an order of a court having jurisdiction  
21                       under this Part.

22               (3) This section does not authorise the holding in custody of the  
23                       alleged offender after the end of the holding period.

24               (4) The *holding period* is:

- 25               (a) if a Saturday, Sunday or public holiday starts within 24 hours  
26                       after the arrest of the alleged offender—the longer of the  
27                       following periods:  
28                       (i) the period starting with the arrest and ending 48 hours  
29                       later;  
30                       (ii) the period starting with the arrest and ending at the end  
31                       of the next day after the day of the arrest that is not a  
32                       Saturday, Sunday or public holiday; or

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- 1 (b) in any other case—the period starting with the arrest and  
2 ending 24 hours later.

3 **70PC Obligation of court—where application before it to deal with**  
4 **contravention**

- 5 (1) This section applies if:  
6 (a) the alleged offender is brought before a court under  
7 section 70PB; and  
8 (b) there is an application before the court for the alleged  
9 offender to be dealt with under Division 13A for the alleged  
10 contravention.
- 11 (2) The court must, without delay, proceed to hear and determine the  
12 application.

13 **70PD Obligation of court—where no application before it, but**  
14 **application before another court, to deal with**  
15 **contravention**

- 16 (1) This section applies if:  
17 (a) the alleged offender is brought before a court under  
18 section 70PB; and  
19 (b) there is no application, or no longer any application, before  
20 the court for the alleged offender to be dealt with under  
21 Division 13A for the alleged contravention; and  
22 (c) the court is aware that there is an application before another  
23 court for the alleged offender to be dealt with under  
24 Division 13A for the alleged contravention.
- 25 (2) The court must, without delay:  
26 (a) order that the alleged offender is to be released from custody  
27 on his or her entering into a recognisance (with or without  
28 surety or security) that he or she will attend before the other  
29 court on a date, at a time and at a place specified by the court;  
30 or  
31 (b) order the arresting person to arrange for the alleged offender  
32 to be brought before the other court on such date and at such  
33 time as the court specifies, being a date and time such that  
34 the alleged offender is to be brought before the other court as

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1 soon as practicable, and in any event not more than 72 hours,  
2 after the order is made.

- 3 (3) If a court makes an order under paragraph (2)(b) for the alleged  
4 offender to be brought before another court:
- 5 (a) subject to paragraph (c), the alleged offender may be kept in  
6 custody until he or she is brought before the other court; and
  - 7 (b) if the alleged offender is brought before the other court as  
8 required by the order, the other court must, without delay,  
9 proceed to hear and determine the application mentioned in  
10 paragraph (1)(c); and
  - 11 (c) if the alleged offender is not brought before the other court as  
12 required by the order, he or she must be released without  
13 delay.

#### 14 **70PE Obligation of court—where no application before any court to** 15 **deal with contravention**

- 16 (1) This section applies if:
- 17 (a) the alleged offender is brought before a court under  
18 section 70PB; and
  - 19 (b) there is no application, or no longer any application, before  
20 the court for the alleged offender to be dealt with under  
21 Division 13A for the alleged contravention; and
  - 22 (c) so far as the court is aware, there is no application, or no  
23 longer any application, before any other court for the alleged  
24 offender to be dealt with under Division 13A for the alleged  
25 contravention.
- 26 (2) The court must, without delay, order the release of the alleged  
27 offender.

#### 28 **70PF Applications heard as required by subsection 70PC(2) or** 29 **paragraph 70PD(3)(b)**

- 30 (1) If a court hearing an application as required by subsection 70PC(2)  
31 or paragraph 70PD(3)(b) adjourns the hearing, the court must:
- 32 (a) order the alleged offender to be kept in such custody as the  
33 court considers appropriate during the adjournment; or

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1 (b) order that the alleged offender is to be released from custody,  
2 either on his or her entering into a recognisance (with or  
3 without surety or security) that he or she will attend before  
4 the court on the resumption of the hearing or otherwise.

5 (2) This section does not authorise the holding in custody of the  
6 alleged offender during an adjournment of proceedings that:  
7 (a) is expressed to be for a period of more than 24 hours; or  
8 (b) continues for more than 24 hours.

## 9 **25 Paragraph 109A(1)(a)**

10 Repeal the paragraph, substitute:  
11 (a) a child-related order; or

## 12 **26 Subsection 112AP(9) (definition of order under this Act)**

13 Omit “an order under this Act affecting children”, substitute “a  
14 child-related order”.

## 15 **27 Subsection 117(1)**

16 Repeal the subsection, substitute:

17 (1) Subject to subsection (2) of this section, subsection 45A(6) and  
18 sections 70NBE, 117AA and 117AC, each party to proceedings  
19 under this Act must bear the party’s own costs.

## 20 **28 Subparagraph 123(1)(j)(iii)**

21 Omit “70NEB or 70NEG”, substitute “70NBB, 70NBD, 70NBE or  
22 70NBF”.

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

## 24 **29 Subparagraph 98(2)(n)(iv)**

25 Repeal the subparagraph, substitute:  
26 (iv) subsection 70NBD(1);

## 27 **30 Subparagraph 224(1)(i)(iii)**

28 Omit “70NEB or 70NEG”, substitute “70NBB, 70NBD, 70NBE or  
29 70NBF”.

# EXPOSURE DRAFT

Schedule 2 Enforcement of child-related orders

Part 1 Enforcement of child-related orders

---

1 **31 Subparagraph 254(2)(n)(iv)**

2 Repeal the subparagraph, substitute:  
3 (iv) subsection 70NBD(1);

4 **Division 2—Amendments contingent on the**  
5 **commencement of provisions dealing with**  
6 **reconsideration of final parenting orders**

7 *Family Law Act 1975*

8 **32 At the end of subsection 70NBC(1)**

9 Add:

10 Note: The court must not reconsider a final parenting order (other than a  
11 child maintenance order) unless the court has considered certain  
12 matters and is satisfied of certain matters: see section 65DAAA.

13 **33 At the end of subsection 70NBC(3)**

14 Add:

15 Note: The court must not reconsider a final parenting order (other than a  
16 child maintenance order) unless the court has considered certain  
17 matters and is satisfied of certain matters: see section 65DAAA.

# EXPOSURE DRAFT

Enforcement of child-related orders **Schedule 2**  
Delegations **Part 2**

---

1 **Part 2—Delegations**

2 **Division 1—Main amendment**

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

4 **34 Subsection 7(1) (before paragraph (c) of the definition of**  
5 ***excluded child order*)**

6 Insert:

7 (ba) a further parenting order made under  
8 paragraph 70NDB(1)(c), 70NEB(1)(b) or 70NFB(2)(c) of the  
9 *Family Law Act 1975*; or

10 **Division 2—Amendment relating to amendments made**  
11 **by Part 1 of this Schedule**

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

13 **35 Subsection 7(1) (paragraph (ba) of the definition of**  
14 ***excluded child order*)**

15 Repeal the paragraph, substitute:

16 (ba) an order made under section 70NBB (make-up time  
17 parenting orders) of the *Family Law Act 1975*; or



# EXPOSURE DRAFT

## Schedule 3 Definition of member of the family

---

1       **Schedule 3—Definition of member of the**  
2                               **family**  
3

4       *Family Law Act 1975*

5       **1 Subsection 4(1) (subparagraph (a)(vi) of the definition of**  
6                               **relative)**

7                               Omit “child; and”, substitute “child; or”.

8       **2 Subsection 4(1) (at the end of paragraph (a) of the**  
9                               **definition of relative)**

10                              Add:

11                                       (vii) for an Aboriginal child or Torres Strait Islander child—  
12   a person who, in accordance with the child’s Aboriginal  
13   or Torres Strait Islander culture, is related to the child;  
14   and

15       **3 After paragraph 4(1AB)(c)**

16                              Insert:

17                                       and (ca) subsection 61DA(2);

18       **4 Paragraph 4(1AC)(a)**

19                              After “step-mother”, insert “, or any other ancestor,”.

20       **5 At the end of subsection 4(1AC)**

21                              Add:

22                                       ; or (i) if the person is an Aboriginal child or Torres Strait Islander  
23   child—a person who, in accordance with the child’s  
24   Aboriginal or Torres Strait Islander culture, is related to the  
25   child.

26       **6 Application of amendments**

27                              So far as the following provisions of the *Family Law Act 1975* apply in  
28                              relation to proceedings, the amendments of those provisions made by  
29                              this Schedule apply in relation to proceedings that commence after this  
30                              item commences:

---

# EXPOSURE DRAFT

Definition of member of the family **Schedule 3**

---

- 1 (a) the definition of *relative* in subsection 4(1);  
2 (b) subsections 4(1AB) and (1AC).

# EXPOSURE DRAFT

Schedule 4 Independent children's lawyers  
Part 1 Requirement to meet with the child

---

## Schedule 4—Independent children's lawyers

### Part 1—Requirement to meet with the child

#### *Family Law Act 1975*

#### **1 Subsections 68L(5) and (6)**

Repeal the subsections.

#### **2 After subsection 68LA(5)**

Insert:

*Requirement to meet with the child and give the child the opportunity to express their views*

(5A) Subject to subsection (5B), the independent children's lawyer must perform the following duties (not necessarily at the same time):

- (a) meet with the child;
- (b) provide the child with an opportunity to express any views in relation to the matters to which the proceedings relate.

Note: A person cannot require a child to express the child's views in relation to any matter (see section 60CE).

(5B) The independent children's lawyer is not required to perform a duty if:

- (a) the child is under 5 years of age; or
- (b) the child does not want to meet with the independent children's lawyer, or express their views (as the case requires); or
- (c) there are exceptional circumstances that justify not performing the duty.

(5C) Without limiting paragraph (5B)(c), exceptional circumstances for the purposes of that paragraph include that performing the duty, would:

- (a) expose the child to the risk of physical or psychological harm; or

# EXPOSURE DRAFT

Independent children's lawyers **Schedule 4**  
Requirement to meet with the child **Part 1**

---

1 (b) have a significant adverse effect on the wellbeing of the  
2 child.

3 (5D) If the independent children's lawyer proposes not to perform a duty  
4 because of paragraph (5B)(c), the court must:

5 (a) determine whether it is satisfied that exceptional  
6 circumstances exist that justify not performing the duty; and

7 (b) if the court determines that those circumstances do not  
8 exist—make an order requiring the independent children's  
9 lawyer to meet with the child or provide the child with an  
10 opportunity to express their views (as the case requires).

11 Note: The court may also make such other orders it considers necessary to  
12 secure the independent representation of the child's interests (see  
13 paragraph 68L(2)(a)).

### 14 **3 Application of amendments**

15 The amendments of the *Family Law Act 1975* made by this Division  
16 apply in relation to proceedings that commence after the  
17 commencement of this item.

# EXPOSURE DRAFT

Schedule 4 Independent children's lawyers

Part 2 Convention on the Civil Aspects of International Child Abduction

---

1 **Part 2—Convention on the Civil Aspects of**  
2 **International Child Abduction**

3 ***Family Law Act 1975***

4 **4 Subsection 68L(1)**

5 Repeal the subsection, substitute:

6 (1) This section applies to proceedings under this Act in which a  
7 child's best interests are, or a child's welfare is, the paramount, or  
8 a relevant, consideration. This includes any such proceedings  
9 arising under regulations made for the purposes of section 111B.

10 Note: Section 111B is about the Convention on the Civil Aspects of  
11 International Child Abduction.

12 **5 Subsection 68L(3)**

13 Repeal the subsection.

14 **6 Application of amendments**

15 The amendments of the *Family Law Act 1975* made by this Division  
16 apply in relation to proceedings that commence after the  
17 commencement of this item.

# EXPOSURE DRAFT

Case management and procedure **Schedule 5**  
Harmful proceedings orders and co-location of sections 45A and 102Q **Part 1**

---

1 **Schedule 5—Case management and**  
2 **procedure**

3 **Part 1—Harmful proceedings orders and co-location**  
4 **of sections 45A and 102Q**

5 *Family Law Act 1975*

6 **1 Section 45A**

7 Repeal the section.

8 **2 Part XIB (heading)**

9 Repeal the heading, substitute:

10 **Part XIB—Decrees and orders relating to**  
11 **unmeritorious, harmful, and vexatious**  
12 **proceedings**

13 **3 Before section 102Q**

14 Insert:

15 **102QAA Simplified outline**

16 This Part sets out the court's powers to deal with proceedings that  
17 are unmeritorious, harmful, or vexatious.

18 Unmeritorious proceedings are proceedings that are without  
19 reasonable prospect of success, frivolous, vexatious, or an abuse of  
20 process.

21 Harmful proceedings are proceedings that may result in harm to  
22 another party, or to a child involved in the proceedings. The kinds  
23 of harms that might provide grounds for such an order could  
24 include severe stress (that could arise, for example, from repeated  
25 filings of applications against the respondent).

# EXPOSURE DRAFT

## Schedule 5 Case management and procedure

### Part 1 Harmful proceedings orders and co-location of sections 45A and 102Q

Vexatious proceedings include proceedings that are an abuse of process, proceedings instituted without reasonable grounds, and proceedings instituted or conducted for a wrongful purpose.

#### 4 Subsection 102Q(1)

Insert:

*harmful proceedings order* means an order made under subsection 102QAC(1).

#### 5 Section 102QA

Repeal the section, substitute:

The provisions of this Part do not limit or otherwise affect:

- (a) each other; or
- (b) any other power that a court has to deal with proceedings.

#### 6 After section 102QA

Insert:

### Division 1A—Summary decrees

#### 102QAB Summary decrees

*No reasonable prospect of successfully defending proceedings*

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

*No reasonable prospect of successfully prosecuting proceedings*

- (2) The court may make a decree for one party (the *first party*) against another in relation to the whole or any part of a proceedings if:

# EXPOSURE DRAFT

- 1 (a) the first party is defending the proceedings or that part of the  
2 proceedings; and  
3 (b) the court is satisfied that the other party has no reasonable  
4 prospect of successfully prosecuting the proceedings or that  
5 part of the proceedings.

6 *When there is no reasonable prospect of success*

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

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

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

20 *Costs*

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

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

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

27 **Division 1B—Harmful proceedings orders**

28 **Subdivision A—Making harmful proceedings orders**



# EXPOSURE DRAFT

## Schedule 5 Case management and procedure

### Part 1 Harmful proceedings orders and co-location of sections 45A and 102Q

---

#### 102QAC Making harmful proceedings orders

- 1
- 2 (1) A court exercising jurisdiction in proceedings under this Act may
- 3 make an order (a *harmful proceedings order*) prohibiting a party
- 4 (the *first party*) to the proceedings from instituting proceedings
- 5 against another party to the proceedings without the leave of the
- 6 court under section 102QAG, if the court is satisfied that there are
- 7 reasonable grounds to believe that:
- 8 (a) the other party would suffer harm if the first party instituted
- 9 further proceedings against him or her; or
- 10 (b) in the case of child-related proceedings (within the meaning
- 11 of Part VII)—the child who is the subject of the proceedings
- 12 would suffer harm if the first party instituted further
- 13 proceedings against the other party.
- 14 (2) For the purposes of subsection (1), harm may include the
- 15 following:
- 16 (a) psychological harm or oppression;
- 17 (b) major mental distress;
- 18 (c) a detrimental effect on the other party’s capacity to care for a
- 19 child.
- 20 (3) In determining whether to make an order under subsection (1), the
- 21 court may have regard to:
- 22 (a) the history of the proceedings under this Act between the first
- 23 party and the other party; and
- 24 (b) whether the first party has frequently instituted or conducted
- 25 proceedings against the other party in any Australian court or
- 26 tribunal (including proceedings instituted (or attempted to be
- 27 instituted) or conducted, and orders made, before the
- 28 commencement of this section); and
- 29 (c) the cumulative effect, or any potential cumulative effect, of
- 30 any harm resulting from the proceedings referred to in
- 31 paragraphs (a) and (b).
- 32 (4) The court may make a harmful proceedings order on its own
- 33 initiative or on application by a party to the proceedings.
- 34 (5) The court must not make a harmful proceedings order in relation to
- 35 a person without hearing the person or giving the person an
- 36 opportunity of being heard.
-

# EXPOSURE DRAFT

1 (6) An order made under subsection (1) is a final order.

## 2 **Subdivision B—Consequences of harmful proceedings orders**

### 3 **102QAD Proceedings in contravention of harmful proceedings order**

4 (1) If a person is subject to a harmful proceedings order prohibiting the  
5 person from instituting proceedings under this Act in a court  
6 having jurisdiction under this Act:

7 (a) the person must not institute proceedings in the court without  
8 the leave of the court under section 102QAG; and

9 (b) another person must not, acting in concert with the person,  
10 institute proceedings in the court without the leave of the  
11 court under section 102QAG.

12 (2) If proceedings are instituted in contravention of subsection (1), the  
13 proceedings are stayed.

14 (3) Without limiting subsection (2), the court may make:

15 (a) an order declaring proceedings are proceedings to which  
16 subsection (2) applies; and

17 (b) any other order in relation to the stayed proceedings it  
18 considers appropriate, including an order for costs.

19 (4) The court may make an order under subsection (3) on its own  
20 initiative or on the application of a person a party to the  
21 proceedings.

### 22 **102QAE Application for leave to institute proceedings**

23 (1) This section applies to a person (the *applicant*) who is:

24 (a) subject to a harmful proceedings order prohibiting the person  
25 from instituting further proceedings under this Act in a court  
26 having jurisdiction under this Act; or

27 (b) acting in concert with another person who is subject to an  
28 order mentioned in paragraph (a).

29 (2) The applicant may apply to the court for leave to institute  
30 proceedings that are subject to the order.

31 (3) The applicant must file an affidavit with the application that:

---

# EXPOSURE DRAFT

## Schedule 5 Case management and procedure

### Part 1 Harmful proceedings orders and co-location of sections 45A and 102Q

---

- 1 (a) lists all the occasions on which the applicant has applied for  
2 leave under this section; and  
3 (b) discloses all relevant facts about the application, whether  
4 supporting or adverse to the application, that are known to  
5 the applicant.
- 6 (4) The applicant must not serve a copy of the application or affidavit  
7 on a person unless an order is made under section 102QAG. If the  
8 order is made, the applicant must serve the copy in accordance  
9 with the order.

#### 10 **102QAF Dismissing application for leave**

- 11 (1) The court may make an order dismissing an application under  
12 section 102QAE for leave to institute proceedings if it considers  
13 the affidavit does not substantially comply with  
14 subsection 102QAE(3).
- 15 (2) The court must make an order dismissing an application under  
16 section 102QAE for leave to institute proceedings if it considers  
17 the proceedings are vexatious proceedings.

#### 18 **102QAG Granting application for leave**

- 19 (1) The court may make an order granting the application for leave  
20 only if it is satisfied that the proceedings are not frivolous,  
21 vexatious or an abuse of process, and have reasonable prospects of  
22 success.
- 23 (2) An order under subsection (1) may be made subject to the  
24 conditions the court considers appropriate.

#### 25 **7 Division 2 of Part XIB (after the heading)**

26 Insert:

#### 27 **Subdivision A—Making vexatious proceedings orders**

#### 28 **8 Division 3 of Part XIB (heading)**

29 Repeal the heading, substitute:

#### 30 **Subdivision B—Consequences of vexatious proceedings orders**

---

# EXPOSURE DRAFT

Case management and procedure **Schedule 5**  
Overarching purpose of the family law practice and procedure provisions **Part 2**

---

1 **9 Section 102QE (heading)**

2 After “proceedings”, insert “by person subject to vexatious  
3 proceedings order”.

4 **10 Sections 102QF and 102QG (heading)**

5 After “leave”, insert “by person subject to vexatious proceedings  
6 order”.

7 **11 Subsection 117(1)**

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

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

10 **12 Subsection 143(5) (note)**

11 Omit “45A”, substitute “102QAB”.

12 **13 Savings provision**

13 To avoid doubt, the repeal of section 45A of the *Family Law Act 1975*  
14 made by this Schedule does not affect any decree made or action taken  
15 under that section, as in force before the commencement of this item.

16 **14 Application of amendments**

17 (1) Division 1A of Part XIB of the *Family Law Act 1975*, as inserted by this  
18 Part, applies to proceedings instituted before or after the  
19 commencement of this item.

20 (2) Division 1B of Part XIB of the *Family Law Act 1975*, as inserted by this  
21 Part, applies to proceedings before the court or after the commencement  
22 of this item.

23 **Part 2—Overarching purpose of the family law**  
24 **practice and procedure provisions**

25 ***Family Law Act 1975***

26 **15 Subsection 4(1)**

27 Insert:

---

# EXPOSURE DRAFT

## Schedule 5 Case management and procedure

### Part 2 Overarching purpose of the family law practice and procedure provisions

---

1                    *family law practice and procedure provisions* has the meaning  
2                    given by subsection 95(4).

#### 3                    **16 Before Division 1 of Part XI**

4                    Insert:

#### 5                    **Division 1A—Overarching purpose of the family law** 6                    **practice and procedure provisions**

#### 7                    **95 Overarching purpose of the family law practice and procedure** 8                    **provisions**

- 9                    (1) The overarching purpose of the family law practice and procedure  
10                    provisions is to facilitate the just resolution of disputes:
- 11                    (a) according to law; and
  - 12                    (b) as quickly, inexpensively and efficiently as possible; and
  - 13                    (c) in a way that ensures the safety of families and children; and
  - 14                    (d) in relation to proceedings under this Act in which the best  
15                    interests of a child are the paramount consideration—in a  
16                    way that promotes the best interests of the child.

17                    Note:        For *family law practice and procedure provisions*, see subsection (4).

- 18                    (2) Without limiting subsection (1), the overarching purpose includes  
19                    the following objectives in relation to proceedings under this Act:
- 20                    (a) the just determination of all such proceedings;
  - 21                    (b) the efficient use of the judicial and administrative resources  
22                    available for the purposes of courts exercising jurisdiction in  
23                    such proceedings;
  - 24                    (c) the efficient disposal of the overall caseload of courts  
25                    exercising jurisdiction in such proceedings;
  - 26                    (d) the disposal of all such proceedings in a timely manner;
  - 27                    (e) the resolution of disputes at a cost that is proportionate to the  
28                    importance and complexity of the matters in dispute.
- 29                    (3) The family law practice and procedure provisions must be  
30                    interpreted and applied, and any power conferred or duty imposed  
31                    by them (including the power to make applicable Rules of Court)  
32                    must be exercised or carried out, in the way that best promotes the  
33                    overarching purpose.
-

# EXPOSURE DRAFT

Case management and procedure **Schedule 5**  
Overarching purpose of the family law practice and procedure provisions **Part 2**

---

- 1 (4) The *family law practice and procedure provisions* are the  
2 following, so far as they apply in relation to proceedings under this  
3 Act:  
4 (a) the applicable Rules of Court;  
5 (b) any other provision made by or under this Act, or any other  
6 Act, with respect to the practice and procedure of the Federal  
7 Circuit and Family Court of Australia or any other court.

## 8 **96 Duty to act consistently with the overarching purpose**

### 9 *Duty of parties*

- 10 (1) The parties to proceedings under this Act must conduct the  
11 proceedings (including negotiations for settlement of the dispute to  
12 which the proceedings relate) in a way that is consistent with the  
13 overarching purpose of the family law practice and procedure  
14 provisions.

### 15 *Duty of lawyers*

- 16 (2) A party's lawyer must, in the conduct of proceedings under this  
17 Act on the party's behalf (including in the conduct of negotiations  
18 for settlement of the dispute to which the proceedings relate):  
19 (a) take account of the duty imposed on the party by  
20 subsection (1); and  
21 (b) assist the party to comply with the duty.

### 22 *Estimate of costs*

- 23 (3) In proceedings under this Act a court may, for the purpose of  
24 enabling a party to comply with the duty imposed by  
25 subsection (1), require the party's lawyer to give the party an  
26 estimate of:  
27 (a) the likely duration of the proceedings or part of the  
28 proceedings; and  
29 (b) the likely amount of costs that the party will have to pay in  
30 connection with the proceedings or part of the proceedings  
31 (including the costs that the lawyer will charge to the party).

# EXPOSURE DRAFT

## Schedule 5 Case management and procedure

### Part 2 Overarching purpose of the family law practice and procedure provisions

---

1

#### *Costs orders*

2

(4) In exercising the discretion to award costs in proceedings under this Act, a court must take account of any failure to comply with the duty imposed by subsection (1) or (2).

3

4

5

(5) Without limiting the exercise of that discretion, a court may order a party's lawyer to bear costs personally.

6

7

(6) If a court orders a lawyer to bear costs personally because of a failure to comply with the duty imposed by subsection (2), the lawyer must not recover the costs from the lawyer's client.

8

9

#### 17 At the end of subsection 117(2)

10

Add:

11

Note 3: See also subsections 96(4) to (6) of this Act.

12

#### 18 Application provision

13

The amendments of the *Family Law Act 1975* made by this Schedule apply on and after the commencement of this item in relation to:

14

15

16

(a) proceedings instituted before the commencement of this item that were not finally determined before that commencement; and

17

18

19

(b) proceedings instituted on or after the commencement of this item.

20

21

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

22

#### 19 Subsection 7(1) (definition of *civil practice and procedure provisions*)

23

24

Repeal the definition, substitute:

25

#### *civil practice and procedure provisions:*

26

(a) in relation to the Federal Circuit and Family Court of Australia (Division 1)—has the meaning given by subsection 67(4); and

27

28

29

(b) in relation to the Federal Circuit and Family Court of Australia (Division 2)—has the meaning given by subsection 190(4).

30

31

# EXPOSURE DRAFT

Case management and procedure **Schedule 5**  
Overarching purpose of the family law practice and procedure provisions **Part 2**

---

1 **20 Subsection 7(1) (definition of *family law practice and***  
2 ***procedure provisions*)**

3 Repeal the definition.

4 **21 Subsection 7(1) (paragraph (a) of the definition of**  
5 ***overarching purpose*)**

6 Omit “family law practice and procedure provisions”, substitute “civil  
7 practice and procedure provisions”.

8 **22 Section 67 (heading)**

9 Omit “family law practice and procedure provisions”, substitute  
10 “civil practice and procedure provisions”.

11 **23 Subsection 67(1)**

12 Omit “family law practice and procedure provisions”, substitute “civil  
13 practice and procedure provisions, in relation to the Federal Circuit and  
14 Family Court of Australia (Division 1),”.

15 **24 Subsection 67(1) (note 1)**

16 Repeal the note, substitute:

17 Note 1: For *civil practice and procedure provisions*, in relation to the Federal  
18 Circuit and Family Court of Australia (Division 1), see subsection (4).

19 **25 Subsection 67(3)**

20 Omit “family law practice and procedure provisions”, substitute “civil  
21 practice and procedure provisions, in relation to the Federal Circuit and  
22 Family Court of Australia (Division 1),”.

23 **26 Subsection 67(4)**

24 Omit “The *family law practice and procedure provisions* are the  
25 following,” substitute “The *civil practice and procedure provisions*, in  
26 relation to the Federal Circuit and Family Court of Australia  
27 (Division 1), are the following.”.

28 **27 Subsection 68(3) (note)**

29 Repeal the note.



# EXPOSURE DRAFT

Schedule 5 Case management and procedure

Part 2 Overarching purpose of the family law practice and procedure provisions

---

1 **28 After section 68**

2 Insert:

3 **68A Proceedings under the *Family Law Act 1975***

4 Sections 67 and 68 do not apply in relation to proceedings under  
5 the *Family Law Act 1975*.

6 Note: See sections 95 and 96 of the *Family Law Act 1975* for the  
7 overarching purpose of provisions dealing with the practice and  
8 procedure of courts (including the Federal Circuit and Family Court of  
9 Australia) in relation to proceedings under that Act.

10 **29 Subsection 190(1)**

11 After “civil practice and procedure provisions”, insert “, in relation to  
12 the Federal Circuit and Family Court of Australia (Division 2),”.

13 **30 Subsection 190(1) (note 1)**

14 Repeal the note, substitute:

15 Note 1: For *civil practice and procedure provisions*, in relation to the Federal  
16 Circuit and Family Court of Australia (Division 2), see subsection (4).

17 **31 Subsection 190(3)**

18 After “civil practice and procedure provisions”, insert “, in relation to  
19 the Federal Circuit and Family Court of Australia (Division 2),”.

20 **32 Subsection 190(4)**

21 Omit “are the following,”, substitute “, in relation to the Federal Circuit  
22 and Family Court of Australia (Division 2), are the following,”.

23 **33 Subsection 191(3) (note)**

24 Repeal the note.

25 **34 After section 191**

26 Insert:

27 **191A Proceedings under the *Family Law Act 1975***

28 Sections 190 and 191 do not apply in relation to proceedings under  
29 the *Family Law Act 1975*.

---



# EXPOSURE DRAFT

## Schedule 6 Protecting sensitive information

---

### Schedule 6—Protecting sensitive information

#### *Family Law Act 1975*

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

Insert:

*protected confidence* has the meaning given by subsection 99(2).

##### **2 After section 98A**

Insert:

##### **99 Admissibility of evidence of protected confidence**

*Admissibility of evidence of protected confidence*

- (1) Except with the leave of the court under subsection (5), evidence that would disclose any of the following is not admissible in proceedings under this Act:
  - (a) a protected confidence;
  - (b) the contents of a document, or information, relating to a protected confidence.
- (2) A *protected confidence* is a communication made by one person to another person:
  - (a) in the course of a relationship in which one of the persons (the *professional*) is acting in a professional capacity to provide a health service (within the meaning of the *Privacy Act 1988*) to the other person (the *protected confider*); and
  - (b) in circumstances in which the professional is under an obligation not to disclose communications made to them by the protected confider (whether the obligation is express or inferred from the nature of the relationship).
- (3) Evidence is not inadmissible because of subsection (1) if consent to the evidence being admitted in the proceedings is given by:
  - (a) if the protected confider is 18 or over—the protected confider; or

# EXPOSURE DRAFT

Protecting sensitive information **Schedule 6**

---

1 (b) if the protected confider is a child under 18—each person  
2 who has parental responsibility (within the meaning of  
3 Part VII) for the child.

4 (4) Subsection (1) does not apply in relation to evidence to which any  
5 of the following provisions apply:

6 (a) section 10E (admissibility of communications in family  
7 counselling and in referrals from family counselling);

8 (b) section 10J (admissibility of communications in family  
9 dispute resolution and in referrals from family dispute  
10 resolution);

11 (c) section 10V (admissibility of family safety risk screening  
12 information etc.).

13 *Leave to admit evidence of protected confidence*

14 (5) In deciding for the purposes of subsection (1) whether to grant  
15 leave to admit evidence in proceedings, the court must determine  
16 whether the public interest in admitting the evidence outweighs the  
17 public interest in preventing harm to:

18 (a) the protected confider, or a person about whom or on whose  
19 behalf the protected confidence was made; or

20 (b) the relationship in the course of which the protected  
21 confidence was made or relationships of that kind generally.

22 (6) In making a decision under subsection (5) in proceedings under  
23 Part VII, the court must regard the best interests of the child as the  
24 paramount consideration.

25 (7) In making a decision under subsection (5), the court must have  
26 regard to the following matters:

27 (a) the probative value of the evidence in the proceedings;

28 (b) the importance of the evidence in the proceedings;

29 (c) the availability of other evidence concerning the matters to  
30 which the evidence relates;

31 (d) the likely effect of adducing the evidence, including the  
32 likelihood of harm, and the nature and extent of harm, that  
33 would be caused:

34 (i) to the protected confider; or

35 (ii) to a child or children to which the proceedings relate;

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# EXPOSURE DRAFT

## Schedule 6 Protecting sensitive information

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- 1 (e) the means available to the court to limit the harm or extent of  
2 the harm that is likely to be caused if the evidence is  
3 admitted;
- 4 (f) whether the substance of the evidence has already been  
5 disclosed by the person who made the protected  
6 communication or any other person;
- 7 (g) the public interest in preserving the confidentiality of  
8 protected confidences.

### 3 Application of amendments

9  
10 The amendments of the *Family Law Act 1975* made by this Part apply  
11 in relation to proceedings that commence after this item commences,  
12 whether the protected confidence was made before or after that time.

# EXPOSURE DRAFT

Communications of details of family law proceedings **Schedule 7**

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1 **Schedule 7—Communications of details of**  
2 **family law proceedings**  
3

4 *Family Law Act 1975*

5 **1 Subsection 4(1)**

6 Insert:

7 *communicate*: see subsection 114P(1).

8 **2 Subsection 4(1) (definition of *proceedings*)**

9 Repeal the definition, substitute:

10 *proceedings*:

11 (a) in Part XIVB—see subsection 114P(1); and

12 (b) otherwise—means a proceeding in a court, whether between  
13 parties or not, and includes cross-proceedings or an  
14 incidental proceeding in the course of or in connection with a  
15 proceeding.

16 **3 Subsection 4(1)**

17 Insert:

18 *public*: see subsection 114P(2).

19 **4 Section 102PC (heading)**

20 Omit “section 121”, substitute “Part XIVB”.

21 **5 Section 102PC**

22 Omit “section 121”, substitute “Part XIVB”.

23 **6 After Part XIVA**

24 Insert:

# EXPOSURE DRAFT

Schedule 7 Communications of details of family law proceedings

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1 **Part XIVB—Restriction on communication of**  
2 **accounts and lists of proceedings**  
3

4 **114N Simplified outline of this Part**

5 It is an offence to communicate an account of proceedings under  
6 this Act to the public, if the account identifies certain people  
7 involved in the proceedings.

8 It is an offence to communicate a list of proceedings that are to be  
9 dealt with under this Act to the public, and that are identified by  
10 reference to the names of the parties to those proceedings.

11 A communication is not made to the public if the communication is  
12 made to a person with a significant and legitimate interest in the  
13 subject matter of the communication that is greater than the interest  
14 of members of the public generally.

15 **114P Meaning of terms used in this Part**

16 (1) In this Part:

17 *communicate* means communicate by any means, including by any  
18 of the following:

- 19 (a) publication in a book, newspaper, magazine or other written  
20 publication;  
21 (b) broadcast by radio or television;  
22 (c) public exhibition;  
23 (d) broadcast or publication or other communication by means of  
24 the internet.

25 Example: For the purposes of paragraph (d), online communications and  
26 communications using a social media service.

27 *proceedings* includes a part of proceedings.

28 (2) In this Part (other than paragraph 114S(1)(b)):

29 *public* includes a section of the public.

# EXPOSURE DRAFT

Communications of details of family law proceedings **Schedule 7**

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1 **114Q Indictable offence—communication to the public of account of**  
2 **proceedings that identifies parties or others involved in**  
3 **proceedings**

- 4 (1) A person commits an indictable offence if:  
5 (a) the person communicates to the public an account of  
6 proceedings under this Act; and  
7 (b) the account identifies:  
8 (i) a party to the proceedings; or  
9 (ii) a witness in the proceedings; or  
10 (iii) a person who is related to, or is associated with, a party  
11 to the proceedings; or  
12 (iv) a person who is, or is alleged to be, in any other way  
13 concerned in the matter to which the proceedings relate.

14 Penalty: Imprisonment for 1 year.

- 15 (2) Subsection (1) does not apply if the communication is:  
16 (a) in accordance with a direction of a court; or  
17 (b) otherwise approved by a court.

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

- 20 (3) For the purposes of paragraph (1)(b), an account of proceedings is  
21 taken to identify a person if the account includes material that is  
22 sufficient to identify the person to a member of the public.  
23 Examples of such material include the following:  
24 (a) a picture, recording, or physical description of the person;  
25 (b) a name or title that identifies the person;  
26 (c) an address or location where the person resides or works;  
27 (d) details of the person's employment, paid or voluntary;  
28 (e) the relationship or other connection between the person and  
29 an identified person or business;  
30 (f) the person's political, philosophical or religious beliefs;  
31 (g) any real or personal property associated with the person.



# EXPOSURE DRAFT

## Schedule 7 Communications of details of family law proceedings

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1 **114R Indictable offence—communication to the public of list of**  
2 **court etc. proceedings that refers to names of parties**

3 (1) A person commits an indictable offence if the person  
4 communicates to the public a list of proceedings, identified by  
5 reference to the names of the parties to the proceedings, that are to  
6 be dealt with by any of the following under this Act:

- 7 (a) a court;  
8 (b) an officer of a court investigating or dealing with a matter in  
9 accordance with this Act, the regulations or the applicable  
10 Rules of Court;  
11 (c) a tribunal established by or under a law of the  
12 Commonwealth or of a State or Territory.

13 Penalty: Imprisonment for 1 year.

14 (2) Subsection (1) does not apply if:

- 15 (a) the communication is the publication, by the court, officer or  
16 tribunal, of a list of proceedings the court, officer or tribunal  
17 is to deal with; or  
18 (b) the communication is:  
19 (i) in accordance with a direction of a court or otherwise  
20 approved by a court; or  
21 (ii) in accordance with the applicable Rules of Court.

22 Example: For the purposes of paragraph (a), a list of proceedings a court is to  
23 deal with that is published by the court at the court's premises.

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

26 **114S When a communication is not a communication to the public**

27 (1) For the purposes of paragraph 114Q(1)(a) and subsection 114R(1),  
28 a communication to a person or body is not a communication to the  
29 public if:

- 30 (a) the person or body has a significant and legitimate interest in  
31 the subject matter of the communication; and  
32 (b) that interest is substantially greater than, or different from,  
33 the interests of members of the public generally.

# EXPOSURE DRAFT

Communications of details of family law proceedings **Schedule 7**

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

- (2) Without limiting subsection (1), none of the following is a communication to the public:
- (a) a private communication between a party to proceedings and a person who is a member of the party's family or a friend of the party;
  - (b) a communication of a pleading, transcript of evidence, or other document for use in connection with any of the following proceedings, to a person concerned in those proceedings:
    - (i) proceedings in a court;
    - (ii) proceedings before an officer of a court investigating or dealing with a matter in accordance with this Act, the regulations or the applicable Rules of Court;
    - (iii) proceedings in a tribunal established by or under a law of the Commonwealth or of a State or Territory;
  - (c) a communication of a pleading, transcript of evidence, or other document, to a prescribed authority of a State or Territory that has responsibilities relating to the welfare of children;
  - (d) a communication of a pleading, transcript of evidence, or other document, to:
    - (i) a body that is responsible for disciplining members of a profession in a State or Territory; or
    - (ii) a person concerned in disciplinary proceedings against a member of a profession in a State or Territory (being proceedings before a body that is responsible for disciplining members of that profession in that State or Territory);
  - (e) a communication of a pleading, transcript of evidence, or other document, to a body that grants assistance by way of legal aid for the purpose of facilitating a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case;
  - (f) a communication of material intended primarily for use by the members of any profession (being part of a series of law reports or any other publication of a technical character);
-

# EXPOSURE DRAFT

## Schedule 7 Communications of details of family law proceedings

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- 1 (g) a communication of an account of proceedings to a member  
2 of a profession in connection with:  
3 (i) the person's practice of that profession; or  
4 (ii) any form of professional training in which that person is  
5 involved;  
6 (h) a communication of an account of proceedings to a student in  
7 connection with the student's studies.

### 8 **114T Consent of Director of Prosecutions required to commence** 9 **proceedings**

10 Proceedings for an offence against subsection 114Q(1) or 114R(1)  
11 must not be commenced without the written consent of the Director  
12 of Public Prosecutions.

### 13 **7 Section 121**

14 Repeal the section.

### 15 **8 Saving of regulations**

16 Regulations that were in force for the purposes of paragraph 121(9)(aa)  
17 of the *Family Law Act 1975* immediately before the commencement of  
18 this item continue in force after that commencement as if they were  
19 regulations in force for the purposes of paragraph 114S(2)(c) of that  
20 Act.

### 21 **9 Application of amendments**

22 Part XIVB of the *Family Law Act 1975*, as inserted by this Part, applies  
23 in relation to acts or omissions occurring on or after the commencement  
24 of this item.

### 25 ***Federal Circuit and Family Court of Australia Act 2021***

### 26 **10 At the end of subsection 98(2)**

27 Add:

- 28 ; (t) the power to give directions, or approve communications, for  
29 the purposes of subsection 114Q(2) or  
30 subparagraph 114R(2)(b)(i) of the *Family Law Act 1975*.

1 **Schedule 8—Family report writers**  
2

3 *Family Law Act 1975*

4 **1 Subsection 4(1)**

5 Insert:

6 *designated report*: see section 11J.

7 *family report writer*: see section 11H.

8 *regulator*: see paragraph 11K(2)(b).

9 **2 Section 11D**

10 Before “A family”, insert “(1)”.

11 **3 At the end of section 11D**

12 Add:

13 (2) However, if a family consultant is also a family report writer, that  
14 protection and immunity:

15 (a) does not relieve the family consultant of their obligations  
16 under regulations made for the purposes of section 11K  
17 (regulations prescribing standards and requirements for  
18 family report writers); and

19 (b) does not extend to action taken to enforce such regulations.

20 **4 After Part III**

21 Insert:

22 **Part IIIAA—Family report writers**  
23

24 **11H Family report writers**

25 Any individual who prepares a designated report (see section 11J)  
26 is a *family report writer*.

# EXPOSURE DRAFT

1 **11J Designated reports**

2 (1) A report that relates to a child is a *designated report* if:

3 (a) the report is prepared following a family assessment (which  
4 usually includes the report's preparer meeting with the child  
5 and others significant to the child's care, welfare and  
6 development and, if appropriate, advising of the child's  
7 views); and

8 (b) the report sets out the expert views and advice of the report's  
9 preparer on parenting arrangements for the purposes of  
10 parenting orders being made by the court in relation to the  
11 child; and

12 (c) the report is both:

13 (i) covered by subsection (2); and

14 (ii) not excluded by regulations made for the purposes of  
15 this paragraph.

16 (2) This subsection covers the following reports:

17 (a) a report prepared for the court by a family consultant in  
18 relation to an appointment (or a series of appointments) a  
19 party to proceedings has been directed to attend, or to arrange  
20 for a child to attend, with the family consultant under  
21 section 11F;

22 (b) a report prepared for the court by a family consultant for the  
23 purposes of subsection 55A(2) (report regarding  
24 arrangements for the care, welfare and development of a  
25 child of a marriage);

26 (c) a report prepared by a family consultant at the direction of  
27 the court under subsection 62G(2) (direction to give report in  
28 relation to proceedings in which the care, welfare and  
29 development of a child under 18 is relevant);

30 (d) a report about a child prepared for the use of an independent  
31 children's lawyer as mentioned in subsection 68M(2);

32 (e) any other report prepared for parties to proceedings before  
33 the court, or for the court for the purposes of proceedings  
34 before the court.

1 **11K Regulations prescribing standards and requirements for family**  
2 **report writers**

3 *Regulations prescribing standards and requirements for family*  
4 *report writers*

- 5 (1) The regulations may make provision for, and in relation to:  
6 (a) standards and requirements that family report writers, or a  
7 class or classes of family report writers, must comply with in  
8 connection with the role of preparing designated reports; and  
9 (b) consequences of non-compliance with prescribed standards  
10 and requirements.

11 *Standards and requirements*

- 12 (2) Without limiting paragraph (1)(a), regulations made for the  
13 purposes of that paragraph may deal with any or all of the  
14 following matters:  
15 (a) recognition, monitoring and enforcement of compliance with  
16 prescribed standards and requirements;  
17 (b) the person or persons responsible for that recognition,  
18 monitoring and enforcement (each such person is a  
19 **regulator**);  
20 (c) duties of family report writers, and persons intending to  
21 become family report writers, in relation to establishing and  
22 maintaining recognition of their compliance, including duties  
23 in relation to providing information and documents to a  
24 regulator;  
25 (d) circumstances in which a regulator may collect, use and share  
26 information and documents for the purposes of meeting the  
27 regulator's responsibilities;  
28 (e) review of decisions that affect recognition of a family report  
29 writer's compliance;  
30 (f) processes for dealing with persons who make false or  
31 misleading representations about a family report writer's  
32 compliance;  
33 (g) processes for handling complaints involving family report  
34 writers;  
35 (h) training for family report writers;
-

# EXPOSURE DRAFT

## Schedule 8 Family report writers

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- 1 (i) the charging of fees, to family report writers, for services  
2 provided to them in connection with recognition, and  
3 maintenance of recognition, of their compliance;
- 4 (j) publication of the names of family report writers who are  
5 recognised as complying with prescribed standards and  
6 requirements;
- 7 (k) publication of information about the named family report  
8 writers for the purposes of informing the court, parties to  
9 proceedings and the public about any or all of the following:
- 10 (i) their qualifications, training and experience;  
11 (ii) their availability;  
12 (iii) the fees they charge;  
13 (iv) their compliance status, including in relation to  
14 particular standards or requirements;  
15 (v) any relevant memberships of professional associations,  
16 registration or employment;  
17 (vi) any other matters relevant to their role of preparing  
18 designated reports;
- 19 (l) standards and requirements in relation to the content of  
20 designated reports.
- 21 (3) Regulations dealing with the matter mentioned in paragraph (2)(k)  
22 must not require or allow the publication of personal information  
23 (within the meaning of the *Privacy Act 1988*) about any child or  
24 other individual to whom a report relates.

### *Consequences of non-compliance*

- 25
- 26 (4) Without limiting paragraph (1)(b), regulations made for the  
27 purposes of that paragraph may do any or all of the following:
- 28 (a) prescribe offences, the penalties for which do not exceed 30  
29 penalty units;
- 30 (b) prescribe civil penalty provisions (within the meaning of the  
31 *Regulatory Powers (Standard Provisions) Act 2014*), the  
32 penalties for which do not exceed 30 penalty units;
- 33 (c) provide for suspension or cancellation of recognition of  
34 compliance;
- 35 (d) provide that, if a family report writer is not recognised, or if  
36 recognition of a family report writer's compliance is
-

1 suspended or cancelled, the court must not have regard to  
2 designated reports prepared by the family report writer;

3 (e) prohibit the preparation of designated reports by family  
4 report writers who are not recognised.

5 (5) Each civil penalty provision prescribed by regulations made for the  
6 purposes of this section is enforceable under Part 4 of the  
7 *Regulatory Powers (Standard Provisions) Act 2014*.

8 (6) The regulations may prescribe the following matters for the  
9 purposes of the exercise of powers under Part 4 of the *Regulatory*  
10 *Powers (Standard Provisions) Act 2014* in relation to those civil  
11 penalty provisions:

12 (a) the persons who are authorised applicants;

13 (b) delegation by those persons of their powers and functions as  
14 authorised applicants;

15 (c) the courts that are relevant courts.

## 16 **11L Disclosure by court to regulator**

17 The court may disclose any of the following to a regulator, for the  
18 purposes of the regulator performing the regulator's functions  
19 under the regulations:

20 (a) a designated report prepared for or at the direction of the  
21 court, or for a party to proceedings before the court;

22 (b) a final order made by the court in proceedings for which a  
23 designated report was prepared.

## 24 **11M Immunity of regulator**

25 A regulator is not liable in civil or criminal proceedings for or in  
26 relation to anything done or omitted to be done, in good faith, in  
27 the performance or exercise, or purported performance or exercise,  
28 of the regulator's functions or powers under regulations made for  
29 the purposes of section 11K.

## 30 **5 At the end of subsection 67ZA(1)**

31 Add:

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# EXPOSURE DRAFT

## Schedule 8 Family report writers

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1                                   ; or (i) a family report writer who is recognised, in accordance with  
2                                   regulations made for the purposes of section 11K, as  
3                                   complying with prescribed standards and requirements.

### 4   **6 At the end of subsection 111CV(1A)**

5                   Add:

6                                   ; and (j) a family report writer who is recognised, in accordance with  
7                                   regulations made for the purposes of section 11K, as  
8                                   complying with prescribed standards and requirements.