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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (23/06/2005)

**Family Law Amendment (Shared
Parental Responsibility) Bill 2005**

No. , 2005

(Attorney-General)

**A Bill for an Act to amend the *Family Law Act
1975*, and for related purposes**

EXPOSURE DRAFT (23/06/2005)

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1 **A Bill for an Act to amend the *Family Law Act***
2 ***1975, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Family Law Amendment (Shared*
6 *Parental Responsibility) Act 2005*.

7 **2 Commencement**

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

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedules 1, 2, 3, 4 and 5	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by the Parliament and assented to. It will not be expanded to
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

1
2 **Schedule 1—Shared parental responsibility**

3 **Part 1—Amendments**

4 *Family Law Act 1975*

5 **1 At the end of section 4**

6 Add:

- 7 (4) A reference in this Act to a person who has parental responsibility
8 (or a component of parental responsibility) for a child is a
9 reference to a person who has that parental responsibility (or that
10 component of parental responsibility) whether solely or jointly
11 with another person.

12 **2 Section 60B**

13 Repeal the section, substitute:

14 **60B Objects of Part and principles underlying it**

15 (1) The objects of this Part are:

- 16 (a) to ensure that children receive adequate and proper parenting
17 to help them achieve their full potential; and
18 (b) to ensure that parents fulfil their duties, and meet their
19 responsibilities, concerning the care, welfare and
20 development of their children; and
21 (c) to ensure that children have the benefit of both of their
22 parents having a meaningful involvement in their lives, to the
23 maximum extent consistent with the best interests of the
24 child.

25 (2) The principles underlying these objects are:

- 26 (a) except when it is or would be contrary to a child's best
27 interests:
28 (i) children have the right to know and be cared for by both
29 their parents, regardless of whether their parents are
30 married, separated, have never married or have never
31 lived together; and

- 1 (ii) children have a right to spend time on a regular basis
2 with, and communicate on a regular basis with, both
3 their parents and other people significant to their care,
4 welfare and development; and
5 (iii) parents jointly share duties and responsibilities
6 concerning the care, welfare and development of their
7 children; and
8 (iv) parents should agree about the future parenting of their
9 children; and
10 (v) children have a right to enjoy their culture (including
11 the right to enjoy that culture with other people who
12 share that culture); and
13 (b) children need to be protected from physical or psychological
14 harm caused, or that may be caused, by:
15 (i) being subjected or exposed to abuse or family violence
16 or other behaviour; or
17 (ii) being directly or indirectly exposed to abuse or family
18 violence or other behaviour that is directed towards, or
19 may affect, another person.
- 20 (3) For the purposes of subparagraph (2)(a)(v), an Aboriginal child's
21 or Torres Strait Islander child's right to enjoy his or her Aboriginal
22 or Torres Strait Islander culture includes the right:
23 (a) to maintain a connection with that culture; and
24 (b) to have the support, opportunity and encouragement
25 necessary:
26 (i) to explore the full extent of that culture, consistent with
27 the child's age and developmental level and the child's
28 views; and
29 (ii) to develop a positive appreciation of that culture.

3 Subsection 60D(1)

30 Insert:

31 *Aboriginal child* means a child of the Aboriginal race of Australia.

4 Subsection 60D(1)

32 Insert:

33 *Aboriginal or Torres Strait Islander culture* includes Aboriginal
34 or Torres Strait Islander lifestyle and traditions.
35
36

1 **5 Subsection 60D(1)**

2 Insert:

3 *component* of parental responsibility for a child means a particular
4 duty, power, responsibility or authority which, by law, parents
5 have in relation to children.

6 **6 Subsection 60D(1)**

7 Insert:

8 *major long-term issues*, in relation to a child, means issues about
9 the care, welfare and development of the child of a long-term
10 nature and includes (but is not limited to) issues of that nature
11 about:

- 12 (a) the child's education (both current and future); and
13 (b) the child's religious and cultural upbringing; and
14 (c) the child's health; and
15 (d) the child's name; and
16 (e) significant changes to the child's living arrangements.

17 **7 Subsection 60D(1)**

18 Insert:

19 *relative* of a child means:

- 20 (a) a step-father or step-mother of the child; or
21 (b) a brother, sister, half-brother, half-sister, step-brother or
22 step-sister of the child; or
23 (c) a grandparent of the child; or
24 (d) an uncle or aunt of the child; or
25 (e) a nephew or niece of the child; or
26 (f) a cousin of the child.

27 **8 Subsection 60D(1)**

28 Insert:

29 *Torres Strait Islander child* means a child who is a descendant of
30 the indigenous inhabitants of the Torres Strait Islands.

31 **9 At the end of Division 1 of Part VII**

32 Add:

1 **Subdivision E—Family dispute resolution**

2 **60I Attending family dispute resolution before applying for Part VII**
3 **order**

4 *Object of this section*

5 (1) The object of this section is to ensure that all persons who have a
6 dispute about matters that may be dealt with by an order under this
7 Part (a **Part VII order**) attempt to resolve that dispute by family
8 dispute resolution before the Part VII order is applied for.

9 *Phase 1 (from commencement to 30 June 2007)*

10 (2) The dispute resolution provisions of the *Family Law Rules 2004*
11 impose the requirements for dispute resolution that must be
12 complied with before an application is made to the Family Court of
13 Australia for a parenting order.

14 (3) By force of this subsection, the dispute resolution provisions of the
15 *Family Law Rules 2004* also apply to an application to a court
16 (other than the Family Court of Australia) for a parenting order.
17 Those provisions apply to the application with such modifications
18 as are necessary.

19 (4) Subsection (3) applies to an application for a parenting order if the
20 application is made:

- 21 (a) on or after the commencement of this section; and
22 (b) before 1 July 2007.

23 *Phase 2 (from 1 July 2007 to 30 June 2008)*

24 (5) Subsections (7) to (11) apply to an application for a Part VII order
25 in relation to a child if:

- 26 (a) the application is made on or after 1 July 2007 and before
27 1 July 2008; and
28 (b) none of the parties to the proceedings on the application have
29 applied, before 1 July 2007, for a Part VII order in relation to
30 the child.

1 *Phase 3 (from 1 July 2008)*

- 2 (6) Subsections (7) to (11) apply to all applications for a Part VII order
3 in relation to a child that are made on or after 1 July 2008.

4 *Requirement to attempt to resolve dispute by family dispute*
5 *resolution before applying for a parenting order*

- 6 (7) Subject to subsection (8), a court exercising jurisdiction under this
7 Act must not hear an application for a Part VII order in relation to a
8 child unless the applicant files in the court a certificate by a family
9 dispute resolution practitioner to the effect that:

- 10 (a) the applicant has attended family dispute resolution with the
11 practitioner and the other party or parties to the proceedings
12 in relation to the issue or issues that the order would deal
13 with; or
14 (b) the applicant did not attend family dispute resolution of that
15 kind but the applicant's failure to do so was due to the
16 refusal, or the failure, of the other party or parties to the
17 proceedings to attend.

18 The certificate must be filed with the application for the Part VII
19 order.

- 20 (8) Subsection (7) does not apply to an application for a Part VII order
21 in relation to a child if:

- 22 (a) the applicant is applying for the order:
23 (i) to be made with the consent of all the parties to the
24 proceedings; or
25 (ii) in response to an application that another party to the
26 proceedings has made for a Part VII order; or
27 (b) the court is satisfied that there are reasonable grounds to
28 believe that:
29 (i) there has been abuse of the child by one of the parties to
30 the proceedings; or
31 (ii) there would be a risk of abuse of the child if there were
32 to be a delay in applying for the order; or
33 (iii) there has been family violence by one of the parties to
34 the proceedings; or
35 (iv) there is a risk of family violence by one of the parties to
36 the proceedings; or
37 (c) all the following conditions are satisfied:
-

- 1 (i) the application is made in relation to a particular issue;
2 (ii) a Part VII order has been made in relation to that issue
3 within the 6 months before the application is made;
4 (iii) the application is made in relation to a contravention of
5 the order by a person;
6 (iv) the person has behaved in a way that showed a serious
7 disregard for his or her obligations under the order; or
8 (d) the application is made in circumstances of urgency; or
9 (e) one or more of the parties to the proceedings is unable to
10 participate effectively in family dispute resolution (whether
11 because of an incapacity of some kind, physical remoteness
12 from dispute resolution services or for some other reason); or
13 (f) other circumstances specified in the regulations are satisfied.

14 (9) If:

- 15 (a) a person applies for a Part VII order; and
16 (b) the person does not, before applying for the order, attend
17 family dispute resolution with a family dispute resolution
18 practitioner and the other party or parties to the proceedings
19 in relation to the issue or issues that the order would deal
20 with; and
21 (c) subsection (7) does not apply to the application because of
22 subsection (8);

23 the court must consider making an order that the person attend
24 family dispute resolution with a family dispute resolution
25 practitioner and the other party or parties to the proceedings in
26 relation to that issue or those issues.

27 (10) The validity of:

- 28 (a) proceedings on an application for a Part VII order; or
29 (b) any order made in those proceedings;

30 is not affected by a failure to comply with subsection (7) in relation
31 to those proceedings.

32 (11) In this section:

33 ***dispute resolution provisions*** of the *Family Law Rules* means:

- 34 (a) Rule 1.05 of those Rules; and
35 (b) Part 2 of Schedule 1 to those Rules;

36 to the extent to which they deal with dispute resolution.

1 **60J Family dispute resolution not attended because of child abuse or**
2 **family violence**

3 (1) If:

4 (a) an application for a Part VII order in relation to a child is
5 made on or after 1 July 2008; and

6 (b) subsection 60I(7) does not apply to the application because
7 the court is satisfied that there are reasonable grounds to
8 believe that:

9 (i) there has been abuse of the child by one of the parties to
10 the proceedings; or

11 (ii) there has been family violence by one of the parties to
12 the proceedings;

13 a court must not hear the application unless the applicant files in
14 the court a certificate by a family counsellor or family dispute
15 resolution practitioner to the effect that the counsellor or
16 practitioner has given the applicant information about the issue or
17 issues that the order would deal with.

18 (2) Subsection (1) does not apply if the court is satisfied that there are
19 reasonable grounds to believe that:

20 (a) there would be a risk of abuse of the child if there were to be
21 a delay in applying for the order; or

22 (b) there is a risk of family violence by one of the parties to the
23 proceedings.

24 (3) The validity of:

25 (a) proceedings on an application for a Part VII order; or

26 (b) any order made in those proceedings;

27 is not affected by a failure to comply with subsection (1) in relation
28 to those proceedings.

29 **10 At the end of subsection 61C(1)**

30 Add:

31 Note 1: This section states the legal position that prevails in relation to
32 parental responsibility to the extent to which it is not displaced by a
33 parenting order made by the court. See subsection (3) of this section
34 and subsection 61D(2) for the effect of a parenting order.

35 Note 2: This section does not establish a presumption to be applied by the
36 court when making a parenting order. See section 61DA for the
37 presumption that the court does apply when making a parenting order.

1 Note 3: Under section 63C, the parents of a child may make a parenting plan
2 that deals with the allocation of parental responsibility for the child.

3 **11 After section 61D**

4 Insert:

5 **61DA Presumption of joint parental responsibility when making**
6 **parenting orders**

7 (1) When making a parenting order in relation to a child, the court
8 must apply a presumption that it is in the best interests of the child
9 for the child's parents to have parental responsibility for the child
10 jointly.

11 Note: The presumption provided for in this subsection is a presumption that
12 relates solely to the allocation of parental responsibility for a child as
13 defined in section 61B. It does not provide for a presumption about
14 the amount of time the child spends with each of the parents (this
15 issue is dealt with in section 65DAA). Joint parental responsibility
16 does not involve or imply the child spending an equal amount of time,
17 or a substantial amount of time, with each parent.

18 (2) The presumption does not apply if there are reasonable grounds to
19 believe that a parent of the child (or a person who lives with a
20 parent of the child) has engaged in:

- 21 (a) abuse of the child or another child who, at the time, was a
22 member of the parent's family (or that person's family); or
23 (b) family violence.

24 (3) The presumption does not apply if:

- 25 (a) the court is making a parenting order that is an interim order;
26 and
27 (b) the court considers that it is not appropriate to apply the
28 presumption in making that interim order.

29 (4) The presumption may be rebutted by evidence that satisfies the
30 court that it would not be in the best interests of the child for the
31 child's parents to have parental responsibility for the child jointly.

32 **61DB Application of presumption of joint parental responsibility**
33 **after interim parenting order made**

34 If there is an interim parenting order in relation to a child, the court
35 must, in making a final parenting order in relation to the child,

1 disregard the allocation of parental responsibility made in the
2 interim order.

3 **12 At the end of Division 2 of Part VII**

4 Add:

5 **61F Application to Aboriginal or Torres Strait Islander children**

6 In:

- 7 (a) applying this Part to the circumstances of an Aboriginal or
8 Torres Strait Islander child; or
9 (b) identifying a person or persons who have exercised, or who
10 may exercise, parental responsibility for such a child;
11 the court must have regard to any kinship obligations, and
12 child-rearing practices, of Aboriginal or Torres Strait Islander
13 culture that are relevant to the child.

14 **13 Subsection 63C(2)**

15 Repeal the subsection, substitute:

- 16 (2) A parenting plan may deal with one or more of the following:
17 (a) the person or persons with whom a child is to live;
18 (b) the time a child is to spend with another person or other
19 persons;
20 (c) the allocation of parental responsibility, or a particular
21 component of parental responsibility, for a child;
22 (d) if 2 or more persons are to have parental responsibility, or a
23 component of parental responsibility, for a child jointly—the
24 form of consultations those persons are to have with one
25 another about decisions to be made in the exercise of that
26 responsibility or that component;
27 (e) the communication a child is to have with another person or
28 other persons;
29 (f) maintenance of a child;
30 (g) the process to be used for resolving disputes about the terms
31 or operation of the plan;
32 (h) the process to be used for changing the plan to take account
33 of the changing needs or circumstances of the child or the
34 parties to the plan;

1 (i) any aspect of the care, welfare or development of the child or
2 any other aspect of parental responsibility for a child.

3 Note: Paragraph (f)—If the *Child Support (Assessment) Act 1989* applies,
4 provisions in a parenting plan dealing with the maintenance of a child
5 (as distinct from child support under that Act) are unenforceable and
6 of no effect (see subsection 63G(5) of this Act). A parenting plan may,
7 however, also operate as a child support agreement (see
8 section 63CAA of this Act).

9 (2A) The person referred to in subsection (2) may be, or the persons
10 referred to in that subsection may include, either a parent of the
11 child or a person other than the parent of the child (including a
12 grandparent or other relative of the child).

13 (2B) Without limiting paragraph (2)(c), the plan may deal with the
14 allocation of responsibility for making decisions about major
15 long-term issues in relation to the child.

16 (2C) The other communication referred to in paragraph (2)(e) includes
17 (but is not limited to) communication by:

- 18 (a) letter; and
19 (b) telephone, email or any other electronic means.

20 **14 Section 63DA**

21 Repeal the section, substitute:

22 **63DA Obligations of advisers**

23 (1) If an adviser gives advice or assistance to people in relation to
24 parental responsibility for a child following the breakdown of the
25 relationship between those people, the adviser must:

- 26 (a) inform them that they could consider entering into a
27 parenting plan in relation to the child; and
28 (b) inform them about where they can get further assistance to
29 develop a parenting plan and the content of the plan.

30 (2) If an adviser gives advice to people in connection with the making
31 by those people of a parenting plan in relation to a child, the
32 adviser must:

- 33 (a) inform them that, if the child spending substantial time with
34 each of them is:
35 (i) practicable; and
36 (ii) in the best interests of the child;
-

- 1 they could consider the option of an arrangement of that
2 kind; and
- 3 (b) inform them of the matters that may be dealt with in a
4 parenting plan in accordance with subsection 63C(2); and
- 5 (c) inform them that, if there is a parenting order in force in
6 relation to the child, the order may (because of section 64D)
7 include a provision that the order is subject to a parenting
8 plan they enter into; and
- 9 (d) inform them about the desirability of including in the plan:
- 10 (i) if they are to have parental responsibility, or a
11 component of parental responsibility, for the child
12 jointly under the plan—provisions of the kind referred
13 to in paragraph 63C(2)(d) (which deals with the form of
14 consultations between the parties to the plan) as a way
15 of avoiding future conflicts over, or misunderstandings
16 about, the matters covered by that paragraph; and
- 17 (ii) provisions of the kind referred to in paragraph
18 63C(2)(g) (which deals with the process for resolving
19 disputes between the parties to the plan); and
- 20 (iii) provisions of the kind referred to in paragraph
21 63C(2)(h) (which deals with the process for changing
22 the plan to take account of the changing needs or
23 circumstances of the child or the parties to the plan);
24 and
- 25 (e) explain to them, in language they are likely to readily
26 understand, the availability of programs to help people who
27 experience difficulties in complying with a parenting plan;
28 and
- 29 (f) inform them that section 65DAB requires the court to have
30 regard to the terms of the most recent parenting plan in
31 relation to the child when making a parenting order in
32 relation to the child if it is in the best interests of the child to
33 do so.

34 Note: Paragraph (a) only requires the adviser to inform the people that they
35 should consider the option of the child spending substantial time with
36 each of them. The adviser does not have to advise them as to whether
37 that option would be appropriate in their particular circumstances.

38 (3) In this section:

39 ***adviser*** means a person who is:

- 1 (a) a legal practitioner; or
2 (b) a family counsellor; or
3 (c) a family dispute resolution practitioner; or
4 (d) a family and child specialist.

5 **15 Paragraph 63E(3)(b)**

6 Omit “subsection 68F(2)”, substitute “subsections 68F(1A) and (2)”.

7 **16 Subsections 64B(2) to (4)**

8 Repeal the subsections, substitute:

- 9 (2) A parenting order may deal with one or more of the following:
10 (a) the person or persons with whom a child is to live;
11 (b) the time a child is to spend with another person or other
12 persons;
13 (c) the allocation of parental responsibility, or a particular
14 component of parental responsibility, for a child;
15 (d) if 2 or more persons are to have parental responsibility, or a
16 component of parental responsibility, for a child jointly—the
17 form of consultations those persons are to have with one
18 another about decisions to be made in the exercise of that
19 responsibility or that component;
20 (e) the communication a child is to have with another person or
21 other persons;
22 (f) maintenance of a child;
23 (g) the steps to be taken before an application is made to a court
24 for a variation of the order to take account of the changing
25 needs or circumstances of:
26 (i) a child to whom the order relates; or
27 (ii) the parties to the proceedings in which the order is
28 made;
29 (h) the process to be used for resolving disputes about the terms
30 or operation of the order;
31 (i) any aspect of the care, welfare or development of the child or
32 any other aspect of parental responsibility for a child.

33 The person referred to in this subsection may be, or the persons
34 referred to in this subsection may include, either a parent of the
35 child or a person other than the parent of the child (including a
36 grandparent or other relative of the child).

1 Note: Paragraph (f)—A parenting order cannot deal with the maintenance of
2 a child if the *Child Support (Assessment) Act 1989* applies.

3 (3) Without limiting paragraph (2)(c), the order may deal with the
4 allocation of responsibility for making decisions about major
5 long-term issues in relation to the child.

6 (4) The other communication referred to in paragraph (2)(e) includes
7 (but is not limited to) communication by:

- 8 (a) letter; and
9 (b) telephone, email or any other electronic means.

10 (4A) Without limiting paragraphs (2)(g) and (h), the parenting order
11 may provide that the parties to the proceedings must consult with a
12 family dispute resolution practitioner to assist with:

- 13 (a) resolving any dispute about the terms or operation of the
14 order; or
15 (b) reaching agreement about changes to be made to the order.

16 **17 Subsection 64B(5)**

17 Omit “(c)”, substitute “(f)”.

18 **18 Subsections 64B(6) to (8)**

19 Repeal the subsections, substitute:

20 (6) For the purposes of this Act:

- 21 (a) a parenting order that provides that a child is to live with a
22 person is *made in favour* of that person; and
23 (b) a parenting order that provides that a child is to spend time
24 with a person is *made in favour* of that person; and
25 (c) a parenting order that provides that a child is to have
26 communication with a person is *made in favour* of that
27 person; and
28 (d) a parenting order that:
29 (i) allocates parental responsibility, or a particular
30 component of parental responsibility, for a child to a
31 person; or
32 (ii) provides that a person is to have parental responsibility,
33 or a particular component of parental responsibility, for
34 a child jointly with another person;
35 is *made in favour* of that person.
-

1 **19 At the end of Division 5 of Part VII**

2 Add:

3 **64D Parenting orders subject to later parenting plans**

4 Unless the court determines otherwise, a parenting order in relation
5 to a child is taken to include a provision that the order is subject to
6 a parenting plan that is:

- 7 (a) entered into subsequently by the child’s parents; and
8 (b) agreed to, in writing, by any other person (other than the
9 child) to whom the parenting order applies.

10 **20 At the end of section 65A**

11 Add:

12 Note: Paragraph (a)—Section 60I provides that people with disputes about
13 matters that may be dealt with in a Part VII order (which includes a
14 parenting order) should generally make use of family dispute
15 resolution before applying for the order.

16 **21 Subsection 65D(1)**

17 After “subject to”, insert “sections 61DA (presumption of joint parental
18 responsibility when making parenting orders) and 65DAB (parenting
19 plans) and”.

20 **22 Subsection 65D(2)**

21 After “subject to”, insert “section 61DA (presumption of joint parental
22 responsibility when making parenting orders) and 65DAB (parenting
23 plans) and”.

24 **23 After section 65D**

25 Insert:

26 **65DAA Court to consider child spending substantial time with each**
27 **parent in certain circumstances**

28 (1) If:

- 29 (a) a parenting order provides (or is to provide) that a child’s
30 parents are to have parental responsibility for the child
31 jointly; and
32 (b) both parents wish to spend substantial time with the child;
-

1 the court must consider making an order to provide (or including
2 provision in the order) for the child to spend substantial time with
3 each of the parents.

4 Note: The effect of section 65E is that in deciding whether to go on to make
5 a parenting order for the child to spend substantial time with each of
6 the parents, the court will regard the best interests of the child as the
7 paramount consideration.

- 8 (2) Subsection (1) does not apply if it is not reasonably practicable for
9 the child to spend substantial time with each of the parents.

10 **65DAB Court to have regard to parenting plans**

11 When making a parenting order in relation to a child, the court is to
12 have regard to the terms of the most recent parenting plan (if any)
13 that has been entered into between the child's parents to the extent
14 to which that plan relates to the child if doing so would be in the
15 best interests of the child.

16 **65DAC Effect of parenting order that provides for joint parental**
17 **responsibility**

- 18 (1) This section applies if, under a parenting order:
19 (a) 2 or more persons are to have parental responsibility, or a
20 component of parental responsibility, for a child jointly; and
21 (b) the exercise of parental responsibility, or that component of
22 parental responsibility, involves making a decision about a
23 major long-term issue in relation to the child.

- 24 (2) The order is taken to require the decision to be made jointly by
25 those persons.

26 Note: Subject to any court orders, decisions about issues that are not major
27 long-term issues are made by the person with whom the child is
28 spending time without a need to consult the other person (see
29 section 65DAE).

- 30 (3) The order is taken to require each of those persons:
31 (a) to consult the other person in relation to the decision to be
32 made about that issue; and
33 (b) to make a genuine effort to come to a joint decision about
34 that issue.

- 1 (4) To avoid doubt, this section does not require any other person to
2 establish, before acting on a decision about the child
3 communicated by one of those persons, that the decision has been
4 made jointly.

5 **65DAE No need to consult on issues that are not major long-term**
6 **issues**

- 7 (1) If a child is spending time with a person at a particular time under a
8 parenting order, the order is taken not to require the person to
9 consult a person who:
10 (a) has parental responsibility, or a component of parental
11 responsibility, for the child; or
12 (b) has parental responsibility, or a component of parental
13 responsibility, for the child jointly with another person;
14 about decisions that are made in relation to the child during that
15 time on issues that are not major-long term issues.

16 Note: This will mean that the person with whom the child is spending time
17 will usually not need to consult on decisions about such things as what
18 the child eats or wears because these are usually not major long-term
19 issues.

- 20 (2) Subsection (1) applies subject to any provision to the contrary
21 made by a parenting order.

22 **24 Paragraph 65G(2)(a)**

23 Repeal the paragraph, substitute:

- 24 (a) the parties to the proceedings have attended a conference
25 with a family and child specialist to discuss the matter to be
26 determined by the proposed order; or

27 **25 Subsection 68F(1)**

28 Omit “subsection (2)”, substitute “subsections (1A) and (2)”.

29 **26 After subsection 68F(1)**

30 Insert:

- 31 (1A) The primary considerations are:
32 (a) the benefit to the child of having a meaningful relationship
33 with both of the child’s parents; and

- 1 (b) the need to protect the child from physical or psychological
2 harm caused, or that may be caused, by:
3 (i) being subjected or exposed to abuse, ill-treatment,
4 violence or other behaviour; or
5 (ii) being directly or indirectly exposed to abuse,
6 ill-treatment, violence or other behaviour that is directed
7 towards, or may affect, another person.

8 **27 Subsection 68F(2)**

9 Omit “The court must consider”, substitute “Additional considerations
10 are”.

11 **28 Paragraph 68F(2)(a)**

12 Omit “wishes” (wherever occurring), substitute “views”.

13 **29 Paragraph 68F(2)(b)**

14 After “other persons”, insert “(including any grandparent or other
15 relative of the child)”.

16 **30 After paragraph 68F(2)(b)**

17 Insert:

- 18 (ba) the willingness and ability of each of the child’s parents to
19 facilitate, and encourage, a close and continuing relationship
20 between the child and the other parent;

21 **31 Subparagraph 68F(2)(c)(ii)**

22 After “other person”, insert “(including any grandparent or other
23 relative of the child)”.

24 **32 Paragraph 68F(2)(e)**

25 After “other person”, insert “(including any grandparent or other
26 relative of the child)”.

27 **33 Paragraph 68F(2)(f)**

28 Repeal the paragraph, substitute:

- 29 (f) the maturity, sex, lifestyle and background (including
30 lifestyle, culture and traditions) of the child and of either of
31 the child’s parents, and any other characteristics of the child
32 that the court thinks are relevant;

- 1 (fa) if the child is an Aboriginal child or a Torres Strait Islander
2 child:
3 (i) the child's right to enjoy his or her Aboriginal or Torres
4 Strait Islander culture (including the right to enjoy that
5 culture with the other people who share that culture);
6 and
7 (ii) the likely impact any proposed parenting order under
8 this Part will have on that right;

9 **34 Paragraph 68F(2)(g)**

10 Repeal the paragraph.

11 **35 Paragraph 68F(2)(j)**

12 Repeal the paragraph, substitute:

- 13 (j) any family violence order that applies to the child or a
14 member of the child's family, if:
15 (i) the order is a final order; or
16 (ii) the making of the order was contested by a person;

17 **36 Subsection 68F(4)**

18 Repeal the subsection, substitute:

- 19 (4) For the purposes of paragraph (2)(fa), an Aboriginal child's or a
20 Torres Strait Islander child's right to enjoy his or her Aboriginal or
21 Torres Strait Islander culture includes the right:
22 (a) to maintain a connection with that culture; and
23 (b) to have the support, opportunity and encouragement
24 necessary:
25 (i) to explore the full extent of that culture, consistent with
26 the child's age and developmental level and the child's
27 views; and
28 (ii) to develop a positive appreciation of that culture.

29 **37 Subsection 68G(1)**

30 Omit "wishes" (wherever occurring), substitute "views".

31 Note: The heading to section 68G is altered by omitting "wishes" and substituting "views".

32 **38 Subsection 68G(2)**

33 Omit "wishes", substitute "views".

1 **39 Section 68H**

2 Omit “wishes”, substitute “views”.

3 Note: The heading to section 68H is altered by omitting “wishes” and substituting “views”.

1

2 **Part 2—Application of amendments**

3 **40 Application**

- 4 (1) The amendments made by items 11, 20 and 21 of this Schedule apply to
5 parenting orders made in proceedings initiated on or after the day on
6 which item 11 commences.
- 7 (2) The amendments made by item 12 of this Schedule apply to
8 proceedings under Part VII, whether or not the proceedings commenced
9 before item 12 commenced.
- 10 (3) The amendments made by item 16 of this Schedule apply to parenting
11 orders made in proceedings initiated on or after the day on which that
12 item commences.
- 13 (4) The amendment made by item 19 of this Schedule applies to parenting
14 orders made on or after the commencement of that item. This includes,
15 without limitation, a parenting order that varies an earlier parenting
16 order, whether the earlier parenting order was made before or after
17 commencement.
- 18 (5) Sections 65DAA, 65DAB, 65DAC and 65DAE of the *Family Law Act*
19 *1975* apply to parenting orders made in proceedings initiated on or after
20 the day on which item 23 of this Schedule commences.
- 21 (6) The amendments made by item 24 of this Schedule apply to a court
22 proposing to make an order mentioned in subsection 65G(1) of the
23 *Family Law Act 1975*, whether or not the proceedings to which the
24 order relates commenced before item 24 commenced.

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Schedule 2—Compliance regime

Part 1—Amendments

1 At the end of section 70NC

Add:

Note: Parenting orders may be subject to any subsequent parenting plan (see section 64D). This means that an action that would otherwise contravene a parenting order may not be a contravention, because of a subsequent inconsistent parenting plan. Whether this is the case or not depends on the terms of the parenting order.

2 Section 70NEA

Repeal the section, substitute:

70NEA Standard of proof

- (1) Subject to subsection (3), the standard of proof to be applied in determining matters in proceedings under this Division is proof on the balance of probabilities.
- (2) Without limiting subsection (1), that subsection applies to the determination of whether a person who contravened an order under this Act affecting children had a reasonable excuse for the contravention.
- (3) The court may only make an order under:
 - (a) paragraph 70NJ(3)(a), (d) or (e); or
 - (b) paragraph 70NN(8)(a);if the court is satisfied beyond reasonable doubt that the grounds for making the order exist.

3 After Subdivision A of Division 13A of Part VII

Insert:

1 **4 At the end of Subdivision AA of Division 13A of Part VII**

2 Add:

3 **70NEC Effect of parenting plan**

4 (1) This section applies if:

- 5 (a) a parenting order has been made in relation to a child
6 (whether before or after the commencement of this section);
7 and
8 (b) after the parenting order was made, the parents of the child
9 made a parenting plan that dealt with a matter dealt with in
10 the parenting order; and
11 (c) section 70NEB applies to proceedings brought in relation to
12 the parenting order in relation to that matter; and
13 (d) the parenting plan was in force when the contravention of the
14 parenting order is alleged to have been committed.

15 Note: An action that would otherwise contravene a parenting order may not
16 be a contravention because of a subsequent inconsistent parenting
17 plan. Whether this is the case or not depends on the terms of the
18 parenting order (see section 64D).

19 (2) In exercising its powers under section 70NEB, the court must:

- 20 (a) have regard to the terms of the parenting plan; and
21 (b) consider whether to exercise its powers under that section to
22 make an order varying the parenting order to include (with or
23 without modification) some or all of the provisions of the
24 parenting plan.

25 **5 Paragraph 70NG(1)(b)**

26 Repeal the paragraph, substitute:

- 27 (b) make a further parenting order that compensates a person for
28 time the person did not spend with the child (or time the child
29 did not live with the person) as a result of the current
30 contravention;

31 **6 At the end of subsection 70NG(1)**

32 Add:

- 33 ; (d) if the current contravention is not of a minor or technical
34 nature—make an order requiring the person who committed

- 1 the current contravention to enter into a bond in accordance
2 with section 70NGA;
- 3 (e) if:
- 4 (i) the current contravention is a contravention of a
5 parenting order in relation to a child; and
- 6 (ii) the current contravention resulted in a person not
7 spending time with the child (or the child not living with
8 a person for a particular period); and
- 9 (iii) the person referred to in subparagraph (ii) reasonably
10 incurs expenses as a result of the contravention; and
- 11 (iv) the current contravention is not of a minor or technical
12 nature;
- 13 make an order requiring the person who committed the
14 current contravention to compensate the person referred to in
15 subparagraph (ii) for some or all of the expenses referred to
16 in subparagraph (iii);
- 17 (f) if the current contravention is not of a minor or technical
18 nature—make an order that the person who committed the
19 current contravention pay some or all of the costs of another
20 party, or other parties, to the proceedings under this
21 Subdivision.

22 **7 After subsection 70NG(1)**

23 Insert:

24 (1AA) If:

- 25 (a) the current contravention is a contravention of a parenting
26 order in relation to a child; and
- 27 (b) the contravention resulted in a person not spending time with
28 the child (or the child not living with a person for a particular
29 period);

30 the court must consider making an order under paragraph (1)(b) to
31 compensate the person for the time the person did not spend with
32 the child (or the time the child did not live with the person) as a
33 result of the contravention.

34 (1AB) The court must not make an order under paragraph (1)(b) if it
35 would not be in the best interests of the child for the court to do so.

36 **8 After section 70NG**

1 Insert:

2 **70NGA Bonds**

- 3 (1) This section provides for bonds that a court may require a person to
4 enter into under paragraph 70NG(1)(d).
- 5 (2) A bond is to be for a specified period of up to 2 years.
- 6 (3) A bond may be:
7 (a) with or without surety; and
8 (b) with or without security.
- 9 (4) The conditions that may be imposed on a person by a bond include
10 (without limitation) conditions that require the person:
11 (a) to attend an appointment (or a series of appointments) with a
12 family and child specialist; or
13 (b) to attend family counselling; or
14 (c) to attend family dispute resolution; or
15 (d) to be of good behaviour.
- 16 (5) If a court proposes to require a person to enter into a bond, it must,
17 before making the requirement, explain to the person, in language
18 likely to be readily understood by the person:
19 (a) the purpose and effect of the proposed requirement; and
20 (b) the consequences that may follow if the person:
21 (i) fails to enter into the bond; or
22 (ii) having entered into the bond—fails to act in accordance
23 with the bond.

24 **70NGB Effect of parenting plan**

- 25 (1) This section applies if:
26 (a) a parenting order has been made in relation to a child
27 (whether before or after the commencement of this section);
28 and
29 (b) after the parenting order was made, the parents of the child
30 made a parenting plan that dealt with a matter dealt with in
31 the parenting order; and
32 (c) proceedings are brought in relation to a contravention of the
33 parenting order in relation to that matter; and

1 (d) the parenting plan was in force when the contravention
2 occurred.

3 Note: An action that would otherwise contravene a parenting order may not
4 be a contravention because of a subsequent inconsistent parenting
5 plan. Whether this is the case or not depends on the terms of the
6 parenting order (see section 64D).

7 (2) In exercising its powers under section 70NG, the court must:
8 (a) have regard to the terms of the parenting plan; and
9 (b) consider whether to exercise its powers under paragraph
10 70NG(1)(ba) to make an order varying the parenting order to
11 include (with or without modification) some or all of the
12 provisions of the parenting plan.

13 **9 Subsection 70NJ(2A)**

14 Repeal the subsection, substitute:

15 (2A) If this Subdivision applies, the court must, in relation to the person
16 who committed the current contravention:

- 17 (a) make an order under paragraph (3)(g), unless the court is
18 satisfied that it would not be in the best interests of the child
19 concerned to make that order; and
20 (b) if the court makes an order under paragraph (3)(g)—consider
21 making another order (or other orders) under subsection (3)
22 that the court considers to be the most appropriate of the
23 orders under subsection (3) in the circumstances; and
24 (c) if the court does not make an order under paragraph (3)(g)—
25 make at least one order under subsection (3), being the order
26 (or orders) that the court considers to be the most appropriate
27 of the orders under subsection (3) in the circumstances.

28 **10 After paragraph 70NJ(3)(c)**

29 Insert:

- 30 (ca) to make a further parenting order that compensates a person
31 for time the person did not spend with the child (or the time
32 the child did not live with the person) as a result of the
33 current contravention, unless it would not be in the best
34 interests of the child concerned to make that order; or

35 **11 At the end of subsection 70NJ(3)**

36 Add:

- 1 (f) if:
2 (i) the current contravention is a contravention of a
3 parenting order in relation to a child; and
4 (ii) the current contravention resulted in a person not
5 spending time with the child (or the child not living with
6 a person for a particular period); and
7 (iii) the person referred to in subparagraph (ii) reasonably
8 incurs expenses as a result of the contravention; and
9 to make an order requiring the person who committed the
10 current contravention to compensate the person referred to in
11 subparagraph (ii) for some or all of the expenses referred to
12 in subparagraph (iii); or
13 (g) to make an order that the person who committed the current
14 contravention pay all of the costs of another party, or other
15 parties, to the proceedings under this Subdivision; or
16 (h) to make an order that the person who committed the current
17 contravention pay some of the costs of another party, or other
18 parties, to the proceedings under this Subdivision.

19 **12 After section 70NJ**

20 Insert:

21 **70NJA Effect of parenting plan**

- 22 (1) This section applies if:
23 (a) a parenting order has been made in relation to a child
24 (whether before or after the commencement of this
25 Subdivision); and
26 (b) after the parenting order was made, the parents of the child
27 made a parenting plan that dealt with a matter dealt with in
28 the parenting order; and
29 (c) proceedings are brought in relation to a contravention of the
30 parenting order in relation to that matter; and
31 (d) the parenting plan was in force when the contravention
32 occurred.

33 Note: An action that would otherwise contravene a parenting order may not
34 be a contravention because of a subsequent inconsistent parenting
35 plan. Whether this is the case or not depends on the terms of the
36 parenting order (see section 64D).

- 37 (2) In exercising its powers under section 70NJ, the court must:
-

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- 1 (a) have regard to the terms of the parenting plan; and
2 (b) consider whether to exercise its powers under paragraph
3 70NG(3)(c) to make an order varying the parenting order to
4 include (with or without modification) some or all of the
5 provisions of the parenting plan.

6 **13 Subsection 117(1)**

7 After “subsection (2)”, insert “, subsection 70NJ(2A)”.

1

2 **Part 2—Application of amendments**

3 **14 Application**

4 The amendments made by this Schedule apply to a contravention of a
5 parenting order, if the contravention occurs on or after the
6 commencement of this Schedule.

1
2 **Schedule 3—Amendments relating to the**
3 **conduct of child-related proceedings**

4 **Part 1—Amendments**

5 *Evidence Act 1995*

6 **1 At the end of subsection 190(1)**

7 Add:

8 Note: Matters related to evidence in child-related proceedings (within the
9 meaning of section 60KA of the *Family Law Act 1975*) are dealt with
10 by that Act.

11 *Family Law Act 1975*

12 **2 Section 60C (after table item 1)**

13 Insert:

1A

Division 1A—Principles for conducting child-related proceedings

principles for conducting proceedings under this Part and certain other incidental proceedings

duties and powers of the court related to giving effect to the principles

14 **3 Subsection 60D(1)**

15 Insert:

16 *child-related proceedings* has the meaning given by section 60KA.

17 **4 After Division 1 of Part VII**

18 Insert:

1 **Division 1A—Principles for conducting child-related**
2 **proceedings**

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

4 **60KA Proceedings to which this Division applies**

- 5 (1) This Division applies to proceedings that are wholly under this
6 Part.
- 7 (2) This Division also applies to proceedings that are partly under this
8 Part, but only:
9 (a) to the extent that they are proceedings under this Part; and
10 (b) if the parties to the proceedings consent—to the extent that
11 they are not proceedings under this Part.
- 12 (3) This Division also applies to any other proceedings between the
13 parties that involve the court exercising jurisdiction under this Act
14 and that arise from the breakdown of the parties' marital
15 relationship, if the parties to the proceedings consent.
- 16 (4) Proceedings to which this Division applies are *child-related*
17 *proceedings*.
- 18 (5) Consent given for the purposes of paragraph (2)(b) or
19 subsection (3) must be given in the form prescribed by the
20 applicable Rules of Court.
- 21 (6) A party to proceedings may, with the leave of the court, revoke a
22 consent given for the purposes of paragraph (2)(b) or
23 subsection (3).

24 **Subdivision B—Principles for conducting child-related**
25 **proceedings**

26 **60KB Principles for conducting child-related proceedings**

27 *Application of the principles*

- 28 (1) The court must give effect to the principles in this section:

- 1 (a) in performing duties and exercising powers (whether under
2 this Division or otherwise) in relation to child-related
3 proceedings; and
4 (b) in making other decisions about the conduct of child-related
5 proceedings.

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

7 *Principle 1*

- 8 (3) The first principle is that the court is to consider the needs and
9 concerns of the child or children concerned in determining the
10 conduct of the proceedings.

11 *Principle 2*

- 12 (4) The second principle is that the court is to actively direct, control
13 and manage the conduct of the proceedings.

14 *Principle 3*

- 15 (5) The third principle is that the proceedings are, as far as possible, to
16 be conducted in a way that will promote cooperative and
17 child-focused parenting by the parties.

18 *Principle 4*

- 19 (6) The fourth principle is that the proceedings are to be conducted
20 without undue delay and with as little formality, and legal
21 technicality and form, as possible.

22 **60KC This Division also applies to proceedings in Chambers**

23 A Judge, Judicial Registrar, Registrar, Federal Magistrate or
24 magistrate, who is hearing child-related proceedings in Chambers,
25 has all of the duties and powers that a court has under this
26 Division.

27 **60KD Powers under this Division may be exercised on court's own
28 initiative**

29 The court may exercise a power under this Division:

- 30 (a) on the court's own initiative; or
-

1 (b) at the request of one or more of the parties to the
2 proceedings.

3 **Subdivision C—Duties and powers related to giving effect to**
4 **the principles**

5 **60KE General duties**

6 (1) In giving effect to the principles in section 60KB, the court must:

7 (a) decide which of the issues in the proceedings require full
8 investigation and hearing and which may be disposed of
9 summarily; and

10 (b) decide the order in which the issues are to be decided; and

11 (c) give directions or make orders about the timing of steps that
12 are to be taken in the proceedings; and

13 (d) in deciding whether a particular step is to be taken—consider
14 whether the likely benefits of taking the step justify the costs
15 of taking it; and

16 (e) make appropriate use of technology; and

17 (f) if the court considers it appropriate—encourage the parties to
18 use family dispute resolution or family counselling; and

19 (g) deal with as many aspects of the matter as it can on a single
20 occasion; and

21 (h) deal with the matter, where appropriate, without requiring the
22 parties' physical attendance at court.

23 (2) Subsection (1) does not limit subsection 60KB(1).

24 **60KF Power to make determinations, findings and orders at any**
25 **stage of proceedings**

26 If, at any time after the commencement of child-related
27 proceedings, the court considers that it may assist in the resolution
28 of the dispute between the parties, the court may do any or all of
29 the following:

30 (a) make a finding of fact in relation to the proceedings;

31 (b) determine a matter arising out of the proceedings;

32 (c) make an order in relation to an issue arising out of the
33 proceedings.

1 Note: For example, the court may choose to use this power if the court
2 considers that making a finding of fact at a particular point in the
3 proceedings will help to focus the proceedings.

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

5 **60KG Rules of evidence not to apply unless court decides**

6 (1) The following provisions of the *Evidence Act 1995* do not apply to
7 child-related proceedings:

8 (a) Divisions 3, 4 and 5 of Part 2.1 (which deal with general
9 rules about giving evidence, examination in chief,
10 re-examination and cross-examination) (other than
11 sections 26, 30, 36 and 41);

12 Note: Section 26 is about the court's control over questioning of
13 witnesses. Section 30 is about interpreters. Section 36 relates to
14 examination of a person without subpoena or other process.
15 Section 41 is about improper questions.

16 (b) Parts 2.2 and 2.3 (which deal with documents and other
17 evidence including demonstrations, experiments and
18 inspections);

19 (c) Parts 3.2 to 3.8 (which deal with hearsay, opinion,
20 admissions, evidence of judgments and convictions, tendency
21 and coincidence, credibility and character).

22 (2) The court may apply one or more of the provisions of a Division or
23 Part mentioned in subsection (1) to an issue in the proceedings, if:

24 (a) for an issue relating to proceedings under this Part—the court
25 considers it necessary in the best interests of the child or
26 children concerned to do so; and

27 (b) for an issue relating to proceedings that are not under this
28 Part—the court considers it necessary in all the
29 circumstances to do so.

30 (3) Subsection (1) does not revive the operation of a rule of common
31 law that, but for subsection (1), would have been prevented from
32 operating because of a provision of a Division or Part mentioned in
33 that subsection.

34 **60KH Evidence of children**

35 (1) This section applies if the court applies the law against hearsay
36 under subsection 60KG(2) to child-related proceedings.

- 1 (2) Evidence of a representation made by a child about a matter that is
2 relevant to the welfare of the child or another child, which would
3 not otherwise be admissible as evidence because of the law against
4 hearsay, is not inadmissible in the proceedings solely because of
5 the law against hearsay.
- 6 (3) The court may give such weight (if any) as it thinks fit to evidence
7 admitted under subsection (2).
- 8 (4) This section applies despite any other Act or rule of law.
- 9 (5) In this section:
- 10 *child* means a person under 18.
- 11 *representation* includes an express or implied representation,
12 whether oral or in writing, and a representation inferred from
13 conduct.

14 **60KI Court's general duties and powers relating to evidence**

- 15 (1) In giving effect to the principles in section 60KB, the court may:
- 16 (a) give directions or make orders about the matters in relation to
17 which the parties are to present evidence; and
- 18 (b) give directions or make orders about who is to give evidence
19 in relation to each remaining issue; and
- 20 (c) give directions or make orders about how particular evidence
21 is to be given; and
- 22 (d) if the court considers that expert evidence is required—give
23 directions or make orders about:
- 24 (i) the matters in relation to which an expert is to provide
25 evidence; and
- 26 (ii) the number of experts who may provide evidence in
27 relation to a matter; and
- 28 (iii) how an expert is to provide the expert's evidence; and
- 29 (e) ask questions of, and seek information or the production of
30 evidence from, parties, witnesses and experts on matters
31 relevant to the proceedings.
- 32 (2) Without limiting subsection (1) or section 60KF, the court may
33 give directions or make orders:
- 34 (a) about the use of written submissions; or

- 1 (b) about the length of written submissions; or
2 (c) about limiting the time for oral argument; or
3 (d) about limiting the time for the giving of evidence; or
4 (e) that particular evidence is to be given orally; or
5 (f) that particular evidence is to be given by affidavit; or
6 (g) that evidence in relation to a particular matter not be
7 presented by a party; or
8 (h) that evidence of a particular kind not be presented by a party;
9 or
10 (i) about limiting cross-examination of a particular witness; or
11 (j) about limiting the number of witnesses who are to give
12 evidence in the proceedings.

- 13 (3) In child-related proceedings concerning an Aboriginal child or
14 Torres Strait Islander child, the court may, for the purposes of
15 section 61F:
16 (a) receive into evidence the transcript of evidence in any other
17 proceedings before:
18 (i) the court; or
19 (ii) another court; or
20 (iii) a tribunal;
21 and draw any conclusions of fact from that transcript that it
22 thinks proper; and
23 (b) adopt any recommendation, finding, decision or judgment of
24 any court, person or body of a kind mentioned in any of
25 subparagraphs (a)(i) to (iii).

26 Note: Section 61F requires the court to have regard to any kinship
27 obligations and child-rearing practices of Aboriginal or Torres Strait
28 Islander culture relevant to an Aboriginal or Torres Strait Islander
29 child.

30 **5 Section 100A**

31 Repeal the section.

32 **6 At the end of section 102A**

33 Add:

34 Note: Section 60KH is relevant to evidence of a representation by a child, if
35 the admissibility of the evidence would otherwise be affected by the
36 law against hearsay.

1 **7 Part XI (heading)**

2 Repeal the heading, substitute:

3 **Part XI—Procedure and evidence**

4 Note: Division 1A of Part VII has provisions about procedure and evidence that apply to
5 child-related proceedings (within the meaning of Part VII).

1

2 **Part 2—Application of amendments**

3 **8 Application of amendments**

4 The amendments made by Part 1 of this Schedule apply to proceedings
5 commenced by an application filed on or after 1 July 2006.

1
2 **Schedule 4—Changes to dispute resolution**

3 **Part 1—Amendments**

4 *Family Law Act 1975*

5 **1 Subsection 4(1)**

6 Insert:

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

- 8 (a) an assault, including a sexual assault, of the child which is an
9 offence under a law, written or unwritten, in force in the State
10 or Territory in which the act constituting the assault occurs;
11 or
12 (b) a person involving the child in a sexual activity with that
13 person or another person in which the child is used, directly
14 or indirectly, as a sexual object by the first-mentioned person
15 or the other person, and where there is unequal power in the
16 relationship between the child and the first-mentioned
17 person.

18 **2 Subsection 4(1)**

19 Insert:

20 *advisory dispute resolution* has the meaning given by subsection
21 10H(2).

22 **3 Subsection 4(1) (definition of *approved counselling***
23 ***organisation*)**

24 Repeal the definition.

25 **4 Subsection 4(1)**

26 Insert:

27 *approved family counselling organisation* means an organisation
28 in respect of which an approval under section 10E is in force.

29 **5 Subsection 4(1)**

30 Insert:

1 Repeal the definition.

2 **16 Subsection 4(1) (definition of *family and child mediation*)**

3 Repeal the definition.

4 **17 Subsection 4(1) (definition of *family and child mediator*)**

5 Repeal the definition.

6 **18 Subsection 4(1)**

7 Insert:

8 *family and child specialist* has the meaning given by section 11B.

9 **19 Subsection 4(1)**

10 Insert:

11 *family counselling* has the meaning given by section 10A.

12 **20 Subsection 4(1)**

13 Insert:

14 *family counsellor* has the meaning given by section 10B.

15 **21 Subsection 4(1)**

16 Insert:

17 *family dispute resolution* has the meaning given by section 10H.

18 **22 Subsection 4(1)**

19 Insert:

20 *family dispute resolution practitioner* has the meaning given by
21 section 10J.

22 **23 Subsection 4(1) (definition of *marriage counselling*)**

23 Repeal the definition.

24 **24 Subsection 4(1)**

25 Insert:

1 Repeal the Parts, substitute:

2 **Part II—Non-court based family services**

3 **Division 1—Family counselling**

4 **Subdivision A—About family counselling**

5 **10A Definition of *family counselling***

6 *Family counselling* is a process in which a family counsellor
7 helps:

- 8 (a) one or more persons to deal with personal and interpersonal
9 issues in relation to marriage; or
10 (b) one or more persons (including children) who are affected, or
11 likely to be affected, by separation or divorce to deal with
12 either or both of the following:
13 (i) personal and interpersonal issues;
14 (ii) issues relating to the care of children.

15 **10B Definition of *family counsellor***

16 A *family counsellor* is a person who is:

- 17 (a) authorised by an approved family counselling organisation to
18 offer family counselling on behalf of the organisation; or
19 (b) engaged under section 38R to perform family counselling
20 services under this Act; or
21 (c) an officer or staff member of the Family Court authorised by
22 the Chief Executive Officer to provide family counselling
23 under this Act; or
24 (d) an officer or staff member of the Federal Magistrates Court
25 authorised by the Chief Executive Officer of that court to
26 provide family counselling under this Act; or
27 (e) appointed under a law of a State as a counsellor in relation to
28 a Family Court of that State.

1 **10C Communications in family counselling etc. are confidential**

- 2 (1) A family counsellor must not disclose a communication made to
3 the counsellor while the counsellor is conducting family
4 counselling.
- 5 (2) Despite subsection (1), a family counsellor may disclose a
6 communication to a person to whom the counsellor refers a person,
7 for medical or other professional consultation, if consent to the
8 disclosure of the communication is given by:
- 9 (a) if the person who made the communication is 18 or over—
10 that person; or
- 11 (b) if the person who made the communication is a child under
12 18:
- 13 (i) each person who has parental responsibility (within the
14 meaning of Part VII) for the child; or
- 15 (ii) a court.
- 16 (3) Despite subsection (1), a family counsellor may disclose a
17 communication if the counsellor reasonably believes the disclosure
18 is necessary for the purpose of:
- 19 (a) protecting a child from harm (whether physical, sexual,
20 psychological or financial); or
- 21 (b) preventing or lessening a serious and imminent threat to:
- 22 (i) the life or health of a person; or
- 23 (ii) the property of a person; or
- 24 (c) reporting the commission, or preventing the likely
25 commission, of an offence involving:
- 26 (i) violence or a threat of violence to a person; or
- 27 (ii) intentional damage to property of a person or a threat of
28 damage to property; or
- 29 (d) enabling the counsellor to properly discharge his or her
30 functions as a counsellor; or
- 31 (e) if a child is separately represented under an order under
32 section 68L—assisting the person representing the child to do
33 so properly; or
- 34 (f) complying with a law of the Commonwealth, a State or a
35 Territory.
- 36 (4) Despite subsection (1), a family counsellor may disclose a
37 communication in order to provide information (other than
-

- 1 personal information within the meaning of section 6 of the
2 *Privacy Act 1988*) for research relevant to families.
- 3 (5) Evidence that would be inadmissible because of section 10D is not
4 admissible merely because subsection (3) or (4) authorises its
5 disclosure.
- 6 Note: This means that the counsellor's evidence is inadmissible in court,
7 even if subsection (3) or (4) allows the counsellor to disclose it in
8 other circumstances.
- 9 (6) Nothing in this section prevents a family counsellor from
10 disclosing information necessary for the counsellor to give a
11 certificate of the kind mentioned in subsection 60J(1) of this Act or
12 paragraph 16(2A)(a) of the *Marriage Act 1961*.
- 13 (7) In this section:
14 **communication** includes admission.

15 **10D Communications in family counselling etc. are inadmissible**

- 16 (1) Evidence of anything said, or any admission made, by or in the
17 company of:
18 (a) a family counsellor conducting family counselling; or
19 (b) a person (the **professional**) to whom a family counsellor
20 refers a person for medical or other professional consultation,
21 while the professional is carrying out professional services
22 for the person;
23 is not admissible:
24 (c) in any court (whether or not exercising federal jurisdiction);
25 or
26 (d) in any proceedings before a person authorised to hear
27 evidence (whether the person is authorised by a law of the
28 Commonwealth, a State or a Territory, or by the consent of
29 the parties).
- 30 (2) Subsection (1) does not apply to:
31 (a) an admission by an adult that indicates that a child under 18
32 has been abused or is at risk of abuse; or
33 (b) a disclosure by a child under 18 that indicates that the child
34 has been abused or is at risk of abuse;

- 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 (3) Nothing in this section prevents a family counsellor from
5 disclosing information necessary for the counsellor to give a
6 certificate of the kind mentioned in subsection 60J(1) of this Act or
7 paragraph 16(2A)(a) of the *Marriage Act 1961*.
- 8 (4) A family counsellor who refers a person to a professional (within
9 the meaning of paragraph (1)(b)) must inform the professional of
10 the effect of this section.

11 **Subdivision B—Approval of family counselling organisations**

12 **10E Approval of family counselling organisations**

- 13 (1) The Minister may, by notice in writing to an organisation, approve
14 the organisation as a family counselling organisation if, and only if,
15 the Minister is satisfied that:
- 16 (a) the organisation is currently receiving, or has been approved
17 to receive, funding under a program or part of a program
18 designated by the Minister under subsection (2); and
- 19 (b) the organisation is receiving, or has been approved to receive,
20 that funding in order to provide services that include family
21 counselling.
- 22 Note: If an organisation meets the requirements for approval under both this
23 section and section 10N, the Minister may approve the organisation as
24 both a family counselling organisation and a family dispute resolution
25 organisation.
- 26 (2) The Minister may, in writing, designate for the purposes of
27 subsection (1):
- 28 (a) a program; or
29 (b) part of a program;
30 administered by or on behalf of the Commonwealth government
31 under which money appropriated by the Parliament is provided to
32 organisations for the purposes of making family counselling and
33 family dispute resolution services available.
- 34 (3) An instrument under this section is not a legislative instrument.

1 **10F Automatic termination of and revocation of approvals**

- 2 (1) An organisation ceases to be approved under section 10E if the
3 organisation:
4 (a) ceases to receive; or
5 (b) ceases to be approved to receive;
6 funding under a program or part of a program designated by the
7 Minister under subsection 10E(2).
- 8 (2) The Minister must revoke the approval of an organisation under
9 section 10E if the organisation requests the revocation.
- 10 (3) The Minister's power to revoke an approval must be exercised by
11 notice in writing to the organisation concerned.

12 **10G Minister to publish lists of approved family counselling**
13 **organisations**

14 The Minister must publish annually, in such manner as the
15 Minister thinks appropriate, a list of all approved family
16 counselling organisations.

17 **Division 2—Family dispute resolution**

18 **Subdivision A—About family dispute resolution**

19 **10H Definition of *family dispute resolution***

- 20 (1) ***Family dispute resolution*** is a process (other than a judicial
21 process):
22 (a) in which a family dispute resolution practitioner helps people
23 affected, or likely to be affected, by separation or divorce to
24 resolve some or all of their disputes with each other; and
25 (b) in which the practitioner is independent of all of the parties
26 involved in the process.
- 27 (2) Family dispute resolution may be either:
28 (a) ***advisory dispute resolution***—in which the family dispute
29 resolution practitioner conducts family dispute resolution by,
30 among other things, providing advice on one or more of the
31 following:
32 (i) the subject matter of the dispute;
-

- 1 (ii) possible outcomes of the dispute;
2 (iii) the application of the law;
3 (iv) an area of professional expertise besides the law (for
4 example, psychology); or
5 (b) **facilitative dispute resolution**—in which the family dispute
6 resolution practitioner conducts family dispute resolution
7 without providing advice on any of the following:
8 (i) the subject matter of the dispute;
9 (ii) possible outcomes of the dispute;
10 (iii) the application of the law;
11 (iv) an area of professional expertise besides the law (for
12 example, psychology).

13 **10J Definition of *family dispute resolution practitioner***

- 14 A **family dispute resolution practitioner** is a person who is:
15 (a) authorised by an approved family dispute resolution
16 organisation to offer family dispute resolution on behalf of
17 the organisation; or
18 (b) engaged under section 38R to perform family dispute
19 resolution services under this Act; or
20 (c) an officer or staff member of the Family Court authorised by
21 the Chief Executive Officer to provide family dispute
22 resolution under this Act; or
23 (d) an officer or staff member of the Federal Magistrates Court
24 authorised by the Chief Executive Officer of that court to
25 provide family dispute resolution under this Act; or
26 (e) appointed under a law of a State as a dispute resolution
27 practitioner in relation to the Family Court of that State; or
28 (f) a person, other than a person mentioned in paragraph (a), (b),
29 (c), (d) or (e), who meets the requirements specified in the
30 regulations.

31 **10K Communications in family dispute resolution etc. are**
32 **confidential**

- 33 (1) A family dispute resolution practitioner must not disclose a
34 communication made to the practitioner while the practitioner is
35 conducting family dispute resolution.

- 1 (2) Despite subsection (1), a family dispute resolution practitioner may
2 disclose a communication to a person to whom the practitioner
3 refers a person, for medical or other professional consultation, if
4 consent to the disclosure of the communication is given by:
5 (a) if the person who made the communication is 18 or over—
6 that person; or
7 (b) if the person who made the communication is a child under
8 18:
9 (i) each person who has parental responsibility (within the
10 meaning of Part VII) for the child; or
11 (ii) a court.
- 12 (3) Despite subsection (1), a family dispute resolution practitioner may
13 disclose a communication if the practitioner reasonably believes
14 the disclosure is necessary for the purpose of:
15 (a) protecting a child from harm (whether physical, sexual,
16 psychological or financial); or
17 (b) preventing or lessening a serious and imminent threat to:
18 (i) the life or health of a person; or
19 (ii) the property of a person; or
20 (c) reporting the commission, or preventing the likely
21 commission, of an offence involving:
22 (i) violence or a threat of violence to a person; or
23 (ii) intentional damage to property of a person or a threat of
24 damage to property; or
25 (d) enabling the practitioner to properly discharge his or her
26 functions as a practitioner; or
27 (e) if a child is separately represented under an order under
28 section 68L—assisting the person representing the child to do
29 so properly; or
30 (f) complying with a law of the Commonwealth, a State or a
31 Territory.
- 32 (4) Despite subsection (1), a family dispute resolution practitioner may
33 disclose a communication in order to provide information (other
34 than personal information within the meaning of section 6 of the
35 *Privacy Act 1988*) for research relevant to families.
- 36 (5) Evidence that would be inadmissible because of section 10L is not
37 admissible merely because subsection (3) or (4) authorises its
38 disclosure.
-

Schedule 4 Changes to dispute resolution
Part 1 Amendments

1 Note: This means that the practitioner's evidence is inadmissible in court,
2 even if subsection (3) or (4) allows the practitioner to disclose it in
3 other circumstances.

4 (6) Nothing in this section prevents a family dispute resolution
5 practitioner from disclosing information necessary for the
6 practitioner to give a certificate of the kind mentioned in
7 subsection 60I(7) or subsection 60J(1).

8 (7) In this section:
9 *communication* includes admission.

10 **10L Communications in family dispute resolution etc. are**
11 **inadmissible**

- 12 (1) Evidence of anything said, or any admission made, by or in the
13 company of:
14 (a) a family dispute resolution practitioner conducting family
15 dispute resolution; or
16 (b) a person (the *professional*) to whom a family dispute
17 resolution practitioner refers a person for medical or other
18 professional consultation, while the professional is carrying
19 out professional services for the person;
20 is not admissible:
21 (c) in any court (whether or not exercising federal jurisdiction);
22 or
23 (d) in any proceedings before a person authorised to hear
24 evidence (whether the person is authorised by a law of the
25 Commonwealth, a State or a Territory, or by the consent of
26 the parties).
- 27 (2) Subsection (1) does not apply to:
28 (a) an admission by an adult that indicates that a child under 18
29 has been abused or is at risk of abuse; or
30 (b) a disclosure by a child under 18 that indicates that the child
31 has been abused or is at risk of abuse;
32 unless, in the opinion of the court, there is sufficient evidence of
33 the admission or disclosure available to the court from other
34 sources.
- 35 (3) Nothing in this section prevents a family dispute resolution
36 practitioner from disclosing information necessary for the
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1 practitioner to give a certificate of the kind mentioned in
2 subsection 60I(7) or subsection 60J(1).

3 (4) A family dispute resolution practitioner who refers a person to a
4 professional (within the meaning of paragraph (1)(b)) must inform
5 the professional of the effect of this section.

6 **10M Family dispute resolution practitioners have immunity**
7 **sometimes**

8 In conducting facilitative dispute resolution, a family dispute
9 resolution practitioner has the same protection and immunity as a
10 Judge of the Family Court has in performing the functions of a
11 Judge.

12 Note: A family dispute resolution practitioner does not have immunity while
13 conducting advisory dispute resolution.

14 **Subdivision B—Approval of family dispute resolution**
15 **organisations**

16 **10N Approval of family dispute resolution organisations**

17 (1) The Minister may, by notice in writing to an organisation, approve
18 the organisation as a family dispute resolution organisation if, and
19 only if, the Minister is satisfied that:

20 (a) the organisation is currently receiving, or has been approved
21 to receive, funding under a program or part of a program
22 designated by the Minister under subsection (2); and

23 (b) the organisation is receiving, or has been approved to receive,
24 that funding in order to provide services that include family
25 dispute resolution.

26 Note: If an organisation meets the requirements for approval under both this
27 section and section 10E, the Minister may approve the organisation as
28 both a family counselling organisation and a family dispute resolution
29 organisation.

30 (2) The Minister may, in writing, designate for the purposes of
31 subsection (1):

32 (a) a program; or

33 (b) part of a program;

34 administered by or on behalf of the Commonwealth government
35 under which money appropriated by the Parliament is provided to

1 **Division 3—Arbitration**

2 **10S Definition of *arbitration***

- 3 (1) *Arbitration* is a process (other than the judicial process) in which
4 parties to a dispute present arguments and evidence to an arbitrator,
5 who makes a determination to resolve the dispute.
- 6 (2) Arbitration may be either:
- 7 (a) *section 13E arbitration*—which is arbitration of Part VIII
8 proceedings carried out as a result of an order made under
9 section 13E; or
- 10 (b) *relevant property or financial arbitration*—which is
11 arbitration (other than section 13E arbitration) of:
- 12 (i) Part VIII proceedings, Part VIIIA proceedings,
13 Part VIIIB proceedings or section 106A proceedings; or
- 14 (ii) any part of such proceedings; or
- 15 (iii) any matter arising in such proceedings; or
- 16 (iv) a dispute about a matter with respect to which such
17 proceedings could be instituted.

18 **10T Definition of *arbitrator***

19 An *arbitrator* is a person who meets the requirements prescribed in
20 the regulations to be an arbitrator.

21 **10U Arbitrators may charge fees for their services**

- 22 (1) An arbitrator conducting arbitration may charge the parties to the
23 arbitration fees for conducting it.
- 24 (2) The arbitrator must give written information about those fees to the
25 parties before the arbitration starts.

26 Note: There may be Rules of Court or regulations relating to the costs of
27 arbitration and how they are assessed or taxed (see paragraphs
28 123(1)(se) and 125(1)(bc)).

29 **10V Arbitrators have immunity**

30 An arbitrator has, in performing his or her functions as an
31 arbitrator, the same protection and immunity as a Judge of the
32 Family Court has in performing the functions of a Judge.

1 Note: Communications with arbitrators are not confidential, and may be
2 admissible in court.

3 **Part III—Family and child specialists**

4 **Division 1—About family and child specialists**

5 **11A Functions of family and child specialists**

6 The functions of family and child specialists are to provide services
7 in relation to proceedings under this Act, including:

- 8 (a) assisting and advising people involved in the proceedings;
9 and
10 (b) assisting and advising courts, and giving evidence, in relation
11 to the proceedings; and
12 (c) helping people involved in the proceedings to resolve
13 disputes that are the subject of the proceedings; and
14 (d) reporting to the court under sections 55A and 62G; and
15 (e) advising the court about appropriate family counsellors,
16 family dispute resolution practitioners and courses, programs
17 and services to which the court can refer the parties to the
18 proceedings.

19 Note: See subsection 4(1AA) for people who are taken to be involved in
20 proceedings.

21 **11B Definition of *family and child specialist***

22 A *family and child specialist* is a person who is:

- 23 (a) appointed as a family and child specialist under section 38N;
24 or
25 (b) appointed as a family and child specialist in relation to the
26 Federal Magistrates Court under the *Federal Magistrates Act*
27 *1999*; or
28 (c) appointed as a family and child specialist under the
29 regulations; or
30 (d) appointed under a law of a State as a family and child
31 specialist in relation to a Family Court of that State.

32 Note: The Chief Executive Officers of the Family Court and the Federal
33 Magistrates Court have all of the functions and powers of family and
34 child specialists, and may direct specialists in the performance of their

1 functions. See Division 1A of the Part IVA of this Act and
2 Division 1A of Part 7 of the *Federal Magistrates Act 1999*.

3 **11C Communications with family and child specialists are**
4 **admissible**

- 5 (1) Evidence of anything said, or any admission made, by or in the
6 company of:
7 (a) a family and child specialist performing the functions of a
8 family and child specialist; or
9 (b) a person (the *professional*) to whom a family and child
10 specialist refers a person for medical or other professional
11 consultation, while the professional is carrying out
12 professional services for the person;
13 is admissible in proceedings under this Act.

14 Note 1: Communications with family and child specialists are not confidential
15 (except in the special circumstances set out in subsection 38BD(3) in
16 relation to specialists having several roles).

17 Note 2: Subsection (1) does not prevent things said or admissions made by or
18 in the company of family and child specialists from being admissible
19 in proceedings other than proceedings under this Act.

- 20 (2) Subsection (1) does not apply to a thing said or an admission made
21 by a person who, at the time of saying the thing or making the
22 admission, had not been informed of the effect of subsection (1).

- 23 (3) Despite subsection (2), a thing said or admission made is
24 admissible even if the person who said the thing or made the
25 admission had not been informed of the effect of subsection (1), if:
26 (a) it is an admission by an adult that indicates that a child under
27 18 has been abused or is at risk of abuse; or
28 (b) it is a disclosure by a child under 18 that indicates that the
29 child has been abused or is at risk of abuse;
30 unless, in the opinion of the court, there is sufficient evidence of
31 the admission or disclosure available to the court from other
32 sources.

33 **11D Family and child specialists have immunity**

34 A family and child specialist has, in performing his or her
35 functions as a family and child specialist, the same protection and

1 immunity as a Judge of the Family Court has in performing the
2 functions of a Judge.

3 **Division 2—Courts’ use of family and child specialists**

4 **11E Courts to consider seeking advice from family and child**
5 **specialists**

6 If, under this Act, a court has the power to:

- 7 (a) order a person to attend family counselling or family dispute
8 resolution; or
9 (b) order a person to participate in a course, program or other
10 service (other than arbitration); or
11 (c) order a person to attend appointments with a family and child
12 specialist; or
13 (d) advise or inform a person about family counselling, family
14 dispute resolution or other courses, programs or services;

15 the court:

- 16 (e) may, before exercising the power, seek the advice of:
17 (i) if the court is the Family Court or the Federal
18 Magistrates Court—a family and child specialist
19 nominated by the Chief Executive Officer of that court;
20 and
21 (ii) if the court is the Family Court of a State—a family and
22 child specialist of that court; or
23 (iii) if the court is not mentioned in subparagraph (i) or
24 (ii)—an appropriately qualified person (whether or not
25 an officer of the court);
26 as to the services appropriate to the needs of the person and
27 the most appropriate provider of those services; and
28 (f) must, before exercising the power, consider seeking that
29 advice.

30 **11F Court may order parties to attend appointments with a family**
31 **and child specialist**

- 32 (1) A court exercising jurisdiction in proceedings under this Act may
33 order one or more parties to the proceedings to attend an
34 appointment (or a series of appointments) with a family and child
35 specialist.

1 Note: Before exercising this power, the court must consider seeking the
2 advice of a family and child specialist about the services appropriate
3 to the parties' needs (see section 11E).

4 (2) When making an order under subsection (1), the court must inform
5 the parties of the effect of section 11G (consequences of failure to
6 comply with order).

7 (3) The court may make orders under this section:

8 (a) on its own initiative; or

9 (b) on the application of:

10 (i) a party to the proceedings; or

11 (ii) a person representing a child under an order made under
12 section 68L.

13 **11G Consequences of failure to comply with order under section 11F**

14 (1) If a person who is ordered to attend an appointment with a family
15 and child specialist under section 11F fails to comply with:

16 (a) the order made by the court; or

17 (b) any instruction the specialist gives to the person;

18 the specialist must report the failure to the court.

19 (2) On receiving the report, the court may make any further orders it
20 considers appropriate.

21 (3) The court may make orders under subsection (2):

22 (a) on its own initiative; or

23 (b) on the application of:

24 (i) a party to the proceedings; or

25 (ii) a person representing a child under an order made under
26 section 68L.

1 **Part IIIA—Obligations to inform people about**
2 **non-court based family services and about**
3 **court’s processes and services**

4 **Division 1—Introduction**

5 **12A Objects of this Part**

- 6 (1) The objects of this Part are:
- 7 (a) to ensure that married couples considering separation or
8 divorce are informed about the services available to help with
9 a possible reconciliation, in situations where a reconciliation
10 between the couple seems a reasonable possibility; and
- 11 (b) to ensure that people affected, or likely to be affected, by
12 separation or divorce are informed about the services
13 available to help them adjust to:
- 14 (i) separation or divorce; and
15 (ii) orders made under this Act; and
- 16 (c) to ensure that people affected, or likely to be affected, by
17 separation or divorce are informed about ways of resolving
18 disputes other than by applying for orders under this Act.

19 **Division 2—Kind of information to be provided**

20 **12B Prescribed information about non-court based family services**
21 **and court’s processes and services**

- 22 (1) The regulations may prescribe information that is to be included in
23 documents provided to persons under this Part, relating to
24 non-court based family services and court’s processes and services.
- 25 (2) Without limitation, information prescribed under this section must
26 include information about:
- 27 (a) the legal and possible social effects of the proposed
28 proceedings (including the consequences for children whose
29 care, welfare or development is likely to be affected by the
30 proceedings); and

- 1 (b) the services provided by family counsellors and family
2 dispute resolution practitioners to help people affected by
3 separation or divorce; and
4 (c) the steps involved in the proposed proceedings; and
5 (d) the role of family and child specialists; and
6 (e) the arbitration facilities available to arbitrate disputes in
7 relation to separation and divorce.

8 **12C Prescribed information about reconciliation**

9 The regulations may prescribe information that is to be included in
10 documents provided to persons under this Part, relating to services
11 available to help with a reconciliation between the parties to a
12 marriage.

13 **12D Prescribed information about Part VII proceedings**

- 14 (1) The regulations may prescribe information that is to be included in
15 documents provided under this Part to persons involved in Part VII
16 proceedings.
17 (2) Without limitation, the information must include information about
18 the family counselling services available to assist the parties, and
19 the child or children concerned, to adjust to the consequences of
20 orders under that Part.

21 **Division 3—Who must provide information, and when**

22 **12E Obligations on legal practitioners**

- 23 (1) A legal practitioner who is consulted by a person considering
24 instituting proceedings under this Act must give the person
25 documents containing the information prescribed under
26 section 12B (about non-court based family services and court's
27 processes and services).
28 (2) A legal practitioner who is consulted by, or who is representing, a
29 married person who is a party to:
30 (a) proceedings for a divorce order in relation to the marriage; or
31 (b) financial or Part VII proceedings in relation to the marriage;
32 must give the person documents containing the information
33 prescribed under section 12C (about reconciliation).
-

1 (3) A legal practitioner representing a party in proceedings under
2 Part VII must give the party documents containing the information
3 prescribed under section 12D (about Part VII proceedings).

4 Note: Section 63DA also imposes information-giving obligations on legal
5 practitioners dealing with people involved in Part VII proceedings.

6 (4) A legal practitioner does not have to comply with subsection (1),
7 (2) or (3) if the practitioner has reasonable grounds to believe that
8 the person has already been given documents containing the
9 prescribed information mentioned in that subsection.

10 (5) A legal practitioner does not have to comply with subsection (2) if
11 the practitioner considers that there is no reasonable possibility of a
12 reconciliation between the parties to the marriage.

13 **12F Obligations on principal executive officers of courts**

14 *Obligation to give prescribed information*

15 (1) The principal executive officer of a court that has jurisdiction
16 under this Act must ensure that any person who is considering
17 instituting proceedings under this Act is, on the first occasion the
18 person deals with a registry of the court, given documents
19 containing the information prescribed under:

- 20 (a) section 12B (about non-court based family services and
21 court's processes and services); and
22 (b) section 12C (about reconciliation).

23 *Obligation to respond to requests for information*

24 (2) The principal executive officer of a court that has jurisdiction
25 under this Act must ensure that, if a person involved in proceedings
26 under this Act requests an officer or staff member of the court for
27 information about family counselling services or family dispute
28 resolution services, the person is given documents containing
29 information about those services.

30 Note: See subsection 4(1AA) for people who are taken to be involved in
31 proceedings.

1 **12G Obligations on family counsellors, family dispute resolution**
2 **practitioners and arbitrators**

- 3 (1) A family counsellor, family dispute resolution practitioner or
4 arbitrator who deals with a married person considering instituting:
5 (a) proceedings for a divorce order in relation to the marriage; or
6 (b) financial or Part VII proceedings in relation to the marriage;
7 must give the married person (and in appropriate cases, that
8 person's spouse) documents containing the information prescribed
9 under 12C (about reconciliation).

10 Note: Section 63DA also imposes information-giving obligations on family
11 counsellors and family dispute resolution practitioners (not arbitrators)
12 dealing with people involved in Part VII proceedings.

- 13 (2) A family counsellor, family dispute resolution practitioner or
14 arbitrator does not have to comply with subsection (1), if he or she:
15 (a) has reasonable grounds to believe that the person has already
16 been given documents containing the prescribed information
17 or
18 (b) considers that there is no reasonable possibility of a
19 reconciliation between the parties to the marriage.

20 **Part IIIB—Court's powers in relation to court and**
21 **non-court based family services**

22 **Division 1—Introduction**

23 **13A Objects of this Part**

- 24 (1) The objects of this Part are:
25 (a) to facilitate access to family counselling:
26 (i) to help married couples considering separation or
27 divorce to reconcile; and
28 (ii) to help people adjust to separation or divorce; and
29 (iii) to help people adjust to court orders under this Act; and
30 (b) to encourage people to use dispute resolution mechanisms
31 (other than judicial ones) to resolve matters in which a court
32 order might otherwise be made under this Act, provided the
33 mechanisms are appropriate in the circumstances and proper
34 procedures are followed; and
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- 1 (c) to encourage people to use, in appropriate circumstances,
2 arbitration to resolve matters in which a court order might
3 otherwise be made, and to provide ways of facilitating that
4 use; and
5 (d) to give the court the power to require parties to proceedings
6 under this Act to make use of court or non-court based family
7 services appropriate to the needs of the parties.
- 8 (2) The object mentioned in paragraph (1)(b) also lies behind the
9 general requirement in section 60I for family dispute resolution
10 services to be used before applications for orders under Part VII
11 are made.

12 **Division 2—Help with reconciliation**

13 **13B Court to accommodate possible reconciliations**

- 14 (1) A court exercising jurisdiction in:
15 (a) proceedings for a divorce order; or
16 (b) financial or part VII proceedings instituted by a party to a
17 subsisting marriage;
18 must consider, from time to time, the possibility of a reconciliation
19 between the parties to the marriage.
- 20 (2) If, during the proceedings, the court considers, from the evidence
21 in the proceedings or the attitude of the parties to the marriage, that
22 there is a reasonable possibility of a reconciliation between the
23 parties, the court may adjourn the proceedings to give the parties
24 the opportunity to consider a reconciliation.
- 25 (3) If the court adjourns the proceedings under subsection (2), the
26 court must advise the parties to attend family counselling, or use
27 the services of another appropriate person or organisation.
- 28 Note: Before advising the parties, the court must consider seeking the advice
29 of a family and child specialist about the services appropriate to the
30 parties' needs (see section 11E).
- 31 (4) If, after an adjournment under subsection (2), either of the parties
32 requests that the proceedings resume, the court must resume the
33 proceedings as soon as practicable.

1 **Division 3—Referrals to family counselling, family dispute**
2 **resolution and other family services**

3 **13C Court may refer parties to family counselling, family dispute**
4 **resolution and other family services**

5 (1) A court exercising jurisdiction in proceedings under this Act may,
6 at any stage in the proceedings, make one or more of the following
7 orders:

8 (a) that one or more of the parties to the proceedings attend
9 family counselling;

10 (b) that the parties to the proceedings attend family dispute
11 resolution;

12 (c) that one or more of the parties to the proceedings participate
13 in an appropriate course, program or other service.

14 Note 1: Before making an order under this section, the court must consider
15 seeking the advice of a family and child specialist about the services
16 appropriate to the parties' needs (see section 11E).

17 Note 2: The court can also order parties to attend appointments with a family
18 and child specialist (see section 11F).

19 (2) The court may suggest a particular purpose for the attendance or
20 participation.

21 (3) The order may require the party or parties to encourage the
22 participation of specified other persons who are likely to be
23 affected by the proceedings.

24 Note: For example, the participation of children, grandparents and other
25 relatives may be encouraged.

26 (4) The court may make any other orders it considers reasonably
27 necessary or appropriate in relation to the order.

28 (5) The court may make orders under this section:

29 (a) on its own initiative; or

30 (b) on the application of:

31 (i) a party to the proceedings; or

32 (ii) a person representing a child under an order made under
33 section 68L.

1 **13D Consequences of failure to comply with order under**
2 **section 13C**

- 3 (1) If a party fails to comply with an order of a court under
4 section 13C, the family counsellor, family dispute resolution
5 practitioner or provider of the course, program or other service
6 must report the failure to the court.
- 7 (2) On receiving the report, the court may make any further orders it
8 considers appropriate.
- 9 (3) The court may make orders under subsection (2):
10 (a) on its own initiative; or
11 (b) on the application of:
12 (i) a party to the proceedings; or
13 (ii) a person representing a child under an order made under
14 section 68L.

15 **Division 4—Court’s role in relation to arbitration of**
16 **disputes**

17 **13E Court may refer Part VIII proceedings to arbitration**

- 18 (1) With the consent of all of the parties to the proceedings, a court
19 exercising jurisdiction in Part VIII proceedings may make an order
20 referring the proceedings, or any part of them, or any matter arising
21 in them, to an arbitrator for arbitration.
- 22 (2) If the court makes an order under subsection (1), it may, if
23 necessary, adjourn the proceedings and may make any additional
24 orders as it thinks appropriate to facilitate the effective conduct of
25 the arbitration.

26 **13F Court may make orders to facilitate arbitration of certain**
27 **disputes**

28 A court that has jurisdiction under this Act may, on application by
29 a party to relevant property or financial arbitration, make orders the
30 court thinks appropriate to facilitate the effective conduct of the
31 arbitration.

1 **13G Family Court and Federal Magistrates Court may determine**
2 **questions of law referred by arbitrator**

- 3 (1) An arbitrator of section 13E arbitration or relevant property or
4 financial arbitration may, at any time before making an award in
5 the arbitration, refer a question of law arising in relation to the
6 arbitration for determination by:
7 (a) a single judge of the Family Court; or
8 (b) a single judge of the Family Court of a State; or
9 (c) the Federal Magistrates Court.
- 10 (2) The arbitrator may do so:
11 (a) on his or her own initiative; or
12 (b) at the request of one or more of the parties to the arbitration
13 if the arbitrator considers it appropriate to do so.
- 14 (3) The arbitrator must not make an award in the arbitration before the
15 judge or Federal Magistrates Court has either:
16 (a) determined the question of law; or
17 (b) remitted the matter to the arbitrator having found that no
18 question of law arises.

19 **13H Awards made in arbitration may be registered in court**

- 20 (1) A party to an award made in section 13E arbitration or in relevant
21 property or financial arbitration may register the award:
22 (a) in the case of section 13E arbitration—in the court that
23 ordered the arbitration; or
24 (b) otherwise—in a court that has jurisdiction under this Act.
- 25 (2) An award registered under subsection (1) has effect as if it were a
26 decree made by that court.

27 **13J Family Court or Federal Magistrates Court can review**
28 **registered awards**

- 29 (1) A party to an award made in section 13E arbitration or relevant
30 property or financial arbitration may apply for review of the award,
31 on questions of law, by:
32 (a) a single judge of the Family Court; or
33 (b) a single judge of the Family Court of a State; or
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(c) the Federal Magistrates Court.

Note: There may be Rules of Court providing for when, and how, an application for review of the award can be made (see paragraph 123(1)(sf)).

- (2) On a review of an award under this section, the judge or Federal Magistrates Court may:
 - (a) determine all questions of law arising in relation to the arbitration; and
 - (b) make such decrees as the judge or Federal Magistrates Court thinks appropriate, including a decree affirming, reversing or varying the award.

13K Family Court and Federal Magistrates Court may set aside registered awards

- (1) If an award made in section 13E arbitration or relevant property or financial arbitration, or an agreement made as a result of such arbitration, is registered in:
 - (a) the Family Court; or
 - (b) the Federal Magistrates Court; or
 - (c) a Family Court of a State;the court in which the award is registered may make a decree affirming, reversing or varying the award or agreement.
- (2) The court may only make a decree under subsection (1) if the court is satisfied that:
 - (a) the award or agreement was obtained by fraud (including non-disclosure of a material matter); or
 - (b) the award or agreement is void, voidable or unenforceable; or
 - (c) in the circumstances that have arisen since the award or agreement was made it is impracticable for some or all of it to be carried out; or
 - (d) the arbitration was affected by bias, or there was a lack of procedural fairness in the way in which the arbitration process, as agreed between the parties and the arbitrator, was conducted.

33 Subsection 26B(1)

Omit “19G”, substitute “13K”.

1 **34 Subsection 37(2)**

2 Omit “(other than the court counsellors)”.

3 **35 At the end of section 37**

4 Add:

5 (3) Despite subsection (2), the Principal Registrar must not give
6 directions that relate to an officer’s functions as a family and child
7 specialist, family counsellor or family dispute resolution
8 practitioner.

9 **36 Paragraph 37A(1)(e)**

10 Repeal the paragraph, substitute:

- 11 (e) the power to make orders under:
12 (i) sections 11F and 11G; and
13 (ii) sections 13C and 13D; and
14 (iii) subsection 65LA(1); and
15 (iv) paragraph 70NG(1)(a);
16 (ea) the power to direct a family and child specialist to give a
17 report under section 62G;

18 **37 Paragraph 37A(2)(e)**

19 Omit “19G”, substitute “13K”.

20 **38 After Division 1 of Part IVA**

21 Insert:

22 **Division 1A—Administration of Court’s family services**

23 **38BA Chief Executive Officer has functions of family and child**
24 **specialists**

- 25 (1) The Chief Executive Officer has all of the functions conferred on
26 family and child specialists by section 11A, and any associated
27 powers and duties.
28 (2) Without limiting subsection (1), sections 11C (communications are
29 admissible) and 11D (family and child specialists have immunity)
30 apply to the Chief Executive Officer while the Chief Executive
31 Officer is performing those functions.
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- 1 (3) The Chief Executive Officer is responsible for administering the
2 functions of family and child specialists.

3 **38BB Chief Executive Officer may give directions that relate to**
4 **family services functions**

- 5 The Chief Executive Officer may give directions that relate to:
6 (a) a Court officer's functions as a family and child specialist; or
7 (b) a Court officer's or staff member's functions as a family
8 counsellor or family dispute resolution practitioner.

9 **38BC Chief Executive Officer may delegate functions and powers**
10 **that relate to family and child specialists**

- 11 (1) The Chief Executive Officer may, in writing, delegate to a family
12 and child specialist any of the Chief Executive Officer's powers,
13 functions and duties in relation to the functions of family and child
14 specialists mentioned in section 11A.
15 (2) A delegate is, in the exercise of a delegated power, function or
16 duty, subject to the directions of the Chief Executive Officer.

17 **38BD Chief Executive Officer may authorise officer or staff member**
18 **to act as family counsellor or family dispute resolution**
19 **practitioner**

- 20 (1) The Chief Executive Officer may, for the purposes of paragraph
21 10B(c), authorise an officer or staff member of the Family Court to
22 provide family counselling under this Act.
23 (2) The Chief Executive Officer may, for the purposes of paragraph
24 10J(c), authorise an officer or staff member of the Family Court to
25 provide family dispute resolution under this Act.
26 (3) If an officer who is a family and child specialist also becomes a
27 family counsellor, or family dispute resolution practitioner,
28 because of an authorisation under this section:
29 (a) section 11C (communications with family and child
30 specialists are admissible) does not apply to the officer at any
31 time while the officer is acting as a family counsellor or
32 family dispute resolution practitioner; and

- 1 (b) the officer must not perform the functions of a family and
2 child specialist in relation to particular proceedings, if the
3 officer has conducted family counselling or family dispute
4 resolution with a person involved in those proceedings.

5 **39 Paragraphs 38N(1)(d), (da) and (daa)**

6 Repeal the paragraphs.

7 **40 Paragraph 38N(1)(db)**

8 Omit “mediators”, substitute “family and child specialists”.

9 **41 After subsection 38R(1)**

10 Insert:

11 (1A) The Chief Executive Officer may engage persons to perform:

- 12 (a) family counselling services under this Act; or
13 (b) family dispute resolution services under this Act.

14 **42 Subsection 38R(2)**

15 After “subsection (1)”, insert “or (1A)”.

16 **43 Paragraph 41(4)(c)**

17 Omit “counselling facilities”, substitute “appropriate family counselling
18 and family dispute resolution services, and family and child
19 specialists,”.

20 **44 Paragraph 44(1B)(a)**

21 Repeal the paragraph, substitute:

- 22 (a) stating that the parties to the marriage have considered a
23 reconciliation with the assistance of a specified person, who
24 is:
25 (i) a family counsellor; or
26 (ii) if the court is the Family Court, the Federal Magistrates
27 Court or the Family Court of a State—an individual or
28 an organisation nominated for the parties by a family
29 and child specialist; or
30 (iii) if the court is not the Family Court, the Federal
31 Magistrates Court or the Family Court of a State—an
32 individual or an organisation nominated for the parties
33 by an appropriately qualified officer of the court; and
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1 **45 Subsection 55A(2)**

2 Omit “a family and child counsellor or welfare officer”, substitute “a
3 family and child specialist”.

4 **46 Section 60C (table item 3)**

5 Repeal the table item, substitute:

3	Division 3—Reports relating to children under 18 <ul style="list-style-type: none">• preparation of reports for use in proceedings relating to children under 18
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6 **47 Subsection 60D(1) (definition of *abuse*)**

7 Repeal the definition.

8 **48 Subsection 60D(1) (definition of *member of the Court***
9 ***personnel*)**

10 Repeal the definition, substitute:

- 11 ***member of the court personnel*** means:
- 12 (a) a family and child specialist; or
 - 13 (b) the Registrar or a Deputy Registrar of a Registry of the
14 Family Court of Australia; or
 - 15 (c) the Registrar or a Deputy Registrar of the Family Court of
16 Western Australia; or
 - 17 (d) a Registrar of the Federal Magistrates Court.

18 **49 Division 3 of Part VII (heading)**

19 Repeal the heading, substitute:

20 **Division 3—Reports relating to children under 18**

21 **50 Section 62A**

22 Repeal the section, substitute:

23 **62A What this Division does**

24 This Division deals with the preparation of reports for use in
25 proceedings relating to children who are under 18.

26 **51 Sections 62B, 62C, 62CA, 62D, 62E and 62F**

1 Repeal the sections, substitute:

2 **62B Court must inform people to whom Part VII orders apply about**
3 **family counselling, family dispute resolution and other**
4 **family services**

5 If a court makes an order in proceedings under this Part, the court
6 must inform the parties to the proceedings about the family
7 counselling services, family dispute resolution services and other
8 courses, programs and services available to help the parties adjust
9 to the consequences of that order.

10 Note: Before informing the parties, the court must consider seeking the
11 advice of a family and child specialist about the services appropriate
12 to the parties' needs (see section 11E).

13 **52 Subsection 62G(2)**

14 Omit "a family and child counsellor or welfare officer", substitute "a
15 family and child specialist".

16 Note: The heading to section 62G is altered by omitting "**family and child counsellors and**
17 **welfare officers**" and substituting "**family and child specialists**".

18 **53 Subsections 62G(4) and (5)**

19 Repeal the subsections, substitute:

20 (4) The family and child specialist may include in the report, in
21 addition to the matters required to be included in it, any other
22 matters that relate to the care, welfare or development of the child.

23 (5) For the purposes of the preparation of the report, the court may
24 make any other orders, or give any other directions, that the court
25 considers appropriate (including orders or directions that a party to
26 proceedings, or the child, attend an appointment or a series of
27 appointments with a family and child specialist).

28 Note: Before making orders under this section, the court must consider
29 seeking the advice of a family and child specialist about the services
30 appropriate to the parties' needs (see section 11E).

31 **54 Subsection 62G(6)**

32 Omit "counsellor or welfare officer", substitute "family and child
33 specialist".

34 **55 Section 62H**

1 Repeal the section.

2 **56 Subsection 65F(1)**

3 Repeal the subsection.

4 **57 Paragraph 65F(2)(a)**

5 Omit “a conference with a family and child counsellor or a welfare
6 officer”, substitute “family counselling”.

7 **58 Paragraph 65L(1)(a)**

8 Omit “a family and child counsellor or a welfare officer”, substitute “a
9 family and child specialist”.

10 Note: The heading to section 65L is altered by omitting “**Counsellors**” and substituting
11 “**Family and child specialists**”.

12 **59 Paragraph 65L(1)(b)**

13 Omit “a family and child counsellor or a welfare officer”, substitute “a
14 family and child specialist”.

15 **60 Subsection 65LA(1)**

16 Repeal the subsection, substitute:

17 (1) In proceedings for a parenting order, the court may make an order
18 directing a party to the proceedings to attend a post-separation
19 parenting program.

20 Note: Before making an order under this section, the court must consider
21 seeking the advice of a family and child specialist about the services
22 appropriate to the party’s needs (see section 11E).

23 **61 Subsection 65LA(3) (definition of *post-separation*
24 *parenting program* or *program*)**

25 Repeal the definition, substitute:

26 ***post-separation parenting program*** means a program that:

- 27 (a) is designed to help people to resolve problems that adversely
28 affect the carrying out of their parenting responsibilities
29 (including by providing counselling services or by teaching
30 techniques to resolve disputes); and
31 (b) consists of lectures, discussions (including group
32 discussions) or other activities.

1 **62 Subsection 65LA(3) (definition of *post-separation***
2 ***parenting program provider or provider*)**

3 Repeal the definition.

4 **63 Subsection 67ZA(1)**

5 Repeal the subsection, substitute:

6 (1) This section applies to a person in the course of performing duties
7 or functions, or exercising powers, as:

- 8 (a) a member of the court personnel; or
9 (b) a family counsellor; or
10 (c) a family dispute resolution practitioner; or
11 (d) an arbitrator.

12 Note: The heading to section 67ZA is altered by omitting “**counsellor, mediator**” and
13 substituting “**family counsellor, family dispute resolution practitioner**”.

14 **64 Section 70NB (definition of *post-separation parenting***
15 ***program or program*)**

16 Repeal the definition.

17 **65 Section 70NB**

18 Insert:

19 *post-separation parenting program* means a program:

- 20 (a) that is designed to help people to resolve problems that
21 adversely affect the carrying out of their parenting
22 responsibilities (including by providing counselling services
23 or by teaching techniques to resolve disputes); and
24 (b) that consists of lectures, discussions (including group
25 discussions) or other activities.

26 **66 Section 70NB (definition of *post-separation program***
27 ***provider or provider*)**

28 Repeal the definition.

29 **67 Paragraph 70NG(1)(a)**

30 Repeal the paragraph, substitute:

- 31 (a) make an order directing:
32 (i) the person who committed the current contravention; or
-

- 1 (ii) that person and another specified person;
2 to attend a post-separation parenting program;

3 Note: Before making an order under this paragraph, the court must
4 consider seeking the advice of a family and child specialist about
5 the services appropriate to the person's needs (see section 11E).

6 **68 Subsection 70NG(3)**

7 Repeal the subsection, substitute:

- 8 (3) If the court makes an order under paragraph (1)(a), the principal
9 executive officer of the court must ensure that the provider of the
10 program concerned is notified of the making of the order.

11 **69 Section 70NH**

12 Repeal the section, substitute:

13 **70NH Duties of provider of post-separation parenting program**

14 The provider of a post-separation parenting program must inform
15 the court if:

- 16 (a) the provider considers that a person ordered to attend the
17 program under paragraph 70NG(1)(a) is unsuitable to attend
18 the program, or to continue attending the program; or
19 (b) a person ordered to attend the program under paragraph
20 70NG(1)(a) fails to attend the program, or a part of it.

21 **70 Subsection 70NI(1)**

22 Omit "attending before the provider of a program for assessment, or
23 attending a program," substitute "attending a post-separation parenting
24 program".

25 **71 Paragraphs 70NI(2)(a) and (b)**

26 After "a child", insert "under 18".

27 **72 Subsection 70NI(3)**

28 Repeal the subsection.

29 **73 Paragraphs 70NIA(a) and (b)**

30 Repeal the paragraphs, substitute:

- 1 (a) it appears to the court that the person has not attended a
2 post-separation parenting program that the person was
3 ordered to attend; or

4 **74 Section 70NIB**

5 Repeal the section.

6 **75 Paragraph 70NJ(5)(ab)**

7 Repeal the paragraph.

8 **76 Subsection 70NM(4)**

9 Repeal the subsection, substitute:

- 10 (4) The conditions that may be imposed on a person by a bond include
11 (without limitation) conditions that require the person:
12 (a) to attend an appointment (or a series of appointments) with a
13 family and child specialist; or
14 (b) to attend family counselling; or
15 (c) to attend family dispute resolution; or
16 (d) to be of good behaviour.

17 Note: Before imposing a condition under this subsection, the court must
18 consider seeking the advice of a family and child specialist about the
19 services appropriate to the person's needs (see section 11E).

20 **77 Subsection 102A(5) (paragraph (b) of the definition of**
21 **examined)**

22 Omit "family and child counsellor or welfare officer", substitute
23 "family counsellor or family and child specialist".

24 **78 Before subsection 111CV(1)**

25 Insert:

- 26 (1A) This section covers:
27 (a) a court; and
28 (b) the Registrar or a Deputy Registrar of a Registry of the
29 Family Court of Australia; and
30 (c) the Registrar or a Deputy Registrar of a Registry of the
31 Family Court of a State; and
32 (d) a Registrar of the Federal Magistrates Court; and
33 (e) a family and child specialist; and
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- 1 (f) a family counsellor; and
2 (g) a family dispute resolution practitioner; and
3 (h) an arbitrator; and
4 (i) the provider of a course, program or service which a person
5 is ordered to participate in under this Act.

6 **79 Subsection 111CV(1)**

7 Omit “A court must inform a competent authority of another country
8 about any information the court”, substitute “A court or person covered
9 by this section must inform a competent authority of another country
10 about any information the court or person”.

11 **80 Subsection 111CV(5)**

12 Repeal the subsection.

13 **81 Subsection 115(2)**

14 Omit “representatives of organisations that provide family and child
15 counselling”, substitute “family counsellors, family dispute resolution
16 practitioners”.

17 **82 Paragraph 123(1)(j)**

18 Repeal the paragraph, substitute:

- 19 (j) authorising an officer making an investigation mentioned in
20 paragraph (h) to:
21 (i) take evidence on oath or affirmation; and
22 (ii) receive in evidence a report from a family and child
23 specialist under section 55A or 62G; and
24 (iii) receive in evidence a report from a person who has had
25 dealings with a party to the matter under investigation
26 under section 65F, 65L, 65LA, 70NG or 70NIA; and
27 (ja) enabling the summoning of witnesses before an officer
28 making an investigation mentioned in paragraph (h) for the
29 purposes of giving evidence or producing books or
30 documents; and

31 **83 Paragraph 123(1)(s)**

32 Repeal the paragraph, substitute:

- 33 (s) providing for and in relation to:

- 1 (i) attendance at family counselling by parties to
2 proceedings under this Act; and
3 (ii) attendance at family dispute resolution by parties to
4 proceedings under this Act; and
5 (iii) the giving of advice and assistance by family and child
6 specialists to people involved in proceedings under this
7 Act; and
8 (iv) the participation by parties to proceedings under this
9 Act in courses, programs and other services (other than
10 those mentioned in subparagraph (i), (ii) or (iii)) that the
11 parties are ordered by the court to participate in; and
12 (v) the use, for the purposes of proceedings under this Act,
13 by courts exercising jurisdiction under this Act and
14 officers of such courts, of reports about the future
15 conduct of the proceedings that have been prepared by
16 persons who dealt with the parties in accordance with
17 Rules of Court made under subparagraphs (i), (ii), (iii)
18 or (iv); and

19 **84 Paragraph 123(1)(sa)**

20 Omit “court mediators”, substitute “family and child specialists”.

21 **85 Paragraph 123(1)(sb)**

22 Omit “mediation or”.

23 **86 Paragraph 123(1)(sb)**

24 Omit “section 19E”, substitute “sections 13E and 13F”.

25 **87 Paragraph 123(1)(sc)**

26 Omit “mediated or”.

27 **88 After paragraph 123(1)(sc)**

28 Insert:

- 29 (sca) prescribing the disputes, proceedings or matters in relation to
30 which family and child specialists may, or must not, perform
31 their functions; and

32 **89 Paragraph 123(1)(sd)**

33 Repeal the paragraph, substitute:

- 1 (sd) providing for and in relation to:
2 (i) the functions to be performed by family and child
3 specialists; and
4 (ii) the procedures to be followed in performing those
5 functions; and
6 (iii) the procedures to be followed by persons involved in
7 proceedings in relation to which a family and child
8 specialist is performing functions; and
9 (iv) the procedures to be followed when a family and child
10 specialist ceases performing functions in relation to a
11 dispute, proceeding or matter; and
12 (sda) providing for and in relation to:
13 (i) the procedures to be followed by a family counsellor
14 within the meaning of paragraph 10B(b) or (c); and
15 (ii) the procedures to be followed by persons attending
16 family counselling with such a counsellor; and
17 (iii) the procedures to be followed when family counselling
18 with such a counsellor ends;
19 (sdb) providing for and in relation to:
20 (i) the procedures to be followed by a family dispute
21 resolution practitioner within the meaning of paragraph
22 10J(b) or (c); and
23 (ii) the procedures to be followed by persons attending
24 family dispute resolution with such a practitioner; and
25 (iii) the procedures to be followed when family dispute
26 resolution with such a practitioner ends;
27 (sdc) providing for and in relation to:
28 (i) the procedures to be followed by an arbitrator in relation
29 to a dispute, proceeding or matter under this Act; and
30 (ii) the attendance by persons at conferences conducted by
31 arbitrators for the purpose of arbitrating a dispute,
32 proceeding or matter under this Act; and
33 (iii) the procedure to be followed when arbitration ends,
34 both where it has resulted in an agreement or award and
35 where it has not; and

36 **90 Paragraph 123(1)(se)**

37 Repeal the paragraph, substitute:

- 1 (se) prescribing matters relating to the costs of arbitration by
2 arbitrators, and the assessment or taxation of those costs; and
3 (sea) prescribing matters relating to the costs of family counselling
4 by family counsellors within the meaning of paragraphs
5 10B(b) and (c); and
6 (seb) prescribing matters relating to the costs of family dispute
7 resolution by family dispute resolution practitioners within
8 the meaning of paragraphs 10J(b) and (c); and

9 **91 Subparagraph 123(1)(sf)(i)**

10 Omit “19D or 19E”, substitute “13H”.

11 **92 Subparagraph 123(1)(sf)(ii)**

12 Omit “19F”, substitute “13J”.

13 **93 Subparagraph 123(1)(sf)(ii)**

14 Omit “19G”, substitute “13K”.

15 **94 Paragraph 125(1)(ba)**

16 Repeal the paragraph, substitute:

17 (ba) providing for and in relation to the authorisation of:

- 18 (i) officers or staff members of the Family Court as family
19 counsellors within the meaning of paragraph 10B(c);
20 and
21 (ii) officers or staff members of the Family Court as family
22 dispute resolution practitioners within the meaning of
23 paragraph 10J(c); and

24 **95 After paragraph 125(1)(bb)**

25 Insert:

26 (bba) the registration of awards made in section 13E arbitration and
27 relevant property or financial arbitration; and

28 **96 Paragraph 125(1)(bc)**

29 Omit “(sc), (sd) or (se)”, substitute “(sc), (sca), (sd), (sda), (sdb), (sdc),
30 (se), (sea) or (seb)”.

31 **97 Paragraph 125(1)(ca)**

32 Repeal the paragraph, substitute:

- 1 (ca) prescribing fees payable for services provided by the Family
2 Court in circumstances other than where a court orders or
3 directs the provision of the services; and
4 (cb) providing for and in relation to matters related to the
5 provision of advisory dispute resolution and facilitative
6 dispute resolution; and

7 ***Federal Magistrates Act 1999***

8 **98 Section 5 (definition of *Family and child counsellor*)**

9 Repeal the definition.

10 **99 Section 5**

11 Insert:

12 *family and child specialist* means a family and child specialist
13 within the meaning of the *Family Law Act 1975*.

14 **100 Section 5 (definition of *Welfare officer*)**

15 Repeal the definition.

16 **101 Part 4 (heading)**

17 Repeal the heading, substitute:

18 **Part 4—Primary dispute resolution for proceedings**
19 **other than proceedings under the Family**
20 **Law Act 1975**

21 **102 Before section 21 of Division 1 of Part 4**

22 Insert:

23 **20A This Part does not apply to proceedings under the *Family Law***
24 ***Act 1975***

25 This Part applies to proceedings in the Federal Magistrates Court
26 other than proceedings under the *Family Law Act 1975*.

27 Note 1: For proceedings under the *Family Law Act 1975*, see in particular
28 Parts II, III, IIIA and IIIB of that Act, which contain provisions
29 dealing with family counselling, family dispute resolution and other

1 processes that apply to the Federal Magistrates Court in relation to
2 proceedings under that Act.

3 Note 2: This Part (other than Division 2—see section 33) applies to
4 proceedings under the *Child Support (Assessment) Act 1989* and the
5 *Child Support (Registration and Collection) Act 1988*.

6 **103 After Division 1 of Part 7**

7 Insert:

8 **Division 1A—Administration of Federal Magistrates**
9 **Court’s family services**

10 **93A Chief Executive Officer has functions of family and child**
11 **specialists**

- 12 (1) The Chief Executive Officer has all of the functions conferred on
13 family and child specialists by section 11A of the *Family Law Act*
14 *1975*, and any associated powers and duties.
- 15 (2) Without limiting subsection (1), sections 11C (communications are
16 admissible) and 11D (family and child specialists have immunity)
17 of that Act apply to the Chief Executive Officer while the Chief
18 Executive Officer is performing the functions of a family and child
19 specialist.
- 20 (3) The Chief Executive Officer is responsible for administering the
21 functions of family and child specialists appointed by the Chief
22 Executive Officer.

23 **93B Chief Executive Officer may give directions that relate to family**
24 **services functions**

25 The Chief Executive Officer may give directions that relate to:
26 (a) a Court officer’s functions as a family and child specialist; or
27 (b) a Court officer’s or staff member’s functions as a family
28 counsellor or family dispute resolution practitioner.

29 **93C Chief Executive Officer may delegate functions and powers that**
30 **relate to family and child specialists**

- 31 (1) The Chief Executive Officer may, in writing, delegate to a family
32 and child specialist any of the Chief Executive Officer’s powers,

1 functions and duties in relation to the functions of family and child
2 specialists mentioned in section 11A of the *Family Law Act 1975*.

3 (2) A delegate is, in the exercise of a delegated power, function or
4 duty, subject to the directions of the Chief Executive Officer.

5 **93D Chief Executive Officer may authorise officer or staff member**
6 **to act as family counsellor or family dispute resolution**
7 **practitioner**

8 (1) The Chief Executive Officer may, for the purposes of paragraph
9 10B(d) of the *Family Law Act 1975*, authorise an officer or staff
10 member of the Federal Magistrates Court to provide family
11 counselling under that Act.

12 (2) The Chief Executive Officer may, for the purposes of paragraph
13 10J(d) of the *Family Law Act 1975*, authorise an officer or staff
14 member of the Federal Magistrates Court to provide family dispute
15 resolution under that Act.

16 (3) If an officer who is a family and child specialist also becomes a
17 family counsellor, or family dispute resolution practitioner,
18 because of an authorisation under this section:
19 (a) section 11C of the *Family Law Act 1975* (admissibility of
20 communications with family and child specialists) does not
21 apply to the officer at any time while the officer is acting as a
22 family counsellor or family dispute resolution practitioner;
23 and
24 (b) the officer must not perform the functions of a family and
25 child specialist in relation to particular proceedings, if the
26 officer has conducted family counselling or family dispute
27 resolution with a party to those proceedings.

28 **104 Paragraph 87(1)(f)**

29 Repeal the paragraph, substitute:

30 (f) authorising an officer making an investigation mentioned in
31 paragraph (e) to:
32 (i) take evidence on oath or affirmation; and
33 (ii) receive in evidence a report from a family and child
34 specialist under section 55A or 62G of the *Family Law*
35 *Act 1975*; and

- 1 (iii) receive in evidence a report from a person who has had
2 dealings with a party to the matter under investigation
3 under section 65F, 65L, 65LA, 70NG or 70NIA of the
4 *Family Law Act 1975*; and
5 (fa) enabling the summoning of witnesses before an officer
6 making an investigation mentioned in paragraph (e) for the
7 purposes of giving evidence or producing books or
8 documents; and

9 **105 Subsection 87(2)**

10 Repeal the subsection, substitute:

- 11 (2) The Rules of Court may make provision for or in relation to:
12 (a) attendance at family counselling by parties to proceedings
13 under the *Family Law Act 1975*; and
14 (b) attendance at family dispute resolution by parties to
15 proceedings under the *Family Law Act 1975*; and
16 (c) the giving of advice and assistance by family and child
17 specialists to people involved in proceedings under the
18 *Family Law Act 1975*; and
19 (d) the participation by parties to proceedings under the *Family*
20 *Law Act 1975* in courses, programs and other services that
21 the parties are ordered by the court to participate in; and
22 (e) the use, for the purposes of proceedings under the *Family*
23 *Law Act 1975*, by the Federal Magistrates Court and officers
24 of the Court in family law and child support proceedings, of
25 reports about the future conduct of the proceedings that have
26 been prepared by persons who dealt with the parties in
27 accordance with Rules of Court made under paragraphs (a),
28 (b), (c) or (d).

29 **106 At the end of subsection 99(1)**

30 Add:

- 31 ; (f) such family and child specialists as are necessary.

32 **107 Paragraph 102(2)(k)**

33 Repeal the paragraph, substitute:

- 34 (k) the power to make orders under the following provisions of
35 the *Family Law Act 1975*:
36 (i) sections 11F and 11G; and
-

- 1 (ii) sections 13C and 13D; and
2 (iii) subsection 65LA(1); and
3 (iv) paragraph 70NG(1)(a);
4 (ka) the power to direct a family and child specialist to give a
5 report under section 62G of the *Family Law Act 1975*;

6 **108 After section 111**

7 Insert:

8 **111A Family and child specialists**

9 Family and child specialists who are officers of the Federal
10 Magistrates Court are to be persons engaged under the *Public*
11 *Service Act 1999*.

12 Note: Family and child specialists who are not officers of the Federal
13 Magistrates Court may be appointed under regulations made under the
14 *Family Law Act 1975*. See paragraph 11B(b) of the *Family Law Act*
15 *1975*.

16 **109 After subsection 115(1)**

17 Insert:

- 18 (1A) The Chief Executive Officer may engage persons to perform:
19 (a) family counselling services under the *Family Law Act 1975*;
20 or
21 (b) family dispute resolution services under the *Family Law Act*
22 *1975*.

23 **110 Subsection 115(2)**

24 After “subsection (1)”, insert “or (1A)”.

25 ***Income Tax Assessment Act 1997***

26 **111 Subsection 30-70(1) (table item 8.1.1)**

27 Omit “family and child mediation or family and child counselling”,
28 substitute “family counselling or family dispute resolution”.

29 **112 Subsection 30-75(1)**

30 Omit “by the Attorney-General”.

1 **113 Subsection 30-75(1)**

2 Omit “section 13A or 13B”, substitute “section 10E or 10N”.

3 Note: The heading to section 30-75 is altered by omitting “**family and child mediation and**
4 **counselling**” and substituting “**family counselling and family dispute resolution**”.

5 ***Marriage Act 1961***

6 **114 Subsection 9D(1)**

7 Omit “An approved counselling organisation as defined in subsection
8 12(1)”, substitute “An approved family counselling organisation as
9 defined in section 10E”.

10 **115 Subsection 9D(2)**

11 Omit “These conditions count as conditions of the organisation’s
12 approval for the purposes of section 13D of the *Family Law Act 1975*
13 (this section deals with revocation of approvals).”

14 **116 Paragraphs 16(2A)(a)**

15 Omit “and child” (wherever occurring).

16 **117 Paragraph 16(2A)(b)**

17 Omit “and child”.

18 **118 Subsection 16(7)**

19 Omit “*and child*”.

1

2 **Part 2—Transitional and application provisions**

3 **119 Definition of commencement**

4 In this Part:

5 *commencement* means the time at which this Schedule commences.

6 **120 Approved counselling organisations become approved**
7 **family counselling organisations**

8 (1) If, immediately before commencement, there is in force in respect of an
9 organisation an approval under section 13A of the *Family Law Act*
10 *1975*, the organisation is, on and from commencement, taken to be
11 approved as a family counselling organisation under section 10E of that
12 Act.

13 Note: An organisation may be approved before commencement under both section 13A and
14 section 13B of the *Family Law Act 1975*. If that is the case, then both this item and
15 item 123 will apply to the organisation.

16 (2) Subitem (1) does not prevent:

- 17 (a) the organisation's approval from being terminated; or
18 (b) the Minister from revoking the organisation's approval;
19 under section 10F of the *Family Law Act 1975*.

20 **121 Approved mediation organisations become approved**
21 **family dispute resolution organisations**

22 (1) If, immediately before commencement, there is in force in respect of an
23 organisation an approval under section 13B of the *Family Law Act*
24 *1975*, the organisation is, on and from commencement, taken to be
25 approved as a family dispute resolution organisation under section 10N
26 of that Act.

27 Note: An organisation may be approved before commencement under both section 13A and
28 section 13B of the *Family Law Act 1975*. If that is the case, then both this item and
29 item 122 will apply to the organisation.

30 (2) Subitem (1) does not prevent:

- 31 (a) the organisation's approval from being terminated; or
32 (b) the Minister from revoking the organisation's approval
33 under section 10P of the *Family Law Act 1975*.

1 **122 Notices filed under section 15**

2 If, at commencement, a notice filed under section 15 of the *Family Law*
3 *Act 1975* as in force at any time before commencement has not been
4 acted on, an appropriate officer of the court in which the notice is filed
5 must arrange for the parties to the marriage to which the notice relates
6 to be interviewed by a family counsellor for the purpose of assisting the
7 parties to reconcile or to improve their relationship with each other or
8 any of their children.

9 **123 Arbitration awards registered under section 19D are**
10 **taken to be registered under section 13H**

11 If:

- 12 (a) at any time before commencement, an award in an arbitration
13 had been registered under section 19D or 19E of the *Family*
14 *Law Act 1975*; and
15 (b) the award is still registered immediately before
16 commencement;

17 the registration of the award continues to have effect after
18 commencement as if it had been done under section 13H of that Act.

19 **124 Powers under Division 4 of Part IIIB of the *Family Law***
20 ***Act 1975* may be exercised in relation to section 19D**
21 **arbitration and private arbitration**

22 For the purposes of section 13G, 13H, 13J and 13K:

- 23 (a) a reference to section 13E arbitration includes a reference to
24 section 19D arbitration (within the meaning of the *Family*
25 *Law Act 1975* as in force immediately before
26 commencement); and
27 (b) a reference to relevant property or financial arbitration
28 includes a reference to private arbitration of a dispute (within
29 the meaning of the *Family Law Act 1975* as in force
30 immediately before commencement).

31 **125 Subsection 44(1B) certificates**

1 A certificate in relation to the parties to a marriage, signed before
2 commencement by a person mentioned in subparagraph 44(1B)(a)(i) or
3 (ii) (as in force immediately before commencement), may be filed in
4 relation to an application for a divorce order in relation to the marriage
5 in satisfaction of the requirement in subsection 44(1B) as amended by
6 this Schedule.

7 **126 Request for counselling under section 62C or 62CA**

8 If, at commencement, a notice filed under section 62C or 62CA of the
9 *Family Law Act 1975* has not been acted on, an appropriate officer of
10 the court in which the notice is filed must arrange for the parties to the
11 proceedings to which the notice relates (and the child and any other
12 persons the officer thinks appropriate) to be interviewed by a family
13 counsellor to assess whether counselling is appropriate in all the
14 circumstances, and, if it is:

- 15 (a) to discuss the care, welfare and development of the child; and
16 (b) if there are differences between the parties in relation to
17 matters affecting the care, welfare and development of the
18 child, to try to resolve those differences.

19 **127 Order under subsection 62F(2)**

20 If, at commencement, an order under subsection 62F(2) of the *Family*
21 *Law Act 1975* has not yet been complied with, the order is taken to have
22 been complied with if the parties to which the order relate attend a
23 conference with a family counsellor (within the meaning of the *Family*
24 *Law Act 1975* as amended by this Schedule).

25 **128 Reports under section 62G**

26 If, at commencement, a family and child counsellor or welfare officer
27 (within the meaning of the *Family Law Act 1975* as in force
28 immediately before commencement) has been directed to give a report
29 under subsection 62G(2) and has not yet given that report:

- 30 (a) the person must still provide the report; and
31 (b) references in section 62G (as amended by this Schedule) to a
32 family and child specialist are taken to be references to the
33 person who provides the report.

34 **129 Pre-parenting order counselling for the purposes of**
35 **section 65F**

1 If, before commencement, parties to proceedings attended a conference
2 with a family and child counsellor or a welfare officer to discuss the
3 matter to which the proceedings relate, the attendance at that conference
4 is taken to satisfy the requirement in subsection 65F(2) of the *Family*
5 *Law Act 1975* (as amended by this Schedule) to attend a conference
6 with a family counsellor.

7 **130 Supervision etc. of parenting orders**

8 If:

- 9 (a) under a court order made before commencement under
10 section 65L, a person is required to do either or both of the
11 following:
12 (i) supervise compliance with a parenting order;
13 (ii) give any party to the parenting order such assistance as
14 is reasonably requested by that party in relation to
15 compliance with, and the carrying out of, the parenting
16 order; and
17 (b) immediately after commencement, the person is not a family
18 and child specialist within the meaning of the *Family Law*
19 *Act 1975* as amended by this Schedule;

20 then the court may make another order substituting a family and child
21 specialist for the person.

22 **131 Application of amendments of the *Income Tax***
23 ***Assessment Act 1997***

24 The amendments made by items 111, 112 and 113 of this Schedule
25 apply to gifts made on or after the commencement of this Schedule.

26 **132 Regulations may prescribe transitional matters**

27 The Governor-General may make regulations prescribing matters of a
28 transitional nature (including prescribing any saving or application
29 provisions) relating to the amendments or repeals made by this
30 Schedule.

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Schedule 5—Removal of references to residence and contact

Australian Citizenship Act 1948

1 Paragraphs 5(2)(b) and (c)

Repeal the paragraphs, substitute:

- (b) under a parenting order the child is to live with the person (whether or not the person is a parent of the child); or
- (c) under a parenting order the person has parental responsibility for the child’s long-term or day-to-day care, welfare and development (whether or not the person is a parent of the child); or

Australian Passports Act 2005

2 Paragraphs 11(5)(b) and (c)

Repeal the paragraphs, substitute:

- (b) under a parenting order:
 - (i) the child is to live with the person; or
 - (ii) the child is to spend time with the person; or
 - (iii) the person is responsible for the child’s long-term or day-to-day care, welfare and development; or

Child Support (Assessment) Act 1989

3 Section 5 (definition of *major contact*)

Repeal the definition.

4 Section 5

Insert:

major care has the meaning given by subsections 8(3) and 8A(5).

5 Section 5 (subparagraph (a)(ii) of the definition of *relevant dependent child*)

Omit “contact with”, substitute “care of”.

1 **6 Section 5 (definition of *substantial contact*)**

2 Repeal the definition.

3 **7 Section 5**

4 Insert:

5 *substantial care* has the meaning given by subsections 8(3) and
6 8A(4).

7 **8 Paragraph 7B(1)(b)**

8 Omit “contact with”, substitute “care of”.

9 **9 Paragraph 7B(1)(d)**

10 Omit “contact with”, substitute “care of”.

11 **10 Paragraph 7B(2)(a)**

12 Omit “provides care for a child, shares care of a child or has contact
13 with”, substitute “cares for”.

14 **11 Paragraph 7B(2)(c)**

15 Omit “providing or sharing such care, or having such contact”,
16 substitute “caring for the child”.

17 **12 Subsection 7B(2)**

18 Omit “provide or share such care or have such contact”, substitute “care
19 for the child”.

20 **13 Subsection 7B(3)**

21 Omit “provide care for, share care of or have contact with”, substitute
22 “care for”.

23 **14 Subparagraph 8(3)(b)(ii)**

24 Omit “contact with”, substitute “care of”.

25 Note: The heading to section 8 is altered by omitting “**contact**” and substituting “**care**”.

26 **15 Paragraph 8(3)(c)**

27 Omit “*contact* with”, substitute “*care* of”.

28 **16 Paragraph 8(3)(d)**

1 Omit “*contact* with”, substitute “*care* of”.

2 **17 Paragraph 8A(1)(a)**

3 Omit “the contact between a child and”, substitute “the time a child is to
4 spend with”.

5 Note: The heading to section 8A is altered by omitting “/contact”.

6 **18 Paragraph 8A(1)(d)**

7 Repeal the paragraph, substitute:

8 (d) as a result of the contravention:

- 9 (i) a person (the *first person*) has more care of the child
10 than the first person would have if the order or parenting
11 plan were not being contravened; and
12 (ii) another person (the *second person*) has less care of the
13 child than the second person would have if the order or
14 parenting plan were not being contravened.

15 **19 Paragraphs 8A(2)(a) and (b)**

16 Repeal the paragraphs, substitute:

- 17 (a) the first person is taken to have care of the child only to the
18 extent (if any) to which the first person would have care of
19 the child if the court order or parenting plan (as the case may
20 be) were being complied with; and
21 (b) the amount of care that the second person has of the child is
22 to be worked out on the basis of the care (if any) that the
23 person actually has of the child; and

24 **20 Subsection 8A(4)**

25 Omit “*contact* with”, substitute “*care* of”.

26 **21 Subsection 8A(5)**

27 Omit “*contact* with”, substitute “*care* of”.

28 **22 Subsection 8A(6)**

29 Omit “contact with”, substitute “care of”.

30 **23 Paragraph 48(1)(da)**

31 Omit “with whom the parent has substantial contact”, substitute “of
32 whom the parent has substantial care”.

1 **24 Paragraph 48(1)(e)**

2 Omit “with whom a parent has major contact taken to be 0.65, the
3 number attributed to each child with whom a parent has substantial
4 contact”, substitute “of whom a parent has major care taken to be 0.65,
5 the number attributed to each child of whom a parent has substantial
6 care”.

7 **25 Paragraph 54(1)(b) (definition of *number of children in***
8 ***carer’s care*)**

9 Omit “with whom a carer has major contact taken to be 0.65, the
10 number attributed to each child with whom a carer has substantial
11 contact”, substitute “of whom a carer has major care taken to be 0.65,
12 the number attributed to each child of whom a carer has substantial
13 care”.

14 **26 Section 54 (example 2)**

15 Omit “substantial contact”, substitute “substantial care”.

16 **27 Paragraph 54A(1)(a)**

17 Omit “and contact”.

18 **28 Subparagraph 54A(1)(b)(ii)**

19 Omit “contact with”, substitute “care of”.

20 **29 Paragraph 54B(1)(e)**

21 Omit “with whom the parent has substantial contact”, substitute “of
22 whom the parent has substantial care”.

23 **30 Subparagraph 54B(1)(f)(i)**

24 Omit “with whom the carer has major contact”, substitute “of whom the
25 carer has major care”.

26 **31 Subparagraph 54B(1)(f)(ii)**

27 Omit “with whom the carer has substantial contact”, substitute “of
28 whom the carer has substantial care”.

29 **32 Subparagraph 117(2)(a)(iv)**

30 Repeal the subparagraph, substitute:

- 1 (iv) high costs involved in enabling a parent to care for any
2 other child or another person that the parent has a duty
3 to maintain;

4 **33 Subparagraph 117(2)(b)(i)**

5 Repeal the subparagraph, substitute:

- 6 (i) because of high costs involved in enabling a parent to
7 care for the child; or
8 (ia) because of special needs of the child; or
9 (ib) because of high child care costs in relation to the child;
10 or

11 **34 Subsection 117(3)**

12 Omit “have contact with”, substitute “care for”.

13 ***Family Law Act 1975***

14 **35 Subsection 4(1) (definition of *contact order*)**

15 Repeal the definition.

16 **36 Subsection 4(1) (definition of *has*)**

17 Repeal the definition.

18 **37 Subsection 4(1) (definition of *made in favour*)**

19 Repeal the definition, substitute:

20 *made in favour*, in relation to a parenting order (other than a child
21 maintenance order), has the meaning given by subsection 64B(6).

22 **38 Subsection 4(1) (definition of *residence order*)**

23 Repeal the definition.

24 **39 Subsection 4(1) (definition of *specific issues order*)**

25 Repeal the definition.

26 **40 Subsection 26B(1A)**

27 Repeal the subsection, substitute:

28 (1A) An *excluded child order* is:

- 1 (a) a parenting order to the extent to which it provides that:
2 (i) a child is to live with a person; or
3 (ii) a child is to spend time with a person; or
4 (iii) a child is to communicate with a person; or
5 (iv) a person is to have parental responsibility, or a
6 component of parental responsibility, for a child; or
7 (b) an order in relation to the welfare of a child;
8 other than:
9 (c) a parenting order made under paragraph 70NG(1)(b) or an
10 order made under paragraph 70NJ(3)(c) that has the same
11 effect as such a parenting order; or
12 (d) an order until further order; or
13 (e) an order made in undefended proceedings; or
14 (f) an order made with the consent of all the parties to the
15 proceedings.

16 **41 Subsection 37A(2A)**

17 Repeal the subsection, substitute:

18 (2A) An *excluded child order* is:

- 19 (a) a parenting order to the extent to which it provides that:
20 (i) a child is to live with a person; or
21 (ii) a child is to spend time with a person; or
22 (iii) a child is to communicate with a person; or
23 (iv) a person is to have parental responsibility, or a
24 component of parental responsibility, for a child; or
25 (b) an order in relation to the welfare of a child;
26 other than:
27 (c) an order until further order; or
28 (d) an order made in undefended proceedings; or
29 (e) an order made with the consent of all the parties to the
30 proceedings.

31 **42 Section 60C (table item 6)**

32 Omit “, other than child maintenance orders” (first occurring), substitute
33 “(other than child maintenance orders) after attending, if necessary,
34 family dispute resolution (see section 60I)”.

1 **43 Section 60C (table item 6)**

2 Omit “residence orders, contact orders and specific issues orders”,
3 substitute “parenting orders, other than child maintenance orders”.

4 **44 Section 60C (table item 11)**

5 Omit “contact orders etc.”, substitute “parenting orders”.

6 **45 Section 60C (table item 13A)**

7 Omit “for contact forgone”, substitute “a person for time that a child did
8 not spend with the person, or for time that a child did not live with the
9 person,”.

10 **46 Subsection 60D(1) (definition of *contact order*)**

11 Repeal the definition.

12 **47 Subsection 60D(1) (definition of *has*)**

13 Repeal the definition.

14 **48 Subsection 60D(1) (definition of *made in favour*)**

15 Repeal the definition, substitute:

16 *made in favour*, in relation to a parenting order (other than a child
17 maintenance order) has the meaning given by subsection 64B(6).

18 **49 Subsection 60D(1) (definition of *residence order*)**

19 Repeal the definition.

20 **50 Subsection 60D(1) (definition of *specific issues order*)**

21 Repeal the definition.

22 **51 Subparagraph 60D(2)(c)(i)**

23 Omit “a residence order, contact order or specific issues order”,
24 substitute “a parenting order (other than a child maintenance order)”.

25 **52 Subsection 63C(4)**

26 Repeal the subsection, substitute:

27 (4) Provisions of a parenting plan that deal with matters other than the
28 maintenance of a child are *child welfare provisions*.

1 **53 Subsection 63C(5)**

2 Omit “(c)”, substitute “(f)”.

3 **54 Subsection 63F(3)**

4 Repeal the subsection, substitute:

5 (3) The child welfare provisions have effect, subject to subsections (5)
6 and (6), as if they were provisions of a parenting order.

7 Note: Provisions of this Act relevant to the child welfare provisions having
8 effect as provided in this subsection include:

- 9 (a) Subdivisions C, D and E of Division 6 of this Part (dealing with
10 obligations created by parenting orders (other than child
11 maintenance orders)); and
- 12 (b) Division 13A of this Part and Part XIII (dealing generally with
13 enforcement of orders and sanctions for contravening orders);
14 and
- 15 (c) subsection 65D(2) (providing for discharge, variation, suspension
16 and revival of parenting orders other than child maintenance
17 orders); and
- 18 (d) other provisions of this Act (including subsection 64B(6)) that
19 refer to parenting orders.

20 **55 Paragraph 65A(b)**

21 Repeal the paragraph, substitute:

22 (b) the general obligations created by parenting orders, other
23 than child maintenance orders (Subdivision C); and

24 **56 Subsection 65G(1)**

25 Repeal the subsection, substitute:

26 (1) This section applies if:

- 27 (a) a court proposes to make a parenting order that deals with
28 who a child is to live with; and
- 29 (b) under the order, the child would not live with a parent,
30 grandparent or other relative of the child; and
- 31 (c) the court proposes to make that order with the consent of all
32 the parties to the proceedings.

33 (1A) This section also applies if:

- 1 (a) a court proposes to make a parenting order that deals with the
2 allocation of parental responsibility, or a component of
3 parental responsibility, for a child; and
4 (b) under the order, no parent, grandparent or other relative of
5 the child would be allocated parental responsibility for the
6 child or that component of parental responsibility for the
7 child; and
8 (c) the court proposes to make that order with the consent of all
9 the parties to the proceedings.

10 Note: The heading to section 65G is altered by omitting “**residence order or specific issues**
11 **order**” and substituting “**parenting order about who a child lives with or the**
12 **allocation of parental responsibility**”.

13 **57 Paragraph 65K(1)(a)**

14 Repeal the paragraph, substitute:

- 15 (a) a parenting order is in force that provides that a child is to
16 live with one of the child’s parents; and

17 Note: The heading to section 65K is altered by omitting “**that is or includes residence**
18 **order**” and substituting “**that deals with who a child lives with**”.

19 **58 Subsection 65K(3)**

20 Repeal the subsection, substitute:

- 21 (3) The surviving parent, or another person (subject to section 65C),
22 may apply for a parenting order that deals with the person or
23 persons with whom the child is to live.

24 **59 Subdivision C of Division 6 of Part VII (heading)**

25 Repeal the heading, substitute:

26 **Subdivision C—General obligations created by certain** 27 **parenting orders**

28 **60 Subsection 65M(1)**

29 Repeal the subsection, substitute:

- 30 (1) This section applies to a parenting order that is in force in relation
31 to a child to the extent to which the order deals with who the child
32 is to live with.

33 Note: The heading to section 65M is altered by omitting “**residence order**” and substituting
34 “**parenting order that deals with who a child lives with**”.

1 **61 Sections 65N and 65P**

2 Repeal the sections, substitute:

3 **65N General obligations created by parenting order that deals with**
4 **who a child spends time with**

5 (1) This section applies to a parenting order that is in force in relation
6 to a child to the extent to which the order deals with who the child
7 is to spend time with.

8 (2) A person must not:

- 9 (a) hinder or prevent a person and the child from spending time
10 together in accordance with the order; or
11 (b) interfere with a person and the child benefiting from
12 spending time with each other under the order.

13 **65NA General obligations created by parenting order that deals**
14 **with who a child communicates with**

15 (1) This section applies to a parenting order that is in force in relation
16 to a child to the extent to which the order deals with who the child
17 is to communicate with.

18 (2) A person must not:

- 19 (a) hinder or prevent a person and the child from communicating
20 with each other in accordance with the order; or
21 (b) interfere with the communication that a person and the child
22 are supposed to have with each other under the order.

23 **65P General obligations created by parenting order that allocates**
24 **parental responsibility**

25 (1) This section applies to a parenting order that is in force in relation
26 to a child to the extent to which the order allocates parental
27 responsibility, or a component of parental responsibility, for the
28 child to a person (the *carer*).

29 (2) A person must not hinder the carer in, or prevent the carer from,
30 discharging that responsibility.

31 **62 Paragraphs 65Q(1)(a) and (b)**

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Repeal the paragraphs, substitute:

- (a) a parenting order provides that:
 - (i) a child is to live with a person; or
 - (ii) a child is to spend time with a person; or
 - (iii) a child is to communicate with a person; and
- (b) a court having jurisdiction under this Part is satisfied, on application by the person referred to in paragraph (1)(a), that there are reasonable grounds for believing that a person (the *alleged offender*) has contravened section 65M, 65N or 65NA in relation to the order; and

63 Subsection 65X(1) (definition of care order)

Repeal the definition.

64 Subsection 65X(1)

Insert:

parenting order to which this Subdivision applies means a parenting order to the extent to which it provides, or would provide, that:

- (a) a child is to live with a person; or
- (b) a child is to spend time with a person; or
- (c) a child is to communicate with a person; or
- (d) a person is to have parental responsibility, or a component of parental responsibility, for a child.

65 Subsection 65Y(1)

Omit “If a residence order, a contact order or a care order (the *Part VII order*)”, substitute “If a parenting order to which this Subdivision applies”.

Note: The heading to section 65Y is altered by omitting “**residence order, contact order or care order**” and substituting “**certain parenting orders**”.

66 Paragraph 65Y(2)(a)

Omit “Part VII order”, substitute “order referred to in subsection (1)”.

67 Paragraph 65Y(2)(b)

Omit “Part VII order”, substitute “order referred to in subsection (1)”.

1 **68 Subsection 65Z(1)**

2 Omit “a residence order, a contact order or a care order”, substitute “a
3 parenting order to which this Subdivision applies”.

4 Note: The heading to section 65Z is altered by omitting “**residence order, contact order or**
5 **care order**” and substituting “**certain parenting orders**”.

6 **69 Paragraph 65ZA(1)(a)**

7 Repeal the paragraph, substitute:

8 (a) a parenting order to which this Subdivision applies is in
9 force; and

10 Note: The heading to section 65ZA is altered by omitting “**residence order, contact order or**
11 **care order**” and substituting “**certain parenting orders**”.

12 **70 Paragraph 65ZA(1)(b)**

13 Omit “Part VII”.

14 **71 Paragraph 65ZB(1)(a)**

15 Omit “a residence order, a contact order or a care order”, substitute “a
16 parenting order to which this Subdivision applies”.

17 Note: The heading to section 65ZB is altered by omitting “**residence order, contact order or**
18 **care order**” and substituting “**certain parenting orders**”.

19 **72 Paragraphs 67K(1)(a) to (c)**

20 Repeal the paragraphs, substitute:

21 (a) a person with whom the child is to live under a parenting
22 order; or

23 (b) a person with whom the child is to spend time under a
24 parenting order; or

25 (c) a person with whom the child is to communicate under a
26 parenting order; or

27 (ca) a person who has parental responsibility, or a component of
28 parental responsibility, for the child under a parenting order;
29 or

30 **73 Subparagraphs 67Q(a)(ii) and (iii)**

31 Repeal the subparagraphs, substitute:

32 (ii) a person with whom the child is to live under a
33 parenting order; or

- 1 (iii) a person with whom the child is to spend time under a
2 parenting order; or
3 (iv) a person with whom the child is to communicate under a
4 parenting order; or
5 (v) a person who has parental responsibility, or a
6 component of parental responsibility, for the child; or

7 **74 Subparagraphs 67Q(d)(ii) to (iv)**

8 Repeal the subparagraphs, substitute:

- 9 (ii) a person described in subparagraph (a)(ii), (iii), (iv) or
10 (v); or
11 (iii) some other person on behalf of a person described in
12 subparagraph (i) or (ii);

13 **75 Paragraphs 67T(a) to (c)**

14 Repeal the paragraphs, substitute:

- 15 (a) a person with whom the child is to live under a parenting
16 order; or
17 (b) a person with whom the child is to spend time under a
18 parenting order; or
19 (c) a person with whom the child is to communicate under a
20 parenting order; or
21 (ca) a person who has parental responsibility, or a component of
22 parental responsibility, for the child under a parenting order;
23 or

24 **76 Subparagraphs 68B(1)(b)(ii) and (iii)**

25 Repeal the subparagraphs, substitute:

- 26 (ii) a person with whom the child is to live under a
27 parenting order; or
28 (iii) a person with whom the child is to spend time under a
29 parenting order; or
30 (iv) a person with whom the child is to communicate under a
31 parenting order; or
32 (v) a person who has parental responsibility, or a
33 component of parental responsibility, for the child; or

34 **77 Paragraph 68F(2)(d)**

1 Omit “having contact”, substitute “spending time with and
2 communicating”.

3 **78 Paragraphs 68M(3)(b) and (c)**

4 Repeal the paragraphs, substitute:

- 5 (b) a person with whom the child is to live under a parenting
6 order; or
- 7 (c) a person with whom the child is to spend time under a
8 parenting order; or
- 9 (d) a person with whom the child is to communicate under a
10 parenting order; or
- 11 (e) a person who has parental responsibility, or a component of
12 parental responsibility, for the child.

13 **79 Section 68N**

14 Omit “contact”.

15 **80 Section 68P (definition of *Division 11 contact order*)**

16 Repeal the definition.

17 **81 Section 68P**

18 Insert:

19 ***Division 11 order*** means:

- 20 (a) a parenting order to the extent to which it:
 - 21 (i) provides for a child to spend time with a person; or
 - 22 (ii) impliedly requires or authorises a person to spend time
23 with the child; or
- 24 (b) any of the following, to the extent to which it requires or
25 authorises a person or persons to spend time with a child:
 - 26 (i) a recovery order or any other order (however described)
27 made under this Act;
 - 28 (ii) an injunction granted under section 68B or 114;
 - 29 (iii) an undertaking given to, and accepted by, a court
30 exercising jurisdiction under this Act;
 - 31 (iv) a registered parenting plan within the meaning of
32 subsection 63C(6);
 - 33 (v) a recognisance entered into under an order under this
34 Act.

1 **82 Section 68P (definition of section 68R contact order)**

2 Repeal the definition.

3 **83 Section 68P**

4 Insert:

5 *section 68R order* means:

6 (a) a parenting order to the extent to which it:

7 (i) provides for a child to spend time with a person; or

8 (ii) impliedly requires or authorises a person to spend time
9 with the child; or

10 (b) any of the following, to the extent to which it requires or
11 authorises a person or persons to spend time with a child:

12 (i) a recovery order or any other order (however described)
13 made under this Act;

14 (ii) an injunction granted under section 68B or 114.

15 **84 Paragraphs 68Q(a) and (b)**

16 Omit “contact” (wherever occurring).

17 **85 Paragraph 68Q(c)**

18 Repeal the paragraph, substitute:

19 (c) to respect the right of a child to spend time, on a regular
20 basis, with both the child’s parents, where:

21 (i) the benefit of spending time with one or both of the
22 parents is diminished by the making or variation of a
23 family violence order; and

24 (ii) it is in the best interests of the child to spend time with
25 both parents on a regular basis.

26 **86 Subsections 68R(1) to (3)**

27 Omit “contact” (wherever occurring).

28 Note: The heading to section 68R is altered by omitting “**an order for contact**” and
29 substituting “**section 68 order**”.

30 **87 Paragraph 68R(4)(a)**

31 Repeal the paragraph, substitute:

1 (a) include in the section 68R order a detailed explanation of
2 how the arrangements under which a person is to spend time
3 with a child under the order is to take place; and

4 **88 Paragraph 68R(4)(b)**

5 Omit “contact” (wherever occurring).

6 **89 Subsection 68R(5)**

7 Omit “contact”.

8 **90 Section 68S**

9 Omit “contact” (wherever occurring).

10 Note: The heading to section 68S is altered by omitting “**contact**”.

11 **91 Section 68T**

12 Omit “contact” (wherever occurring).

13 Note: The heading to section 68T is altered by omitting “**contact**”.

14 **92 Paragraph 69Z(2)(c)**

15 Repeal the paragraph, substitute:

16 (c) a person who, under a parenting order, has responsibility for
17 the child’s long-term or day-to-day care, welfare and
18 development.

19 **93 Paragraph 69ZA(1)(c)**

20 Repeal the paragraph, substitute:

21 (c) a person who, under a parenting order, has responsibility for
22 the child’s long-term or day-to-day care, welfare and
23 development.

24 **94 Subparagraph 69ZH(3)(a)(ii)**

25 Repeal the subparagraph, substitute:

26 (ii) whom the child lives with, who the child spends time
27 with and other aspects of the care, welfare and
28 development of the child; and

29 **95 Section 70B (after paragraph (a) of the definition of *State*
30 *child order*)**

31 Insert:

- 1 (aa) that (however it is expressed) has the effect of providing for a
2 person or persons to spend time with a child who is under 18;
3 or

4 **96 Section 70F (definition of *care order*)**

5 Repeal the definition.

6 **97 Section 70F**

7 Insert:

8 *Subdivision C parenting order* means a parenting order to the
9 extent to which it deals with:

- 10 (a) whom a child is to live with; or
11 (b) whom a child is to spend time with; or
12 (c) who is to be responsible for a child's day-to-day care, welfare
13 and development.

14 **98 Section 70F (after subparagraph (a)(i) of the definition of**
15 ***overseas child order*)**

16 Insert:

- 17 (ia) however it is expressed, has the effect of providing for a
18 person or persons to spend time with a child who is
19 under 18; or

20 **99 Subsection 70J(1)**

21 Omit "a residence order, a contact order or a care order", substitute "a
22 Subdivision C parenting order".

23 **100 Paragraph 70J(1)(a)**

24 Repeal the paragraph, substitute:

- 25 (a) each person:
26 (i) with whom the child is supposed to live; or
27 (ii) who is to spend time with the child; or
28 (iii) who is to have contact with the child; or
29 (iv) who has rights of custody or access in relation to the
30 child;
31 under the overseas order consents to the exercise of
32 jurisdiction by the court in the proceedings; or

1 **101 Subsection 70J(2)**

2 Omit “a residence order, a contact order or a care order” (wherever
3 occurring), substitute “a Subdivision C parenting order”.

4 **102 Paragraph 70J(2)(b)**

5 Omit “the residence order, contact order or care order”, substitute “the
6 Subdivision C parenting order”.

7 **103 Paragraph 70K(b)**

8 Omit “a residence order, a contact order or a care order”, substitute “a
9 Subdivision C parenting order”.

10 Note: The heading to section 70K is altered by omitting “**residence order, contact order or**
11 **care order**” and substituting “**Subdivision C parenting order**”.

12 **104 Subsection 70L(1) (paragraph (a) of the definition of**
13 ***Australian child order***)

14 Repeal the paragraph, substitute:
15 (a) a Subdivision C parenting order; or

16 **105 Subsection 70L(1) (paragraph (a) of the definition of**
17 ***responsible person***)

18 Repeal the paragraph, substitute:
19 (a) with whom the child is supposed to live under the order; or
20 (aa) whom the child is supposed to spend time with under the
21 order; or
22 (ab) whom the child is supposed to have contact with under the
23 order; or

24 **106 Paragraph 70M(1)(a)**

25 Repeal the paragraph, substitute:
26 (a) a court in Australia makes, in relation to a child who is under
27 18:
28 (i) a parenting order, other than a child maintenance order;
29 or
30 (ii) a State child order as defined in section 70B; and

31 **107 Paragraph 70M(3)(a)**

32 Repeal the paragraph, substitute:

- 1 (a) a person with whom the child is supposed to live under the
2 order; or
3 (aa) a person with whom the child is supposed to spend time
4 under the order; or
5 (ab) a person with whom the child is supposed to have contact
6 under the order; or

7 **108 Subsection 70N(1)**

8 Repeal the subsection, substitute:

- 9 (1) The regulations may make provision for and in relation to the
10 sending to a prescribed overseas jurisdiction of copies of, and
11 documents relating to:
12 (a) a parenting order, other than a child maintenance order; or
13 (b) a State child order as defined in section 70B;
14 that relates to a child to whom an overseas child order relates.

15 **109 Paragraphs 70ND(a) to (c)**

16 Repeal the paragraphs, substitute:

- 17 (a) a parenting order that deals with whom a child is to live with
18 is taken to include a requirement that people act in
19 accordance with section 65M in relation to the order; and
20 (b) a parenting order that deals with whom a child is to spend
21 time with is taken to include a requirement that people act in
22 accordance with section 65N in relation to the order; and
23 (c) a parenting order that deals with who a child is to
24 communicate with is taken to include a requirement that
25 people act in accordance with section 65N in relation to the
26 order; and
27 (d) a parenting order to which section 65P applies is taken to
28 include a requirement that people act in accordance with that
29 section in relation to the order.

30 **110 Subsections 70NE(2) and (3)**

31 Repeal the subsections, substitute:

- 32 (2) A person (the *respondent*) is taken to have had a reasonable excuse
33 for contravening a parenting order to the extent to which it deals
34 with whom a child is to live with in a way that resulted in the child
35 not living with a person in whose favour the order was made if:

- 1 (a) the respondent believed on reasonable grounds that the
2 actions constituting the contravention were necessary to
3 protect the health or safety of a person (including the
4 respondent or the child); and
5 (b) the period during which, because of the contravention, the
6 child did not live with the person in whose favour the order
7 was made was not longer than was necessary to protect the
8 health or safety of the person referred to in paragraph (a).
- 9 (3) A person (the *respondent*) is taken to have had a reasonable excuse
10 for contravening a parenting order to the extent to which it deals
11 with whom a child is to spend time with in a way that resulted in a
12 person and a child not spending time together as provided for in the
13 order if:
14 (a) the respondent believed on reasonable grounds that not
15 allowing the child and the person to spend time together was
16 necessary to protect the health or safety of a person
17 (including the respondent or the child); and
18 (b) the period during which, because of the contravention, the
19 child and the person did not spend time together was not
20 longer than was necessary to protect the health or safety of
21 the person referred to in paragraph (a).
- 22 (3A) A person (the *respondent*) is taken to have had a reasonable excuse
23 for contravening a parenting order to the extent to which it deals
24 with whom a child is to communicate with in a way that resulted in
25 a person and a child not having the communication provided for
26 under the order if:
27 (a) the respondent believed on reasonable grounds that not
28 allowing the child and the person to communicate together
29 was necessary to protect the health or safety of a person
30 (including the respondent or the child); and
31 (b) the period during which, because of the contravention, the
32 child and the person did not communicate was not longer
33 than was necessary to protect the health or safety of the
34 person referred to in paragraph (a).

35 **111 Subsection 70NE(4)**

36 Omit “specific issues order”, substitute “parenting order to which
37 section 65P applies”.

1 **112 Paragraphs 79A(1AA)(b) and (c)**

2 Repeal the paragraphs, substitute:

3 (b) a parenting order provides that:

4 (i) the child is to live with the person; or

5 (ii) the person has parental responsibility, or a component
6 of parental responsibility, for the child.

7 **113 Paragraphs 90K(2)(b) and (c)**

8 Repeal the paragraphs, substitute:

9 (b) a parenting order provides that:

10 (i) the child is to live with the person; or

11 (ii) the person has parental responsibility, or a component
12 of parental responsibility, for the child.

13 **114 Subparagraph 91(1)(b)(i)**

14 Repeal the subparagraph, substitute:

15 (i) a parenting order, other than a child maintenance order;
16 or

17 **115 Paragraphs 92A(2)(ba) and (bb)**

18 Repeal the paragraphs, substitute:

19 (ba) a person with whom the child is to live under a parenting
20 order;

21 (bb) a person who has parental responsibility, or a component of
22 parental responsibility, for the child under a parenting order;

23 **116 Paragraph 111B(1A)(c)**

24 Repeal the paragraph, substitute:

25 (c) relating to a Central Authority within the meaning of the
26 regulations applying on behalf of another person for a
27 parenting order that deals with the person or persons with
28 whom a child is to spend time or communicate if the
29 outcome of the proceedings is that the child is not to be
30 returned under the Convention.

31 **117 Paragraph 111B(4)(b)**

32 Repeal the paragraph, substitute:

- 1 (b) subject to any order of a court for the time being in force, a
2 person:
3 (i) with whom a child is to live under a parenting order; or
4 (ii) who has parental responsibility, or a component of
5 parental responsibility, for a child under a parenting
6 order;
7 should be regarded as having rights of custody in respect of
8 the child; and

9 **118 Paragraph 111B(4)(d)**

10 Repeal the paragraph, substitute:

- 11 (d) subject to any order of a court for the time being in force, a
12 person:
13 (i) with whom a child is to spend time under a parenting
14 order; or
15 (ii) with whom a child is to communicate under a parenting
16 order;
17 should be regarded as having a right of access to the child.

18 **119 Subsection 111B(4) (note)**

19 Repeal the note, substitute:

20 Note: The references in paragraphs (b) and (d) to parenting orders also cover
21 provisions of parenting agreements registered under section 63E (see
22 section 63F, in particular subsection (3)).

23 **120 Section 111CW**

24 Repeal the section, substitute:

25 **111CW Court proceedings dealing with who a child spends time**
26 **with**

- 27 (1) A court hearing proceedings under Part VII (Children) or
28 regulations made for the purposes of section 111B dealing with:
29 (a) whom a child is to spend time with; or
30 (b) whom a child is to communicate with;
31 must admit into evidence and consider the findings (if any) of a
32 competent authority of a Convention country on the suitability of a
33 parent as a person for the child to spend time with or communicate
34 with.

- 1 (2) The court may adjourn the proceedings pending the outcome of a
2 request by a parent of the child to a competent authority of a
3 Convention country for a finding on the suitability of the parent as
4 a person for the child to spend time with or communicate with.
- 5 (3) On the application of a parent who is an Australian resident
6 seeking to have, or to continue to have, a child spend time with or
7 communicate with the parent, a court may:
- 8 (a) admit evidence; and
9 (b) make a finding on the suitability of that parent as a person for
10 the child to spend time with or communicate with; and
11 (c) specify conditions on which the child is to spend time with or
12 communicate with the person.

13 **121 Paragraph 117A(1)(a)**

14 Repeal the paragraph, substitute:

- 15 (a) a court has found, for the purposes of Division 13A of
16 Part VII, that a person has, by taking a child away from
17 another person or by refusing or failing to deliver a child to
18 another person, contravened a parenting order to the extent to
19 which the order provides that:
- 20 (i) a child is to live with a person; or
21 (ii) a child is to spend time with a person; or
22 (iii) a child is to communicate with a person;

23 ***Migration Act 1958***

24 **122 Subsection 192(8)**

25 Repeal the subsection, substitute:

- 26 (8) In paragraph (7)(b), *guardian* includes a person who is
27 responsible, under a parenting order (within the meaning of the
28 *Family Law Act 1975*), for the detainee's long-term care, welfare
29 and development.