

# EXPOSURE DRAFT

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Inserts for  
**Family Law Amendment (Family  
Violence and Other Measures) Bill 2017:  
Exposure draft provisions**

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Schedule FLA, Part 1, Division 1	The day after this Act receives the Royal Assent.	
2. Schedule FLA, Part 1, Division 2	A single day to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule FLA, Parts 2 and 3	The day after this Act receives the Royal Assent.	

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## Schedule FLA—Amendment of the Family Law Act 1975

### Part 1—Family law matters to be resolved by State and Territory courts

#### Division 1—Measures commencing day after Royal Assent

##### *Family Law Act 1975*

#### **1 Subsection 28(2)**

Repeal the subsection, substitute:

(2) The jurisdiction of the Court in an appeal from the following court may be exercised by one Judge or by a Full Court:

(a) a court of summary jurisdiction;

(b) a court prescribed by the regulations for the purposes of section 69GA or subsection 96(7).

#### **2 After section 69G**

Insert:

#### **69GA Operation of this Subdivision in relation to prescribed courts**

This Subdivision applies to a court prescribed by the regulations for the purposes of this section in the same way as this Division applies to a court of summary jurisdiction.

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

Section 69GA of the *Family Law Act 1975*, as inserted by this Part, applies to decisions made on or after the commencement of this Part, whether the proceedings in which the decision was made were instituted before, on or after that commencement.

#### **4 Subsection 69J(1) (note)**

Repeal the note, substitute:

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1 Note: This section applies to courts prescribed by the regulations for the  
2 purposes of section 69GA in the same way as this section applies to  
3 courts of summary jurisdiction.

## 4 **5 At the end of subsection 69N(1)**

5 Add:

6 Note: This section applies to courts prescribed by the regulations for the  
7 purposes of section 69GA in the same way as this section applies to  
8 courts of summary jurisdiction.

## 9 **6 At the end of Division 12 of Part VII**

10 Add:

### 11 **Subdivision G—Short form reasons for decisions relating to** 12 **interim parenting orders**

#### 13 **69ZL Short form reasons for decisions relating to interim parenting** 14 **orders**

15 A court may give reasons in short form for a decision it makes in  
16 relation to an interim parenting order.

## 17 **7 Application of amendments**

18 Section 69ZL of the *Family Law Act 1975*, as inserted by this Part,  
19 applies to decisions made on or after the commencement of this Part,  
20 whether the proceedings in which the decision was made were instituted  
21 before, on or after that commencement.

## 22 **8 At the end of section 96**

23 Add:

24 *Other prescribed courts treated like courts of summary jurisdiction*

25 (7) This section applies to a court prescribed by the regulations for the  
26 purpose of this subsection in the same way as this section applies  
27 to a court of summary jurisdiction.

## 28 **9 Application of amendments**

29 Subsection 96(7) of the *Family Law Act 1975*, as inserted by this Part,  
30 applies to decisions made on or after the commencement of this Part,  
31 whether the proceedings in which the decision was made were instituted  
32 before, on or after that commencement.

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1 **Division 2—Measures commencing on Proclamation**

2 **10 Subsection 46(1)**

3 Omit “\$20,000”, substitute “the amount prescribed by the regulations”.

4 **11 Application of amendments**

5 The amendment of subsection 46(1) of the *Family Law Act 1975* made  
6 by this Division applies in relation to proceedings instituted after this  
7 item commences.

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1 **Part 2—Strengthening the powers of the courts to**  
2 **protect victims of family violence**

3 **12 After section 45**

4 Insert:

5 **45A Summary decrees**

6 *No reasonable prospect of successfully defending proceedings*

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

14 *No reasonable prospect of successfully prosecuting proceedings*

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

22 *When there is no reasonable prospect of success*

- 23 (3) For the purposes of this section, a defence or proceedings or part of  
24 proceedings need not be:  
25 (a) hopeless; or  
26 (b) bound to fail;  
27 to have no reasonable prospect of success.

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

- 29 (4) The court may dismiss all or part of proceedings at any stage if it is  
30 satisfied that the proceedings or part is frivolous, vexatious or an  
31 abuse of process.
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## *Costs*

- 1
- 2 (5) If the court makes a decree, or dismisses all or part of proceedings,  
3 under this section, the court may make such order as to costs as the  
4 court considers just.

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

- 5
- 6 (6) The court may take action under this section on its own initiative or  
7 on application by a party to the proceedings.

## *This section does not limit other powers*

- 8
- 9 (7) This section does not limit any powers that the court has apart from  
10 this section.

11 Note: Part XIB also gives courts powers relating to vexatious proceedings.

## **13 Application of amendments**

12 Section 45A of the *Family Law Act 1975*, as inserted by this Part,  
13 applies to proceedings instituted before, on or after the commencement  
14 of this Part.  
15

## **14 At the end of subsection 60CC(1)**

16 Add:

17 Note: Section 68P also limits the effect of this section on a court making  
18 decisions under that section about limiting, or not providing, an  
19 explanation to a child of an order or injunction that is inconsistent  
20 with a family violence order.  
21

## **15 Section 68C**

22 Repeal the section, substitute:  
23

### **68C Offence for breaching injunction**

- 24
- 25 (1) A person (the *respondent*) commits an offence if:  
26 (a) an injunction is in force under section 68B that is expressed  
27 to be for the personal protection of another person; and  
28 (b) the injunction is directed against the respondent; and  
29 (c) the respondent engages in conduct; and  
30 (d) the conduct breaches the injunction.

31 Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

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1 (2) Despite subsections 8.2(3) and (4) of the *Criminal Code*, evidence  
2 of self-induced intoxication cannot be considered in determining,  
3 for the purposes of subsection (1) of this section, whether:

4 (a) conduct was accidental; or

5 (b) a person had a mistaken belief about facts if the person had  
6 considered whether or not the facts existed.

7 (3) Despite subsection 8.4(1) of the *Criminal Code*, evidence of  
8 self-induced intoxication cannot be considered in determining, for  
9 the purposes of subsection (1) of this section, in relation to any part  
10 of a defence that is based on actual knowledge or belief, whether  
11 that knowledge or belief existed.

## 12 **16 Application of amendments**

13 Section 68C of the *Family Law Act 1975*, as inserted by this Part,  
14 applies in relation to conduct engaged in after the commencement of  
15 this Part.

## 16 **17 After subsection 68P(2)**

17 Insert:

18 (2A) Subparagraph (2)(c)(iii) does not apply to a child if the court is  
19 satisfied that:

20 (a) the child is too young to understand an explanation of the  
21 order or injunction; or

22 (b) it is in the child's best interests not to receive an explanation  
23 of the order or injunction.

24 (2B) Paragraph (2)(d) does not require inclusion of a matter in an  
25 explanation given to a child if the court is satisfied that:

26 (a) the child is too young to understand the matter; or

27 (b) it is in the child's best interests for the matter not to be  
28 included in the explanation.

29 (2C) In determining whether it is satisfied as described in  
30 paragraph (2A)(b) or (2B)(b) of this section, the court may, but is  
31 not required to, have regard to all or any of the matters set out in  
32 subsection 60CC(2) or (3). This has effect despite section 60CC  
33 (How a court determines what is in a child's best interests).

## 34 **18 Subsection 68T(1)**

35 Omit "earlier", substitute "earliest".

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## 19 Paragraph 68T(1)(b)

Repeal the paragraph, substitute:

- (b) the time specified in the interim order as the time at which the revival, variation or suspension ceases to have effect; and
- (c) the time the order, injunction or arrangement is affected by an order (however described) made by a court, under section 68R or otherwise, after the revival, variation or suspension.

## 20 Application of amendments

The amendments of section 68T of the *Family Law Act 1975* made by this Part apply in relation to revivals, variations and suspensions, that are made under section 68R of that Act on or after the commencement of this Part, of orders, injunctions and arrangements.

## 21 Section 102QA (note)

Repeal the note, substitute:

Note: For example, section 45A allows a court to dismiss proceedings if it is satisfied that they are vexatious.

## 22 Section 114AA

Repeal the section, substitute:

### 114AA Offence for breaching injunction

(1) A person (the *respondent*) commits an offence if:

- (a) an injunction is in force under section 114 that is expressed to be for the personal protection of another person; and
- (b) the injunction is directed against the respondent; and
- (c) the respondent engages in conduct; and
- (d) the conduct breaches the injunction.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

(2) Despite subsections 8.2(3) and (4) of the *Criminal Code*, evidence of self-induced intoxication cannot be considered in determining, for the purposes of subsection (1) of this section, whether:

- (a) conduct was accidental; or
- (b) a person had a mistaken belief about facts if the person had considered whether or not the facts existed.



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1 (3) Despite subsection 8.4(1) of the *Criminal Code*, evidence of  
2 self-induced intoxication cannot be considered in determining, for  
3 the purposes of subsection (1) of this section, in relation to any part  
4 of a defence that is based on actual knowledge or belief, whether  
5 that knowledge or belief existed.

## 6 **23 Application of amendments**

7 Section 114AA of the *Family Law Act 1975*, as inserted by this Part,  
8 applies in relation to conduct engaged in after the commencement of  
9 this Part.

## 10 **24 Subsection 117(1)**

11 Omit “subsection 70NFB(1)”, substitute “subsections 45A(5) and  
12 70NFB(1)”.

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1 **Part 3—Other amendments**

2 *Family Law Act 1975*

3 **25 Subsection 114(2)**

4 Repeal the subsection.