

2022-2023

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Family Law Amendment Bill 2023

No. , 2023

(Attorney-General)

**A Bill for an Act to amend legislation relating to
family law, and for related purposes**

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	3
Schedule 1—Parenting framework		4
Part 1—Best interests of children		4
<i>Family Law Act 1975</i>		4
Part 2—Parental responsibility		7
<i>Family Law Act 1975</i>		7
Part 3—Child-related proceedings		10
<i>Family Law Act 1975</i>		10
Schedule 2—Enforcement of child-related orders		12
Part 1—Enforcement of child-related orders		12
Division 1—Main amendments		12
<i>Child Support (Assessment) Act 1989</i>		12
<i>Family Law Act 1975</i>		12
<i>Federal Circuit and Family Court of Australia Act 2021</i>		34
Division 2—Amendments contingent on the commencement of Part 3 of Schedule 1		34
<i>Family Law Act 1975</i>		34
Division 3—Application and transitional rules		35
Part 2—Delegations		36
Division 1—Main amendment		36
<i>Federal Circuit and Family Court of Australia Act 2021</i>		36
Division 2—Amendment relating to amendments made by Part 1 of this Schedule		36
<i>Federal Circuit and Family Court of Australia Act 2021</i>		36
Schedule 3—Definition of member of the family		37
<i>Family Law Act 1975</i>		37
Schedule 4—Independent children’s lawyers		38

Part 1—Requirement to meet with the child	38
<i>Family Law Act 1975</i>	38
Part 2—Convention on the Civil Aspects of International Child Abduction	40
<i>Family Law Act 1975</i>	40
Schedule 5—Case management and procedure	41
Part 1—Harmful proceedings orders and co-location of sections 45A and 102Q	41
<i>Family Law Act 1975</i>	41
<i>Federal Circuit and Family Court of Australia Act 2021</i>	48
Part 2—Overarching purpose of the family law practice and procedure provisions	49
<i>Family Law Act 1975</i>	49
<i>Federal Circuit and Family Court of Australia Act 2021</i>	52
Schedule 6—Communications of details of family law proceedings	55
<i>Family Law Act 1975</i>	55
<i>Federal Circuit and Family Court of Australia Act 2021</i>	60
Schedule 7—Family report writers	61
<i>Family Law Act 1975</i>	61
Schedule 8—Review of operation of the Federal Circuit and Family Court of Australia Act 2021	67
<i>Federal Circuit and Family Court of Australia Act 2021</i>	67
Schedule 9—Dual appointments	68
<i>Federal Circuit and Family Court of Australia Act 2021</i>	68

1 **A Bill for an Act to amend legislation relating to**
2 **family law, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Family Law Amendment Act 2023*.

6 **2 Commencement**

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

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

Commencement information

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

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

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

7 **3 Schedules**

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

1 **Schedule 1—Parenting framework**

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

3 *Family Law Act 1975*

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

5 Repeal the paragraph, substitute:

6 (b) paragraph 60CC(3)(a); and

7 **2 Paragraph 60A(a)**

8 Omit “and the principles underlying it.”.

9 **3 Subdivision B of Division 1 of Part VII (heading)**

10 Omit “, principles”.

11 **4 Section 60B**

12 Repeal the section, substitute:

13 **60B Objects of Part**

14 The objects of this Part are:

15 (a) to ensure that the best interests of children are met, including
16 by ensuring their safety; and

17 (b) to give effect to the Convention on the Rights of the Child
18 done at New York on 20 November 1989.

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

23 **5 Section 60C (table item 1, column headed “Divisions and
24 coverage”)**

25 Omit “principles underlying it, and”.

26 **6 Section 60CC**

27 Repeal the section, substitute:

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

2 *Determining child’s best interests*

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

8 *General considerations*

- 9 (2) For the purposes of paragraph (1)(a), the court must consider the
10 following matters:
11 (a) what arrangements would promote the safety (including
12 safety from family violence, abuse, neglect, or other harm)
13 of:
14 (i) the child; and
15 (ii) each person who has care of the child (whether or not a
16 person has parental responsibility for the child);
17 (b) any views expressed by the child;
18 (c) the developmental, psychological, emotional and cultural
19 needs of the child;
20 (d) the capacity of each person who has or is proposed to have
21 parental responsibility for the child to provide for the child’s
22 developmental, psychological, emotional and cultural needs;
23 (e) the benefit to the child of being able to have a relationship
24 with the child’s parents, and other people who are significant
25 to the child, where it is safe to do so;
26 (f) anything else that is relevant to the particular circumstances
27 of the child.

28 *Additional considerations—right to enjoy Aboriginal or Torres*
29 *Strait Islander culture*

- 30 (3) For the purposes of paragraph (1)(b), the court must consider the
31 following matters:
32 (a) the child’s right to enjoy the child’s Aboriginal or Torres
33 Strait Islander culture, by having the opportunity to connect
34 with, and maintain their connection with, members of their

1 family and with their community, culture, country and
2 language;
3 (b) the likely impact any proposed parenting order under this
4 Part will have on that right.

5 *Consent orders*

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

10 **7 Subsection 60CD(1)**

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

12 **8 Paragraph 60D(1)(b)**

13 Repeal the paragraph, substitute:

14 (b) encourage the person to act in the child’s best interests by
15 applying the considerations set out in subsections 60CC(2)
16 and (3).

17 **9 Paragraph 68N(b)**

18 Omit “and principles”.

19 **10 Subsection 68P(2C)**

20 Repeal the subsection.

21 **11 Paragraph 68S(2)(a)**

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

24 **12 Application provision**

25 The amendments of the *Family Law Act 1975* made by this Part apply
26 in relation to proceedings that commence on or after the day this item
27 commences.

1 **Part 2—Parental responsibility**

2 *Family Law Act 1975*

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

4 Omit “See section 61DA for the presumption that the court does apply
5 when making a parenting order.”.

6 **14 After section 61C**

7 Insert:

8 **61CA Consultation between parents on major long-term issues**

9 If it is safe to do so, and subject to any court orders, the parents of
10 a child who is not yet 18 are encouraged:

- 11 (a) to consult each other about major long-term issues in relation
12 to the child; and
13 (b) in doing so, to have regard to the best interests of the child as
14 the paramount consideration.

15 **15 At the end of section 61D**

16 Add:

- 17 (3) A parenting order that deals with the allocation of responsibility for
18 making decisions about major long-term issues in relation to the
19 child (see subsection 64B(3)) may provide for joint or sole
20 decision-making in relation to all or specified major long-term
21 issues.

22 **16 Sections 61DA and 61DB**

23 Repeal the sections, substitute:

24 **61DAA Effect of parenting order that provides for joint
25 decision-making about major long-term issues**

- 26 (1) If a parenting order provides for joint decision-making by persons
27 in relation to all or specified major long-term issues in relation to a
28 child, the order is taken to require each of the persons:

- 1 (a) to consult each other person in relation to each such decision;
2 and
3 (b) to make a genuine effort to come to a joint decision.
- 4 (2) To avoid doubt, this section does not require any other person to
5 establish, before acting on a decision about the child
6 communicated by one of those persons, that the decision has been
7 made jointly.

8 **61DAB No need to consult on issues that are not major long-term**
9 **issues**

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

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

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

24 **17 At the end of section 61F**

25 Add:

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

28 **18 At the end of subsection 63C(2B)**

29 Add:

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

31 **19 Paragraphs 63DA(2)(a) and (b)**

32 Repeal the paragraphs.

1 **20 Subsections 63DA(3) and (4)**

2 Repeal the subsections.

3 **21 At the end of subsection 64B(3)**

4 Add:

5 Note 1: See also subsection 61D(3) and section 61DAA in relation to
6 parenting orders dealing with allocation of responsibility for making
7 decisions about major long-term issues.

8 Note 2: For the definition of *major long-term issues*, see subsection 4(1).

9 **22 Subsection 65D(1)**

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

12 **23 Subsection 65D(2)**

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

15 **24 Sections 65DAA, 65DAC and 65DAE**

16 Repeal the sections.

17 **25 Application provision**

18 (1) Subject to subitem (2), the amendments of the *Family Law Act 1975*
19 made by this Part apply in relation to proceedings that commence on or
20 after the day this item commences.

21 (2) Section 61CA of the *Family Law Act 1975*, as inserted by this Part,
22 applies from the day this item commences.

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

2 *Family Law Act 1975*

3 **26 After section 65D**

4 Insert:

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

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

- 1 (3) Despite subsection (1), the court may reconsider a final parenting
2 order with the agreement or consent of all the parties to that order.
- 3 (4) The failure of a court to comply with subsection (1) does not affect
4 the validity of any order made by the court.

5 **27 Application provision**

6 The amendment made by this Part applies in relation to final parenting
7 orders whether the orders came into force before, or come into force on
8 or after, the day this item commences.

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

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

4 **Division 1—Main amendments**

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

6 **1 Subsection 100(2)**

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

11 ***Family Law Act 1975***

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

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

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

17 Repeal the definition.

18 **4 Subsection 4(1)**

19 Insert:

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

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

22 Repeal the definition.

23 **6 Subsection 4(1)**

24 Insert:

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

1 **7 Subsection 4(1)**

2 Repeal the following definitions:

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

6 **8 Subsection 4(1)**

7 Insert:

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

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

12 Repeal the definition.

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

14 Add:

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

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

- 18 (1) Evidence of anything said, or of any admission made, by a person
19 attending a post-separation parenting program is not admissible:
20 (a) in any court (whether exercising federal jurisdiction or not);
21 or
22 (b) in any proceedings before a person authorised by a law of the
23 Commonwealth, of a State or of a Territory, or by the
24 consent of the parties, to hear evidence.
- 25 (2) Subsection (1) does not apply to the following:
26 (a) an admission by an adult that indicates that a child under 18
27 has been abused or is at risk of abuse;
28 (b) a disclosure by a child under 18 that indicates that the child
29 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 Note: A court may make an order directing a person to attend a
5 post-separation parenting program under subsection 65LA(1) or
6 70NBD(1).

7 **11 Section 60C (table item 6)**

8 Repeal the item, substitute:

9

6 **Division 6—Parenting orders other than child
maintenance orders**

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

10 **12 Section 60C (table item 13A)**

11 Repeal the item, substitute:

12

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

- orders that the court may make in proceedings where it is alleged that a person has contravened a child-related order (including parenting orders)

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

14 Repeal the item, substitute:

15

14 **Division 14—Miscellaneous**

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

1 **14 Subsection 63F(3) (paragraph (a) of the note)**

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

3 **15 Paragraphs 65A(1)(b) and (c)**

4 Repeal the paragraphs.

5 **16 Subsection 65D(3)**

6 Repeal the subsection (not including the notes).

7 **17 Subsection 65D(3) (notes 1 and 2)**

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

10 **18 Subdivisions C and D of Division 6 of Part VII**

11 Repeal the Subdivisions.

12 **19 Section 67Q (note 1)**

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

15 **20 Subsections 69ZH(2) and (4)**

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

17 **21 Division 13A of Part VII**

18 Repeal the Division, substitute:

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

21 **Subdivision A—Preliminary**

22 **70NAA Simplified outline**

23

<p>24 This Division sets out orders that a court may (or must in certain 25 circumstances with respect to costs orders) make if an issue arises 26 in the proceedings about whether a person (the <i>respondent</i>) has contravened a child-related order.</p>

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

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

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

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

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

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

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

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

30 **70NAB Objects**

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

- 33 (a) supporting parties to child-related orders to comply with
34 those orders; and

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

12 **70NAC Meaning of *contravene* a child-related order**

- 13 (1) A person *contravenes* a child-related order only if:
- 14 (a) the person is a person (other than a child) to whom the order
- 15 applies and:
- 16 (i) the person intentionally fails to comply with the order;
- 17 or
- 18 (ii) the person makes no reasonable attempt to comply with
- 19 the order; or
- 20 (b) the person is not a person to whom the order applies, and the
- 21 person is not a child, but:
- 22 (i) the person intentionally prevents compliance with the
- 23 order by a person to whom the order applies; or
- 24 (ii) the person aids or abets a contravention of the order by
- 25 a person to whom the order applies.

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

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

32

Circumstances in which a person *contravenes* a child-related order

Item	The order deals with ...	and, contrary to the order, the person intentionally ...
1	whom a child is to live with	removes the child from the care of

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

Circumstances in which a person <i>contravenes</i> a child-related order		
Item	The order deals with ...	and, contrary to the order, the person intentionally ...
		another person, or refuses or fails to deliver or return the child to another person.
2	whom a child is to spend time with	hinders or prevents another person from spending time with the child.
3	whom a child is to communicate with	hinders or prevents another person from communicating with the child.
4	the allocation of parental responsibility for a child to another person (the <i>carer</i>)	hinders or prevents the carer from discharging that responsibility.
5	the maintenance of a child	fails to pay maintenance or prevents the payment of maintenance.

1

2 **70NAD Meaning of *reasonable excuse* for contravening a**
3 **child-related order**

4 *Where person did not understand obligations*

5 (1) A person has a ***reasonable excuse*** for contravening a child-related
6 order if:

7 (a) the person contravened the order because at the time of the
8 contravention the person did not understand the obligations
9 imposed by the order; and

10 (b) the court considers that the person ought to be excused in
11 respect of the contravention.

12 (2) If the court decides that a person has a reasonable excuse under
13 subsection (1) for contravening a child-related order, the court
14 must explain to the person, in language likely to be readily
15 understood by the person:

16 (a) the obligations imposed on the person by the order; and

17 (b) the consequences that may follow if the person contravenes
18 the order again.

1 *Protection of health or safety of a person*

- 2 (3) A person has a **reasonable excuse** for contravening a child-related
3 order if:
- 4 (a) the person contravened the order because the person
5 reasonably believed that the person’s actions constituting the
6 contravention were necessary to protect the health or safety
7 of the person, a child or any other person; and
 - 8 (b) the period of the contravention was not longer than necessary
9 to protect the health or safety of the person, child or other
10 person.

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

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

15 **70NAE Standard of proof**

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

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

22 **Subdivision B—Orders relating to contraventions of**
23 **child-related orders**

24 **70NBA Court may make orders in proceedings relating to**
25 **contravention of child-related orders**

- 26 (1) This Subdivision sets out orders that a court exercising jurisdiction
27 in proceedings under this Act may (or must in certain
28 circumstances) make if:
- 29 (a) an issue arises in the proceedings about whether a person (the
30 **respondent**) has contravened a child-related order; and
 - 31 (b) a party to the proceedings makes an application for an order
32 under this Subdivision in relation to the issue.

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

1 Note: The court does not need to find that the respondent contravened a
2 child-related order to make certain orders under this Subdivision. For
3 example, the court may make the following orders at any stage of the
4 proceedings:
5 (a) a make-up time parenting order under section 70NBB;
6 (b) an order varying or suspending a parenting order under
7 section 70NBC;
8 (c) an order requiring the respondent and any other party to the
9 proceedings to attend a post-separation parenting program under
10 section 70NBD.

- 11 (2) Each of the following is a *child-related order*:
- 12 (a) a parenting order;
- 13 (b) an injunction granted by the court:
- 14 (i) under section 68B; or
- 15 (ii) under section 114 in so far as the injunction is for the
16 protection of a child;
- 17 (c) a bond entered into:
- 18 (i) under a parenting order; or
- 19 (ii) under paragraph 70NBF(1)(a); or
- 20 (iii) for the purposes of subsection 70NCC(3);
- 21 (d) an undertaking given to, and accepted by, the court that
22 relates to, or to the making of, an order, injunction or bond
23 referred to in any of paragraphs (a) to (c);
- 24 (e) a subpoena issued under the applicable Rules of Court that:
- 25 (i) relates to, or to the making of, an order, injunction or
26 bond referred to in any of paragraphs (a) to (c); and
- 27 (ii) is issued to a party to the proceedings for the order,
28 injunction or bond, as the case may be.

29 **70NBB Make-up time parenting orders**

30 (1) If a child does not spend time with a person as required by a
31 child-related order as a result of the alleged contravention
32 mentioned in subsection 70NBA(1), then, in lieu of that time, the
33 court may make a parenting order (a *make-up time parenting*
34 *order*) that the child spend time with the person.

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

36 Note 2: The court may also make an order requiring the respondent to
37 compensate another person for reasonable expenses incurred as a

1 result of a child not spending time with that other person: see
2 paragraph 70NBF(1)(c).

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

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

9 **70NBC Variation and suspension of child-related orders that are**
10 **parenting orders**

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

12 (1) The court may, at any stage of the proceedings, vary a child-related
13 order that is a parenting order.

14 (2) Subsection (1) does not limit the circumstances in which a court
15 having jurisdiction under this Act may vary a child-related order
16 that is a parenting order.

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

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

21 **70NBD Post-separation parenting programs**

22 *Post-separation parenting program orders*

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

Duty of principal executive officer to notify program provider

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

Unsuitability to attend program or failure to attend program

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

70NBE Costs orders

21
22
23
24
25
26
27
28
29
30
31
32
33

Costs order against complainant—unsubstantiated allegations of contraventions

- (1) The court may make an order (a **costs order**) that a person (the **complainant**) pay some or all of the costs of one or more of the other parties, including the respondent, if:
 - (a) the complainant alleged that the respondent contravened a child-related order; and
 - (b) either:
 - (i) the court does not find that the respondent contravened the child-related order; or
 - (ii) the court finds that the respondent had a reasonable excuse for contravening the child-related order.

- 1 (2) The court must consider making the costs order if:
2 (a) the complainant has previously alleged, in proceedings under
3 this Act or any other Act, that the respondent contravened the
4 child-related order mentioned in subsection (1) or any other
5 child-related order; and
6 (b) as a result of the most recent allegation, the court before
7 which those proceedings were brought:
8 (i) did not find that the respondent contravened the
9 child-related order mentioned in paragraph (a); or
10 (ii) found that the respondent had contravened the
11 child-related order mentioned in paragraph (a), but did
12 not make an order under this Division in relation to the
13 contravention.

- 14 (3) The court must not make the costs order if:
15 (a) the court finds that the respondent had a reasonable excuse
16 for contravening the child-related order; and
17 (b) the court has made, or will make, a make-up time parenting
18 order under section 70NBB in respect of the contravention.

19 *Costs order against respondent—contraventions without*
20 *reasonable excuse*

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

26 **70NBF Orders where contravention established without reasonable**
27 **excuse**

28 *Orders for contraventions without reasonable excuse*

- 29 (1) If the court finds that the respondent has contravened a
30 child-related order without having a reasonable excuse, the court
31 may make any of the following orders:
32 (a) an order requiring the respondent to enter into a bond in
33 accordance with section 70NCA;

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

- 1 (b) if an order is made under paragraph (a), and the respondent
2 fails, without having a reasonable excuse, to enter into the
3 bond—an order imposing a fine not exceeding 10 penalty
4 units on the respondent;
- 5 (c) where the contravention resulted in a child not spending time
6 with, or living with, a person (the *affected person*) for a
7 period—an order requiring the respondent to compensate the
8 affected person for some or all of any expenses the affected
9 person reasonably incurred as a result of the contravention;
- 10 (d) where the court is satisfied beyond reasonable doubt that the
11 respondent contravened the order:
- 12 (i) an order imposing a fine not exceeding 60 penalty units;
13 (ii) an order imposing a term of imprisonment.

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

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

20 *Matters to be considered by the court*

- 21 (2) In making an order mentioned in subsection (1), the court must
22 have regard to:
- 23 (a) the likely effects of making the order on any child, or any
24 other person; and
25 (b) the seriousness of the contravention.
- 26 (3) Without limiting the matters the court may take into account, the
27 following matters must be taken into account by the court when
28 having regard to the seriousness of the contravention:
- 29 (a) whether a court has previously found that the respondent has
30 contravened a child-related order without having a reasonable
31 excuse;
- 32 (b) whether the respondent behaved in a way that showed a
33 serious disregard of the respondent's obligations under the
34 child-related order mentioned in subsection (1);
- 35 (c) the behaviour of any person with whom the child is to live or
36 spend time under the child-related order mentioned in
37 subsection (1).

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

6 **Subdivision C—Further provisions relating to bonds and**
7 **imprisonment**

8 **70NCA Matters relating to bonds**

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

12 *Matters dealt with in bonds*

- 13 (2) A bond is to be for a specified period of up to 2 years.
- 14 (3) A bond may be:
15 (a) with or without surety; and
16 (b) with or without security.
- 17 (4) The conditions that may be imposed on the respondent by a bond
18 include (without limitation) conditions that require the respondent:
19 (a) to attend a post-separation parenting program; or
20 (b) to attend an appointment (or a series of appointments) with a
21 family consultant; or
22 (c) to attend family counselling; or
23 (d) to attend family dispute resolution; or
24 (e) to be of good behaviour.

25 *Duty to explain bond*

- 26 (5) Before requiring the respondent to enter into a bond, the court must
27 explain to the respondent, in language likely to be readily
28 understood by the respondent:
29 (a) the purpose and effect of the proposed requirement; and
30 (b) the consequences that may follow if the respondent:
31 (i) fails to enter into the bond; or

- 1 (ii) having entered into the bond—fails to act in accordance
2 with the bond.

3 **70NCB Procedure for enforcing bonds**

- 4 (1) This section applies if:
5 (a) the court finds that the respondent has contravened a
6 child-related order without having a reasonable excuse; and
7 (b) the respondent has entered into a bond in accordance with an
8 order made under paragraph 70NBF(1)(a); and
9 (c) the respondent fails, without having a reasonable excuse, to
10 comply with the bond.
- 11 (2) The court may:
12 (a) without prejudice to the continuance of the bond, impose a
13 fine not exceeding 10 penalty units on the respondent; or
14 (b) revoke the bond and deal with the respondent in any manner
15 in which the respondent could have been dealt with for the
16 contravention of the child-related order if:
17 (i) the bond had not been entered into; and
18 (ii) the respondent was before the court under this Division
19 in respect of the contravention of the child-related order.
- 20 (3) Without limiting the matters the court may take into account, the
21 court must take into account the following matters when acting
22 under subsection (2):
23 (a) the fact that the bond was entered into;
24 (b) anything done pursuant to the bond;
25 (c) any fine imposed, and any other order made, for or in respect
26 of the contravention of the child-related order.

27 **70NCC Matters relating to imprisonment**

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

30 *Limits on sentences of imprisonment*

- 31 (2) The sentence of imprisonment must be expressed to be:
32 (a) for a specified period of no more than 12 months; or

- 1 (b) for a period ending at the earlier of:
2 (i) the time when the respondent complies with the
3 child-related order concerned; or
4 (ii) the time when the respondent has been imprisoned
5 under the sentence for 12 months, or such lesser period
6 as is specified by the court ordering the sentence.

7 *Good behaviour bonds*

- 8 (3) When sentencing the respondent to imprisonment, the court may
9 direct that, after serving a specified part of the term of
10 imprisonment, the respondent be released upon the respondent
11 entering into a bond (with or without surety or security) that the
12 respondent will be of good behaviour for a specified period of up
13 to 2 years.

14 *Statement of reasons*

- 15 (4) The court that sentences the respondent to imprisonment must:
16 (a) state the reasons why it is satisfied as mentioned in
17 subsection 70NBF(4); and
18 (b) cause those reasons to be entered in the records of the court.

19 Note: Subsection 70NBF(4) provides that the respondent may be sentenced
20 to imprisonment only if the court is satisfied that it would not be
21 appropriate for the court to deal with the contravention in any other
22 way under subsection 70NBF(1).

- 23 (5) The failure of the court to comply with subsection (4) does not
24 invalidate a sentence.

25 **70NCD Powers of court in relation to imprisoned person**

26 *Release of imprisoned respondent*

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

30 *Suspension of sentence*

- 31 (2) The court that sentences the respondent to imprisonment may:

- 1 (a) suspend the sentence upon the terms and conditions
2 determined by the court; and
3 (b) terminate such a suspension.

4 **70NCE Rules relating to child maintenance orders and child**
5 **support**

6 *Sentences of imprisonment for contravention of child maintenance*
7 *orders*

- 8 (1) The court must not make an order imposing a sentence of
9 imprisonment on the respondent under
10 subparagraph 70NBF(1)(d)(ii), in respect of a contravention of a
11 child maintenance order made under this Act, unless the court is
12 satisfied that the contravention was intentional or fraudulent.
- 13 (2) To avoid doubt, the serving by the respondent of a period of
14 imprisonment imposed under subparagraph 70NBF(1)(d)(ii) for
15 failure to make a payment under a child maintenance order does
16 not affect the respondent's liability to make the payment.

17 *Court must not imprison respondent for contravention of child*
18 *support assessments etc.*

- 19 (3) The court must not make an order imposing a sentence of
20 imprisonment on the respondent under
21 subparagraph 70NBF(1)(d)(ii) in respect of:
22 (a) a contravention of an administrative assessment of child
23 support made under the *Child Support (Assessment) Act*
24 *1989*; or
25 (b) a breach of a child support agreement made under that Act;
26 or
27 (c) a contravention of an order made by a court under Division 4
28 of Part 7 of that Act for a departure from such an assessment
29 (including such an order that contains matters mentioned in
30 section 141 of that Act).

1 **Subdivision D—Miscellaneous**

2 **70NDA Court may issue warrant for arrest of alleged offender**

- 3 (1) The court may issue a warrant authorising a person to whom it is
4 addressed to arrest the respondent if:
- 5 (a) a child-related order that is a parenting order provides that a
6 child is to live with, spend time with or communicate with a
7 person (the *complainant*); and
 - 8 (b) the court is satisfied that there are reasonable grounds for
9 believing that the respondent has contravened the order on
10 any of the grounds mentioned in any of items 1 to 3 of the
11 table in subsection 70NAC(2); and
 - 12 (c) the issue of the warrant is necessary to ensure that the
13 respondent will attend before the court to be dealt with under
14 this Division for the alleged contravention.
- 15 (2) A warrant stops being in force on the date specified in the warrant
16 (which must be no more than 6 months after the issue of the
17 warrant).

18 **70NDB Relationship between Division and prosecutions for offences**
19 **under other laws**

- 20 (1) This section applies if:
- 21 (a) an act or omission by the respondent:
 - 22 (i) constitutes an alleged contravention of a child-related
23 order; and
 - 24 (ii) also constitutes an alleged offence under any law; and
 - 25 (b) the respondent is prosecuted in respect of the offence.
- 26 (2) The court must:
- 27 (a) dismiss proceedings in relation to the alleged contravention
28 of the child-related order; or
 - 29 (b) adjourn those proceedings until the prosecution has been
30 completed.
- 31 (3) Nothing in this Division renders a person liable to be punished
32 twice in respect of the same act or omission.

1 **70NDC Division does not limit operation of section 105**

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

4 **22 Division 14 of Part VII (after the heading)**

5 Insert:

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

7 **23 Section 70P**

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

10 **24 After section 70P**

11 Insert:

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

13 **70PA Situation to which Subdivision applies**

14 This Subdivision applies if a person:

- 15 (a) is arrested under a warrant issued under
16 subsection 70NDA(1) (warrants for arrest of persons alleged
17 to have contravened a child-related order); or
18 (b) is arrested without warrant under a recovery order.

19 **70PB Arrested person to be brought before a court**

20 (1) The arresting person must:

- 21 (a) ensure that the alleged offender is brought before a court
22 having jurisdiction under this Part before the end of the
23 holding period applicable under subsection (4); and
24 (b) take all reasonable steps to ensure that, before the alleged
25 offender is brought before a court, the person who applied for
26 the warrant or recovery order is aware:
27 (i) that the alleged offender has been arrested; and
28 (ii) of the court before which the alleged offender is to be
29 brought.

- 1 (2) The alleged offender must not be released before the end of the
2 holding period except under an order of a court having jurisdiction
3 under this Part.
- 4 (3) This section does not authorise the holding in custody of the
5 alleged offender after the end of the holding period.
- 6 (4) The *holding period* is:
7 (a) if a Saturday, Sunday or public holiday starts within 24 hours
8 after the arrest of the alleged offender—the longer of the
9 following periods:
10 (i) the period starting with the arrest and ending 48 hours
11 later;
12 (ii) the period starting with the arrest and ending at the end
13 of the next day after the day of the arrest that is not a
14 Saturday, Sunday or public holiday; or
15 (b) in any other case—the period starting with the arrest and
16 ending 24 hours later.

17 **70PC Obligation of court—where application before it to deal with**
18 **contravention**

- 19 (1) This section applies if:
20 (a) the alleged offender is brought before a court under
21 section 70PB; and
22 (b) there is an application before the court for the alleged
23 offender to be dealt with under Division 13A for the alleged
24 contravention.
- 25 (2) The court must, without delay, proceed to hear and determine the
26 application.

27 **70PD Obligation of court—where no application before it, but**
28 **application before another court, to deal with**
29 **contravention**

- 30 (1) This section applies if:
31 (a) the alleged offender is brought before a court under
32 section 70PB; and

- 1 (b) there is no application, or no longer any application, before
2 the court for the alleged offender to be dealt with under
3 Division 13A for the alleged contravention; and
4 (c) the court is aware that there is an application before another
5 court for the alleged offender to be dealt with under
6 Division 13A for the alleged contravention.
- 7 (2) The court must, without delay:
- 8 (a) order that the alleged offender is to be released from custody
9 on entering into a recognisance (with or without surety or
10 security) that the alleged offender will attend before the other
11 court on a date, at a time and at a place specified by the court;
12 or
13 (b) order the arresting person to arrange for the alleged offender
14 to be brought before the other court on such date and at such
15 time as the court specifies, being a date and time such that
16 the alleged offender is to be brought before the other court as
17 soon as practicable, and in any event not more than 72 hours,
18 after the order is made.
- 19 (3) If a court makes an order under paragraph (2)(b) for the alleged
20 offender to be brought before another court:
- 21 (a) subject to paragraph (c), the alleged offender may be kept in
22 custody until brought before the other court; and
23 (b) if the alleged offender is brought before the other court as
24 required by the order, the other court must, without delay,
25 proceed to hear and determine the application mentioned in
26 paragraph (1)(c); and
27 (c) if the alleged offender is not brought before the other court as
28 required by the order, the alleged offender must be released
29 without delay.

30 **70PE Obligation of court—where no application before any court to**
31 **deal with contravention**

- 32 (1) This section applies if:
33 (a) the alleged offender is brought before a court under
34 section 70PB; and

- 1 (b) there is no application, or no longer any application, before
2 the court for the alleged offender to be dealt with under
3 Division 13A for the alleged contravention; and
4 (c) so far as the court is aware, there is no application, or no
5 longer any application, before any other court for the alleged
6 offender to be dealt with under Division 13A for the alleged
7 contravention.
- 8 (2) The court must, without delay, order the release of the alleged
9 offender.

10 **70PF Applications heard as required by subsection 70PC(2) or**
11 **paragraph 70PD(3)(b)**

- 12 (1) If a court hearing an application as required by subsection 70PC(2)
13 or paragraph 70PD(3)(b) adjourns the hearing, the court must:
14 (a) order the alleged offender to be kept in such custody as the
15 court considers appropriate during the adjournment; or
16 (b) order that the alleged offender is to be released from custody,
17 either on entering into a recognisance (with or without surety
18 or security) that the alleged offender will attend before the
19 court on the resumption of the hearing or otherwise.
- 20 (2) This section does not authorise the holding in custody of the
21 alleged offender during an adjournment of proceedings that:
22 (a) is expressed to be for a period of more than 24 hours; or
23 (b) continues for more than 24 hours.

24 **Subdivision C—Other matters**

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

26 Repeal the paragraph, substitute:

- 27 (a) a child-related order; or

28 **26 Subsection 112AP(9) (definition of *order under this Act*)**

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

1 **27 Subsection 117(1)**

2 Omit “subsections”, substitute “subsection”.

3 **28 Subsection 117(1)**

4 Omit “and 70NFB(1) and sections”, substitute “and sections 70NBE,”.

5 **29 Subsection 117(1)**

6 Omit “shall bear his or her”, substitute “must bear the party’s”.

7 **30 Subparagraph 123(1)(j)(iii)**

8 Omit “70NEB or 70NEG”, substitute “70NBB, 70NBD, 70NBE or
9 70NBF”.

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

11 **31 Subparagraph 98(2)(n)(iv)**

12 Repeal the subparagraph, substitute:
13 (iv) subsection 70NBD(1);

14 **32 Subparagraph 224(1)(i)(iii)**

15 Omit “70NEB or 70NEG”, substitute “70NBB, 70NBD, 70NBE or
16 70NBF”.

17 **33 Subparagraph 254(2)(n)(iv)**

18 Repeal the subparagraph, substitute:
19 (iv) subsection 70NBD(1);

20 **Division 2—Amendments contingent on the**
21 **commencement of Part 3 of Schedule 1**

22 ***Family Law Act 1975***

23 **34 At the end of subsection 70NBC(1)**

24 Add:

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

1 **35 At the end of subsection 70NBC(3)**

2 Add:

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

6 **Division 3—Application and transitional rules**

7 **36 Application and transitional rules**

- 8 (1) The Minister may, by legislative instrument, make rules prescribing
9 matters of a transitional nature (including prescribing any saving or
10 application provisions) relating to the amendments or repeals made by
11 this Part.
- 12 (2) To avoid doubt, the rules may not do the following:
- 13 (a) create an offence or civil penalty;
 - 14 (b) provide powers of:
 - 15 (i) arrest or detention; or
 - 16 (ii) entry, search or seizure;
 - 17 (c) impose a tax;
 - 18 (d) set an amount to be appropriated from the Consolidated
19 Revenue Fund under an appropriation in this Act or the
20 *Family Law Act 1975*;
 - 21 (e) directly amend the text of this Act or the *Family Law Act*
22 *1975*.

1 **Part 2—Delegations**

2 **Division 1—Main amendment**

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

4 **37 Subsection 7(1) (before paragraph (c) of the definition of**
5 ***excluded child order*)**

6 Insert:

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

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

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

13 **38 Subsection 7(1) (paragraph (ba) of the definition of**
14 ***excluded child order*)**

15 Repeal the paragraph, substitute:

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

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

4 *Family Law Act 1975*

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

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

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

10 Add:

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

15 **3 Paragraph 4(1AC)(a)**

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

17 **4 At the end of subsection 4(1AC)**

18 Add:

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

23 **5 Application provision**

24 So far as the following provisions of the *Family Law Act 1975* apply in
25 relation to proceedings, the amendments of those provisions made by
26 this Schedule apply in relation to proceedings that commence on or
27 after the day this item commences:

- 28 (a) the definition of *relative* in subsection 4(1);
29 (b) subsection 4(1AC).

1 **Schedule 4—Independent children’s lawyers**

2 **Part 1—Requirement to meet with the child**

3 *Family Law Act 1975*

4 **1 Subsections 68L(5) and (6)**

5 Repeal the subsections.

6 **2 After subsection 68LA(5)**

7 Insert:

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

10 (5A) Subject to subsection (5B), the independent children’s lawyer must
11 perform the following duties (not necessarily at the same time):

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

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

17 (5B) The independent children’s lawyer is not required to perform a
18 duty if:

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

25 (5C) Without limiting paragraph (5B)(c), exceptional circumstances for
26 the purposes of that paragraph include that performing the duty,
27 would:

- 28 (a) expose the child to a risk of physical or psychological harm
29 that cannot be safely managed; or
30 (b) have a significant adverse effect on the wellbeing of the
31 child.

1 (5D) If the independent children’s lawyer proposes not to perform a duty
2 because of paragraph (5B)(c), the court must do the following
3 before making final orders:

- 4 (a) determine whether it is satisfied that exceptional
5 circumstances exist that justify not performing the duty;
6 (b) if the court determines that those circumstances do not
7 exist—make an order requiring the independent children’s
8 lawyer to meet with the child or provide the child with an
9 opportunity to express their views (as the case requires).

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

13 **3 Application provision**

14 The amendments of the *Family Law Act 1975* made by this Part apply
15 in relation to proceedings that commence on or after the day this item
16 commences.

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

3 ***Family Law Act 1975***

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

5 Repeal the subsection, substitute:

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

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

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

13 Repeal the subsection.

14 **6 Application provision**

15 The amendments of the *Family Law Act 1975* made by this Part apply
16 in relation to proceedings that commence on or after the day this item
17 commences.

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

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

5 *Family Law Act 1975*

6 **1 Section 45A**

7 Repeal the section.

8 **2 Part XIB (heading)**

9 Repeal the heading, substitute:

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

13 **3 Before section 102Q**

14 Insert:

15 **102QAA Simplified outline**

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

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

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

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

4 Subsection 102Q(1)

Insert:

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

5 Section 102QA

Repeal the section, substitute:

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

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

6 After section 102QA

Insert:

Division 1A—Summary decrees

102QAB Summary decrees

No reasonable prospect of successfully defending proceedings

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

No reasonable prospect of successfully prosecuting proceedings

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

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

6 *When there is no reasonable prospect of success*

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

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

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

20 *Costs*

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

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

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

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

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

1 **102QAC Making harmful proceedings orders**

2 *Making harmful proceedings orders*

3 (1) A court exercising jurisdiction in proceedings under this Act may
4 make an order (a *harmful proceedings order*) prohibiting a party
5 (the *first party*) to the proceedings from instituting proceedings
6 against another party to the proceedings without the leave of the
7 court under section 102QAG, if the court is satisfied that there are
8 reasonable grounds to believe that:

- 9 (a) the other party would suffer harm if the first party instituted
10 further proceedings against the other party; or
11 (b) in the case of child-related proceedings (within the meaning
12 of Part VII)—the child who is the subject of the proceedings
13 would suffer harm if the first party instituted further
14 proceedings against the other party.

15 (2) For the purposes of subsection (1), harm may include the
16 following:

- 17 (a) psychological harm or oppression;
18 (b) major mental distress;
19 (c) a detrimental effect on the other party's capacity to care for a
20 child.

21 (3) In determining whether to make an order under subsection (1), the
22 court may have regard to:

- 23 (a) the history of the proceedings under this Act between the first
24 party and the other party; and
25 (b) whether the first party has frequently instituted or conducted
26 proceedings against the other party in any Australian court or
27 tribunal (including proceedings instituted (or attempted to be
28 instituted) or conducted, and orders made, before the
29 commencement of this section); and
30 (c) the cumulative effect, or any potential cumulative effect, of
31 any harm resulting from the proceedings referred to in
32 paragraphs (a) and (b).

33 (4) The court may make a harmful proceedings order on its own
34 initiative or on application by a party to the proceedings.

1 (5) The court must not make a harmful proceedings order in relation to
2 a person without hearing the person or giving the person an
3 opportunity of being heard.

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

5 *Order about notifying other party in relation to application for*
6 *leave etc.*

7 (7) If the court makes an order under subsection (1), the court must
8 also make an order as to whether the court is to notify the other
9 party, in the event that the first party makes an application under
10 section 102QAE for leave to institute proceedings against the other
11 party, of either or both of the following:

- 12 (a) that the application has been made;
13 (b) if the application is dismissed—that the application has been
14 dismissed.

15 (8) The court must have regard to the wishes of the other party in
16 making an order under subsection (7).

17 **Subdivision B—Consequences of harmful proceedings orders**

18 **102QAD Proceedings in contravention of harmful proceedings order**

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

- 22 (a) the person must not institute proceedings in the court without
23 the leave of the court under section 102QAG; and
24 (b) another person must not, acting in concert with the person,
25 institute proceedings in the court without the leave of the
26 court under section 102QAG.

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

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

- 30 (a) an order declaring proceedings are proceedings to which
31 subsection (2) applies; and

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

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

6 **102QAE Application for leave to institute proceedings**

7 (1) This section applies to a person (the *applicant*) who is:
8 (a) subject to a harmful proceedings order prohibiting the person
9 from instituting further proceedings under this Act in a court
10 having jurisdiction under this Act; or
11 (b) acting in concert with another person who is subject to an
12 order mentioned in paragraph (a).

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

15 Note: The court may be required to give notice that the application has been
16 made (see subsection 102QAC(7)).

17 (3) The applicant must file an affidavit with the application that:
18 (a) lists all the occasions on which the applicant has applied for
19 leave under this section; and
20 (b) discloses all relevant facts about the application, whether
21 supporting or adverse to the application, that are known to
22 the applicant.

23 (4) The applicant must not serve a copy of the application or affidavit
24 on a person unless an order is made under section 102QAG. If the
25 order is made, the applicant must serve the copy in accordance
26 with the order.

27 **102QAF Dismissing application for leave**

28 (1) The court may make an order dismissing an application under
29 section 102QAE for leave to institute proceedings if it considers
30 the affidavit does not substantially comply with
31 subsection 102QAE(3).

32 Note: The court may be required to give notice that the application has been
33 dismissed (see subsection 102QAC(7)).

1 (2) The court must make an order dismissing an application under
2 section 102QAE for leave to institute proceedings if it considers
3 the proceedings are vexatious proceedings.

4 Note: The court may be required to give notice that the application has been
5 dismissed (see subsection 102QAC(7)).

6 (3) The court may dismiss the application without an oral hearing
7 (either with or without the consent of the applicant).

8 (4) The court may make an order under this section in Chambers.

9 **102QAG Granting application for leave**

10 (1) The court may make an order granting the application for leave
11 only if it is satisfied that the proceedings are not frivolous,
12 vexatious or an abuse of process, and have reasonable prospects of
13 success.

14 (2) An order under subsection (1) may be made subject to the
15 conditions the court considers appropriate.

16 **7 Division 2 of Part XIB (after the heading)**

17 Insert:

18 **Subdivision A—Making vexatious proceedings orders**

19 **8 Division 3 of Part XIB (heading)**

20 Repeal the heading, substitute:

21 **Subdivision B—Consequences of vexatious proceedings orders**

22 **9 Section 102QE (heading)**

23 After “proceedings”, insert “by person subject to vexatious
24 proceedings order”.

25 **10 Sections 102QF and 102QG (heading)**

26 After “leave”, insert “by person subject to vexatious proceedings
27 order”.

1 **11 Subsection 117(1)**

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

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

4 **12 Subsection 143(5) (note)**

5 Omit “45A”, substitute “102QAB”.

6 **13 Savings provision**

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

10 **14 Application provision**

11 The amendments of the *Family Law Act 1975* made by this Part apply
12 on and after the day this item commences in relation to:

- 13 (a) proceedings instituted before that day that were not finally
14 determined before that day; and
15 (b) proceedings instituted on or after that day.

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

3 ***Family Law Act 1975***

4 **15 Subsection 4(1)**

5 Insert:

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

8 **16 Before Division 1 of Part XI**

9 Insert:

10 **Division 1A—Overarching purpose of the family law**
11 **practice and procedure provisions**

12 **95 Overarching purpose of the family law practice and procedure**
13 **provisions**

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

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

- 23 (2) Without limiting subsection (1), the overarching purpose includes
24 the following objectives in relation to proceedings under this Act:
25 (a) the just determination of all such proceedings;
26 (b) the efficient use of the judicial and administrative resources
27 available for the purposes of courts exercising jurisdiction in
28 such proceedings;

- 1 (c) the efficient disposal of the overall caseload of courts
2 exercising jurisdiction in such proceedings;
3 (d) the disposal of all such proceedings in a timely manner;
4 (e) the resolution of disputes at a cost that is proportionate to the
5 importance and complexity of the matters in dispute.
- 6 (3) The family law practice and procedure provisions must be
7 interpreted and applied, and any power conferred or duty imposed
8 by them (including the power to make applicable Rules of Court)
9 must be exercised or carried out, in the way that best promotes the
10 overarching purpose.
- 11 (4) The *family law practice and procedure provisions* are the
12 following, so far as they apply in relation to proceedings under this
13 Act:
14 (a) the applicable Rules of Court;
15 (b) any other provision made by or under this Act, or any other
16 Act, with respect to the practice and procedure of the Federal
17 Circuit and Family Court of Australia or any other court.

18 **96 Duty to act consistently with the overarching purpose**

19 *Duty of parties*

- 20 (1) The parties to proceedings under this Act must conduct the
21 proceedings (including negotiations for settlement of the dispute to
22 which the proceedings relate) in a way that is consistent with the
23 overarching purpose of the family law practice and procedure
24 provisions.

25 *Duty of lawyers*

- 26 (2) A party's lawyer must, in the conduct of proceedings under this
27 Act on the party's behalf (including in the conduct of negotiations
28 for settlement of the dispute to which the proceedings relate):
29 (a) take account of the duty imposed on the party by
30 subsection (1); and
31 (b) assist the party to comply with the duty.

1

Estimate of costs

2

(3) In proceedings under this Act a court may, for the purpose of enabling a party to comply with the duty imposed by subsection (1), require the party's lawyer to give the party an estimate of:

3

4

5

6

7

8

9

10

(a) the likely duration of the proceedings or part of the proceedings; and

(b) the likely amount of costs that the party will have to pay in connection with the proceedings or part of the proceedings (including the costs that the lawyer will charge to the party).

11

Costs orders

12

13

14

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

15

16

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

17

18

19

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

20

17 At the end of subsection 117(2)

21

Add:

22

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

23

18 Application provision

24

25

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

26

27

28

(a) proceedings instituted before that day that were not finally determined before that day; and

(b) proceedings instituted on or after that day.

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

2 **19 Subsection 7(1) (definition of *civil practice and procedure***
3 ***provisions*)**

4 Repeal the definition, substitute:

5 ***civil practice and procedure provisions:***

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

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

12 **20 Subsection 7(1) (definition of *family law practice and***
13 ***procedure provisions*)**

14 Repeal the definition.

15 **21 Subsection 7(1) (paragraph (a) of the definition of**
16 ***overarching purpose*)**

17 Omit “family law practice and procedure provisions”, substitute “civil
18 practice and procedure provisions”.

19 **22 Section 67 (heading)**

20 Omit “family law practice and procedure provisions”, substitute
21 “civil practice and procedure provisions”.

22 **23 Subsection 67(1)**

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

26 **24 Subsection 67(1) (note 1)**

27 Repeal the note, substitute:

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

1 **25 Subsection 67(3)**

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

5 **26 Subsection 67(4)**

6 Omit “The *family law practice and procedure provisions* are the
7 following,”, substitute “The *civil practice and procedure provisions*, in
8 relation to the Federal Circuit and Family Court of Australia
9 (Division 1), are the following,”.

10 **27 Subsection 68(3) (note)**

11 Repeal the note.

12 **28 After section 68**

13 Insert:

14 **68A Proceedings under the *Family Law Act 1975***

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

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

21 **29 Subsection 190(1)**

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

24 **30 Subsection 190(1) (note 1)**

25 Repeal the note, substitute:

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

28 **31 Subsection 190(3)**

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

1 **32 Subsection 190(4)**

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

4 **33 Subsection 191(3) (note)**

5 Repeal the note.

6 **34 After section 191**

7 Insert:

8 **191A Proceedings under the *Family Law Act 1975***

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

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

15 **35 Application provision**

16 The amendments of the *Federal Circuit and Family Court of Australia*
17 *Act 2021* made by this Part apply on and after the day this item
18 commences in relation to:

- 19 (a) proceedings instituted before that day that were not finally
20 determined before that commencement; and
21 (b) proceedings instituted on or after that day.

1 **Schedule 6—Communications of details of**
2 **family law proceedings**
3

4 ***Family Law Act 1975***

5 **1 Subsection 4(1)**

6 Insert:

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

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

9 Repeal the definition, substitute:

10 *proceedings*:

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

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

16 **3 Subsection 4(1)**

17 Insert:

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

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

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

21 **5 Section 102PC**

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

23 **6 After Part XIVA**

24 Insert:

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

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

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

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

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

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

16 (1) In this Part:

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

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

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

27 *proceedings* includes a part of proceedings.

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

29 *public* includes a section of the public.

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

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

14 Penalty: Imprisonment for 1 year.

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

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

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

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

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

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

13 Penalty: Imprisonment for 1 year.

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

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

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

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

- 1 (ii) any form of professional training in which that person is
2 involved;
3 (h) a communication of an account of proceedings to a student in
4 connection with the student's studies.

5 **114T Consent of Director of Prosecutions required to commence**
6 **proceedings**

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

10 **7 Section 121**

11 Repeal the section.

12 **8 Saving of regulations**

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

18 **9 Application provision**

19 Part XIVB of the *Family Law Act 1975*, as inserted by this Schedule,
20 applies in relation to acts or omissions occurring on or after the day this
21 item commences.

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

23 **10 At the end of subsection 98(2)**

24 Add:
25 ; (t) the power to give directions, or approve communications, for
26 the purposes of subsection 114Q(2) or
27 subparagraph 114R(2)(b)(i) of the *Family Law Act 1975*.

1 **Schedule 7—Family report writers**
2

3 ***Family Law Act 1975***

4 **1 Subsection 4(1)**

5 Insert:

6 *civil penalty provision* has the same meaning as in the Regulatory
7 Powers Act.

8 *designated family report*: see section 11J.

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

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

11 *Regulatory Powers Act* means the *Regulatory Powers (Standard*
12 *Provisions) Act 2014*.

13 **2 Section 11D**

14 Before “A family”, insert “(1)”.

15 **3 At the end of section 11D**

16 Add:

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

19 (a) does not relieve the family consultant of their obligations
20 under regulations made for the purposes of section 11K
21 (regulations prescribing standards and requirements for
22 family report writers); and

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

24 **4 After Part III**

25 Insert:

1 **Part IIIAA—Family report writers**
2

3 **11H Family report writers**

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

6 **11J Designated family reports**

- 7 (1) A report that relates to a child is a *designated family report* if:
8 (a) the report is prepared following a family assessment (which
9 usually includes the report's preparer meeting with the child
10 and others significant to the child's care, welfare and
11 development and, if appropriate, advising of the child's
12 views); and
13 (b) the report sets out the expert views and advice of the report's
14 preparer on parenting arrangements for the purposes of
15 parenting orders being made by the court in relation to the
16 child; and
17 (c) the report is both:
18 (i) covered by subsection (2); and
19 (ii) not excluded by regulations made for the purposes of
20 this paragraph.
- 21 (2) This subsection covers the following reports:
22 (a) a report prepared for the court by a family consultant in
23 relation to an appointment (or a series of appointments) a
24 party to proceedings has been directed to attend, or to arrange
25 for a child to attend, with the family consultant under
26 section 11F;
27 (b) a report prepared for the court by a family consultant for the
28 purposes of subsection 55A(2) (report regarding
29 arrangements for the care, welfare and development of a
30 child of a marriage);
31 (c) a report prepared by a family consultant at the direction of
32 the court under subsection 62G(2) (direction to give report in
33 relation to proceedings in which the care, welfare and
34 development of a child under 18 is relevant);

- 1 (d) a report about a child prepared for the use of an independent
 2 children’s lawyer as mentioned in subsection 68M(2);
 3 (e) any other report prepared for parties to proceedings before
 4 the court, or for the court for the purposes of proceedings
 5 before the court.

6 **11K Regulations prescribing standards and requirements for family**
 7 **report writers**

8 *Regulations prescribing standards and requirements for family*
 9 *report writers*

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

17 *Standards and requirements*

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

- 1 (f) processes for dealing with persons who make false or
2 misleading representations about a family report writer's
3 compliance;
- 4 (g) processes for handling complaints involving family report
5 writers;
- 6 (h) training for family report writers;
- 7 (i) the charging of fees, to family report writers, for services
8 provided to them in connection with recognition, and
9 maintenance of recognition, of their compliance;
- 10 (j) publication of the names of family report writers who are
11 recognised as complying with prescribed standards and
12 requirements;
- 13 (k) publication of information about the named family report
14 writers for the purposes of informing the court, parties to
15 proceedings and the public about any or all of the following:
16 (i) their qualifications, training and experience;
17 (ii) their availability;
18 (iii) the fees they charge;
19 (iv) their compliance status, including in relation to
20 particular standards or requirements;
21 (v) any relevant memberships of professional associations,
22 registration or employment;
23 (vi) any other matters relevant to their role of preparing
24 designated family reports;
- 25 (l) standards and requirements in relation to the content of
26 designated family reports.
- 27 (3) Regulations dealing with the matter mentioned in paragraph (2)(k)
28 must not require or allow the publication of personal information
29 (within the meaning of the *Privacy Act 1988*) about any child or
30 other individual to whom a report relates.
- 31 *Consequences of non-compliance*
- 32 (4) Without limiting paragraph (1)(b), regulations made for the
33 purposes of that paragraph may do any or all of the following:
34 (a) prescribe offences, the penalties for which do not exceed 30
35 penalty units;

- 1 (b) prescribe civil penalty provisions, the penalties for which do
2 not exceed 30 penalty units;
- 3 (c) provide for suspension or cancellation of recognition of
4 compliance;
- 5 (d) provide that, if a family report writer is not recognised, or if
6 recognition of a family report writer's compliance is
7 suspended or cancelled, the court must not have regard to
8 designated family reports prepared by the family report
9 writer;
- 10 (e) prohibit the preparation of designated family reports by
11 family report writers who are not recognised.

12 (5) Each civil penalty provision prescribed by regulations made for the
13 purposes of this section (a **Part IIIAA civil penalty provision**) is
14 enforceable under Part 4 of the Regulatory Powers Act.

15 *Authorised applicant*

- 16 (6) For the purposes of Part 4 of the Regulatory Powers Act, each of
17 the following persons is an authorised applicant in relation to the
18 Part IIIAA civil penalty provisions:
 - 19 (a) each regulator;
 - 20 (b) the Secretary of the Department.
- 21 (7) The Secretary of the Department may, in writing, delegate the
22 Secretary's powers and functions under Part 4 of the Regulatory
23 Powers Act in relation to the Part IIIAA civil penalty provisions to
24 an SES employee, or an acting SES employee, in the Department.

25 *Relevant court*

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

1 **11L Disclosure by court to regulator**

2 The court may disclose any of the following to a regulator, for the
3 purposes of the regulator performing the regulator's functions
4 under the regulations:

- 5 (a) a designated family report prepared for or at the direction of
6 the court, or for a party to proceedings before the court;
7 (b) a final order made by the court in proceedings for which a
8 designated family report was prepared.

9 **11M Immunity of regulator**

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

15 **5 At the end of subsection 67ZA(1)**

16 Add:
17 ; or (i) a family report writer who is recognised, in accordance with
18 regulations made for the purposes of section 11K, as
19 complying with prescribed standards and requirements.

20 **6 At the end of subsection 111CV(1A)**

21 Add:
22 ; and (j) a family report writer who is recognised, in accordance with
23 regulations made for the purposes of section 11K, as
24 complying with prescribed standards and requirements.

1 **Schedule 8—Review of operation of the**
2 **Federal Circuit and Family Court of**
3 **Australia Act 2021**
4

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

6 **1 Subsection 284(1)**

7 Omit “fifth”, substitute “third”.

1 **Schedule 9—Dual appointments**
2

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

4 **1 Section 23**

5 Before “If a person”, insert “(1)”.

6 **2 At the end of section 23**

7 Add:

8 (2) A person:

- 9 (a) may be appointed to the office of Judge of the Federal Circuit
10 and Family Court of Australia (Division 1), regardless of
11 whether the person holds an office of Judge of a Family
12 Court of a State; and
13 (b) may serve in that office of Judge of the Federal Circuit and
14 Family Court of Australia (Division 1) even if the person
15 continues to hold, and serve in, the office of Judge of the
16 Family Court of that State.

17 **3 Application provision**

18 The amendments of section 23 of the *Federal Circuit and Family Court*
19 *of Australia Act 2021* made by this Schedule apply to the appointment
20 of a person to the office of Judge of the Federal Circuit and Family
21 Court of Australia (Division 1), regardless of whether that appointment
22 is made before, on or after the day this item commences.