

2002-2003-2004

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Family Law Amendment Bill 2004**

**No.     , 2004**

*(Attorney-General)*

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



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

3     The Parliament of Australia enacts:

4     **1 Short title**

5             This Act may be cited as the *Family Law Amendment Act 2004*.

6     **2 Commencement**

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

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	The 28th day after the day on which this Act receives the Royal Assent.	

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

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

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule  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

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## **Schedule 1—Amendments**

### **Part 1—Parenting compliance regime**

#### *Family Law Act 1975*

##### **1 At the end of section 65F**

Add:

(4) In this section:

*proceedings for a parenting order* includes:

- (a) proceedings for the enforcement of a parenting order; and
- (b) any other proceedings in which a contravention of a parenting order is alleged.

##### **2 Subsection 65LA(3)**

Insert:

*proceedings for a parenting order* includes:

- (a) proceedings for the enforcement of a parenting order; and
- (b) any other proceedings in which a contravention of a parenting order is alleged.

##### **3 After Subdivision A of Division 13A of Part VII**

Insert:

#### **Subdivision AA—Court’s powers where contravention without reasonable excuse not established**

##### **70NEB Court’s power to vary parenting order**

- (1) The court may make an order varying a parenting order if:
  - (a) proceedings in relation to the parenting order are brought before a court having jurisdiction under this Act and it is alleged in those proceedings that a person (the *respondent*) committed a contravention of the primary order; and
  - (b) either:

**Schedule 1** Amendments

**Part 1** Parenting compliance regime

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- 1 (i) the court is not satisfied that the respondent has  
2 committed a contravention of the parenting order; or  
3 (ii) the court is satisfied that the respondent has committed  
4 a contravention of the parenting order but the  
5 respondent proves that the respondent had a reasonable  
6 excuse for the contravention.
- 7 (2) Subsection (1) applies whether the parenting order is made before  
8 or after the commencement of this Subdivision.

9 **4 Application**

10 The amendments made by this Part apply to:

- 11 (a) contraventions, and alleged contraventions, of parenting  
12 orders (whether occurring before, at or after the  
13 commencement of this Part); and  
14 (b) proceedings in which it is alleged that a person committed a  
15 contravention of a parenting order (whether those  
16 proceedings are commenced before, at or after the  
17 commencement of this Part).

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2 **Part 2—Costs and offers of settlement**

3 *Family Law Act 1975*

4 **5 Paragraph 117(2A)(f)**

5 Omit “, in accordance with section 117C or otherwise,”.

6 **6 Section 117C**

7 Repeal the section, substitute:

8 **117C Offers of settlement**

9 (1) This section applies to proceedings under this Act other than the  
10 following proceedings:

- 11 (a) proceedings under Part VI;  
12 (b) proceedings under Division 6, 9 or 13 of Part VII;  
13 (c) proceedings to enforce a decree or injunction made under  
14 Division 6, 9 or 13 of Part VII.

15 (2) If:

- 16 (a) a party to proceedings to which this section applies makes an  
17 offer to the other party to the proceedings to settle the  
18 proceedings; and  
19 (b) the offer is made in accordance with any applicable Rules of  
20 Court;

21 the fact that the offer has been made, or the terms of the offer, must  
22 not be disclosed to the court in which the proceedings are being  
23 heard except for the purposes of the consideration by the court of  
24 whether it should make an order as to costs under subsection  
25 117(2) and the terms of any such order.

26 (3) A judge of the court is not disqualified from sitting in the  
27 proceedings only because the fact that an offer has been made is,  
28 contrary to subsection (2), disclosed to the court.

29 **7 Application**

30 The amendments made by this Part apply to offers to settle proceedings  
31 that are made on or after the commencement of this Part.

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2 **Part 3—Suspension of sentences of imprisonment**

3 *Family Law Act 1975*

4 **8 After subsection 70NO(4)**

5 Insert:

6 (4A) A court that sentences a person to imprisonment under paragraph  
7 70NJ(3)(e) may:

8 (a) suspend the sentence upon the terms and conditions  
9 determined by the court; and

10 (b) terminate a suspension made under paragraph (a).

11 **9 After subsection 112AE(4)**

12 Insert:

13 (4A) A court that sentences a person to imprisonment under paragraph  
14 112AD(2)(d) may:

15 (a) suspend the sentence upon the terms and conditions  
16 determined by the court; and

17 (b) terminate a suspension made under paragraph (a).

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2 **Part 4—Enforcement (removal of information**  
3 **procedure)**

4 *Family Law Act 1975*

5 **10 Subsections 70NN(2) to (7)**

6 Repeal the subsections, substitute:

- 7 (2) If the court (whether or not constituted by the judge or magistrate  
8 who made the community service order or required the bond to be  
9 entered into in accordance with section 70NM) is satisfied that the  
10 person has, without reasonable excuse, failed to comply with the  
11 order or bond, the court may take action under subsection (8).

12 **11 Subsection 70NN(10)**

13 Repeal the subsection.

14 **12 Subsections 112AH(2) to (7)**

15 Repeal the subsections, substitute:

- 16 (2) If the court (whether or not constituted by the judge or magistrate  
17 who imposed the sentence or made the order) is satisfied that the  
18 person has, without reasonable excuse, failed to comply with:  
19 (a) the sentence or order; or  
20 (b) any requirements made in relation to the sentence or order by  
21 or under the applied provisions;  
22 the court may take action under subsection (8).

23 **13 Subsection 112AH(10)**

24 Repeal the subsection.

25 **14 Application**

26 The amendments made by this Part apply to failures to comply with  
27 orders, bonds or sentences that occur on or after the commencement of  
28 this Part.

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2 **Part 5—Private arbitration**

3 *Family Law Act 1975*

4 **15 Subsection 4(1)**

5 Insert:

6 *Part VIIIA proceedings* means proceedings in relation to a  
7 financial agreement.

8 **16 Subsection 4(1)**

9 Insert:

10 *Part VIIIB proceedings* means:

- 11 (a) proceedings in relation to a superannuation agreement  
12 (within the meaning of Part VIIIB); or  
13 (b) proceedings in relation to a payment split or payment flag  
14 (within the meaning of that Part); or  
15 (c) any other proceedings under that Part.

16 **17 Subsection 4(1)**

17 Insert:

18 *section 106A proceedings* means proceedings under section 106A.

19 **18 Subsection 19E(3) (paragraph (a) of the definition of**  
20 ***dispute*)**

21 Repeal the paragraph, substitute:

- 22 (a) Part VIII proceedings, Part VIIIA proceedings, Part VIIIB  
23 proceedings or section 106A proceedings; or

1

2 **Part 6—Change of venue**

3 *Family Law Act 1975*

4 **19 After section 27**

5 Insert:

6 **27A Change of venue**

7 The Court or a Judge may, at any stage of a proceeding in the  
8 Court, direct that the proceeding or a part of the proceeding be  
9 conducted or continued at a place specified in the order, subject to  
10 such conditions (if any) as the Court or Judge imposes.

1

2 **Part 7—Definition of disposition**

3 *Family Law Act 1975*

4 **20 Subsection 106B(5) (definition of *disposition*)**

5 Repeal the definition, substitute:

6 *disposition* includes:

- 7 (a) a sale or gift; and  
8 (b) the issue, grant, creation, transfer or cancellation of, or a  
9 variation of the rights attaching to, an interest in a company  
10 or a trust.

11 **21 Subsection 106B(5)**

12 Insert:

13 *interest:*

- 14 (a) in a company includes:  
15 (i) a share in or debenture of the company; and  
16 (ii) an option over a share in or debenture of the company  
17 (whether the share or debenture is issued or not); and  
18 (b) in a trust includes:  
19 (i) a beneficial interest in the trust; and  
20 (ii) the interest of a settlor in property subject to the trust;  
21 and  
22 (iii) a power of appointment under the trust; and  
23 (iv) a power to rescind or vary a provision of, or to rescind  
24 or vary the effect of the exercise of a power under, the  
25 trust; and  
26 (v) an interest that is conditional, contingent or deferred.

27 **22 Application**

28 The amendments made by this Part apply to dispositions that occur on  
29 or after the commencement of this Part.

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2 **Part 8—Appeals**

3 *Family Law Act 1975*

4 **23 Subsection 94(2D)**

5 After “Applications”, insert “of a procedural nature, including  
6 applications”.

7 **24 After paragraph 94(2D)(d)**

8 Insert:

- 9 or (e) for an extension of time within which to file an application  
10 for leave to appeal; or  
11 (f) for security for costs in relation to an appeal; or  
12 (g) to reinstate an appeal dismissed under a provision of the  
13 Rules of Court; or  
14 (h) to adjourn the hearing of an appeal; or  
15 (i) to vacate the hearing date of an appeal; or  
16 (j) to expedite the hearing of an appeal;

17 **25 Subsection 94AAA(10)**

18 After “Applications”, insert “of a procedural nature, including  
19 applications”.

20 **26 After paragraph 94AAA(10)(d)**

21 Insert:

- 22 or (e) for an extension of time within which to file an application  
23 for leave to appeal; or  
24 (f) for security for costs in relation to an appeal; or  
25 (g) to reinstate an appeal dismissed under a provision of the  
26 Rules of Court; or  
27 (h) to adjourn the hearing of an appeal; or  
28 (i) to vacate the hearing date of an appeal; or  
29 (j) to expedite the hearing of an appeal;

30 **27 After section 94AAA**

31 Insert:

1 **94AAB Appeals, and applications for leave, without oral hearing**

- 2 (1) Subject to subsection (2):  
3 (a) an appeal under section 94 or 94AAA; or  
4 (b) an application under section 94AA for leave to appeal;  
5 may be dealt with without an oral hearing if all the parties to the  
6 appeal or the application consent to the appeal or application being  
7 dealt with in that way.
- 8 (2) Subsection (1) does not apply to an appeal, or an application for  
9 leave to appeal, if the Court otherwise orders.
- 10 (3) A consent given under subsection (1) may only be withdrawn with  
11 the leave of the court.

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**Part 9—Transfer of matters from State courts of summary jurisdiction to the Federal Magistrates Court**

*Family Law Act 1975*

**28 Paragraphs 46(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the court must, before proceeding to hear and determine the proceedings, inform the parties that, unless each of them consents to the court hearing and determining the proceedings, the court is required to transfer the proceedings to:
  - (i) the Family Court; or
  - (ii) the Supreme Court of a State or Territory; or
  - (iii) the Federal Magistrates Court; and
- (b) unless the parties consent to the court hearing and determining the proceedings—the court must transfer the proceedings to:
  - (i) the Family Court; or
  - (ii) the Supreme Court of a State or Territory; or
  - (iii) the Federal Magistrates Court.

**29 Subsection 46(1B)**

Repeal the subsection, substitute:

- (1B) Subject to subsection (1C), if:
  - (a) proceedings referred to in subsection (1) are instituted in a court of summary jurisdiction; and
  - (b) the parties consent to the proceedings being heard and determined by that court;a party is not entitled subsequently to object to the proceedings being so heard and determined.
- (1C) If the court subsequently gives leave to a party to object to the proceedings being so heard and determined, the court must transfer the proceedings to:

**Schedule 1** Amendments

**Part 9** Transfer of matters from State courts of summary jurisdiction to the Federal Magistrates Court

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- 1 (a) the Family Court; or  
2 (b) the Supreme Court of a State or Territory; or  
3 (c) the Federal Magistrates Court.

4 **30 Subsection 46(2A)**

5 Repeal the subsection, substitute:

6 (2A) If:

- 7 (a) proceedings for a divorce order have been instituted in or  
8 transferred to a court of summary jurisdiction; and  
9 (b) the proceedings are defended;  
10 the court is required to transfer the proceedings to:  
11 (c) the Family Court; or  
12 (d) the Supreme Court of a State or Territory; or  
13 (e) the Federal Magistrates Court.

14 **31 Subsection 46(3A)**

15 Repeal the subsection, substitute:

16 (3A) If proceedings instituted under this Act, or continued under  
17 section 9, are pending in a court of summary jurisdiction, each of  
18 the following Courts:

- 19 (a) the Family Court;  
20 (b) the Supreme Court of a State or Territory;  
21 (c) the Federal Magistrates Court;  
22 may, on the application of a party or of its own motion, order that  
23 the proceedings be removed to that Court.

24 **32 Subsections 69N(2) and (3)**

25 Repeal the subsections, substitute:

- 26 (2) The court must, before going on to hear and determine the  
27 proceedings, inform the parties that, unless each of them consents  
28 to the court hearing and determining the proceedings, the court is  
29 required to transfer the proceedings to:  
30 (a) the Family Court; or  
31 (b) a Family Court of a State; or  
32 (c) the Supreme Court of the Northern Territory; or  
33 (d) the Federal Magistrates Court.

- 1                   (3) If the parties do not consent to the court hearing and determining  
2                   the proceedings, the court must transfer the proceedings to:  
3                   (a) the Family Court; or  
4                   (b) a Family Court of a State; or  
5                   (c) the Supreme Court of the Northern Territory; or  
6                   (d) the Federal Magistrates Court.

7                   **33 Paragraph 69N(5)(b)**

- 8                   Repeal the paragraph, substitute:  
9                   (b) the court may, on its own initiative, transfer the proceedings  
10                  to:  
11                  (i) the Family Court; or  
12                  (ii) a Family Court of a State; or  
13                  (iii) the Supreme Court of the Northern Territory; or  
14                  (iv) the Federal Magistrates Court.

15                  **34 Subsection 69N(6)**

- 16                  Repeal the subsection, substitute:  
17                  (6) If the court subsequently gives leave to a party to object to the  
18                  proceedings being heard and determined by the court, the court  
19                  must transfer the proceedings to:  
20                  (a) the Family Court; or  
21                  (b) a Family Court of a State; or  
22                  (c) the Supreme Court of the Northern Territory; or  
23                  (d) the Federal Magistrates Court.

24                  **35 Application**

- 25                  The amendments made by this Part apply to proceedings initiated before  
26                  or after the commencement of this Part.

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2 **Part 10—Terminology relating to divorce and**  
3 **principal relief**

4 ***Family Law Act 1975***

5 **36 Subsection 4(1) (definition of *decree*)**

6 Repeal the definition, substitute:

7 *decree* means decree, judgment or order and includes:

- 8 (a) an order dismissing an application; or  
9 (b) a refusal to make a decree or order.

10 **37 Subsection 4(1)**

11 Insert:

12 *divorce* means the termination of a marriage otherwise than by the  
13 death of a party to the marriage.

14 Note: Annulment does not involve the termination of a marriage but simply  
15 a declaration that a purported marriage is in fact void.

16 **38 Subsection 4(1)**

17 Insert:

18 *divorce or validity of marriage proceedings* means:

- 19 (a) proceedings between the parties to a marriage, or by the  
20 parties to a marriage, for:  
21 (i) a divorce order in relation to the marriage; or  
22 (ii) a decree of nullity of marriage; or  
23 (b) proceedings for a declaration as to the validity of:  
24 (i) a marriage; or  
25 (ii) a divorce; or  
26 (iii) the annulment of a marriage;  
27 by decree or otherwise.

28 **39 Subsection 4(1) (paragraphs (d) and (e) of the definition of**  
29 ***marriage counselling*)**

30 Repeal the paragraphs, substitute:

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- 1 (d) divorce or the annulment of a marriage; or  
2 (e) adjusting to divorce or the annulment of a marriage;

3 **40 Subsection 4(1) (paragraphs (a) and (b) of the definition of**  
4 ***matrimonial cause*)**

5 Repeal the paragraphs, substitute:

- 6 (a) proceedings between the parties to a marriage, or by the  
7 parties to a marriage, for:  
8 (i) a divorce order in relation to the marriage; or  
9 (ii) a decree of nullity of marriage; or  
10 (b) proceedings for a declaration as to the validity of:  
11 (i) a marriage; or  
12 (ii) a divorce; or  
13 (iii) the annulment of a marriage;  
14 by decree or otherwise; or

15 **41 Subsection 4(1) (subparagraph (ca)(ii) of the definition of**  
16 ***matrimonial cause*)**

17 Omit “proceedings between those parties for principal relief”, substitute  
18 “divorce or validity of marriage proceedings between those parties”.

19 **42 Subsection 4(1) (subparagraph (ca)(iii) of the definition of**  
20 ***matrimonial cause*)**

21 Repeal the subparagraph, substitute:

- 22 (iii) in relation to the divorce of the parties to that marriage,  
23 the annulment of that marriage or the legal separation of  
24 the parties to that marriage, being a divorce, annulment  
25 or legal separation effected in accordance with the law  
26 of an overseas jurisdiction, where that divorce,  
27 annulment or legal separation is recognised as valid in  
28 Australia under section 104; or

29 **43 Subsection 4(1) (definition of *prescribed proceedings*)**

30 Repeal the definition, substitute:

- 31 ***prescribed proceedings*** means:  
32 (a) divorce or validity of marriage proceedings; or  
33 (b) proceedings in relation to concurrent, pending or completed  
34 divorce or validity of marriage proceedings.

1 **44 Subsection 4(2)**

2 Repeal the subsection, substitute:

3 (2) A reference in this Act, the standard Rules of Court or the related  
4 Federal Magistrates Rules to a party to a marriage includes a  
5 reference to a person who was a party to a marriage that has been:

- 6 (a) terminated by divorce (in Australia or elsewhere); or  
7 (b) annulled (in Australia or elsewhere); or  
8 (c) terminated by the death of one party to the marriage.

9 **45 Section 14B (paragraph (a) of the definition of *Division 2***  
10 ***proceedings*)**

11 Repeal the paragraph, substitute:

- 12 (a) proceedings for a divorce order; or

13 **46 Paragraph 33A(2)(a)**

14 Repeal the paragraph, substitute:

- 15 (a) proceedings for a divorce order; or

16 **47 Paragraph 37A(2)(a)**

17 Repeal the paragraph, substitute:

- 18 (a) a divorce order in proceedings that are defended; or

19 **48 Paragraph 37A(2)(c)**

20 Repeal the paragraph, substitute:

- 21 (c) a declaration as to the validity of:  
22 (i) a marriage; or  
23 (ii) a divorce; or  
24 (iii) the annulment of a marriage; or

25 **49 Subsection 39(3)**

26 Omit “a decree of dissolution of marriage”, substitute “a divorce order”.

27 **50 Subsection 39(3)**

28 Omit “the decree”, substitute “the order”.

29 **51 Subsection 39(4)**

30 Omit “a decree of dissolution of marriage”, substitute “a divorce order”.

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1 **52 Subsection 44(1A)**

2 Repeal the subsection, substitute:

3 (1A) Proceedings under this Act for:

4 (a) a divorce order in relation to a marriage; or

5 (b) a decree of nullity of marriage;

6 may be instituted by either party to the marriage or jointly by both  
7 parties to the marriage.

8 **53 Subsection 44(1B)**

9 Omit “dissolution of a marriage”, substitute “a divorce order in relation  
10 to a marriage”.

11 **54 Subsection 44(1C)**

12 Omit “dissolution of a marriage”, substitute “a divorce order in relation  
13 to a marriage”.

14 **55 Paragraph 44(3)(a)**

15 Repeal the paragraph, substitute:

16 (a) a divorce order has taken effect; or

17 **56 Paragraph 44(3)(c)**

18 Repeal the paragraph, substitute:

19 (c) in a case referred to in paragraph (a)—the date on which the  
20 divorce order took effect; or

21 **57 Paragraph 44(3A)(a)**

22 Repeal the paragraph, substitute:

23 (a) a divorce order has taken effect or a decree of nullity of  
24 marriage has been made; and

25 **58 Subparagraph 44(3A)(c)(i)**

26 Repeal the subparagraph, substitute:

27 (i) the date on which the divorce order took effect or the  
28 date of the making of the decree of nullity, as the case  
29 may be; or

30 **59 Paragraph 44(3B)(a)**

31 Repeal the paragraph, substitute:

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1 (a) a divorce order has taken effect or a decree of nullity of  
2 marriage has been made; and

3 **60 Subparagraph 44(3B)(c)(i)**

4 Repeal the subparagraph, substitute:

5 (i) the date on which the divorce order took effect or the  
6 date of the making of the decree of nullity, as the case  
7 may be; or

8 **61 Section 44A**

9 Omit “a decree of dissolution of marriage”, substitute “a divorce order”.

10 Note: The heading to section 44A is altered by omitting “**decree of dissolution of marriage**”  
11 and substituting “**divorce order**”.

12 **62 Paragraph 46(2A)(a)**

13 Omit “a decree of dissolution of a marriage”, substitute “a divorce  
14 order”.

15 **63 Part VI (heading)**

16 Repeal the heading, substitute:

17 **Part VI—Divorce and nullity of marriage**

18 **64 Subsection 48(1)**

19 Omit “a decree of dissolution of a marriage”, substitute “a divorce order  
20 in relation to a marriage”.

21 Note: The heading to section 48 is replaced by the heading “**Divorce**”.

22 **65 Subsection 48(2)**

23 Omit “a decree of dissolution of the marriage”, substitute “the divorce  
24 order”.

25 **66 Subsection 48(2)**

26 Omit “dissolution of marriage”, substitute “the divorce order”.

27 **67 Subsection 48(3)**

28 Omit “decree of dissolution of marriage”, substitute “divorce order”.

29 **68 Subsection 50(1)**

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1 Omit “a decree of dissolution of marriage”, substitute “a divorce order”.

2 **69 Section 52**

3 Omit “a decree of dissolution of that marriage”, substitute “a divorce  
4 order in relation to that marriage”.

5 Note: The heading to section 52 is altered by omitting “**decree of dissolution**” and  
6 substituting “**divorce order**”.

7 **70 Section 52**

8 Omit “a decree of dissolution of the marriage”, substitute “a divorce  
9 order in relation to the marriage”.

10 **71 Section 54**

11 Repeal the section.

12 **72 Subsections 55(1) to (5)**

13 Repeal the subsections, substitute:

14 (1) Subject to this section, a divorce order made under this Act takes  
15 effect by force of this section:

16 (a) at the expiration of a period of 1 month from the making of  
17 the order; or

18 (b) from the making of an order under section 55A;  
19 whichever is the later.

20 (2) If a divorce order has been made in any proceedings, the court of  
21 first instance (whether or not it made the order), or a court in which  
22 an appeal has been instituted, may, either before or after it has  
23 disposed of the proceedings or appeal, and whether or not a  
24 previous order has been made under this subsection:

25 (a) make an order extending the period at the expiration of which  
26 the divorce order will take effect, having regard to the  
27 possibility of an appeal or further appeal; or

28 (b) make an order reducing the period at the expiration of which  
29 the divorce order will take effect if it is satisfied that there are  
30 special circumstances that justify its so doing.

31 (3) If an appeal is instituted (whether or not it is the first appeal)  
32 before a divorce order has taken effect, then, notwithstanding any  
33 order in force under subsection (2) at the time of the institution of  
34 the appeal but subject to any such order made after the institution

**Schedule 1** Amendments

**Part 10** Terminology relating to divorce and principal relief

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1 of the appeal, the divorce order, unless reversed or rescinded, takes  
2 effect by force of this section:

- 3 (a) at the expiration of a period of 1 month from the day on  
4 which the appeal is determined or discontinued; or  
5 (b) on the day on which the divorce order would have taken  
6 effect under subsection (1) if no appeal had been instituted;  
7 whichever is the later.

8 (4) A divorce order does not take effect by force of this section if  
9 either of the parties to the marriage has died.

10 (5) In this section:

11 *appeal*, in relation to a divorce order, means:

- 12 (a) an appeal or application for leave to appeal against, or an  
13 intervention or application for a re-hearing relating to:  
14 (i) the divorce order; or  
15 (ii) an order under section 55A in relation to the  
16 proceedings in which the divorce order was made; or  
17 (b) an application under section 57 or 58 for rescission of the  
18 divorce order or an appeal or application for leave to appeal  
19 arising out of such an application.

20 Note: The heading to section 55 is altered by omitting “**decree becomes absolute**” and  
21 substituting “**divorce order takes effect**”.

22 **73 Subsection 55A(1)**

23 Omit “A decree *nisi* of dissolution of marriage does not become  
24 absolute”, substitute “A divorce order in relation to a marriage does not  
25 take effect”.

26 Note: The heading to section 55A is altered by omitting “**Decree absolute**” and substituting  
27 “**Divorce order**”.

28 **74 Subparagraph 55A(1)(b)(ii)**

29 Omit “the decree *nisi* should become absolute”, substitute “the divorce  
30 order should take effect”.

31 **75 Subsection 55A(2)**

32 Omit “a decree of dissolution of marriage”, substitute “a divorce order  
33 in relation to a marriage”.

34 **76 Subsection 55A(4)**

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1 Omit “the decree *nisi* of dissolution of marriage”, substitute “the  
2 divorce order”.

3 **77 Subsections 56(1) and (2)**

4 Repeal the subsections, substitute:

5 (1) If a divorce order takes effect, the Registry Manager of the court by  
6 which the order was made must prepare and file a memorandum of  
7 the fact and of the date on which the divorce order took effect.

8 (2) If a divorce order has taken effect, any person is entitled, on  
9 application to the Registry Manager of the court by which the  
10 divorce order was made, to receive a certificate signed by the  
11 Registrar of that court that the divorce order has taken effect.

12 Note: The heading to section 56 is altered by omitting “**decree absolute**” and substituting  
13 “**divorce order**”.

14 **78 Sections 57 to 59**

15 Repeal the sections, substitute:

16 **57 Rescission of divorce order where parties reconciled**

17 Despite anything contained in this Part, if a divorce order has been  
18 made in relation to a marriage, the court may, at any time before  
19 the order takes effect, upon the application of the parties to the  
20 marriage, rescind the divorce order on the ground that the parties  
21 have become reconciled.

22 **58 Rescission of divorce order on ground of miscarriage of justice**

23 If a divorce order has been made in proceedings but has not taken  
24 effect, the court by which the divorce order was made may, on the  
25 application of a party to the proceedings, or on the intervention of  
26 the Attorney-General, if it is satisfied that there has been a  
27 miscarriage of justice by reason of fraud, perjury, suppression of  
28 evidence or any other circumstance, rescind the divorce order and,  
29 if it thinks fit, order that the proceedings be re-heard.

1 **59 Re-marriage**

2 If a divorce order under this Act in relation to a marriage has taken  
3 effect, a party to the marriage may marry again.

4 **79 Paragraph 60F(2)(a)**

5 Repeal the paragraph, substitute:

6 (a) a marriage that has been terminated by divorce or annulled  
7 (in Australia or elsewhere); or

8 **80 Paragraph 69P(3)(d)**

9 Omit “the dissolution of the marriage”, substitute “the divorce of the  
10 parties”.

11 **81 Subparagraph 69ZH(3)(b)(ii)**

12 Omit “proceedings between those parties for principal relief”, substitute  
13 “divorce or validity of marriage proceedings between those parties”.

14 **82 Subparagraph 69ZH(3)(b)(iii)**

15 Repeal the subparagraph, substitute:

16 (iii) in relation to the divorce of the parties to that marriage,  
17 an annulment of that marriage or a legal separation of  
18 the parties to that marriage, that is effected in  
19 accordance with the law of an overseas jurisdiction and  
20 that is recognised as valid in Australia under  
21 section 104.

22 **83 Paragraph 75(2)(g)**

23 Omit “the marriage has been dissolved”, substitute “or divorced”.

24 **84 Paragraphs 79(1B)(a) and (b)**

25 Repeal the paragraphs, substitute:

26 (a) parties to concurrent, pending or completed divorce or  
27 validity of marriage proceedings; or  
28 (ba) parties to a marriage who have divorced under the law of an  
29 overseas country, where that divorce is recognised as valid in  
30 Australia under section 104; or  
31 (bb) parties to a marriage that has been annulled under the law of  
32 an overseas country, where that annulment is recognised as  
33 valid in Australia under section 104; or

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1 **85 Paragraphs 79(1C)(a) and (b)**

2 Repeal the paragraphs, substitute:

3 (a) divorce or validity of marriage proceedings are instituted by  
4 one or both of those parties; or

5 (ba) the parties to the marriage have divorced under the law of an  
6 overseas country and the divorce is recognised as valid in  
7 Australia under section 104; or

8 (bb) the marriage is annulled under the law of an overseas country  
9 and the annulment is recognised as valid in Australia under  
10 section 104; or

11 **86 Paragraph 90(2)(a)**

12 Omit “the dissolution or”, substitute “the termination of the marriage to  
13 which the maintenance agreement relates by divorce or the”.

14 **87 Paragraph 90(2)(b)**

15 Omit “the dissolution or”, substitute “the termination of the marriage to  
16 which the maintenance agreement relates by divorce or the”.

17 **88 Paragraph 90(2)(d)**

18 Omit “the dissolution or”, substitute “the termination of the marriage to  
19 which the maintenance agreement relates by divorce or the”.

20 **89 Paragraph 90(2)(e)**

21 Omit “the dissolution or”, substitute “the termination of the marriage to  
22 which the maintenance agreement relates by divorce or the”.

23 **90 Paragraph 90B(2)(a)**

24 Omit “the dissolution of the marriage”, substitute “divorce”.

25 **91 Subparagraph 90B(2)(b)(ii)**

26 Omit “the dissolution of the marriage”, substitute “divorce”.

27 **92 Subparagraph 90B(2)(b)(iii)**

28 Repeal the subparagraph, substitute:

29 (iii) both during the marriage and after divorce.

30 **93 Subparagraph 90C(2)(b)(ii)**

31 Omit “the dissolution of the marriage”, substitute “divorce”.

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1 **94 Subparagraph 90C(2)(b)(iii)**

2 Repeal the subparagraph, substitute:  
3 (iii) both during the marriage and after divorce.

4 **95 Paragraph 90D(1)(a)**

5 Omit “a decree nisi dissolving a marriage is made”, substitute “a  
6 divorce order is made in relation to a marriage (whether it has taken  
7 effect or not)”.

8 Note: The heading to section 90D is altered by omitting “**dissolution of marriage**” and  
9 substituting “**divorce order is made**”.

10 **96 Subparagraph 90MI(a)(i)**

11 Omit “the decree absolute dissolving the marriage”, substitute “the  
12 divorce order that has terminated the marriage”.

13 **97 Subsection 90MK(2) (subparagraph (a)(i) of the definition**  
14 **of service time)**

15 Omit “the decree absolute dissolving the marriage”, substitute “the  
16 divorce order that has terminated the marriage”.

17 **98 Subsection 91(1A)**

18 Omit “a decree *nisi* has been made in any proceedings and before it has  
19 become absolute”, substitute “a divorce order has been made in any  
20 proceedings and before it has taken effect”.

21 **99 Subsection 92(1)**

22 Omit “other than proceedings for principal relief”, substitute “(other  
23 than divorce or validity of marriage proceedings)”.

24 **100 Subsection 92(1A)**

25 Omit “proceedings for principal relief”, substitute “divorce or validity  
26 of marriage proceedings”.

27 **101 Section 93**

28 Omit “a decree of dissolution of marriage after the decree has become  
29 absolute”, substitute “a divorce order after the order has taken effect”.

30 Note: The heading to section 93 is altered by omitting “**decree absolute**” and substituting  
31 “**divorce order takes effect**”.

1     **102 Paragraph 98(1)(a)**

2             Omit “proceedings for principal relief”, substitute “divorce or validity  
3             of marriage proceedings”.

4     **103 Paragraph 98(1)(b)**

5             Omit “other than proceedings for principal relief”, substitute “other than  
6             divorce or validity of marriage proceedings”.

7     **104 Subsection 98A(1)**

8             Omit “dissolution of marriage”, substitute “a divorce order in relation to  
9             a marriage”.

10    **105 Subsection 98A(2)**

11            Omit “dissolution of marriage”, substitute “a divorce order in relation to  
12            a marriage”.

13    **106 Subsection 98A(2A)**

14            Omit “the dissolution of marriage”, substitute “the divorce order in  
15            relation to the marriage”.

16    **107 Subsection 98A(4)**

17            Omit “dissolution of the marriage”, substitute “the divorce order in  
18            relation to the marriage”.

19    **108 Subsection 104(1) (definition of *applicant*)**

20            Omit “the dissolution or”, substitute “a divorce or the”.

21    **109 Subsection 104(1) (paragraph (a) of the definition of**  
22            ***applicant*)**

23            Omit “dissolution”, substitute “divorce”.

24    **110 Subsection 104(1) (paragraph (b) of the definition of**  
25            ***applicant*)**

26            Omit “dissolution”, substitute “divorce”.

27    **111 Subsection 104(1) (definition of *relevant date*)**

28            Omit “the dissolution or”, substitute “a divorce or the”.

29    **112 Subsection 104(1) (definition of *relevant date*)**

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1 Omit “dissolution,” substitute “divorce.”

2 **113 Subsection 104(1) (definition of *respondent*)**

3 Omit “the dissolution or”, substitute “a divorce or the”.

4 **114 Subsection 104(1) (definition of *respondent*)**

5 Omit “dissolution,” substitute “divorce.”

6 **115 Subsection 104(3)**

7 Omit “A dissolution or”, substitute “A divorce or the”.

8 **116 Paragraph 104(3)(f)**

9 Omit “dissolution of marriage,” substitute “divorce, the”.

10 **117 Subsection 104(4)**

11 Omit “A dissolution or”, substitute “A divorce or the”.

12 **118 Subsection 104(5)**

13 Omit “Any dissolution or”, substitute “Any divorce or any”.

14 **119 Subsection 104(7)**

15 Omit “a dissolution or”, substitute “a divorce or an”.

16 **120 Paragraph 104(7)(a)**

17 Omit “the dissolution” (wherever occurring), substitute “the divorce”.

18 **121 Paragraph 104(7)(b)**

19 Omit “the dissolution”, substitute “the divorce”.

20 **122 Subsection 104(8)**

21 Omit “a dissolution or”, substitute “a divorce or the”.

22 **123 Subsection 104(9)**

23 Omit “a dissolution or”, substitute “a divorce or the”.

24 **124 Subsection 104(9)**

25 Omit “the dissolution”, substitute “the divorce”.

26 **125 Subsection 104(10)**

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1           Omit “dissolutions”, substitute “divorces”.

2       **126 Subsection 104A(2)**

3           Omit “dissolution”, substitute “divorce or the”.

4       **127 Subsection 104A(3)**

5           Omit “dissolution”, substitute “divorce or the”.

6       **128 Paragraph 123(1)(n)**

7           Omit “applications for dissolution of marriage”, substitute “an  
8           application for a divorce order in relation to a marriage”.

9       **129 Transitional arrangements in relation to decrees nisi**  
10       **made before the commencement of this Part**

- 11       (1)    A decree nisi of the dissolution of a marriage under this Act that:  
12            (a) was made before the commencement of this Part; and  
13            (b) had become final before the commencement of this Part;  
14       has effect on and after the commencement of this Part as if it were a  
15       divorce order that had taken effect on the day on which the decree nisi  
16       became absolute.
- 17       (2)    A decree nisi of the dissolution of a marriage under this Act that:  
18            (a) was made before the commencement of this Part; and  
19            (b) had not become final before the commencement of this Part;  
20       has effect on and after the commencement of this Part as if it were a  
21       divorce order that had been made on the day on which the decree nisi  
22       was made.

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## Part 11—Leave to appeal

### *Family Law Act 1975*

#### **130 Subsections 94AA(1) to (2C)**

Repeal the subsections, substitute:

- (1) The following table sets out the circumstances in which leave to appeal is required:

---

<b>Requirements for leave to appeal</b>			
<b>Item</b>	<b>Appeal from</b>	<b>Appeal to</b>	<b>Who determines the application for leave to appeal</b>
1	a prescribed decree of the Family Court (constituted otherwise than as a Full Court)	a Full Court of the Family Court	a Full Court of the Family Court
2	a prescribed decree of a Family Court of a State	a Full Court of the Family Court	a Full Court of the Family Court
3	a prescribed decree of a Supreme Court of a State or Territory constituted by a single Judge	a Full Court of the Family Court	a Full Court of the Family Court
4	a prescribed decree of the Federal Magistrates Court	the Family Court	(a) a single Judge of the Family Court (who need not be a member of the Appeal Division); or (b) a Full Court of the Family Court

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13

- (2) Despite subsection (1), an order by consent disposing of an application under this section for leave to appeal under subsection 94(1) or (1AA) (including an order for costs) may be made by:
- (a) a Full Court of the Family Court; or

- 1 (b) a Judge of the Appeal Division; or  
2 (c) another Judge if there is no Judge of the Appeal Division  
3 available.

4 (2A) Despite subsection (1), an order by consent disposing of an  
5 application under this section for leave to appeal under subsection  
6 94AAA(1) (including an order for costs) may be made by:

- 7 (a) a Full Court of the Family Court; or  
8 (b) a single Judge of the Family Court (who need not be a  
9 member of the Appeal Division).

10 **131 Application**

11 The amendment made by this Part applies to applications for leave to  
12 appeal made on or after the commencement of this Part.

1

2 **Part 12—Power to dismiss appeal**

3 *Family Law Act 1975*

4 **132 After section 96**

5 Insert:

6 **96AA Power to dismiss appeal**

7 If it appears to a court hearing an appeal under this Part that the  
8 notice of the appeal does not disclose proper grounds of appeal  
9 (whether generally, or in relation to a particular ground of appeal),  
10 the court may order that the proceedings on the appeal be stayed or  
11 dismissed (either generally or in relation to that ground).

12 **133 Application**

13 The amendment made by this Part applies to appeals that are initiated  
14 before or after this Part commences.

1

2 **Part 13—Appeals to High Court**

3 *Family Law Act 1975*

4 **134 Section 95**

5 Repeal the section, substitute:

6 **95 Appeals to High Court**

7 Despite anything contained in any other Act, an appeal does not lie  
8 to the High Court from a decree of a court exercising jurisdiction  
9 under this Act, whether original or appellate, except by special  
10 leave of the High Court.

11 **135 Application**

12 The amendment made by item 134 applies to appeals in relation to  
13 proceedings whether initiated before or after the commencement of that  
14 item.

1

2 **Part 14—Recovery of amounts paid under**  
3 **maintenance orders**

4 *Family Law Act 1975*

5 **136 At the end of Division 7 of Part VII**

6 Add:

7 **Subdivision G—Recovery of amounts paid under maintenance**  
8 **orders**

9 **66X Recovery of amounts paid under maintenance orders**

10 If:

- 11 (a) a court has at any time purported to make a maintenance  
12 order (the *purported order*) requiring a person to pay an  
13 amount by way of maintenance for a child; and  
14 (b) the person has paid the amount in compliance with the  
15 purported order; and  
16 (c) a court has determined that the person is not a parent or  
17 step-parent of the child;  
18 the amount paid may be recovered in a court having jurisdiction  
19 under this Part.

1

2 **Part 15—Frivolous or vexatious proceedings**

3 *Family Law Act 1975*

4 **137 Section 118**

5 Repeal the section, substitute:

6 **118 Frivolous or vexatious proceedings**

7 (1) The court may, at any stage of proceedings under this Act, if it is  
8 satisfied that the proceedings are frivolous, vexatious or an abuse  
9 of the process of the court:

- 10 (a) dismiss the proceedings; or  
11 (b) make such order as to costs as the court considers just.

12 (2) If the court is satisfied that a person has instituted or conducted  
13 vexatious legal proceedings frequently and without reasonable  
14 ground, the court may order that the person may not, without leave  
15 of the Court, begin any action, appeal or other proceeding in the  
16 court. The order has effect despite any other provision of this Act.

17 Note: Subsections (5) and (6) make provision about how to determine  
18 whether proceedings are vexatious for the purposes of this subsection.

19 (3) Before the court exercises its powers under subsection (2), the  
20 person must be given reasonable notice of, and a reasonable  
21 opportunity to make submissions to the court in relation to:

- 22 (a) the proposed exercise of the power by the court on its own  
23 motion if paragraph (4)(a) applies; or  
24 (b) the application to the court for it to exercise the power if  
25 paragraph (4)(b) applies.

26 (4) The court may exercise its powers under subsection (1) or (2)  
27 either:

- 28 (a) on its own motion; or  
29 (b) on application by:  
30 (i) a party to the relevant proceedings; or  
31 (ii) for the Family Court of Australia—a Registry Manager;  
32 or  
33 (iii) for the Family Court of a State—the Executive Officer.

**Schedule 1** Amendments

**Part 15** Frivolous or vexatious proceedings

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- 1 (5) In determining for the purposes of subsection (2) whether  
2 proceedings that a person institutes or conducts are vexatious, the  
3 court may have regard to:
- 4 (a) earlier and current proceedings the person has instituted or  
5 conducted under this Act (whether alone or in concert with  
6 another person or other persons); and
- 7 (b) earlier and current proceedings the person has instituted or  
8 conducted in other courts and tribunals in Australia (whether  
9 alone or in concert with another person or other persons); and
- 10 (c) whether another court has:
- 11 (i) dismissed proceedings instituted or conducted by the  
12 person; or
- 13 (ii) ordered the person to pay costs in relation to  
14 proceedings instituted or conducted by the person; or
- 15 (iii) ordered that the person is not, without leave of a court,  
16 to institute or conduct proceedings of a kind or kinds  
17 specified in the order;
- 18 on the basis that proceedings instituted or conducted by the  
19 person were frivolous, vexatious or an abuse of the process of  
20 that court.
- 21 (6) A court may discharge or vary an order made by that court under  
22 subsection (2).

1

2 **Part 16—Rules as to costs**

3 *Family Law Act 1975*

4 **138 Subsection 117(1)**

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

6 **139 After subsection 117(1)**

7 Insert:

8 (1A) The Rules may provide that, in the circumstances specified in the  
9 Rules, a party to proceedings under this Act is to bear the costs of  
10 another party to those proceeding unless the court otherwise orders.

1

2 **Part 17—Civil penalties for contravention of Rules**

3 *Family Law Act 1975*

4 **140 After paragraph 123(1)(t)**

5 Insert:

6 (ta) providing for civil penalties for failures to comply with the  
7 standard Rules of Court; and

8 **141 Transitional**

9 (1) Standard Rules of Court made before the commencement of this Part  
10 that provide for civil penalties for failures to comply with the standard  
11 Rules of Court have effect, on and after the commencement of this Part,  
12 as if they had been made on the commencement of this Part.

13 (2) Subitem (1) is to be disregarded in determining the effect that those  
14 standard Rules of Court had before the commencement of this Part.

1

2 **Part 18—Powers of judicial registrars**

3 *Family Law Act 1975*

4 **142 Paragraph 26B(1A)(e)**

5 Omit “paragraph 70NG(1)(b)”, substitute “subsection 70NEB(1) or  
6 paragraph 70NG(1)(b) or (ba)”.

1

2 **Part 19—Interaction of family law and bankruptcy**  
3 **law**

4 *Family Law Act 1975*

5 **143 At the end of section 79**

6 Add:

7 (10) The following are entitled to become a party to proceedings in  
8 which an application is made for an order under this section:

- 9 (a) a creditor of a party to the proceedings if the creditor may not  
10 be able to recover his or her debt if the order were made;  
11 (b) any other person whose interests would be affected by the  
12 making of the order.

13 **144 At the end of section 79A**

14 Add:

15 (4) For the purposes of this section, a creditor of a party to the  
16 proceedings in which the order under section 79 was made is taken  
17 to be a person whose interests are affected by the order if the  
18 creditor may not be able to recover his or her debt because the  
19 order has been made.

20 **145 After section 79E**

21 Insert:

22 **79F Notifying third parties about application**

23 The applicable Rules of Court may make provision for a person  
24 who:

- 25 (a) applies for an order under this Part; or  
26 (b) is a party to proceedings for an order under this Part;  
27 to give notice of the application to a person who is not a party to  
28 the proceedings.

29 **146 After section 90D**

30 Insert:

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1     **90DA Need for separation declaration for certain provisions of**  
2                     **financial agreement to take effect**

- 3             (1) A financial agreement between 2 people, to the extent to which it  
4                 deals with:
- 5                     (a) how, in the event of the breakdown of the marriage, all or  
6                         any of the property or financial resources of either or both of  
7                         them at the time when the agreement is made, or at a later  
8                         time and before the termination of the marriage by divorce, is  
9                         to be dealt with; or
- 10                    (b) the maintenance of either of them after the termination of the  
11                         marriage by divorce;
- 12             is of no force or effect until a separation declaration is made.
- 13             (2) A separation declaration is a written declaration that complies with  
14                 subsections (3) and (4).
- 15             (3) The declaration must be signed by at least one of the parties to the  
16                 financial agreement.
- 17             (4) The declaration must state that:
- 18                     (a) the parties have separated and are living separately and apart  
19                         at the declaration time; and
- 20                     (b) in the opinion of the parties making the declaration, there is  
21                         no reasonable likelihood of cohabitation being resumed.

- 22             (5) In this section:

23                     ***declaration time*** means the time when the declaration was signed  
24                     by a party to the financial agreement (or last signed by a party to  
25                     the agreement, if both parties to the agreement have signed).

26                     ***separated*** has the same meaning as in section 48 (as affected by  
27                     section 49).

28     **147 After subsection 106B(4)**

29             Insert:

- 30             (4AA) An application may be made to the court for an order under this  
31                 section by:
- 32                     (a) a party to the proceedings; or

**Schedule 1** Amendments

**Part 19** Interaction of family law and bankruptcy law

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- 1                                   (b) a creditor of a party to the proceedings if the creditor may not  
2                                   be able to recover his or her debt if the instrument or  
3                                   disposition were made; or  
4                                   (c) any other person whose interests would be affected by the  
5                                   making of the instrument or disposition.