

# CHAPTER 2

## OUTLINE OF THE BILL

2.1 This Chapter outlines the key provisions of the Bill.

### *Schedule 1 - Shared Parental Responsibility*

2.2 A child's best interests are the paramount consideration of a court in making a parenting order.<sup>1</sup> **Clause 60CC** sets out primary considerations and additional considerations that a court must have regard to in determining what is in a child's best interests.<sup>2</sup>

2.3 **Clause 60I** inserts into the Act a requirement that, except in the circumstances outlined in **subclause 60I(9)**, persons involved in a child-related dispute must make a genuine effort to resolve the dispute through family dispute resolution before applying for a court order.

2.4 **Clause 61DA** provides that in making a parenting order, a court **must** apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

2.5 **Clause 63DA** creates obligations on 'advisors' (defined as legal practitioners; family counsellors; family dispute resolution practitioners; or family consultants) who are giving assistance to people in relation to parental responsibility for a child following the breakdown of a relationship. Two of the things that advisors must advise people in those situations are that they could consider equal time, or substantial and significant time, parenting arrangements, where those arrangements would be reasonably practicable and in the best interests of the child.

2.6 **Clause 65DAA** provides that when a parenting order provides that the parents of a child have equal shared parental responsibility for a child, the court **must** consider whether spending equal time (or substantial and significant time) which each parent is in the best interests of the child, and reasonably practicable. If the court finds such arrangements are in the best interests of the child, and reasonably practicable, then the court **must** make an order that the child spend equal time (or substantial and significant time) with each parent.

---

1 See section 65E of the Act and clause 60CA of the Bill.

2 A child's best interests are the paramount consideration of a court in making a parenting order.

2.7 Clauses 61DA and 65DAA only apply to parenting orders made in proceedings initiated on or after the commencement of Schedule 1 (**item 43(2) and (8) of Schedule 1**).<sup>3</sup>

2.8 **Clause 117AB** requires that, where the court is satisfied that a party to the proceedings **knowingly** made a false allegation or statement in the proceedings, the court **must** order that party to pay some or all of the costs of another (or other) parties.

### ***Schedule 2 – Compliance Regime***

2.9 Schedule 2 repeals the current Division 13A of Part VII of the Act – Consequences of failure to comply with orders and other obligations that affect children – and replaces it with a new compliance regime. The **new Division 13A** (inserted by item 6 of Schedule 2) establishes a regime where consequences are classified by reference to 4 situations, namely where there is:

- an allegation of contravention, but contravention is not established (**Subdivision C**)
- a contravention with a reasonable excuse (**Subdivision D**)
- a contravention without reasonable excuse - less serious contravention (**Subdivision E**), or
- a contravention without reasonable excuse - more serious contravention (**Subdivision F**)

2.10 The court also has the power to vary a parenting order regardless of whether subdivisions C, D, E and F also apply (**Subdivision B**).

2.11 Where there is an allegation of a contravention, but the court does not find that the contravention is established (**Subdivision C**), the court may consider making an order for some or all of the costs of the parties to the proceedings to be paid by the *applicant* (see **clause 70NCB**).

2.12 For contraventions with a reasonable excuse (**Subdivision D**) the court may make an order compensating a person for time not spent with a child as a result of the contravention (see **clause 70NDB**). If the court does not make an order under clause 70NDB, it may consider making an order for some or all of the costs of the parties to the proceedings to be paid by the *applicant* (see **clause 70NDC**).

2.13 The court has a range of powers in respect of the orders that it may make with respect to contraventions under subdivision E and F (see **clauses 70 NEB** and **70NFB**), and includes the power to order a sentence of imprisonment in relation to contraventions dealt with under **Subdivision F**.

---

3 Schedule 1 commences on a day to be fixed by Proclamation, or if this does not occur within six months of Royal Assent, on the first day after that period.

---

### *Schedule 3 – Amendments relating to the conduct of child-related proceedings*

2.14 **Clause 69ZN** sets out the principles that the court must have regard for in conducting child-related proceedings, including:

- the courts is to consider the needs of the child concerned and the impact the conduct of the proceedings may have on the child in determining the conduct of the proceedings
- the court is to actively direct, control and manage the conduct of proceedings, and
- the proceedings are to be conducted without undue delay and with as little formality and legal technicality and form as possible.

2.15 **Clause 69ZT** provides that, unless the court decides otherwise, the rules of evidence do not apply to child-related proceedings.

2.16 **Clause 69WZ** gives the court the power to order prescribed State or Territory agencies to provide the court with documents or information about:

- notifications to the agency of suspected abuse of a child, or family violence relating to the child to whom the proceedings relate
- assessments by the agency of investigations into a notification or the outcomes of an investigation, and
- reports commissioned by the agency in the course of investigating a notification.

### *Schedule 4 – Changes to dispute resolution*

2.17 New **Parts II (Non-court based family services)** and **III (Family consultants)** are inserted into the Act as part of a restructure of the dispute resolution processes.<sup>4</sup>

2.18 Non-court based family services are family counselling (**Division 2 of Part II**), family dispute resolution (**Division 3 of Part II**) and arbitration (**Division 4 of Part II**).

2.19 Court based family services are 'family consultants'. The functions of family consultants are set out in **clause 11A** and include:

- assisting and advising people involved in the proceedings
- assisting and advising courts and giving evidence in relation to proceedings, and

---

4 Item 36 of Schedule 4 repeals the current Parts II (Counselling organisations and mediation organisations) and Part III (

- advising the court about appropriate family counsellors, family dispute resolution practitioners and courses and programs services to which the court may refer the parties to the proceedings.

2.20 A key difference between the non-court based and the court based services are that communications with and in the presence of family counsellors and family dispute resolution practitioners are not admissible in the proceedings, except in cases of abuse or risk of abuse of a child under 18 (see **clauses 10E** and **10J**). Communications involving family consultants are admissible in proceedings (see **clause 11C**).

2.21 **Clause 12B** provides for regulations that can prescribe information to be given to persons relating to non-court based family services and court processes and services, including information about the legal and possible social effect of the proposed proceedings, services provided by family counsellors and family dispute resolution practitioners and the role of family consultants. **Clause 12C** provides for regulations that prescribe information to be included in documents to be given to persons in relation to services available to help with reconciliation of a marriage. **Clause 12D** provides for regulations to prescribe information to be included in documents given to people involved in child-related proceedings, including information about family counselling services to assist the parties and the child(ren) with the consequences of those proceedings.

2.22 **Clauses 12E, 12F and 12G** place obligations on legal practitioners, principle executive officers of courts, family counsellors, family dispute resolution practitioners and arbitrators to provide to people the information prescribed in clauses 12B, 12C and 12D, in various circumstances.

2.23 A new **Part IIIB** sets out the courts powers in relation to non-court based family services, including: orders referring parties to counselling and family dispute resolution or arbitration (**clauses 13C and 13E**); and orders to review and set aside registered awards (**clauses 13J and 13K**).

#### ***Schedule 5 – Representation of a child's interests by independent children's lawyer***

2.24 **Clause 68L** provides that the court may, where it is satisfied that the child's interests in the proceedings ought to be independently represented by a lawyer, appoint an 'independent children's lawyer'. The role of the independent children's lawyer is (**subclause 68LA(2)**):

- to form an independent view, on the evidence available, of what is in the best interests of the child and inform the court of that view, and
- in relation to the proceedings, act in the best interests of the child.

2.25 The independent children's lawyer is *not* the child's legal representative, and is not obliged to act on the instructions of the child (see **subclause 68LA(4)**).

---

### ***Schedule 6 – Family violence***

2.26 **Clause 68P** sets out the obligation of a court in making an order or granting an injunction that is inconsistent with an existing family violence order. The court must, amongst other things:

- specify that the order or injunction is inconsistent with the existing family violence order,
- give a detailed explanation in the order or injunction of how the contact that it provides for is to take place,
- explain the injunction to the parties to the proceedings, the person to whom the family violence order is directed and the person whom it protects.<sup>5</sup>

2.27 Where an order is made or an injunction is granted that is inconsistent with an existing family violence order, the family violence order is invalid to the extent of the inconsistency (**subclause 68Q(1)**).

2.28 **Subclause 68R(1)** gives courts which are dealing with an application for a family violence order the power to revive, vary, discharge or suspend family law orders, injunctions and other arrangements that provide for a child to spend time with a person.

### ***Schedule 7 – Jurisdiction of courts***

2.29 **Item 1 of Schedule 7** repeals section 45A of the Act. **Section 45A** requires the Federal Magistrates Court to transfer matrimonial proceedings to the Family Court when the value of the property exceeds \$700,000, unless the parties consent to the proceedings remaining in the Federal Magistrates Court.

### ***Schedule 8 – Removal of references to residence and contact***

2.30 Schedule 8 amends a number of Acts, such as the *Australian Citizenship Act 1948*, the *Australian Passports Act 2005*, and the *Child Support (Assessment) Act 1989* to remove the terms 'residence', 'contact' and 'specific issues orders'.

---

5 The court may arrange for someone else to provide this explanation.

